

JOSÉ M. TORRALBA

Libertad, objeto práctico y acción  
La facultad del juicio en la filosofía moral de Kant

Appendix: The Three-fold Function  
of the Faculty of Judgement in Kant's Ethics:  
Typik, Moral Judgement and Conscience



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## APPENDIX

### The Three-fold Function of the Faculty of Judgement in Kant's Ethics: Typik, Moral Judgement and Conscience\*

The main topic of this paper is the application of moral laws. In spite of the fact that all practical *philosophy* is a theory on praxis –and, as speculative discourse, is not effective enough in itself to go from one to the other–, one of its principal objectives has always been to use the *application* of those theoretically formulated cases to real cases, that is to *direct* the action.

There is little doubt that Kant's model for ethics is one which presents the greatest problems when moving from the purity and universality of the moral principles of transcendental idealism to particular situations where the agents must take a decision. If this difficulty –which is the basis for the most frequent objections to Kant's moral philosophy– were utterly insurmountable, then the categorical imperative would be of no interest in ethics. The study of the faculty of practical judgement will allow us to resolve this problem, and show that, at least after the *Groundwork*, Kant attempted to solve the problem of application.

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\* This paper was delivered at the 5th UK Kant Society Graduate Conference. It is a slightly modified version of the Spanish one published as “Facultad del juicio y aplicación de la ley moral en la filosofía de Kant”, in *Methodus. Revista Internacional de Filosofía Moderna / An International Journal for Modern Philosophy*, II (2007): 1-30.

Quotation from Kant's works follows the standard format: the Berlin Academy, volume and page number (for example: *KpV*, 5:69), with the exception of the *Critique of Pure Reason*, cited by first (A) and second (B) editions, and the *Lecture on Ethics*, W. Stark's edition (Berlin–New York: Walter de Gruyter, 2004), which reproduces the original page-numbering of Kaehler's manuscript. The following abbreviations have been adopted: *KrV* (*Critique of Pure Reason*), *KpV* (*Critique of Practical Reason*), *KU* (*Critique of the Faculty of Judgment*), *Grundlegung* (*Groundwork of the Metaphysics of Morals*), *MS* (*The Metaphysics of Morals*), *Logik* (*Lectures on Logic* [Jäsche]), *Gemeinspruch* (*On the common saying: That might be correct in theory, but it is of no use in practice*) and *Vz̄M* (*Lecture on Ethics* [Kaehler]). Unless otherwise stated, English translations are taken from: Immanuel Kant, *Practical philosophy* (translated and edited by M. J. Gregor. Cambridge: Cambridge University Press, 1996); *Critique of the power of judgment* (translated by P. Guyer – E. Mathews and edited by P. Guyer. Cambridge: Cambridge University Press, 2000); *Critique of pure reason* (translated by J.M.D. Meiklejohn. New York: Collier & Son, 1900; *Religion within the Boundaries of Mere Reason* (translated and edited by A. Wood – G. di Giovanni. Cambridge: Cambridge University Press, 1998), *Lectures on Ethics* (translated by P. Heath and edited by P. Heath – J. B. Schneewind. Cambridge: Cambridge University Press, 1996).

Indeed, Kant is in a quandary, as he proposes the suitability of the maxims to become universal laws as one of the essential criteria for morality. Although this is clearly not a mere quantitative generalization –like a logical quantifier– but rather the proper *form* of moral necessity and the bindingness (*Verbindlichkeit*)<sup>1</sup> which corresponds to it, that radical heterogeneity of the formal character of the law and the materiality of the action become the main pitfall for the coherence of Kantian ethics.

It is precisely in such a model for practical rationality, where the tension between theory and practice reaches a breaking point, that the intervention of a mediating influence between the two extremes becomes more peremptory. And, although it may seem strange, this may allow the Kantian theory to become one of the models that most clearly shows that the functions that such a mediating influence –which is always present in one shape or another in ethical theory– must fulfil, together with the aporia inherent to the application. And this allows us to affirm that, even if Kant’s moral philosophy were powerless to resolve or avoid these aporia, its study would continue to assist in understanding some issues –those on application– which no theory of ethics can ignore. There is a simple reason for this: in philosophy, posing the question correctly is, at least, as important as to find the answer. And it may occur that, even if one knows the relevant questions, one is not in a position to answer them satisfactorily. But what is clear is that it would be difficult, if not impossible, to find a solution to a problem if the terms in which it is posed are erroneous.

This mediation between norm and situation –that is, the *interpretation*– being dealt with here is a task that only the faculty of judgement (*Urteilskraft*)<sup>2</sup> can satisfy. This faculty can be defined –generically– as the capacity to decide if something corresponds to a rule. Whatever the case, this faculty of judgement cannot be downgraded to the mere *determination* of the correspondence between what is universal and what is particular, as to do so a particular kind of knowledge is needed –usually called practical<sup>3</sup>– on how the rules or principles should be applied. Moreover, in any application which is not mechanical, that is, where contingency intervenes –as, in this case, that of action– there is always the possibility of committing an error, as the rules are, by definition, general guidelines, and thus insufficient to determine *the ultimate detail* of the action. The

<sup>1</sup> “*Verbindlichkeit*” is sometimes translated simply as “obligation” but the preferred translation here is “bindingness”, in the sense of “binding force” or “obligatory character”, in order to distinguish it clearly from “duty” (*Pflicht*).

<sup>2</sup> “*Urteilskraft*” is translated as “faculty of judgement” and, for instance, “*reine praktische Urteilskraft*” as “faculty of pure practical judgement”.

<sup>3</sup> See Inciarte, F., “Theorie der Praxis als praktische Theorie”, in Engelhardt, P. (Hg.), *Zur Theorie der Praxis* (Mainz: Matthias-Grünwald-Verlag, 1970), 45-64.

practical faculty of judgement is that which, due to the knowledge only found here, must avoid that eventual error<sup>4</sup>.

