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include causal as well as motivational independence; but this is both unKantian and wrong on its own merits. For more on the analyticity of reciprocity see Allison, 1990, pp. 201-213, and 'Spontaneity and Autonomy' in Allison 1996, chapter 4.

<sup>13</sup> But any talk about 'moral character' under these terms is misleading.

<sup>14</sup> With the term 'operations', we refer here to adopting, interpreting, modifying, and mostly *deciding* to act on principles. My analysis is much indebted to McCarty, 2002. Although McCarty does not mention it, I take it that Kant's insistence on acting *from* duty is exactly such an operation, which is *not*, strictly speaking, fully conceptual. Accordingly, he finds that maxims could be better conceived as either intentional or dispositional in nature.

<sup>15</sup> This might entail a complication of the relation between the *ratio cognoscendi* and the *ratio essendi* of freedom.

<sup>16</sup> For a modern reformulation of such a distinction between 'knowing that' and 'knowing how' see Ryle 1949, pp. 26-59

<sup>17</sup> Barbara Herman follows exactly this path of interpretation by calling this 'principle' the 'rules of moral salience' in her 1993, chapter 4. She claims that these 'rules' are close to ways of perception; see *ibid.*, pp. 82-83. In my view, on the one hand, talk about 'rules' is misleading, and, on the other, any talk about the role of 'perception' must be extremely cautious. In any case, Herman omits any explicit talk about *cognition*, focusing instead on casuistry and the presuppositions of a moral *Bildung*. Gary Banham goes deeper by insisting on the teleological principle of moral judgment and by connecting reflective judgment to perfectionism; see 2003 pp. 198-199. Nevertheless, both agree that Kant's ethics, as opposed to Kantian ethics, is *not* deontological!

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- <sup>4</sup> What we mean by this term is merely the conception of autonomy as immediately and exclusively referred to the 'right' as methodologically and ontologically prior to the 'good', a product of the Categorical Imperative procedure. *Orthos logos* or *nomos* [ορθός λόγος – νόμος] simply means right reason or right law.
- <sup>5</sup> Choice is our plight, our inescapable fate, as rational beings; we cannot refuse it, or stand still, because this would again be something we have chosen to do; for that, see Kant's adaptation of the Biblical Fall story in Kant, 1786. Nevertheless, what we are trying to prove is that choice is *not* pure activity of our autonomous agency, but something that also involves *sensibility*. This is the meaning of a second sense of autonomy as *heautonomy*, which has to involve a phenomenology of *purposiveness*.
- <sup>6</sup> This is explained in greater detail in Korsgaard, 1996, pp. 164 -167. It is also the fundamental thought in J. Rawls's Kantianism. It is in the nature of a free will to give itself a law, *irrespective of its content*, and this is not something theoretical (like comprehensive doctrines of the 'good'), but significantly practical.
- <sup>7</sup> This view is advocated by many, to the extent that, for example, a (good) maxim is an *intrinsically* normative entity; see Korsgaard 1997, p. 112.
- <sup>8</sup> Some would object here that *A* and *B* just have different principles or, in any case, different conceptions of the principle, i.e. what 'friendship' really means. This objection based on a semantic meaning, although possible, distorts the point made, because it fails to understand (a) the meaning of the subjectivity of a maxim – a maxim is not just a theoretical conception - and (b) that freedom of choice here is much broader than that of *Wille*, as mentioned by Kant in *MM*, 380, *Ak.*, 6:226.
- <sup>9</sup> The discussion and the literature on the nature of maxims are huge. The debate refers to whether maxims are principles, policies or intentions. Onora O' Neill is among those who maintain that all maxims are principles expressing general rules or policies; cf. O' Neill, 1989, p. 129. Others leave space for maxims being also singular in scope; for a survey of the debate, see Allison, 1990, pp. 86-94.
- <sup>10</sup> See Korsgaard 1996, p. 166. But note that this view wants to make the 'action-description' problem disappear. However, this is impossible to do.
- <sup>11</sup> A view that is highly contested, as we have stressed above, both in relation to Kantian textual resources and independent ones.
- <sup>12</sup> This particular interpretation of Kant's freedom, already found in Korsgaard's work, is advocated by H. Allison in his 'Reciprocity Thesis', where he claims that there is an analytical connection between freedom and moral law. This move entails that we thicken negative freedom in order to

