

Practical deliberation and  
the voice of conscience in  
Fichte's 1798 *System*  
of *Ethics*

Michelle Kosch

*Cornell University*

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J.G. FICHTE'S 1798 *SYSTEM OF ETHICS*, HIS MAJOR WORK OF NORMATIVE ethics, ranks among the most under-appreciated works in the history of moral philosophy. That has not always been the case; in the early nineteenth century the work was widely regarded as the most complete and systematic normative ethics on Kantian foundations.<sup>1</sup> Its later obscurity had many causes: the difficulty of the text itself; the early disruption of Fichte's academic career; and above all the eventual dominance of Hegelianism in German philosophy, which cemented in the minds of later philosophers and historians some fundamental misinterpretations of Fichte's central claims. Here I will rebut what seem to me the most significant of these, which concern his account of practical deliberation and of the authority of individual conscience.

The views attributed to Fichte are: that moral deliberation consists entirely in consultation of one's conscience; that conscience is a faculty that gives immediate epistemic access to substantive moral truths; that conformity with the verdict of conscience is the sole criterion of the moral correctness of actions; and that an individual's conscientious decision is therefore morally incorrigible. (I will refer to the conjunction of these four points in what follows as "the criterial interpretation".) This was by no means the consensus reading of Fichte on these topics in the early nineteenth century.<sup>2</sup> Nor is it correct, as I will show. But Hegel attributed this set of views to Fichte in several works;<sup>3</sup> and from Hegel this reading of the *System of Ethics* passed into

1. I make this case in M. Kosch 2015.
2. Some readers were confused by Fichte's remarks about the function of conscience. For instance, Berger, in his otherwise excellent review, attributed to Fichte the view that a "feeling" is a "criterion" of the good (J.G.I. Berger 1799 p. 227). Elvenich (mistakenly) saw Fichte as proposing two substantive criteria of moral worth, an "outer" and an "inner" one (P.J. Elvenich 1830 p. 305) but in his interpretation (correctly) took the substance of Fichte's doctrine of duties to be derived from the "outer" criterion (P.J. Elvenich 1830 p. 290). Schleiermacher made a different mistake, taking Fichte's claim to be that fulfillment of the formal condition guarantees fulfillment of the substantive one (F. Schleiermacher 1803 p. 184). But these are exceptions in a large body of literature from which the criterial interpretation is largely absent.
3. Cf. *Phänomenologie des Geistes* §§632–671 (G.W.F. Hegel 1986 vol. 3 pp. 464–494), and especially §635 (G.W.F. Hegel 1986 vol. 3 pp. 466–467); *Grundlinien*

the general philosophical imagination. It is still nearly universal, even among scholars of Fichte.<sup>4</sup>

*der Philosophie des Rechts* §137 (G.W.F. Hegel 1986 vol. 7 pp. 254ff.).

4. The continuing appeal of this reading was made salient to me in a 2012 APA presentation by Günter Zöllner, who pointed to the “criteriological” role of conscience as a feature of Fichte’s ethical theory that should make it unattractive to contemporary Kantians. Conscience, according to Zöllner’s Fichte, is a source of immediate and infallible moral insight, and consultation of it is the sole means for identifying which action is substantively correct in a deliberative situation. “Unlike in standard situations of applying a means-ends calculus as part of consequentialist reasoning Fichte’s ethical deliberator does not actually consider the short-, medium- and long-range outcome of various courses of action vying for preferential selection and exclusive execution. Rather Fichte’s ethical ego turns to his or her own conscience as a source of immediate, allegedly infallible insight, not weighing consequences but attending to an inner voice” (G. Zöllner 2012 pp. 5–6). Allen Wood has supported Zöllner’s reading in correspondence, and defended parts of the criterial interpretation in a recent paper, arguing that on Fichte’s account conscience is an infallible guide to substantive moral correctness, and contrasting Fichte’s view of the role of conscience with Kant’s (J.B. Schneewind and A.W. Wood 2012, pp. 479–481) — although, in earlier work, Wood advanced an interpretation that seems to me more in line with the one I advance here (cf. A.W. Wood 1990 p. 176ff). Daniel Breazeale has also defended the criterial interpretation in a recent paper. Like Zöllner, Breazeale calls conscience’s role for Fichte “criteriological” (D. Breazeale 2012 p. 202). Like Wood, he contrasts Fichte’s view of conscience with that of Kant, writing that “[w]hereas for Kant, conscience is an inner tribunal that ascertains whether we have really determined our actions according to respect for the moral law, for Fichte it is precisely ‘an inner feeling within our conscience’ that determines what is and is not our duty, a feeling that ‘never errs so long as we pay heed to its voice’” (D. Breazeale 2012 p. 200). (I will argue in §3 that for Fichte, as for Kant, conscience has only a second-order epistemic function, and that the contrast with Kant drawn by both Wood and Breazeale is therefore incorrect.) Breazeale takes the exercise of reflecting judgment to be part of practical deliberation, but he sees its function not as ordinary calculative reasoning (as I will argue it is in §2) but instead as a process “which produces in me a certain mental ‘harmony’ with my feeling of independence, a harmony that is perceived as a *feeling* of ‘ought’” (D. Breazeale 2012 p. 200). He identifies that process of reflection with conscience itself (thereby giving conscience a first-order epistemic role), and attributes to Fichte the view that conscience is substantively infallible. “What we have just described is nothing other than the operation of conscience, which, properly understood, is our unailing moral guide in every concrete situation” (D. Breazeale 2012 p. 200). These are examples I have encountered in the past year, but this has long been a standard interpretation of Fichte, in texts on the history of philosophy in general and in scholarly work on Fichte in particular. In earlier work Breazeale describes Fichtean

The implausibility of the views attributed to Fichte on the criterial interpretation continues to play a role in the neglect of his moral philosophy, despite the popularity of Kantian approaches to ethics and the fact that Fichte’s *System of Ethics* remains one of the most original and insightful efforts at a systematic normative theory on Kantian foundations. In this paper my main aim is to explain how Fichte actually thought about practical deliberation (§2) and the role of conscience (§3). A subsidiary aim is to explain why the criterial interpretation has had such appeal, despite its philosophical and textual inadequacy (§4). But I will begin by outlining, very briefly, the structure of Fichte’s ethical theory (§1), since only against this background can his account of practical deliberation be understood; and I will conclude with some brief remarks about the interest Fichte’s theory ought to evoke in the context of contemporary moral philosophy.