In this paper, I will, firstly, outline the many forms and functions the faculty of judgement can adopt (1.1). Then I will explain the two senses in which, according to Kant, (pure) reason is practical: as a principle for moral judgement and a principle for determination of the will, and thus, the double sense the application has for him (1.2). Next (2.) I will differentiate between the three ways in which the faculty of judgement intervenes in the application of morally practical principles. In the first of these (2.1), the categorical imperative is established as a norm for all moral judgement by means of the faculty of *pure* practical judgement and the categories of freedom. In the second (2.2), the faculty of judgement applies this norm to the maxims, by using the system of the duties of virtue (2.2.1) and also deals with casuistry, that is, the application of the maxims to particular circumstances (2.2.2). Then (2.3) I show the third form of the practical faculty of judgement: moral conscience (*Gewissen*), that is, the moral faculty of judgement, passing judgement upon itself. Finally in the conclusion (3.) I offer an explanation of how the principles of judgement and of determination are related.

## 1. Reflection and application in the faculty of judgement

### 1.1. *Introductory guide to the faculty of judgement: reflection*

Any research into the forms and functions of the faculty of *practical* judgement must be approached from the perspective of the faculty of judgement *in general*. The main pitfall for this type of research is that in Kant's work there is no general unitary theory on this faculty. In each of the three *Critiques*, the faculty of judgement adopts different forms and has different functions depending on the context (cognitive, moral, aesthetic or teleological). However, the most recent Kantian research has shown that reflection can be used as an introductory guide –in the Kantian meaning of *Leitfaden*– which brings together the varied forms of the faculty of judgement. Thus reflection would be the fundamental –although not always explicit– activity for any act of judging<sup>5</sup>.

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<sup>4</sup> Although there are numerous instances and contexts where Kant defines the faculty of judgement as a faculty of application (see, among others, *KrV*, A:132 / B:171; *KpV*, 5:67; *KU*, 5:169; *MS*, 6:411; *Gemeinspruch*, Ak. 8:275), he is not usually included among the “theoreticians of application”, as has recently been commented in Conill, J., “Aplicación”, in Beuchot, M. – Arenas-Dolz, F. (dirs.), *10 palabras clave en hermenéutica filosófica* (Estella: Verbo divino, 2006), 53-82.

<sup>5</sup> I am referring, amongst others to Wieland, W., *Urteil und Gefühl. Kants Theorie der Urteilskraft* (Göttingen: Vandenhoeck & Ruprecht, 2001); Longuenesse, B., *Kant and the Capacity to Judge. Sensibility and Discursivity in the Transcendental Analytic of the Critique of Pure Reason* (Princeton: Princeton University Press, 1998); Peter, J., *Das transzendente Prinzip der Urteilskraft. Eine Untersuchung zur Funktion und Struktur der reflektierenden Urteilskraft bei Kant* (Berlin – New York: W.

The *Critique of the Faculty of Judgement* and the *First Introduction* to that work, which explains the “discovery” of the two basic forms (determining and reflective) that the faculty adopts, are the logical means of access to the system<sup>6</sup>. The faculty of judgement in general is “the faculty for thinking of the particular as contained under the universal” (*KU*, 5:179). It is determining when what is given is what is universal and what is particular must “simply” be subsumed; on the other hand, it is reflective when what is given is private and the corresponding universal whole must be “sought”. There are two extreme cases that clearly illustrate what belongs to each of these functions. In the transcendental function of categorical subsumption in the *Analytic of the Critique of Pure Reason*, the faculty of judgement is *merely determining*. And again, in the judgement of taste in the third *Critique* we find the *merely* reflective form of the activity of judgement. Except in these two extreme cases, the activity of the faculty of judgement is *simultaneously* determining and reflective.

In contrast, the characterization found in the third *Critique* of judgement of taste as an aesthetic judgement may be interpreted literally, as “aesthetic” – fundamentally – referring to the area of sensibility. Thus, the Kantian theory on the faculty of aesthetic judgement (*ästhetische Urteilskraft*) is a theory on the faculty of sensible judgement rather than a doctrine on beauty. This is what Kant indicates in the prologue: “The investigation of the faculty of taste, as the aesthetic faculty of judgement, is here undertaken not for the formation and culture of taste, (...) but only from a transcendental point of view” (*KU*, 5:170)<sup>7</sup>.

Sensible judgement is opposed to logical (in *KU* terminology) or objective (according to *KrV*) judgement. The relevance of the judgement of taste in a general theory of the faculty of judgement is that it demonstrates the dearth of that groundwork which is proper to the faculty of judgement. This dearth is due to the lack of an *objective* principle, which is replaced by the *subjective* principle of heautonomy and establishes a subjective legality as the fruit of the reflective task of the faculty of judgement. Heautonomy is the fundamental

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de Gruyter, 1992); Natterer, P., *Systematischer Kommentar zur Kritik der reinen Vernunft. Interdisziplinäre Bilanz der Kantforschung seit 1945* (Berlin – New York: W. de Gruyter, 2003).

<sup>6</sup> This difference has already been seen in the first *Critique* on the concept of “transcendental reflection” (see *KrV*, A:260 / B:316 ff.), which is the essential activity of reason and is at the heart of the Kantian transcendental system.

<sup>7</sup> See Wieland, W., *Urteil und Gefühl*, 25-77. See, for example, Kant’s commentary on the significance of “aesthetics” in a note from the *Critique of Pure Reason* (B 35-36) on the transcendental aesthetic (where he makes significant changes to the first edition text). Apart from that, there are frequent interpretations that *reduce* the significance of the Kantian *Urteilskraft* to a “judgement of taste”, in such a way that the relationship of this faculty with morality then belongs to the §59 of the third *Critique*: “On beauty as a symbol of morality”. See Recki, B., *Ästhetik der Sitten. Die Affinität von ästhetischem Gefühl und praktischer Vernunft bei Kant* (Frankfurt a. M.: Vittorio Klostermann, 2001).

principle that governs *all* activity –determining and reflective– within the faculty of judgement, including what is merely determining (see *EE*, 20: 211)<sup>8</sup>. In this sense, we can affirm that the faculty of judgement is the faculty of reflection, whose *main* model is the judgement of taste (see *KU*, 5:169).