that one could find such an account should one look at the ‘principle’ underlying reflective, instead of determinant judgment. Familiarly enough, such a ‘principle’ does not contribute to knowledge that the moral world is such and such [*Wissen*]. To *know that* something is a moral feature of a particular situation is not to know what one ought to do. On the contrary, it would entail learning to recognize and respond to moral demands; more explicitly to *know how* to respond.<sup>16</sup> This is not to be subordinate in relation to moral knowledge proper. Kant places this ‘principle’ exactly within the realm of *cognition* in general [*Erkenntnis*] and argues that it is *constitutive* not of the object, but of the subject. Thus, the *ground* [*Grund*] of such a principle lies deep in the conception of a human being as an end-in-itself, but also as an embodied being within a community. Embodied though does not mean empirical.

To recapitulate somehow and conclude: the argument we put forward here only aimed at presenting an aspect of Kant’s conception of the rationality of moral judgment and at criticizing at least one contemporary effort to reduce it into mere conceptuality. Were our argument right the articulation of a solution would be twofold: (a) a reconstruction of the ‘principle’ of moral judgment as fitting within a different, perhaps richer, conception of autonomy, and which (b) would allow for an aesthetic of morals to be provided. But this has to wait for another occasion.<sup>17</sup>

### Endnotes

- <sup>1</sup> On Kant’s conception of judgment in general see Caygill, 1989, Bell, 19 87 and Longuenesse, 1998; on his conception of moral judgment see particularly Herman, 1993 and more recently Banham, 2003.
- <sup>2</sup> References to Immanuel Kant’s works are inserted in the text with pagination numbers both from the English translations of Kant’s works, and the volume and pagination numbers of the standard German Academy edition: *Kants gesammelte Schriften*, edited by the Royal Prussian (then German) Academy of Sciences (Berlin: Georg Reimer, later Walter de Gruyter and Co., 1900) with the exception of the *Lectures on Ethics*
- <sup>3</sup> There is indeed a somewhat biased connotation of the term ‘aporia’. ‘Aporia’ signifies a dead-end, indeed an abyss [*Abgrund*] opened up in front of us. Kant acknowledges that, but thematizes it, instead of avoiding to fully address it. Thus, it seems to me that Kant is talking about a real ‘problem’ and not about the end of reason. However, the ‘aporia’ was rediscovered by Bell, 1987, *passim*, and is the central theme of Caygill, 1989

normativity of the conceptual normative principles simply cannot cover conceptually the operations *on* them. Indeed, the choice of principles cannot be on the choice menu. Besides, it cannot account for consciousness in action.<sup>14</sup> For how can our actions be *voluntary* if they are themselves determined just by the logical necessity of principles?

### III. Practical rationality and the nature of the moral question

Such a treatment of the problem of Kant's conception of moral judgment makes manifest at least one important feature of Kant's moral philosophy. If our argument is sound then we should be ready to acknowledge that the moral question for Kant is not one of moral *knowledge stricto sensu* [*Wissen*]. It is not the case then that we *do not know* which principle covers our action or, in Kant's terms, what we *ought* to do. For Kant we always know what is our duty.<sup>15</sup> That is why our will [*Wille*] is a causality and can be considered neither free nor unfree. Now, the moral question is of a different order. It refers to whether we should *exempt* ourselves from performing a certain action or not. In other words, it is always our duty to 'help our friends when they are in need'. Now, if the choice of this further approval of the principle cannot be conceptual as mentioned above and *Willkür* cannot just automatically obey the formality of CI the solution to the problem of moral judgment has to be formulated in other terms.