## 1. Fichte’s ethical project

Fichte’s ethics is recognizably Kantian in many ways. Chief among these is its foundation in the idea of the autonomy of the free rational

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conscience as “the positive criterion” of truth for moral beliefs, claiming that this criterion, though “subjective”, is nevertheless the only one, and that it is, for Fichte, immune to error (D. Breazeale 1996 pp. 48–50). Gunnar Beck argues that, according to Fichte, “by dint of our conscience ... each man has direct, unmediated and complete awareness of what the moral law commands him ... to do” (G. Beck 2008 p. 69). Bärbel Frischmann writes that for Fichte conscience is “the criterion for the moral correctness of our convictions” (B. Frischmann 2008 p. 322). We also find the reading in general histories, for instance in Copleston, for whom Fichtean conscience is “an absolute criterion of right and wrong” (F. Copleston 1962 vol. 7 p. 65) and who praises Fichte for tracking the “way in which the ordinary man is accustomed to speak about his moral convictions” (by saying, for example, “I feel that this is the right thing to do”) (F. Copleston 1962 vol. 7 p. 66). Cf. also K. Fischer 1884 p. 58off. There are, as one anonymous reviewer has pointed out, many versions of the criterial reading in the literature, and there are important distinctions among them. However, since all of them give conscience a first-order epistemic role, they are all subject to the objection I raise in §3. Of course this reading is not strictly ubiquitous: as I have said, A.W. Wood 1990 takes what seems to me a different view, and Peter Rohs explicitly acknowledges the existence of a material standard of correctness of actions that is independent of the deliverance of conscience (P. Rohs 1991, p. 109).

will.<sup>5</sup> But if there is one fact about Fichte's relation to Kant that is generally recognized, it is his view that adherence to the spirit of the Kantian critical philosophy sometimes requires departures from its letter. It is unsurprising, then, that Fichte's *System of Ethics* departs from Kant's ethical writings on a number of key points.

The most fundamental difference lies in his account of the nature of the moral principle upon which the content of moral duty is said to depend. For Kant, the moral principle requires that we choose only in such a way that the maxim of choice can at the same time be willed as a universal law for a realm of rational agents.<sup>6</sup> Kant calls this principle "formal"; a material principle, by contrast, would prescribe the production of an end and judge the goodness of acts, rules, or policies on the basis of their tendency to produce or further that end.

Fichte's moral principle is material in just this sense. He rejects Kant's reason for insisting that a moral principle must be formal (*viz.*, that all material principles must be rooted in the lower faculty of desire),<sup>7</sup> because he rejects both Kant's account of the content of the lower faculty of desire and his account of the relation of the lower to the higher fac-

5. Fichte does not take up Kant's term "autonomy" as his own, but he does claim that his account of ethics is autonomous in Kant's sense (*e.g.* at J.G. Fichte 1971, IV: 56–57). He holds that the exercise of the rational will is what is fundamentally valuable, and that other things acquire value in virtue of their relation to that (as conditions of its possibility, or as its products, for instance). (I take these to be first-order claims about what is of value and about the place of moral considerations within practical reason more generally.) He also holds that the rational will has this (its own) value as its constitutive end, and that it inevitably discovers this end (and also creates some aspects of it) through its own rational activity. Rational willing is the "source" of value in these two senses, I believe, for both Kant and Fichte. I do not believe that either claim commits either Kant or Fichte to the attitude-dependence of value or norms across the board. (This point of interpretation is controversial, but no part of my argument in this paper depends upon it.) Here and elsewhere I cite Fichte according to the pagination of the first edition of his collected works, published by his son I.H. Fichte in 1845–1846 and reprinted by De Gruyter in 1971. This pagination is reproduced in the margins of the latest edition by the Bavarian Academy of Sciences and Humanities (J.G. Fichte 1962–2011). All translations of Fichte are mine.

6. I. Kant 1968, 4: 420–440; I. Kant 1996a pp. 72–89.

7. I. Kant 1968, 5: 21–29; I. Kant 1996a pp. 155–162.

ulty of desire (in fact, he rejects the deep Kantian distinction between lower and higher faculties of desire altogether).<sup>8</sup> He plays down the idea of universal legislation, claiming that the universal-law formulation is a valuable heuristic but in no way a constitutive principle of practical reason.<sup>9</sup> His moral principle requires, instead, that we pursue the substantive end of rational agency's own ever greater perfection and independence from external limitations of all kinds.

It is this idea that I would like to elucidate, briefly, in this section. The best place to begin, in coming to grips with Fichte's ethical thought, is a summary statement of the moral principle he offers at the end of the second main part of the *System of Ethics*: "I should *act freely*, that I may *become free*."<sup>10</sup> There are, he tells us, several senses of freedom in play in that sentence. The freedom at issue in "becoming" free is the moral end *qua* "objective state of affairs that should be produced, the final end of absolute independence of everything outside of us."<sup>11</sup> What I *should* do is not simply produce this end by whatever means, but rather produce it by "act[ing] freely". What is it to act freely? Fichte tells us that acting freely has two aspects: "*how* it [*viz.*, the acting] must happen, and *what* must happen."<sup>12</sup> To these aspects correspond "formal" and "material" conditions of the "freedom" of an action,<sup>13</sup> where by the "freedom" of an action Fichte means the action's moral worth in a familiar sense: that it be done from the motive of duty (the "formal" condition) and that it be what duty demands (the "material" condition).<sup>14</sup> That an action can satisfy one of these two con-

8. J.G. Fichte 1971, IV: 128–131, 177–191.

9. J.G. Fichte 1971, IV: 234.

10. J.G. Fichte 1971, IV: 153; cf. 60, 149, 153, 209, 211–212, 229.

11. J.G. Fichte 1971, IV: 153.

12. J.G. Fichte 1971, IV: 153.

13. J.G. Fichte 1971, IV: 153.

14. Fichte also calls the formal condition a "subjective" criterion and the material condition an "objective" one. He also at one point calls the formal condition a condition on actions' "morality" and the material condition a condition on actions' "legality". This last remark is potentially misleading (though there

ditions without satisfying the other — that these are indeed independent necessary conditions on an action's moral worth, as Fichte here states — is denied by the criterial interpretation, and is part of what I aim to establish in what follows.

The formal condition (“how it must happen”) imposes a sort of due-diligence constraint on the pursuit of the moral end. It requires that the agent be conscious of the grounds of her action, that these grounds be that the action is the one the agent judges morality to demand, and that the agent be sufficiently subjectively confident in that judgment. The material condition (“what must happen”) requires that the action be part of a series at whose end one would arrive at the moral end *qua* state of affairs.

Progress toward this end is progress along many irreducibly divergent axes, which can be collected under four main categories.

First, the moral end subsumes the right ordering of individuals' relations to one another *qua* free individuals in a community of right. Fichte thought (and tried to show in his *Foundations of Natural Right* of 1796–1797) that a certain form of intersubjective interaction is a condition of possibility of free agency conscious of itself as such, and that certain principles of right fall out of an examination of the requirements of such interaction. In the *System of Ethics* he argues that participation in a community of right is a moral duty, as is compliance with the laws of any such community of which one is a member. These laws answer the greater part of the questions about what our duties to others are.<sup>15</sup> Some further questions are answered by the associative duties that arise from the social division of labor.<sup>16</sup> Fichte's justification of these associative duties is external: one has the duties because they are partially constitutive of practices that conduce to, or themselves partially constitute, the collective pursuit of the other components of the moral end. (Political duties are also justified externally, although

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was precedent for it in Kant), since ‘legality’ refers to substantive moral correctness (not accordance with positive law or *a priori* principles of right).