Likewise, in this reflective instance of the faculty of judgement we can find the key to solve the aporia of the application. Kant formulated this aporia as follows:

It [the faculty of judgement] has to provide a concept itself, through which no thing is actually recognized, but which only serves as a rule for it, but not as an objective rule to which it can conform its judgement, since for what yet another faculty of judgement would be required in order to be able to decide whether it is a case of the rule or not. (*KU*, 5:169; see also *Gemeinspruch*, 8:275)<sup>9</sup>

The classification of the rules as used by Kant in his *Logik* may help to understand this point: he explains that some rules are known before their application, and consequently, can be ordered and learned; others –such as, in this case, the rules of the faculty of judgement– are only known *after* their application. Moreover, whoever has many rules (or knowledge) but does not know how to put them into practice –that is, whoever has understanding but does not have the faculty of judgement– is “pedantic”. For someone like this the rules are but mere formulae, and are not principles (see *Logik*, 9:11, 46; *KrV*, A:134 / B:173-74)<sup>10</sup>.

As we will see further on, the faculty of *practical* judgement has a reflective and determining function and has a *merely* determining form (a typical, *Typik*) and another –with some nuances– *merely* reflective one (conscience, *Gewissen*)<sup>11</sup>.

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<sup>8</sup> See Mertens, H., *Kommentar zur Ersten Einleitung zu Kants Kritik der Urteilskraft: zur systematischen Funktion der Kritik der Urteilskraft für das System der Vernunftkritik* (München: Berchmanns, 1975), 94-106.

<sup>9</sup> This aporia had already been dealt with in the *Critique of Pure Reason*, where a tentative solution is offered –one could say– in a “naturalistic” code. Kant makes the *dispositional nature* of this faculty clear when he states that it is a talent or “mother-wit, the want of which no scholastic discipline can compensate”, that is, that it cannot be taught tuition, but only exercised (see *KrV*, A:133-134 / B:172-174), as its proper knowledge (how the rules are to be applied) is not *objectivable*. In the heautonomy as a subjective *a priori* principle of the faculty of judgement we see this dispositional character of the faculty, but where the explanation given in the first *Critique* simply referred to nature, it is now completed with the discovery of a *transcendental* principle, which is a much more satisfactory solution. Transcendental philosophy cannot be “naturalized” (at least in the current meaning of the term: see Guyer, P., “Naturalizing Kant”, in Schönecker, D. – Zwenger, Th. (Hg.), *Kant verstehen. Understanding Kant* (Darmstadt: Wissenschaftliche Buchhandlung, 2001), 59-84), because it would lose its critical potential.

<sup>10</sup> See Kulenkampff, J., “Nicht belehrt, nur geübt?”, in Enskat, R. (Hg.), *Erfahrung und Urteilskraft* (Würzburg: Königshausen & Neumann, 2000), 165-177.

<sup>11</sup> Thus, it is not that there are two different faculties of judgement (a theoretical one and a practical one), but rather it is one and the same faculty which also operates on a (moral-)practical

### 1.2. *Moral judgement and determination of the will*

In Kantian philosophy, the concepts of action, causality and substance are closely inter-related. An action is the production of a change in the world, that is, the relationship between the subject of the causality and the effect (see *KrV*, A:205 / B:250 and B:431-432). This production presupposes a force (*Kraft*) to carry it out, as force is the capacity (*Vermögen*) of a substance to produce a change by means of an action. In this context, the cause is described as the determining ground (*Bestimmungsgrund*) that activates the force of a substance so that it can produce a change in the world. And the effect (*Wirkung*) is what, strictly speaking, is called action (*Handlung*)<sup>12</sup>.

What differentiates between human actions and natural ones is not to be found in the action in itself (in both cases they are effects that belong to natural legality), but in its cause, that is, the way in which the faculty determines action. If the determining grounds of the faculty of desire are based *completely* on natural or instinctive laws, then that action is not free. Only when (pure) reason intervenes in the configuration of the determining grounds can the action be considered free in a strict, that is, practical or moral sense<sup>13</sup>. Such an intervention is possible because human choice (*Willkür*) can be “*affected* but not *determined* by impulses” (*MS*, 6:213), as its determining grounds form a maxim (rule). (Pure) reason is practical precisely because it can determine choice and therefore be the *cause* of the action, and –in this sense– is called will (*Wille*)

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level. The various forms of the faculty of judgement should be classified following (a) the task they carry out (theoretical and practical), (b) the sphere (*Gebiet*) their objects belong to, (c) if the use is pure or empirical. Thus, for example, the morally-practical sphere corresponds to the faculty of *pure* practical judgement only, whereas the technically-practical one is the area of the faculty of practical judgement *in general*.

<sup>12</sup> These ideas, taken from the conceptual rationalist universe which Kant absorbed, appear *explicitly* in his university lectures, but this doctrine is also assumed in his published works. See *ML<sub>2</sub>*, 28:565-575; Gerhardt, V., “Handlung als Verhältnis von Ursache und Wirkung. Zur Entwicklung des Handlungsbegriffs bei Kant”, in Prauss, G. (Hg.), *Handlungstheorie und Transzendentalphilosophie* (Frankfurt a. M.: Vittorio Klostermann, 1986), 98-131; Willaschek, M. *Praktische Vernunft. Handlungstheorie und Moralbegründung bei Kant* (Stuttgart – Weimar: J. B. Metzler, 1992), 38 ff.

<sup>13</sup> Much has been written on the three meanings of freedom: transcendental, psychological and practical. To my knowledge, the best is by Schönecker, D., *Kants Begriff transzendentaler und praktischer Freiheit. Eine Entwicklungsgeschichtliche Studie* (Berlin – New York: Walter de Gruyter, 2005), which demonstrates the incoherence of some passages of the Canon of the first *Critique* and shows that Kant’s mature position is that of the “Critical Examination of the Analytic of Pure Practical Reason” of the second *Critique* (and so, Allison’s influential interpretation in his *Kant’s theory of freedom* (Cambridge: Cambridge University Press, 1990) should be revised). Others who have dealt with the issue are: Rodríguez, R., “Kant: teoría de la acción y libertad”, in Vázquez, M. E. – de la Calle, R. (eds.), *Filosofía y razón. Kant, 200 años* (Valencia: PUV, 2005), 93-105 and Rovira, R., *Teología ética. Sobre la fundamentación y construcción de una Teología racional según los principios del idealismo trascendental de Kant* (Madrid: Encuentro, 1986), 55-66.