Accordingly, the moral question becomes one of *how to realize* what is given to us as pure practical reason. Note that in the case of ortho-nomy this is not an issue, because the demands of practical reason are already realized – we are always already within the realm of moral reasons – save the fact that some (most of) times we fail to know it due to our weak natures. But this is like what we are trying to enforce is the value *of* practical rationality not the value *in* practical rationality forgetting that Kant insists that '*rational nature exists as an end in itself*' (Kant, 1785, p. 79; 4:428-429). Now, if the 'principle' of judgment as we presented it above cannot be itself conceptual all the way down, we need a richer conception of judgment. In other words we need something that *both* guides and is not just 'another' conceptual rule. This particular 'principle' is not to be learned as a bit of information about the world. Such 'principle' has to part of the structure of our moral *sensibility*.

Does Kant have such an elaborate account of moral sensibility as included in such a 'principle' of moral judgment? This is not the space for a full articulation of such a principle. Nevertheless, I would suggest

information (information-processing) and produces the relevant output. This is why this model *needs* to maintain a strictly conceptual connection between free choice and maxim principles.<sup>12</sup>

This view takes as a reference point Kant's own statement that freedom and unconditional practical law reciprocally imply each other (Kant, 1788, p. 162; 5:29 also 1785, p. 97; 4:450). However, the strictly conceptual link that, according to the above view, has to be taken for granted, implies that agents cannot opt out from acting on principle. But the cycle of choices showed that perhaps there is more to be said about what must be in between maxims and principles, even if that means we have to modify our conceptions of both maxims and principles. Accordingly, the principle of our example 'I must help my friends whenever they need me' *must* be open to further *affirmation* or *negation* in the choice of performing an action, which might also entail that a principle can cover more maxims *or* a maxim might cover more principles. The coincidence of the objective and subjective seems to need something more than mere instrumentality.

An insistence on the instrumentality of the determinant aspect of moral judgment should have the result of conceiving an agent who cultivates moral character in the sense of enriching her theoretical knowledge of moral concepts;<sup>13</sup> in the sense of, let us say, giving depth (not a definition) to the concept of 'friendship' in our example (e.g. that 'friendship' implies helping a friend without asking for a reward). According to our analysis this is a narrow conception of autonomy, i.e., rational autonomy or *orthonomy*, which, nevertheless, has a cost for moral agency because it presupposes a principled agent whose career as a moral agent seems linear and smooth and the choice of *ends*, of any sort whatsoever, is a function of practical rationality. According to this view, an agent's character is the projection of a level of theoretical 'consistency'.

To push the point further, the thrust of the aporia of determinant moral judgment is that *the connection between choices and operations on principles cannot be entirely conceptual*. Consciousness in action, in order not to be aporetic, cannot be conceived in terms of having no choice when acting on maxims as principles. This is because the same operation could also be conceived – that all that the agent has to do is just choose law, and then she is automatically *within the normative* realm – as a result of hypnosis or brain tampering. 'I must help my friends whenever they need me' is something we simply *cannot* leave outside our questioning of *how* or *under which conditions* it has been adopted as our *end*. The rich

incorporation of a desire into a maxim has already taken place. That is why an agent brings maxims, not actions under the scrutiny of the CI procedure. CI procedure has to judge maxims *as* they are described by agents themselves, i.e., subjectively. But, as we mentioned above, there must be something else going on in the determination of maxims. We *make* maxims, which means that there is no *rational choice* taking place in order to do that.

Kant acknowledges a problem of circularity – exactly the aporia of judgment - when he worries that '[...] we could not even prove the latter [the idea of freedom] as something real in ourselves and in human nature; we saw only that we must *presuppose* it if we want to think of a being as rational and endowed with consciousness of his causality...' (Kant, 1785, p. 96; 4:448-449; my italics). Can practical reason choose our nonmoral ends, when it forms a maxim in the way suggested above by ortho-nomy, that is, by adopting a prescriptive maxim? The last (c) point shows that there is something *nonconceptual*, i.e., intransitive, also at the basis of moral judgment.