15. J.G. Fichte 1971, IV: 238–239, 259, 285–287, 301, 306–309.

16. Cf. J.G. Fichte 1971, IV: 271–273; 325–365.

the proximate end that justifies them — the protection of individuality — is distinct from the moral end.)

The moral principle dictates obligations directly only where such associative duties do not: in the sphere set aside as private by the law, or where the law is silent for other reasons, or where the power of enforcement is absent. It is a source of self-regarding duties and of some duties to others that are not themselves duties of right (because they do not fall directly out of the need to render multiple exercises of free agency compatible — *e.g.* duties to future generations); and it guides collective deliberation by citizens about which larger social goals to pursue among the many that are consistent with the principles of right.

The duties that are directly dictated by the moral end fall into two general classes. Duties in the first class have the same rationale as duties of right: the protection and promotion of individual agency *qua* individual, in the preservation of each individual's sphere of unimpeded causal interaction with the surrounding world. These impose patient-centered restrictions on the fulfillment of duties in the second class, which concern the direct promotion of the end of material independence of rational agency from external limitations of all kinds. Duties in this second class are duties to protect and expand human capabilities and opportunities for action in the outside world: to broaden our individual and collective ability to realistically plan (where that involves both increasing our ability to ensure that our plans are carried out if we undertake them and opening up novel possibilities for planning through technological innovation and creative expansion of ways of living, producing, and interacting). This fourth component of the moral end is the most distinctive element of Fichte's ethics (though it has roots in Kant's philosophy of history); it provides the foundation of his theory of property as well as of his account of many ethical duties (*e.g.* duties of beneficence and self-improvement); and it motivates his remarkable account of the moral importance of scientific research and education.

The ordering of these components is not obviously lexicographic, though there are some clear priority relations between duties from the different categories. Fichte's aim was to describe a moral situation

no less complex than the one we actually inhabit, in which tradeoffs between heterogeneous, not precisely comparable goods are routine.

That, then, is a brief outline of the structure of Fichte's ethical theory.<sup>17</sup> Two features of it are especially important for what follows. First, moral deliberation is end-oriented for Fichte, and that makes his account of it profoundly different from Kant's. This is seldom appreciated, and the assumption that his account of deliberation must be similar to Kant's has contributed to the motivation of the criterial interpretation. Second, for Fichte moral worth has two distinct necessary conditions, one formal and one material. His account of conscience forms part of his account of the formal condition. Proponents of the criterial interpretation either deny the existence of a separate, material condition, or else understand Fichte as arguing that satisfaction of the formal condition guarantees satisfaction of the material condition. Neither reading can be squared with the relevant texts, and both are philosophically implausible (though for different reasons). Their implausibility accounts for the incredulity with which most who accept the criterial interpretation regard Fichte's account of practical deliberation. I will expand on all of these points in the remaining sections.

## 2. Practical deliberation

Fichte thought that all practical reasoning is reasoning about what would bring about, or what would constitute the fulfillment of, the various components of the moral end. That is, he thought that all practical deliberation is purely calculative.<sup>18</sup> The task of practical

17. For a more detailed discussion of Fichte's theory of agency, see M. Kosch 2013. For a longer overview of Fichte's normative ethical theory and a discussion of the philosophical motivation behind the idea of material independence, see M. Kosch 2014, from which part of this summary is taken.

18. Here by 'calculative' I have in mind roughly the sense defined in C. Vogler 2002. But although Fichte thinks that all practical deliberation is calculative, he does not think that all *reasons* arise from such deliberation. We have reason to pursue the moral end, but this reason does not emerge from any process of deliberation, since we do not reason about whether to adopt it. It is given to us, as a reason, by our constitution as agents.

deliberation is that of determining which courses of action are possible in a given situation, which among the possible courses is permissible given the constraints of positive law (and, sometimes, non-political associative duties), and which permissible action is most likely to lead toward the end of material independence. Here is one description:

The moral law, in relation to empirical human beings, has a determinate *starting point* (the determinate limitation in which the individual finds himself) ...; it has a determinate (if never reachable) *goal* (absolute freedom from all limitation); and a completely determinate *way* along which it leads us (the order of nature). Therefore for every determinate individual in a given situation there is something determinate that is required by duty — and this, we can say, is what the moral law demands in its application to [that individual].<sup>19</sup>

This account of practical deliberation is very different from Kant's, and Fichte was careful to underscore this difference at several points in the text.

In one such passage, he claims that deliberation belongs entirely to the theoretical faculty, to the "power of reflecting judgment".<sup>20</sup> The moral principle specifies only the moral end, and does not directly prescribe or proscribe any determinate actions (or action types), either in general or in any individual case. The ethical drive thus determines the power of judgment "not *materially*, by giving it something ... but instead only *formally*, by determining it to seek something", namely that action *x* that, in the circumstances, is the one progress toward the moral end demands.<sup>21</sup> Because "the practical faculty is not a theoretical

19. J.G. Fichte 1971, IV: 166.

20. J.G. Fichte 1971, IV: 165.

21. J.G. Fichte 1971, IV: 166.

faculty ... it cannot give this *x*; rather this *x* is to be sought through the (here freely reflecting) power of judgment".<sup>22</sup>

Fichte here refers to a distinction Kant had drawn in the introduction to the *Critique of the Power of Judgment*. Kant had claimed that within what we would call "practical reasoning" in a loose sense (deliberation about what to do) we should differentiate between a part that is properly practical and a part that is only "technically-practical" and that belongs, strictly, to theoretical reason.<sup>23</sup> By "technically-practical" Kant has in mind reasoning about what would bring about, or what would constitute the fulfillment of, a given end – calculative reasoning, in other words. He argues that such reasoning belongs strictly to the theoretical faculty, not to the practical, because it involves only causal and mereological judgments and concepts drawn from natural science (in a sense broad enough to include psychology), and these are theoretical.<sup>24</sup> Fichte's assertion in this passage is that *all* practical deliberation is technically-practical in Kant's sense.<sup>25</sup>

22. J.G. Fichte 1971, IV: 166.

23. I. Kant 1968, 5: 171–173; I. Kant 2000 pp. 59–61.

24. "[A]ll technically-practical rules (*i. e.* those of art and skill in general, as well as those of prudence ...) ... must be counted only as corollaries of theoretical philosophy" (I. Kant 1968, 5: 172; I. Kant 2000 p. 60).