Choice properly guides the determination of causality in order to *produce* actions, whereas it is the will that supplies the determining grounds for choice, that is, the maxims<sup>14</sup>. This division of levels within the faculty of desire (*Begehrungsvermögen*), together with the resultant distinction between action and maxim, is one of the essential principles of Kantian ethics, as it is the basis for the separation of legality and morality, that is, between merely acting *in conformity* with duty and doing so for the sake of duty (see *Grundlegung*, 4:390). In the first case only the action (effect) corresponds to moral law, whereas in the second moral law *also* becomes a motive or incentive (*Triebfeder*) so that choice is determined by the maxim (see *MS*, 6:214). Consequently, for Kant, acting according to (*nach*) moral principles does not require the *application* of moral law to *concrete* actions, but rather moral determination of the maxim, that is, the motive must be respect for the law. In this sense, we must –to a certain extent– separate the determination of the choice of the production of the corresponding action, because the success (*Erfolg*) of such production depends on factors which are not in the power of the agent. Thus morality lies in the maxim, or rather, in the principle on which it depends, that is, the inner disposition of the will (*Willensgesinnung*).

In this model for determination of action, reason has two different roles to play. On the one hand, it must judge how well the maxims correspond to moral law; and on the other, the reason must be *sufficient* motive for choice (*Willkür*) to be determined by the maxim of goodness, as, otherwise, morality would always be incidental and would depend on the interest in the *object* of the maxim, that is, the effect produced by the action. Therefore, (pure) reason is the basis for both the principle of *judgement* (*principium diiudicationis*) and that of the determination of choice (*principium executionis*)<sup>15</sup>. The following section will

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<sup>14</sup> The maxims are the product of practical reason in general, but this is always controlled by the power of *pure* reason; thus a practical reason becomes a *subjective* practical principle only when a motive or incentive (*Triebfeder*) makes the choice determine through it. This is what the (negative) freedom of the human being consists of; there is no imposed determination, rather it must always be “incorporated” (*aufnehmen*, *Rel.*, 6:23-24), or be “imposed upon oneself” (*Grundlegung*, 4:438), because *pure* reason intervenes in the configuration of motives and thus proves (positive) freedom.

<sup>15</sup> “Wir haben hier zuerst auf zwey Stücke zu sehen, auf das principium der diiudication der Verbindlichkeit, und auf das principium der Execution oder Leistung der Verbindlichkeit. (...) Richtschnur ist das principium der diiudication und Triebfeder der Ausübung der Verbindlichkeit, indem man nun dieses verwechselte, so war alles in der moral falsch” (*Vz̄M*, 69; see also R 6608-6619). There is every indication that these are terms coined by Kant himself which, although they are only *expressed* in lectures and reflections, make up an excellent interpretative key for the whole of his ethics, because they also work in his published works, as can be seen in the studies by Henrich, D., “Ethics of Autonomy”, in Henrich, D., *The Unity of Reason. Essays on Kant's Philosophy* (ed. by Richard L. Velley. Cambridge: Harvard University Press, 1994), 89-121; Allison, H. E., *Kant's theory of freedom*, 68 ff.; Timmermann, J., *Sittengesetz und Freiheit*.

study the judicative function of pure practical reason –the “judgement of reason” (*Urteil der Vernunft*) to which Kant frequently refers (see, for example, *KpV*, 5:75-76; *Rel.*, 6:24; *MS*, 6:221)– as one of the tasks which are proper to the faculty of practical judgement. This is the first of the two fundamental senses of the application of moral law. The second, to which we will refer towards the end of this paper, deals with the determination of choice. The practical faculty of judgement supply the necessary knowledge for the determination.

## **2. Forms of the faculty of practical judgement and levels of application in Kantian ethics**

Reason is practical because its principles are applicable. The faculty of practical judgement lays down a mediation between a rule (in this case, a moral law or maxim) and a case (the maxim as the basis for determination or the particular context of the action), in order to prove its concordance (or, in some cases, to establish it). Within this general schema, the faculty of practical judgement plays a rather more determining role, when the given is moral law, or, on the contrary, a reflective type, if it begins with a particular case. *The Metaphysics of Morals* is where this can be most clearly perceived. But what is more, the faculty can adopt two extreme forms: one “*merely* determining”, which corresponds to the typic of the faculty of *pure* practical judgement in the second Critique and one “*merely* reflective” of moral conscience (as can be seen in *Religion* and *The Metaphysics of Morals*), in as far as it is a judgement on the activity of the faculty of practical judgement.

### **2.1. *The typic of the faculty of pure practical judgement: the categorical imperative as a canon of moral judging***

The second chapter of the Analytic of the *KpV* (“On the concept of an object of pure practical reason”) is perhaps one of the most obscure parts of Kant’s work. In particular the doctrine on the “categories of freedom” (*KpV*, 5:65-67) and the epigraph “On the typic of the faculty of pure practical judgement” (*KpV*, 5:67-71) have not been studied frequently, despite containing –as Kant specifically underlines– the justification of the fact that good and evil

are rather, without exception, *modi* of a single category, namely that of causality, insofar as the determining ground of causality consists in reason’s representation for a law of causality

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*Untersuchungen zu Immanuel Kants Theorie des freien Willens* (Berlin – New York: W. de Gruyter, 2003), 145-149, ;Schönecker, D., *Kants Begriff transzendentaler und praktischer Freiheit. Eine Entwicklungsgeschichtliche Studie* (Berlin – New York: W. de Gruyter, 2005), 113 ff.

which, as the law of freedom, reason gives to itself and thereby proves itself a priori to be practical. (*KpV*, 5:65)<sup>16</sup>

The following is a short, concise explanation of that statement.