(c) Treating moral judgment as an unproblematic version of determinant judgment, as we saw, means that we act, that is, we choose an action, by adopting a prescriptive maxim (principle). The *subsumption* of a maxim under a rule (principle) seems to be guaranteed. But there is a significant cost to be paid in terms of both agency and freedom. For when we begin by adopting a principle that tells us what to do, we must next choose *whether* to do it. It is *not* enough that I have a principle that says 'I must help my friends whenever they need me', I must also *choose* whether to pursue this in certain circumstances. But, according to the model of moral judgment as immediately determinant, i.e., that whenever we choose an action we *ipso facto* adopt a maxim (self-legislating *Wille*), either way we choose, we shall once again adopt a maxim; for choosing is adopting a maxim.

Then, after adopting a maxim for the second time, we are again required to respond to a principle telling us what to do; for maxim principles, according to that model, are prescriptions. It is a consequence of this kind of practical reasoning that, if choosing is really adopting a maxim, and if maxim principles really are prescriptions<sup>11</sup> - a function of taking the 'I must help my friends whenever they need me' as both a maxim and a prescription – human agency is nothing but an endless cycle of choice and prescription, which can never terminate in action. To my mind, this view of agency reflects the model of agency that functions as the ready-made 'input-output' machine. It conceptualizes the

which, in order to indicate appropriate correlations between moral features and the terms of natural descriptions, has to be equipped with morally salient characteristics – chooses to form a maxim. The point to keep in mind here is that the above formulated view presupposes that *having* a maxim *ipso facto* means that one's desire for an end has already been incorporated within it, and that practical rationality is all about the fact *that choosing is simply adopting a prescriptive maxim*; and this is something that in turn makes one accountable. Moral judgment's choice is immediately based on moral incentives and not mere inclinations. However, this view is a caricature of both Kantian moral judgment and the conception of agency.

(b) A tendency to reduce the aporia (regress) to the above formulation – a feature of reading Kant as subscribing to Wittgensteinian rule-following – is expressed in the argument from the self-standing status of justificatory reasons for action (a self-determining *Wille*). Following our aforementioned example, when I ask you why you are helping your friend *C*, you give me your proximate end, that it is an instance of your 'I must help my friends whenever they need me' principle. But then, I am entitled to ask you why you want that and, presumably, in response you will point to a larger 'life-plan'; this, of course, can take the form of an infinite regress, until you are 'out of answers', namely you cannot give any further rational justification. Are we justifiable in stopping our critical inquiry at that point? Have we reached 'bedrock' in our explanations? Can we simply say 'I simply *do* it'?

The problem here is of the same nature. The role of the 'bedrock' is taken here by the same appeal to *form*, although here it is not just a *form of life* but a *form of law* (of the maxim). Such a formality is guaranteed by the appeal to the Categorical Imperative (CI), as represented by the Formula of Universal Law (FUL). CI is the formal principle of practical judgment (Kant, 1785, p. 69; 4:416), but its formality does *not* solve the aporia. And it does not solve the aporia because it does not explain *why* we should even care about adopting the FUL. This statement does not subscribe to the fact that '[t]he Formula of Universal Law simply describes the function or task of an autonomous will. The moral law does not impose a constraint on the will; it merely says what it has to do in order to be an autonomous will'.<sup>10</sup>

The formality of the logical necessity of the CI principle cannot be the principle of moral judgment, because it already presupposes moral judgment itself. Clearly, when *A* brings his maxim under the universalizability test of the CI, a moral judgment that involves the



for this no particular content is needed. Then *agency is already autonomous*, because it immediately takes part in the realm of reasons. The dependence of action on a law, whatever its content, is a consequence of the fact that it is a will.<sup>6</sup> This, nevertheless, entails that maxims are immediately normative entities (prescriptions).<sup>7</sup>

But this involves both a reduction and a regressive argument, an *aporia*, which functions simultaneously at different levels, (a) at the level of the nature of maxims or the problem of 'action- description', (b) at the level of justifications, and (c) at the level of choosing [*Willkür*].