25. Some (cf. *e.g.* A.W. Wood 2000) have taken Fichte's remark that practical deliberation involves reflecting judgment to suggest a kinship to aesthetic judgment (Fichte's talk of "harmony" here also invites this); others (*e.g.* some audience members at the 2012 Boston University Workshop in Late Modern Philosophy, at which this paper was read) have taken it to be an effort on Fichte's part to say that practical deliberation involves only regulative principles but no constitutive ones. Both conclusions seem to me insufficiently supported by the textual evidence. According to the distinction Kant draws in the third *Critique*, determining judgment is what we employ to place a given particular under a "rule, principle, law" of which we are already in possession; whereas reflecting judgment extracts a universal from a group of given particulars (I. Kant 1968, 5: 179). Both determining and reflecting judgment are involved in theoretical inquiry, for Kant; so Fichte's reference to reflecting judgment should not suggest that aesthetic judgment, or something importantly analogous to aesthetic judgment, must be at issue. And the distinction between the regulative and constitutive use of concepts cuts across the distinction between reflective and determining judgment, for Kant; so there is no reason to take Fichte's description of practical deliberation as the

In a second passage apparently aimed at distinguishing his account of practical deliberation from Kant's, Fichte discusses "the Kantian principle: act in such a way that you can think the maxim of your will as a universal law".<sup>26</sup> He argues that the principle is correct in that since "[t]he moral end of every rational being is ... the self-sufficiency of reason generally" we should all in principle agree about the right thing to do in a given situation.<sup>27</sup> But he goes on to argue that the universality (in this sense) of moral judgment has at most heuristic significance:

exercise of reflecting judgment as just another way of saying that it involves only regulative principles. What is true is that, intuitively, moral judgments of the sort Kant describes in the *Groundwork* are instances of determining judgment. Practical reason provides a concept (<suited for universal legislation>), and practical judgment determines whether a given maxim falls under that concept. The concept is given *a priori* and so is (also) constitutive of practical reasoning. One might think that for Fichte moral judgments should work in the same way. We have a concept (<conducive to the moral end>), and practical judgment determines whether a given contemplated action falls under it. Why is that not Fichte's view? One problem might arise from the fact that acting on the moral end involves balancing competing considerations that are not precisely comparable. But I think the real problem arises from the fact that working out what is conducive to the moral end is very often a matter of exercising creativity, both because solutions to technical problems involve creativity and because the moral end itself involves the creative expansion of action possibilities. For Fichte, much moral progress results from invention (technological invention is the most straightforward instance, but artistic, conceptual, and other forms of invention are also involved). Notice that empirical-concept formation (a paradigm instance of Kantian reflecting judgment) is similarly creative. So, given the sort of problem-solving Fichte thinks practical reasoning involves, it is no surprise that he describes it as employing reflecting rather than determining judgment. Thanks to the audience at the 2012 Boston University Workshop in Late Modern Philosophy for forcing me to think about this question, and to an anonymous reviewer at this journal for prompting me to add a footnote addressing it.

26. J.G. Fichte 1971, IV: 233–234.

27. J.G. Fichte 1971, IV: 233. The context is the discussion of the obligation to seek consensus in cases of moral disagreement. Disagreement is a *prima facie* problem, because the result of the process of deliberation has the status of an imperative whose character is universal in that it (implicitly) claims to be the one any rational agent in exactly this situation with exactly this set of background beliefs would, on sufficient reflection, come to. Fichte here claims that the real meaning of Kant's formula of universal law is that morality demands that we act as if we were "everyman".

But in my view we need to add ... [that] this principle is only heuristic (I can very well use it to test whether I have erred in my judgment of my duty); but it is in no way constitutive. It is not even itself a principle, but only a consequence of the true principle, the demand for the absolute self-sufficiency of reason. The relationship of the two is not: because something can be a principle of universal legislation, for that reason it should be the maxim of my will; but instead the opposite: because something should be the maxim of my will, for that reason it can also be a principle of universal legislation.<sup>28</sup>

Here we have a disagreement about the nature of practical reasoning that goes very deep. This difference has been overlooked in the literature on Fichte's ethics, and since I believe that oversight has contributed to the plausibility of the criterial interpretation (as I will explain), I will pursue this contrast with Kant a bit further before turning to examine Fichte's account of conscience.

Recall that Kant, in the *Groundwork*, recognized two *a priori* principles of practical reason: the instrumental principle and the categorical imperative. The first rules out maxims that are individually self-defeating; the second rules out maxims that are collectively self-defeating (even if individually self-serving), or else maxims that conflict with certain natural ends of rational beings. Technically-practical reasoning is subordinate to the instrumental principle, and although Kant does not claim that the instrumental principle is itself a principle of theoretical reason (as some philosophers have done<sup>29</sup>), he does hold that all reasoning subordinate to it is theoretical. Fichte, in claiming that all deliberation about what to do involves only theoretical reasoning, and in claiming that the categorical imperative is a heuristic rather than a

28. J.G. Fichte 1971, IV: 234.

29. For a recent statement see K. Setiya 2007.

constitutive principle, is claiming that some version of the instrumental principle is the *only* constitutive principle of practical deliberation.<sup>30</sup>

Fichte can hold this more austere view of practical deliberation because his ontology of practical reasons is likewise more austere than Kant's. Fichte accepts only impartial, agent-neutral reasons at the ground level (although he admits some derivative agent-relative reasons — some given by political and other associative duties; others by natural solutions to moral coordination problems). The "self-sufficiency of reason generally" is an agent-neutral end and the source of agent-neutral reasons. Sometimes (perhaps ordinarily) pursuing one's own self-sufficiency is the best way to pursue this end; but where it is not, Fichte's position is that we have, associative duties aside, *no* reason to pursue our own before others'. This is what simplifies his account of practical deliberation: it can involve only calculative reasoning because it is oriented toward an end that is not essentially agent-relative.

Kant, by contrast, admits non-derivative agent-relative reasons. His practical deliberator begins from a default position of pursuing an end that is essentially agent-relative and that sets individual interests against one another, namely that of the agent's own happiness.<sup>31</sup> The categorical-imperative test then acts as a constraint on that pursuit.

30. He thus is committed (as I believe was Kant himself) to the denial of Korsgaard's thesis that "[t]he familiar view that the instrumental principle is the *only* requirement of practical reason is [not just false but] incoherent" (C. Korsgaard 1997 p. 220). It might be worth recalling at this point that Fichte takes the solution of coordination problems not to be an object of individual moral deliberation, but instead to be solved by membership in a community of right and by the associative duties arising from the social division of labor.

31. My conception of my happiness, for Kant, is a comparative conception of my overall well-being. The end is agent-relative because it is my well-being that is my end, not human well-being in general. The comparative element in the end of happiness — the fact that what I want in wanting happiness is to be well-off compared to my peers, and ideally to be better-off than them — is what sets individuals' interests in opposition to one another. Because it involves, essentially, this competitive element, the end of happiness will often conflict with what morality requires even under the best of (material) circumstances. Yet the agent-relative aim of one's own happiness is rationally required, according to Kant. This is the source of the antinomy of practical reason. For more discussion of Kant's conception of happiness, see A.W. Wood

For Fichte's practical deliberator, then, there is no two-step process corresponding to the two-step process of maxim-formation and maxim-testing in Kant. The fact that the categorical-imperative test in its Kantian form is absent from Fichte's account of practical deliberation, and the corresponding thinness of the account (Fichte, like Kant, having little to say about the instrumental principle), is part of the background of the interpretive problem, to which I can now return.