By means of the categories of freedom there is submission of “the manifold of *desires* to the unity of consciousness of a practical reason commanding in the moral law” (*KpV*, 5:65), that is, that the diverse *types* of *possible* actions are presented in such a way that *pure* reason can make a judgement on their morality. In my opinion, using the first three categories (quantity, quality and relationship) *all* the possible types of action maxims are represented (or described), in the same way as the categories of understanding contain all possible judgements (see *KrV*, A:80-81 / B:106-107). And again, the modality of those maxims is determined *after* the judgement of the faculty of pure practical judgement, as the modality designates the relationship between the maxim and pure practical reason, in a similar way as the categories of understanding refer to the *existence* of objects in relation to understanding (see *KrV*, B:110)<sup>17</sup>.

The faculty of *pure* practical judgement is similar to the faculty of transcendental judgement of the first *Critique*, as in both cases it is the merely determinative nature of a function of *pure* reason. The difference lies in that although in the latter both the rule (category) and the case (the *a priori* forms of sensibility) are given, in the former the case cannot be given (it would be the action or the particular situation), because pure practical reason does not have direct access to sensibility. Therefore, in spite of the fact that the sense of Kant's text appears to be the opposite, it is *not* a task of the faculty of *pure* practical judgement to decide “whether an action possible for us in sensibility is or is not a case that stands under the rule” (*KpV*, 5:67). That task corresponds to the practical faculty of judgement *in general* and not to the *pure* one. In fact,

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<sup>16</sup> A somewhat personal interpretation perhaps (because of “perspectivism”), but faithful to the sense of these passages and extremely clarifying, is that of Kaulbach, F., *Das Prinzip Handlung in der Philosophie Kants* (Berlin – New York: W. de Gruyter, 1978), 272 ff.

<sup>17</sup> Despite these parallelisms, the categories of practical reason are not an application of moral law to *actions* (that is to say, to effects in the world), but rather refer to the determination of choice and, therefore, only to the maxims. The best studies I have found on this issue are: Graband, C., “Das Vermögen der Freiheit: Kants Kategorien der praktischen Vernunft”, in *Kant-Studien*, 96 (2005): 21-65; Benton, R. J., *Kant's Second Critique and the Problem of Transcendental Arguments* (The Hague: Martinus Nijhoff, 1977) and “Kant's Categories of Practical Reason as Such”, in *Kant-Studien*, LXXI (1980): 181-201. Yet again, Bobzien's work (“Die Kategorien der Freiheit bei Kant”, in Oberer, H. – Seel, G. (Hg.), *Kant. Analysen – Probleme – Kritik*, Band I (Würzburg: Königshausen & Neumann, 1988), 193-220) is extremely thorough and significant, but I believe she makes a fundamental error when she considers that the categories can be used to apply moral law to actions as phenomena (*Erscheinungen*), thus ensuring the possibility of moral good *in the world* (see 194 and 202).

the faculty of *pure* practical judgement decides on the maxims *a priori*, that is, the form of the diverse grounds of determination of choice, the variety of which has been earlier synthesised by the categories of freedom. Although Kant uses the term “actions”, he is in fact referring to “maxims” and, more specifically, to the *form* of these maxims<sup>18</sup>. What must be understood is the *moral* possibility or impossibility of the maxims, which is very far removed from “the possibility of the *action* as an event in the sensible world” (*KpV*, 5:68).

This *a priori* judgement of the maxims needs, as does the faculty of transcendental judgement, a mediating instance –the schema– between the rule and the case. But here the schema is not supplied by the imagination, but by understanding. And the schema is not that of one particular case (the action or maxim of the first order), but rather

here we have to do with (...) the schema of a law itself (if the word schema is appropriate here), since the *determination of the will* (not the action with reference to its result) through the law alone without any other determining ground connects the concept of causality to conditions quite other than those which constitute natural connection. (*KpV*, 5:68-69)

The faculty of pure practical judgement takes the form of lawfulness from understanding as an example for the judgement of the maxims, as the legality of nature and freedom “to this extent (...) as such are the same” (*KpV*, 5:70) as their principles share a universal and necessary nature<sup>19</sup>.

Thus, the *typic* determines the conditions which are indispensable for the application of moral law. Such conditions lay down a normative framework which constitutes the *first* level for application of moral law, where it does not

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<sup>18</sup> It is well known that Kant uses the concept in a two-fold way. According to Timmermann, J., *Sittengesetz und Freiheit*, 149-154 and Schwartz, M., *Der Begriff der Maxime bei Kant. Eine Untersuchung des Maximenbegriffs in Kants praktischer Philosophie* (Berlin: Lit, 2006), we can say that there are maxims of the first and second order. Those of the first order would be the “maxims of action”, that is, the practical rule placed in relation to the end (object) of the action, with choice as the cause of that effect. Those of the second order would be the “maxims of will”, that is, those that refer to the inner attitude (*Gesinnung*) that determines the motive (*Triebfeder*) by which choice takes a practical rule (maxim of the first order) as the basis for determination. Anyone who has a good interior attitude will only accept maxims whose form is in conformity with moral laws, precisely *because of* this conformity.

<sup>19</sup> In this way, the *typic* also becomes a mediating element between freedom and nature. The moral principles are *applicable* to nature, because (1) reason cannot order anything contradictory (drawing a square circle, for example) and (2) there is a *formal* concordance between them (due to legality). Natural law as a type for moral law is the rule for judging the maxims: “The rule of judgement under laws of pure practical reason is: Ask yourself whether, if the action which you propose should take place by a law of nature of which you yourself were a part, you could regard it as possible through your will” (*KpV*, 5:69). This rule is the categorical imperative in its first formulation (universal law or law of nature). The *Groundwork* had already stated that the “canon of moral appraisal [*Beurteilung*]” is the categorical imperative: “We must *be able to will* that a maxim of our action become a universal law” (*Grundlegung*, 4:424).

yet judge the moral value of particular maxims (of the first order). This first level is that of the obligation of virtue (*Tugendverpflichtung*), that is, the *duty* to decide on action *because of* respect for the law. Such an obligation is satisfied by attaining a virtuous interior attitude (*Gesinnung*), which becomes the subjective basis for determination, in other words, a motive or incentive (*Triebfeder*). As we will now see, the obligation of virtue (*Tugendverpflichtung*) must not be confused with the duties of virtue (*Tugendpflicht*), in that some ends are duties (*MS*, Ak. VI 410).