(a) First of all, there is a suggestive Kantian distinction between a maxim and a law: 'a maxim is a *subjective* principle of a volition [*Willkür*]: an objective principle (that is, one that would also serve subjectively as a practical principle for all rational beings if reason had full control over the faculty of desire) is a practical law' (Kant, 1785, pp. 56, 73; 4:400n, 421n; my italics). But if moral law is a property of the will, a maxim is something the agent himself *makes* on subjective grounds (p. 65; 4:412); hence different agents can have very different maxims with regard to the same law (Kant, 1797, p. 379; 6:225). Accordingly, having adopted the above principle 'I must help my friends whenever they need me' does not mean that *A* and *B* who are performing the same action, say helping their friend *C*, do have the same maxims. *A* might perform it out of compassion and *B* might perform in the hope of getting a reward.<sup>8</sup>

In any case, what is described here as a maxim is not something that falls under *Wille*, but under *Willkür*. Practical laws proceed from the will, maxims from choice. In man, as Kant says, the latter is a free choice (p.380; 6:226) and only choice [*Willkür*] can therefore be called *free* (*ibid.*). The point here is that, in order to remain faithful to the continuity of the Kantian argument we *cannot* equate maxims with principles. The argument from the 'Third Antinomy' just forbids us to take this step – an infinite regress stands here as a bugbear.<sup>9</sup> The regress refers to what can be termed the 'action-description' problem, namely the problem of *how* an agent describes what he is intending to do and why (for what end and in response to what motive). The need to look into the function of moral judgment becomes urgent. The *aporia* in judgment makes itself manifest in the need for some further rules of relevance or salience in order for the agent to determine which facts it is legitimate to include into a maxim. For in order for a person to describe her action and its underlying maxim a judgment has already taken place. In that sense, moral agent seems to be always-already constituted.

Agency is already constituted when - like a preprogrammed machine,

What in the end becomes *constitutive* has to transcend instrumentality, i.e., agency cannot be simplistically ‘given’ as in orthonomy. This means that we have to problematize the very act of incorporation of an inclination into a maxim, when we *choose* to perform an action. Surprisingly, we shall reach an account that makes this act of judgment a function of the agent’s whole, embodied character, which involves *cognition in general* and not just an exercise of rational choice, which involves mere (moral) *knowledge*. In the *Lectures on Ethics*, Kant says that ‘the understanding sees that a thing [say baby torturing] is disgusting and is hostile to it, but it cannot be disgusted: it is only *sensibility which is disgusted*’ (Kant, 1930, p. 46; my italics). However, in the present essay we shall only sketch the beginnings of a richer conception of moral judgment, without aiming at giving a full articulation of it.

## II. Problems with the standard view on moral judgment

In order to flesh out the above mentioned first formulation of the argument, and locate in the Kantian conception of moral judgment the paradigmatic space of our practical rationality, we shall examine its architectonic in the standard meaning it takes, namely that *choosing*, i.e., exercising judgment, consists in *adopting a maxim*.<sup>5</sup> And adopting a maxim is equivalent to acting on a principle, giving yourself a moral law. So, for example, your choice to help your friend *A* because she needs you is equivalent to giving yourself a principled maxim of the sort ‘I must help my friends whenever they need me’. This should be taken as the standard interpretation of Kant’s conception of autonomy, which is based on the *logical necessity* of acting *only* on a certain conception of a moral law. There is, in other words, a logical inescapability of acting on a certain principle, and no rational agent can opt out of this (Kant, 1785, p. 66; 4:412-413) – whether he or she likes it or not.