### 3. Conscience

The account of practical deliberation I have just reconstructed is taken from the first section of the third main part of the *System of Ethics*, which is dedicated to explicating the formal condition on the moral worth of actions. This section is also the locus of the interpretive problem, because in it Fichte has appeared, to many, to offer a quite different account of practical deliberation, on which an agent decides what to do in a given situation by simply consulting her conscience. Conscience is taken, on this interpretation, to have a first-order epistemic function: to provide immediate epistemic access to the determinate moral truth about what the agent should do in the situation. This assumption that conscience has a first-order epistemic function, coupled with Fichte's assertion in the section that conscience cannot err, has led readers to attribute to Fichte the view that conscientious decisions are substantively infallible.

That such an account is implausible has been charged by virtually everyone who has attributed it to Fichte, beginning with Hegel. That makes its persistence a puzzle. But the stretch of text that gives rise to it is, it must be admitted, especially thorny. I will begin by describing how it ought to be read, and then, in the next section, offer some suggestions as to why it has not always been read in this way.

Fichte prepares his discussion of the formal condition by remarking that two consequences "follow immediately" from the Kantian idea that morally worthy action must be action from duty, not just action

2001; for more discussion of how Fichte's account of practical reasons allows him to avoid Kant's antinomy, see M. Kosch 2015.

in accordance with duty: first, that one should act not blindly and impulsively but thoughtfully and with consciousness of one's duty; and, second, that one should never act against one's conviction.<sup>32</sup> Here we can see a shift in focus towards epistemic concerns and away from the motivational focus of Kant's own account of action from duty. There are two reasons for this shift.

The first arises out of Fichte's account of practical deliberation itself: since it is as prone to error as any exercise of reflective judgment, Fichte owes us an account of what could give an agent sufficient confidence in its results to justify action. (Kant, by contrast, seems to have seen the application of the categorical-imperative test as epistemically less problematic.) The second arises from Fichte's distinctive account of weakness of will (which he will outline in the section that follows): since he denies that a rational agent can be moved to do what she clearly sees to be unjustified, Fichte sees all morally blameworthy (though not all substantively morally incorrect) action as rooted in epistemic irresponsibility.<sup>33</sup> (For Kant, by contrast, weakness of will manifests itself in the transition from reflection to action, as well as in failures of reflection.)

So while Fichte aims, in this section, to capture the Kantian idea of action from the motive of duty, his conception of what that requires focuses on epistemic responsibility, because he thinks that this is where agents for the most part go wrong.<sup>34</sup> This is why he formulates the formal condition on moral worth as he does: "Act always according to your best conviction of your duty; or: act according to your conscience."<sup>35</sup>

This condition might seem easy to fulfill; and if how we fulfill it were trivially obvious, Fichte would stop here. But he sees a potential

32. J.G. Fichte 1971, IV: 155–156.

33. J.G. Fichte 1971, IV: 191–193.

34. Thanks to an anonymous referee at this journal for pressing me to clarify this shift in emphasis in Fichte's account of action from duty.

35. J.G. Fichte 1971, IV: 156; cf. IV: 173: "The formal condition of the morality of our actions ... consists in our decision to do what conscience demands because conscience demands it."

problem. He suggests that the formal condition might be impossible to meet if a certain second-order worry cannot be put to rest: “Just as I can err in the judgment of the individual case, so I can err in the judgment of my judgment, in my conviction of my conviction.”<sup>36</sup> If action from duty requires acting on conviction about what duty demands, and if I could judge wrongly that I have such conviction — that I am in fact convinced that I should do some action *x* now — then I could act in the absence of the subjective conviction that the formal condition requires, *without recognizing that it is absent*.

The problem Fichte sees is that, were that possible, fulfillment of the formal condition would be “dependent upon accident.”<sup>37</sup> Fulfillment of the material demands of morality is “dependent upon accident” in a straightforward sense, because these demands are substantive and because practical judgment can err in its determination of them. Satisfaction of the formal condition, by contrast, is supposed to be immune to moral luck, entirely under the agent’s control. (That is because it is to satisfaction of the formal condition that praiseworthiness and blameworthiness attach.) In order for fulfillment of the formal condition *not* to be dependent upon accident, Fichte goes on, there must be “an absolute criterion of the correctness of my conviction concerning my duty.”<sup>38</sup> The availability of such a criterion would rule out the possibility that I might, unbeknownst to myself, fail to act on the motive of duty. That is the worry Fichte is trying to lay to rest in the discussion that follows.

It might seem a strange worry to have, and I believe it is that strangeness that has made the passage so easy to misread. We can understand what Fichte says here only if we keep clearly in view the distinction between (1) a first-order question about what I should do (“Is *x* really what I should do?”) and (2) a second-order question about my *judgment* that *x* is what I should do (“Am I really *convinced* that *x* is

what I should do?”). These can sound like the same question. (Indeed it is plain that they have, to most of Fichte’s readers.) And even once one succeeds in distinguishing them, it can still seem that what motivates the second-order worry can only be concern that the first-order judgment might be in error. In fact, though, the two questions are distinct; and in fact Fichte has already explained the reason, beyond concern with the first, for asking the second: it is the agent’s concern with whether she is fulfilling the *formal* (not the material) condition on the moral worth of actions. For she cannot act on conviction if she is unsure about whether she has a conviction to act on.

Fichte has already told us that the first-order conviction he has in mind is non-factive (“Just as I can err in my judgment of the individual case ...”). And in the discussion that follows (after a few pages) of conscientious moral disagreement, Fichte presupposes that this second-order certainty is no guarantee of the substantive truth of agents’ first-order convictions: for if it were a guarantee of truth, it would thereby guarantee the *absence* of conscientious disagreement.<sup>39</sup> So my aim, in looking for a “criterion of correctness of my conviction concerning my duty”, cannot be to become convinced that I am correct in my first-order judgment. It can only be to become convinced that I am in fact convinced *of* my first-order judgment.

The answer to this second-order question is, according to Fichte, easy to come by. Our subjective confidence in having come to a concrete moral judgment is no more problematic than our confidence in having come to a concrete theoretical judgment, he argues, since the

36. J.G. Fichte 1971, IV: 164.

37. J.G. Fichte 1971, IV: 164.

38. J.G. Fichte 1971, IV: 164.

39. Fichte has at least one further commitment that entails that subjective conviction does not guarantee substantive correctness. For properly exercised reflective judgment to be infallible, practical reasoners would need not only to be perfectly rational in their inferences; they would also need to start from all and only true premises. But if Fichte thought we (already) reason from all and only true premises, he would have to deny either that we can make progress in our theoretical understanding of the world, or that such progress could have any practical relevance. Since he does think that we can make progress in science in the future, and since he does think that such progress would be practically relevant, he must assume we draw false conclusions in many instances of practical reasoning today.

former is simply a species of the latter. (It is at this point in the text that we find the discussion of reflective judgment reconstructed in §2 above.) The process of engaging in practical deliberation and completing it is just the same, subjectively, as any instance of theoretical reasoning: our theoretical faculties go their way until they hit upon something that satisfies the demand to find the action  $x$  that is the one that, in these circumstances, is most conducive to progress toward the end of absolute independence. What happens, subjectively, when our theoretical faculties have hit upon that something is the occurrence of a feeling of “cool approval” that is exactly similar to the one that accompanies the discovery of the answer to any theoretical question. “In action we call what is approved in this way *right*; in cognition *true*”, but the feeling of settled conviction that replaces the feeling of doubt that precedes it is the same, because the same cognitive process underlies both.<sup>40</sup> In the moral case, the name for that feeling of settled conviction is “the voice of conscience”.