## 2.2. “Ends that are duties” and the faculty of practical judgement as judging and application of the maxim

Whereas in the *Groundwork* and in *KpV* it is argued that no end should be a *ground of determination* for the will, in the second part of *The Metaphysics of Morals* the case is made for the fact that, of necessity, *all* action –moral action also–

has its end; and since no one can have an end without *himself* making the object of his choice into an end, to have any end of action whatsoever is an act of *freedom* on the part of the acting subject, not an effect of *nature*. But because this act which determines an end is a practical principle that prescribes the end itself (and so prescribes unconditionally), not the means (hence not conditionally), it is a categorical imperative of pure practical reason, and therefore an imperative which connects a *concept of duty* with that of an end in general. (*MS*, 6:385)

These ends derive from *a priori* reason and are presented as duties (see *MS*, 6:395).

We must differentiate between these duties of virtue (*Tugendpflichten*) and the obligation of virtue (*Tugendverpflichtung*), as this latter is one only: respect for the law, while the duties of virtue are many, “for there are indeed many objects that it is also our duty to have as ends” (*MS*, 6:410). In this way, the system of the duties of virtue constitutes a second level –a *concretion*– in the application of moral law. Thus the maxims can be judged, not only by their form, but also by their relationship with the ends which are duties.

### 2.2.1. “Latitude” (Spielraum)<sup>20</sup> in the system of duties of virtue

The doctrine of virtue is differentiated from the doctrine of right (legality) not only because of the internal or external nature of legislation, but also because of the class of bindingness (*Verbindlichkeit*) of its duties. Legal duties are of a strict (*enge*) bindingness, as they rule over action, that is, the end that must be *produced*, whereas the duties of virtue are of wide (*weite*) bindingness, as they refer to the maxim of action (see *MS*, 6:410-411, 391-395, 398, 218-221)<sup>21</sup>. This

<sup>20</sup> “Latitude” is preferred to “playroom” as translation for “*Spielraum*”.

<sup>21</sup> Whatever the case, internal legislation changes juridical duties also into “indirect” ethical duties.

distinction is crucial for understanding the faculty of practical judgement and, in order to confirm it, the following schema of the system of duties<sup>22</sup>:

1. **Duties of right:** are of narrow bindingness, as they refer to action. Sphere of *legality*.

2. **Duties of virtue:** are of wide bindingness, as they refer to the maxim. Sphere of *morality*.

### 2.1. Perfect duties (or perfectly *determined*)<sup>23</sup>

#### 2.1.1. To oneself

a) *As an animal being:* (against) killing oneself (§6), defiling oneself by lust (§7) and stupefying oneself by the excessive use of food or drink (§8)

b) *As a moral being:* Self-knowledge (§14-15), own innate judge (§13), and (against) lying (§9), avarice (§10) and servility (§11-12).

#### 2.1.2. To other human beings<sup>24</sup>

<sup>22</sup> This classification does not coincide with the one offered by Kant in the *MS* –although logically it is consistent with it– and has been carried out to show the existence of two different “latitudes” (*Spielraum*): that which proceeds from the wide nature of the obligation and is, therefore, a common feature of all duties of virtue (in contrast with duties of right, which lack this) and that of the *imperfect* nature (in the sense of imperfectly determined) of some duties, which has a different meaning from the first. Kant’s classification follows an inverse order: first, duties are divided into those which have to do with oneself, and those to do with others; and then into perfect and imperfect duties, see *MS*, 6:446-447.

<sup>23</sup> Kant does not use the expression “perfectly *determined* duties”; rather the duties are “perfect” or “imperfect” depending on their level of determination (the concretion of the maxim) and not on whether they are strict or wide obligations (that is, of right or of virtue). Perfect duties are restrictive or negative because they forbid, while the imperfect ones are extensive or positive because they order, but both are duties of virtue (see *MS*, 6:419). Ignoring this difference confuses perfect *ethical* duties with juridical ones. Kant is somewhat to blame, as –here also– he is not attentive to the terminology. Thus, for example, the classification of duties he uses in the *Groundwork* (where he does not yet make a clear division between juridical/ethical duty and perfect/imperfect) is often taken as “definitive”, despite the fact that he himself says that it is only a “division (...) at my discretion [*beliebig*]” (*Grundlegung*, 4:421). An example of this can be seen in Wood, A. W., *Kant’s ethical thought* (Cambridge: Cambridge University Press, 1999), 44-45, 323-325. Conversely, a good interpretation of this point can be found in Herman, B., *The Practice of Moral Judgment* (Cambridge: Harvard University Press, 1996), 159-183.

<sup>24</sup> The division of the duties towards oneself into perfect and imperfect is not clearly expressed in the *Metaphysics of Morals*, but –in my opinion– the following words can only be interpreted from that division: “Auch wird die Pflicht der freien Achtung gegen andere, weil sie eigentlich nur negativ sind (sich nicht über andere zu erheben), und so der Rechtspflicht, niemanden das Seine zu schmälen, analog, obgleich als bloße Tugendpflicht verhältnismäßig gegen Liebespflicht für enge, die letztere also als weite Pflicht angesehen. (...) Dadurch, daß ich die erstere Pflicht gegen jemand ausübe, verpflichte ich zugleich einen anderen; ich mache mich um ihn verdient. Durch die Beobachtung der letzteren aber verpflichte ich bloß mich selbst, halte mich in meinen Schranken, um den anderen an dem Werte, den er als Mensch in sich selbst zu setzen befugt ist, nichts zu entziehen” (*MS*, 6:449-450; the emphasis have been added). Here Kant uses the terminology “strict/wide” duty of virtue instead of “perfect/imperfect” duty, however its meaning could not be clearer, because in both cases he

– “Duties (...) the observance of which does not result in obligation [*Verbindlichkeit*] on the part of others (...) [are] fulfilling a duty *that is owed* [*schuldige*]” (MS, 6:448). Are duties related to the respect due to other human beings (§37-41), which is against arrogance (§42), defamation (§43) and ridicule (§44).