This view of moral judgment is a strategic move, which Kant partly indeed makes in the *Groundwork*; it reflects the legislative, substantially *normative* role of the will. Indeed, there is a sense in which every freely chosen action has a maxim principle corresponding to it. The *normative* element of the will is inscribed in our actions and this means that when we are choosing to act, we are at the same time within the realm of reasons for action. If we are asked accordingly, we *cannot* avoid giving justifications for our action, our adoption of a particular maxim, unless we are just wantons. This interpretation of the rationality of moral judgment seems only to require that a will chooses a law for itself, and

section.<sup>1</sup> Accordingly, just as sensible intuitions are related to understanding by being subsumed under concepts, so too sensible inclinations are related to an object of the will only insofar as they are ‘*incorporated* into a maxim’ (Kant, 1793, p. 73; 6:24; my italics).<sup>2</sup> Familiarly enough, this would be the *determinant* function of judgment. Now, if we take moral judgment’s nature, as a form of practical schematism, to be just of a determinant nature, then, we do not get very far. In the *CPR*, Kant describes judgment as ‘the ability to subsume under rules, i.e., to distinguish whether something does or does not stand under a given rule (is or is not a *casus datae legis*)...’ (Kant, 1781, p.132/ 1787, p. 171). The recognition of the modes of judgment in the above definition, its ‘subsuming’ and its ‘distinguishing’, can easily be followed by another statement that Kant makes:

Now if general logic wanted to show universally how we are to subsume under these rules, i.e., how we are to distinguish whether something does or does not fall under them, then this could not be done except again by a rule. But for this rule, precisely because it is a rule, we need once again instruction from the power of judgment. (Kant, 1781, p. 133/1787, p. 172)

The above statement unveils a significant problem for judgment itself. It uncovers judgment’s *aporia* and, in a way, signifies judgment’s limits.<sup>3</sup> For it expresses the obvious incoherence of an infinite regress of acts of judgment, which, in its turn, creates a ‘mystery’, a secret power. In reality, the exercise of judgment is found always to presuppose judgment: its discriminations require subsumptions and its subsumptions require discriminations.

Allegedly, there is also an *aporia* in moral judgment, which is acknowledged by Kant in the ‘Typik’ of Pure Practical Judgment’ (Kant, 1788, p. 194; 5:67ff). In order to present its significance, let us try to reconstruct it in similar terms and, at the same time, criticize at least one contemporary effort to close it prematurely. This effort refers to the standard take on the function of moral judgment, which involves a version of autonomy as ortho-nomy,<sup>4</sup> although in a much smoother way than the one found in past interpretations. The argument stemming from the ‘Third Antinomy’ helps us see that the relation between inclinations as causes (mechanism) and will’s moral laws (freedom) *has to be judgmental* in a special way, i.e., in order to save phenomena and noumena in a non-reductive way.

## Kant on the Rationality of Moral Judgment

Kostas Koukouzelis\*

### Abstract

The paper deals with Kant's conception of moral judgment. I start by criticizing a dominant interpretation of Kant's practical rationality in its assertion that choosing, i.e. exercising judgment consists in adopting a maxim; and adopting a maxim is equivalent to acting on a principle, giving oneself the moral law (Korsgaard). According to this view, the logical inescapability of choosing *always already* places us within the normative realm. I argue that there is a further function suppressed by this view, which can be termed as *approval*. This takes us to the further acknowledgement that the core of Kant's practical rationality, that is, the moral question itself, is *not* simply one of moral knowledge [*Wissen*], but a broader one of cognition in general [*Erkenntnis*].

**Key words:** Kant, moral judgment, Korsgaard, practical rationality

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### I. Introduction

Moral judgment runs exactly in parallel to the general function of judgment as described in the *Critique of Pure Reason's* 'Schematism'

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\* Goldsmiths College, University of London, cup01ml@gold.ac.uk, kostaskoukouzelis@yahoo.com.