Fichte is quite explicit here that he is making a phenomenological point about what it feels like to come to a judgment — “whether I am doubtful or certain, I learn not through argument ... but through an immediate feeling”<sup>41</sup> — and that this answers the question of how one can be assured that this element of the formal criterion is met (when it is) by answering the question of how one can be confident that one has indeed come to a moral judgment.

The interpretive problem arises from his way of putting this idea: “if action from duty is to be possible, there must be an absolute criterion of the correctness of our conviction of our duty”.<sup>42</sup> To many readers the “correctness” at issue has seemed to be the substantive correctness of the first-order judgment that the agent has come to. The interpretive mistake, then, is to take a way of determining when one has a moral conviction to act on (and so can in principle satisfy

40. J.G. Fichte 1971, IV: 167, 170.

41. J.G. Fichte 1971, IV: 169. Fichte’s discussion here calls to mind Peirce’s in ‘The Fixation of Belief’ (C. Peirce 1877).

42. J.G. Fichte 1971, IV: 165.

the formal requirement to act according to one’s conviction of one’s duty) to be, instead, a procedure for determining what the thing to do is in a given situation (and so to provide instead the material content of one’s duty in that situation).

#### 4. Textual and other temptations to the criterial interpretation

Fichte seems himself to be aware of the potential for misunderstanding here, and takes measures to forestall it at several points — pointing out explicitly the distinctness of the formal and material conditions at the start of the discussion;<sup>43</sup> emphasizing along the way that the formal criterion is subjective and inner, not “an outer, objective” criterion;<sup>44</sup> and returning to the contrast between formal and material conditions at the end of the discussion.<sup>45</sup> These protestations, along with the architectonic of the *System of Ethics* and the various formulations of the moral principle, rule the criterial interpretation out categorically. But, unfortunately, Fichte makes many remarks in this section that have seemed to invite it; and some (not illegitimate) assumptions have led readers to accept that invitation.

The most important among the assumptions arises from failure to see the distance between Fichte’s account of practical deliberation and Kant’s. The absence of a deliberative procedure like the categorical-imperative test has led readers to put consultation of conscience in its place. The criterial interpretation takes consultation of conscience to be a first-order procedure of practical deliberation (something analogous to running one’s maxim through the categorical-imperative test), when in fact the function Fichte attributes to conscience is very like one of the functions Kant himself attributed to conscience: conscience tells us whether or not we *have* deliberated adequately (in Kant’s terms, whether or not we have submitted our maxim to the

43. J.G. Fichte 1971, IV: 156.

44. J.G. Fichte 1971, IV: 170. Kant draws the same distinction at I. Kant 1968, 6: 401; I. Kant 1996a pp. 529–530.

45. J.G. Fichte 1971, IV: 172–173.

categorical-imperative test).<sup>46</sup> For both, the epistemic function of conscience is entirely second-order. That is why Fichte can take himself to be agreeing with Kant about conscience in this section.<sup>47</sup>

46. I. Kant 1968, 6: 401; I. Kant 1996a pp. 529–530. Of course conscience has further functions, for Kant, that it does not have for Fichte. It also examines whether we have followed through, in our actions, on our considered moral judgments; and it punishes us for not doing so (I. Kant 1968, 6: 438ff.; I. Kant 1996a pp. 559ff). Conscience does not have these functions for Fichte, because he thought that we are always adequately motivated to act in accordance with what we clearly see to be our best reasons.
47. Cf. J.G. Fichte 1971, IV: 173, where Fichte insists that “[c]onscience ... does not provide the material; this is provided only by the power of judgment, and conscience is no power of judgment. It provides only certainty, and this sort of certainty occurs only together with the [first-order] consciousness of duty.” Fichte’s interpreters, by contrast, take him to be disagreeing with Kant (and so take his claim in this section that he agrees with Kant to be a mistake). For instance, Schneewind and Wood contrast Fichte’s and Kant’s accounts of the role of conscience in deliberation (J.B. Schneewind and A.W. Wood pp. 480–481). Breazeale does the same, writing: “Whereas for Kant, conscience is an inner tribunal that ascertains whether we have really determined our actions according to respect for the moral law, for Fichte it is precisely ‘an inner feeling within our conscience’ that determines what is and is not our duty, a feeling that ‘never errs so long as we pay heed to its voice’” (D. Breazeale 2012 p. 200). On my interpretation, by contrast, Fichte is correct in his assessment. In fact his whole way of framing the issue echoes some remarks of Kant’s in his essay ‘On the Miscarriage of All Philosophical Trials in Theodicy’, which appeared in the *Berlinische Monatsschrift* in 1791. Kant there writes: “One cannot always stand by the *truth* of what one says to oneself or to another (for one can be mistaken); however, one can and must stand by the *truthfulness* of one’s declaration or confession, because one has immediate consciousness of this. For in the first instance we compare what we say with the object in a logical judgment (through the understanding), whereas in the second instance ... we compare what we say with the subject (before conscience). ... We can call this truthfulness ‘formal conscientiousness’; ‘material conscientiousness’ consists in the caution of not venturing anything on the danger that it might be wrong, whereas ‘formal’ conscientiousness consists in the consciousness of having applied this caution in a given case. — Moralists speak of an ‘erring conscience’. But an erring conscience is an absurdity; and, if there were such a thing, then we could never be certain we have acted rightly, since even the judge in the last instance can still be in error. I can indeed err in the judgment *in which I believe* to be right, for this belongs to the understanding which alone judges objectively (rightly or wrongly); but in the judgment *whether I in fact believe* to be right (or merely pretend it) I absolutely cannot be mistaken, for this judgment — or rather this proposition — merely says that I judge the object in such-and-such a way” (I. Kant 1968, 8: 267–268; I. Kant 1996b p. 34).