## 2.2. Imperfect duties (or imperfectly *determined*)

### 2.2.1. To oneself

- a) *As an animal being*: to develop and increase his natural perfection, that is, with a pragmatic purpose (§19-20).
- b) *As a moral being*: to increase his moral perfection, that is, for a moral purpose (§21-22).

### 2.2.2. To other human beings

– The “Duties to others by performing which you also put others under obligation, (...) [are] *meritorious* [*verdienstliche*]” (MS, 6:448). They are duties related to the *love to one's neighbour* (or philanthropy): beneficence (§29-31), gratitude (§32-33), sympathetic feeling (§34-35) and the vices of hatred for human beings, directly opposed to love of them (§36).

In view of this classification, we can easily understand how the faculty of practical judgement functions. *All* duties of virtue (both perfect and imperfect) are of wide bindingness, as they refer to the maxim and not to the action. The end, which simultaneously is a duty, can be fulfilled by *diverse* maxims (of particular actions). This diversity allows for latitude (*Spielraum*) for the application of the maxim:

For if the law can prescribe only the maxim of actions, not actions themselves, this is a sign that it leaves latitude (*latitudo*) for free choice in following (complying with) the law, that is, that the law cannot specify precisely in what way one is to act and how much one is to do by the action for an end that is also a duty. (MS, 6:390)

There will always be a “gap” between duty and a specific situation which will require the intervention of the faculty of judgement to interpret the circumstances in the light of duty.

Perfect duties have only this latitude, as their mandates are negative and absolutely *determined*: the description of a situation as contradictory to duty does not require any further intervention of the faculty of judgement in order to decide whether the maxim contravenes duty or not. Conversely, imperfect duties *also* have another margin of action, subordinate to and dependent on the former. Given that its mandates are positive and therefore, *indeterminate*, they

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is dealing with duties of virtue. There is only “analogy” between a perfect duty virtue and a juridical duty.

“unavoidably lead to questions that call upon judgement to decide how a maxim is to be applied in particular cases, and indeed in such a way that judgement provides another (subordinate) maxim” (*MS*, 6:411). Thus, for example, the maxim of love of one’s neighbour is circumscribed to love of one’s parent’s (see *MS*, 6:390)<sup>25</sup>.

### 2.2.2. *Metaphysics of morals and moral anthropology*

The abovementioned subordinate maxim, in turn, needs a new intervention of the faculty of judgement in order to be applied to a specific situation. And this is the third and last level of application of moral law. It is a transition similar to the one given in the

metaphysics of nature to physics (...) –a transition having its own special rules–. (...) A transition which, by applying the pure principles of duty to cases of experience, would *schematize* these principles, as it were, and present them as ready for morally practical use. (*MS*, 6:468)

These schemas or application modes “cannot be presented as sections of ethics and members of the *division* of a system (which must proceed a priori from a rational concept), but can only be appended to the system. Yet even this application belongs to the complete presentation of the system” (*MS*, 6:469). This is what was stated in the general introduction to the work: that human nature –“comprehensible only through experience”– must be taken into account when applying moral principles, although this does not affect its *a priori* purity and character. “A metaphysics of morals cannot be based upon anthropology but can still be applied to it” (*MS*, 6:217).

This quick, concise explanation may be easier to understand if we put ourselves in the place of the agent who must make a decision. In that case the activity of the faculty of judgement does not begin with the categorical imperative, but rather with the situation the agent is facing. With this starting-point, the task of the practical faculty of judgement can be resumed in three stages, as an example<sup>26</sup>:

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<sup>25</sup> This “indetermination” corresponding to the imperfect duties and, in general, the task of the faculty of judgement to indicate which maxim a particular situation corresponds to (that is, the “description of the action”) does not mean –as is often suggested– that duties can have exceptions: “But a wide duty is not to be taken as permission to make exceptions to the maxim of actions but only as permission to limit one maxim by another” (*MS*, 6:390). The decision on *which* rule and *how* it is to be applied in each case is in the realm of the faculty of judgement, which does not modify the rule nor introduce exceptions, but rather applies it, that is to say, interprets it (although it may err on doing so).

<sup>26</sup> This is simply a reconstruction of the elements which –logically– are necessary in the task of the practical faculty of judgement, where I follow Höffe, O., “Universalistische Ethik und Urteilskraft”, in *Zeitschrift für philosophische Forschung*, 44 (1990): 537-563.

1. The perception of the situation, in which there are two aspects:
  - a) theoretical: being aware of an emergency situation, that is, understanding or *describing* the circumstances as “an emergency”.
  - b) practical: being aware of the need to react to the emergency.
2. The construction (*Bildung*) of maxims with the possible answers to the situation, in which the described situation appears as a case of a rule. This maxim is not simply “to help” or “not to help”, but also refers to how, when, etc.
3. The moral judgement of the maxims.

Only the *third stage* is *completely* independent of experience, and thus is a task for the *pure* practical faculty of judgement, while the previous two correspond to the practical faculty of judgement *in general*.

In the first stage (the perception of the situation as an “emergency”) does the (*theoretical*) faculty of judgement also intervene, in its reflective function (on becoming aware of the circumstances) and determining (in as far as it subsumes those circumstances in the concept of “emergency”). Moreover, the awareness that when faced with an emergency one must assist is also a task of the faculty of judgement, but presupposes the presence of a “moral receptivity” of the mind (*Gemüt*) (cf. the “*ästhetische Vorbegriffe*” in *MS*, 6:399-403). The margin of action present in all duties of virtue is the area to which all the before-mentioned elements belong. Interpretation (both of the rule and of the situation) is inevitable, because the maxims that are duties cannot determine all the factors *a priori*. And the existence of casuistry precisely –which is not part of the *metaphysics* of morals, although it is a necessary complement to it– shows that the application of moral law is accompanied by an unavoidable exercise of interpretation (cf. *MS*, 6:411)<sup>27</sup>.