The most important among the unfortunate remarks are the first and third corollaries in this section. The first corollary is the claim that conscience cannot err.<sup>48</sup> This indeed follows from what Fichte has said; but if we understand the sort of verdict conscience delivers, we see that it does not follow from this that an individual cannot err in her substantive first-order judgment (which is, apparently, what Hegel took Fichte to mean with the claim that conscience cannot err). Here, again, Fichte agrees with Kant.<sup>49</sup>

The third corollary is the claim that conscience cannot be replaced by the judgment of an external authority, and that acting on external authority rather than on one’s own individual judgment is necessarily acting in a way that lacks moral worth.<sup>50</sup> The first half of this conjunction also follows from what Fichte has said, since the feeling of certainty that he has described comes only to one who has made a judgment himself: “it is the exclusive condition of possibility of such a feeling that the subject himself actually judged. And so certainty and conviction

48. J.G. Fichte 1971, IV: 173–174.

49. Kant also claimed, both in ‘On the Miscarriage of All Philosophical Trials in Theodicy’ (quoted above) and in *The Metaphysics of Morals*, that “an erring conscience is an absurdity”. In *The Metaphysics of Morals*, he continues: “For while I can indeed be mistaken at times in my objective judgment as to whether something is a duty or not, I cannot be mistaken in my subjective judgment as to whether I have submitted it to my practical reason (here in its role as judge) for such a judgment; for if I could be mistaken in that, I would have made no practical judgment at all, and in that case there would be neither truth nor error” (I. Kant 1968, 6: 401; I. Kant 1996a pp. 529–530; cf. I. Kant 1968, 8: 267–268; I. Kant 1996b p. 34, quoted above). Kant goes on to note that it follows from this that “to act in accordance with conscience cannot itself be a duty; for if it were, there would have to be yet a second conscience in order for one to become aware of the act of the first. The duty here is only to cultivate one’s conscience, to sharpen one’s attentiveness to the voice of the inner judge and to use every means to obtain a hearing for it” (I. Kant 1968, 6: 401; I. Kant 1996a p. 530). Unfortunately, Fichte is not so careful and does often speak as if acting in accordance with conscience were itself a duty. But he means, I believe, only to agree with Kant’s judgment that “if someone is aware that he has acted in accordance with his conscience, then as far as guilt or innocence is concerned nothing more can be required of him. It is incumbent upon him only to enlighten his *understanding* in the matter of what is or is not duty” (I. Kant 1968, 6: 401; I. Kant 1996a p. 530).

50. J.G. Fichte 1971, IV: 175.

tion of foreign judgments simply does not occur; and conscience can absolutely not allow itself to be led by authority.<sup>51</sup>

Of course one might concede that the relevant feeling cannot be present when one acts on someone else's normative authority, and yet still argue that morality can sometimes require just that.<sup>52</sup> This would be to deny that the formal condition as Fichte presents it is indeed a necessary condition of the moral worth of actions, and it is probably the main thrust of Hegel's criticism, most charitably construed.

When considering this objection, it is important to bear in mind what Fichte means to claim here. First, as we have seen, he does not claim that satisfaction of the formal condition is sufficient for substantive correctness. Second, he does not mean to grant blanket permission to conscientious objection to political authority.<sup>53</sup> Third, he does not mean to rule out the possibility that individuals might learn, morally, from other individuals; in fact he admits the necessity of a segment of society dedicated to the moral education of people generally,<sup>54</sup> endorses a general duty of everyone to set a moral example,<sup>55</sup> and argues that discussion aimed at reaching a moral consensus in cases of disagreement is itself a moral demand.<sup>56</sup>

51. J.G. Fichte 1971, IV: 175.

52. Cf. e.g. J. Raz 1979 and P. Soper 2002.

53. J.G. Fichte 1971, IV: 239–240.

54. J.G. Fichte 1971, IV: 348–353.

55. J.G. Fichte 1971, IV: 313–325.

56. J.G. Fichte 1971, IV: 230–233. Much of part 3 section 2 — nominally devoted to the explication of the material condition — is in fact devoted to the problem of disagreement among peers. In the recent literature, the debate about peer disagreement centers on how the agent should (unilaterally) adjust her credences in the face of it (cf. A. Elga 2007, D. Christensen 2007, D. Enoch 2010, and R. Feldman and T.A. Warfield 2010). Fichte's proposal is more in line with our actual practice (at least in some areas): he thinks we should argue until we reach agreement (cf. J.G. Fichte 1971, IV: 229–253 *passim*). In fact he conceptualizes the need for the church as a social institution in terms of the need for a forum that facilitates such consensus (not, as one might have thought, as a forum for disseminating the judgment of a moral authority).

All of these arguments presuppose that moral judgment is educable; and what is more Fichte does not offer the usual Kantian reasons for denying that there can be moral expertise. Instead he takes pains to argue that the ultimate authority of individual conscience is *consistent* with the demand for openness to moral persuasion by others.<sup>57</sup> What he means to rule out is only the moral permissibility of acting against one's own firm, considered conviction and acting instead on the expressed conviction of some other agent acting in a private capacity (or of trying to cause anyone else to do the same).<sup>58</sup> It is worth noting that this is hardly an extreme position; in fact it is taken to be the default position in the contemporary literature on moral deference.<sup>59</sup> All that being said, the objection (now detached from the criterial interpretation) may yet have merit.<sup>60</sup>

Another remark that seems to invite the criterial interpretation comes before the corollaries, at the close of the main discussion: “[C]onscience is the immediate consciousness of our determinate duty.”<sup>61</sup> Fichte qualifies this statement in the very moment of making it, cautioning that it must be taken in exactly the way it has been laid out in the preceding pages, “[f]or the consciousness of something determinate, as such, is never immediate, but is only found through an act of thought.”<sup>62</sup> “Materially, the consciousness of our duty is not

57. J.G. Fichte 1971, IV: 245–247.

58. J.G. Fichte 1971, IV: 233.

59. That pure moral deference is problematic is taken as the default position both by those who defend that position (cf. e.g. S. McGrath 2009, A. Hills 2009; for an early and influential statement, see R.P. Wolff 1970) and by those who seek to challenge it, defending pure moral deference in principle (cf. e.g. P. Soper 2002 and D. Koltonski 2010).

60. Soper distinguishes a “harmless” version of the principle that autonomy forbids deference, “the truism that autonomous individuals must, in the end, make judgments for themselves”, from the more substantive denial that deference could ever be justified for an autonomous individual (P. Soper 2002 p. 8). Fichte seems to endorse the more substantive principle (in private contexts; he rejects it in the political sphere) along with the harmless one, and indeed to draw no distinction between them.

61. J.G. Fichte 1971, IV: 173.

62. J.G. Fichte 1971, IV: 173.

immediate ... the consciousness of duty is [only] formally immediate. This formal consciousness is a bare feeling.<sup>63</sup> "Conscience ... does not provide the material; this is delivered only by the power of judgment, and conscience is no power of judgment."<sup>64</sup> He reiterates the point in the second of the three corollaries:

So that the word 'feeling' does not give rise to dangerous misunderstandings: a theoretical proposition is not and cannot be felt; what is felt is rather the certainty and sure conviction connected with the thought of [that proposition when it has been] brought about according to theoretical laws.<sup>65</sup>

His claims about immediacy and feeling, in other words, are not to be taken to imply that one acquires the first-order conviction that *x* is the action to be performed in a given situation by "immediately feeling" it.<sup>66</sup>

But despite the clarifications offered, the statement itself has been taken as evidence that Fichte thought of conscience as a sort of faculty for immediate apprehension of ethical truths.<sup>67</sup> Such an account would of course conflict with the explanation of the role of reflective judgment that I have reconstructed (in §2), and would, in particular, result

63. J.G. Fichte 1971, IV: 173.

64. J.G. Fichte 1971, IV: 173.

65. J.G. Fichte 1971, IV: 174–175.

66. Fichte writes that this same feeling of certainty is the "feeling" (J.G. Fichte 1971, IV: 167) that arises when "the original I and the actual [I] are in harmony" (J.G. Fichte 1971, IV: 166). This, of course, does not help, since the harmony of the original and the actual I looks like a material criterion, and so this comment also invites the view that the feeling of harmony constitutes *evidence* that a given moral judgment is correct. Both Wood (A.W. Wood 2000 p. 105) and Breazeale (D. Breazeale 2012 p. 200) read the "harmony" comment in this way.

67. For examples, see footnotes 2, 3, and 4 above. And indeed we can agree that Fichte would have done better to write here that "conscience is the immediate consciousness of our *conviction concerning* our determinate duty".

in absurdity when combined with the parallel Fichte draws between practical and theoretical reasoning.<sup>68</sup>

One might, finally, worry about a set of remarks Fichte makes as he turns from discussion of the formal condition on moral worth to discussion of the material one.<sup>69</sup> The first point he makes, at that transition, is that in order for action to conform to the formal condition, it need not be motivated by duty *described as he is about to describe it*. The formal condition requires action from conviction, based on the deliverance of conscience; but it does not require action from the explicitly formulated aim of absolute independence. This is unproblematic on its own; it simply follows from the way the formal condition has been defined. But he then remarks that the systematic elucidation of the material condition on which he is about to embark is required *only* as part of a science of morals, and that the voice of conscience suffices for ordinary moral life.<sup>70</sup> One might wonder how this is consistent with my claim (in §2) that for Fichte practical deliberation consists in calculative reasoning toward the set of ends furthering which constitutes the material condition on the moral worth of action.

Part of Fichte's motivation for this remark may lie in the worry that much of what he is about to say will sound counterintuitive; for he often tries to downplay the degree to which his moral philosophy revises moral common sense (although it plainly does so). But another motivation is surely the simple truth of the claim that for the most part the feeling of certainty in one's conviction is all that occurs, consciously, to the deliberating agent. We can accept this claim without inferring

68. Fichte does not speak of theoretical "conscience" nor discuss whether there can be justified deference to epistemic authority on non-moral questions. But if the criterial interpretation of the deliverance of conscience were correct, it would follow from this parallel that Fichte is committed to the "immediacy" (in the same sense) of all scientific knowledge. The claim would be that the way I find answers to questions like 'Is Mercury or Mars closer to the sun?' is by seeing how I feel about them, and that my feeling cannot err in such matters.

69. Cf. J.G. Fichte 1971, IV: 208–210.

70. J.G. Fichte 1971, IV: 209.

from it that Fichte attributes to conscience a first-order epistemic function, as long as we also accept that many of the inferences involved in practical deliberation are made automatically and outside of conscious awareness, and that they are often based on premises that the agent has never consciously articulated.<sup>71</sup> Here again the parallel with theoretical (*e.g.* perceptual) judgment is clarifying.<sup>72</sup> And the remark is quite in line with Fichte's view, expressed at several points in the text, that systematic ethics is a philosophical description of ordinary moral agency, but in no sense a prerequisite for its exercise.

### Conclusion

Rescuing Fichte's ethical thought from two centuries of more or less total neglect is not the work of a single paper. This is one of several dedicated to bringing Fichte's contribution back into the focus of philosophers working on ethics in a broadly Kantian spirit. At the center of this larger project — and not discussed here — is an explanation and defense of Fichte's conception of material

independence and the non-welfarist consequentialist normative ethics he builds upon it.<sup>73</sup>

The truth of Fichte's claim that fidelity to the spirit of the Kantian philosophy often requires departures from the letter of Kant's texts is already in evidence in the contemporary literature, both in the work of more orthodox Kantians and, to an even greater extent, in the work of those trying to push Kant in a consequentialist direction (an effort that had its first instantiation in the *System of Ethics*).<sup>74</sup> But Fichte has much to add to these debates. Many of his applications of the Kantian approach have no counterparts in the contemporary literature.<sup>75</sup> Others have been independently reproduced, a fact that is interesting for quite different reasons.<sup>76</sup> At the most basic level, though, appreciation of Fichte's work can shed light on a question that arises for everyone working in this tradition: what *is* the spirit of Kantian ethics, most fundamentally, and how are its diverse and often competing components best squared with one another?<sup>77</sup>

71. Some twentieth-century moral philosophers have inferred intuitionism in moral epistemology from the fact that moral judgment seems (in many cases) like being faced with "the immediate consciousness of our determinate duty". Sturgeon explains how the denial that moral inferences can take place outside of conscious awareness can motivate intuitionistic conclusions, and why this is a mistake, in N. Sturgeon 2002 (p. 205ff). Sturgeon's point is illuminating here, because the same (mistaken) conclusion seems to have been drawn by many of Fichte's readers.

72. For example, when we are asked to judge whether two items are the same distance away but different sizes, or different distances away but the same size, in some cases we know the answer immediately and can state it with confidence, and in others we are unsure and aware that we are unsure. We (*qua* perceivers) need be able to give no account of the perceptual cues and the inferences made from them that allow us to judge confidently in the first case. We may be aware only of the judgment and of our degree of confidence in it. But there are in fact such cues, and we in fact draw complex inferences on their basis, without being conscious of doing so; and, moreover, both the cues and the inferences can be examined and laid out systematically (as they are in works of cognitive psychology and the philosophy of perception). Fichte is pointing out that something similar (relevantly similar: I do not mean to suggest that Fichte takes moral judgment to be in any other respect like perception) is true in the practical case.

73. Cf. M. Kosch 2014.

74. The contemporary consequentialist Kantianism I have in mind is exemplified by D. Cummiskey 1996 and D. Parfit 2011.

75. One good example is his account of the moral importance of scientific research and education.

76. For example, Barbara Herman's account of Kantian duties of beneficence (B. Herman 1993 and 2007) seems to me closer to Fichte's than it is to Kant's own. Jennifer Uleman's interpretation of Kant (J. Uleman 2010) also develops some of Kant's leading ideas in Fichtean directions. For further discussion, see M. Kosch 2014, especially note 47.

77. Thanks to Günter Zöllner for permission to quote from his APA symposium paper, and to Frederick Neuhauser, Allen Wood, participants in the 2012 Boston University Workshop in Late Modern Philosophy, and two anonymous referees for this journal for comments on earlier drafts.

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78. This review is anonymous in the *Göttingische Bibliothek*, and its author is apparently unknown to the editors of *J.G. Fichte in zeitgenössischen Rezensionen*, but the review appears to have been written by Johann Gottfried Immanuel Berger (1773–1803, repent in theology at the University of Göttingen). Stäudlin identifies the author of this review only as "der verstorbene Berger" (C.F. Stäudlin 1822 p. 990n.), but the only other "Berger" active in German philosophy at the time (Johann Erich von Berger) was alive until 1833.
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