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<sup>27</sup> From the theory of action, this “interpretation” is one of the essential elements in any “description of the action”, as can be seen in the classical work on the subject: Anscombe, G.E.M., *Intention* (Oxford: Basil Blackwell, 1957). However, the “discontinuity”, proper to transcendental idealism, mid-way between moral laws and the empirical character of the actions, creates problems –which are not easily solved– when it comes to describing the action. A good attempt to overcome these difficulties which are inherent to the Kantian approach, introducing the concept of the “*rules of moral salience*”, is that described in Herman, B., *The Practice of Moral Judgment*, 73-93. Whatever the case, the basic problem that surfaces here is whether said “discontinuity” between nature and freedom correctly reflects the relationship that the subject has with the world in which he finds himself, or, as Arana states, it is rather the fruit of a “lack of knowledge (...) of the ontological and epistemological assumptions of modern science, which led him [Kant] to distort the meaning of natural necessity and to place obstacles in the path of the spread and demonstration of freedom” (Arana, J., *Los filósofos y la libertad. Necesidad natural y autonomía de la voluntad* (Madrid: Síntesis, 2005), 130; see also “Naturaleza y libertad: Kant y la tradición racionalista”, in *Annuario Filosófico*, XXXVII (2004): 563-594). In my opinion, the optimum solution would be one that permitted a broadening of the narrow concept of experience (*Erfahrung*) used by Kant. But this is an issue which will not be dealt with here.

In the process of construction of the maxim (*stage two*), we find that there are various maxims that satisfy the duty of charity corresponding to this emergency situation<sup>28</sup>. Thus, any one of them is acceptable as a basis for determination of choice.

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The above explanation shows that the problem of application was not at all strange to Kant; indeed it had been part of his philosophical project at least since the *Groundwork*. In the prologue to this work, we find words which we have kept very much in mind while writing this paper; their significance can now be properly grasped. They are as follows:

Among practical cognitions not only do moral laws, along with their principles, differ essentially from all the rest, in which there is something empirical, but all moral philosophy is based entirely on its pure part; and when it is applied to the human being it does not borrow the least thing from acquaintance with him (from anthropology) but gives to him, as a rational being, laws a priori, which no doubt still require a faculty of judgement sharpened by experience, partly to distinguish in what cases they are applicable and partly to provide them with access to the will of human being and efficacy for his fulfillment of them. (*Grundlegung*, 4:389)

The faculty of judgement –well tempered and steeled by experience (*durch Erfahrung geschärfte Urteilstkraft*)– has two tasks. Up to now we have dealt with the first –“to distinguish in what cases they [laws] are applicable”. The second –“to provide them with access to the will of the human being and efficacy for his fulfillment of them”– is the proper object of the *Doctrine of Method*, both in the second *Critique* and –most particularly– in *MS*, whose objective is the moral determination of will<sup>29</sup>. Although in principle they are two separate issues (one on judging and the other on the moral determination of will), we will now see how the faculty of judgement, by means of conscience, offers the necessary

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<sup>28</sup> See Thurnherr, U., *Die Ästhetik der Existenz. Über den Begriff der Maxime und die Bildung von Maximen bei Kant*, (Tübingen – Basel: Francke, 1994), 69-82.

<sup>29</sup> This is not the place to examine these passages in detail, suffice to say that they explain how the faculty of judgement intervenes in the moral configuration of the human being: by exercising the structure (syllogistic) of practical reason (see *KpV*, 5:90); by arousing interest in moral law (see *MS*, 6:478, 484); by permitting the distinction between mere *Beispiel* and genuine moral *Exempel*, that is, what is necessary to understand the *moral* principle given in the examples (see *MS*, 6:480), etc. To do so, an empirical knowledge of human nature is necessary, as seen in *Anthropology from a Pragmatic Point of View* and in the lectures on *Pedagogy*, which will help to discover the best way in which moral laws may influence sensibility and in which humankind will accept them (*Eingang*). The key concept in this area of moral formation is that of culture (*Kultur*) as development of human dispositions (*Anlage*), which, in turn, relates practical reason with the civilizing process and the philosophy of history. See Wood, A. W., *Kant's ethical thought*, 283-320.

unity or continuity between them, and thus, how the two senses of application mentioned at the start of these pages direct each other.

### 2.3. Conscience (*Gewissen*) or judging of the faculty of practical judgement

Up to now we have considered the faculty of judgement mainly an instance in charge of *determining* whether “something is duty or not”, that is, as a faculty of the “objective judgements”. Such judgements are products of the determining use of the faculty, as, although they require reflective measures, these are guided by determination. In forming these judgements, the subject may err, either because the necessary knowledge is lacking (or flawed), or because the subject still needs to learn how to interpret the situations in which she finds herself, before deciding whether something is a duty or not. It is true that the categorical imperative, by means of the typic, becomes the canon for moral judging, that is, the rule for the correct functioning of the faculty of practical judgement, but this is not enough to wholly avoid the error.

The faculty of judgement is *also* responsible for judging this “objective” judgement, that is, to ensure the sincere interest of the subject for her objective judging to be genuine. According to Kant,

for while I can indeed be mistaken at times in my objective judgement as to whether something is a duty or not, I cannot be mistaken in my subjective judgement as to whether I have submitted it [action or maxim] to my practical reason (here in its role as judge) for such a [objective] judgement. (*MS*, 6:401)

This other “subjective” judgement cannot, either, be erroneous, because in such a case, “I would have made no practical judgement at all, and in that case there would be neither truth nor error” (*MS*, 6:401). It is this “subjective judgement” which Kant called moral conscience (*Gewissen*); and in this precise sense the famous and controversial statement: “an *erring* conscience is an absurdity” (*MS*, 6:401) must be interpreted. In fact, according to Kant, conscience is not a judgement on the concordance of a case with the rule, as this task corresponds to another instance of the faculty of practical judgement<sup>30</sup>. Conscience is situated –one could say– on a “meta-level” of

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<sup>30</sup> Thus, Kant does not state that the judgement of conscience is the *ultimate* criterion for good and evil. For Kant, this criterion *is* to be found in the autonomous legislation of pure reason, as it is here that the definitive instance of moral appellation can be found. The difference –clearly expressed by Kant– between objective and subjective judgement here is crucial so as not to attribute to him a view which more correctly belongs to other authors, such as Fichte. From the Fichtean perspective, all moral criteria are downgraded to subjective judgement, as moral conscience (*Gewissen*) is the *only* conscience (*Bewusstsein*) of the pure originary I. And Fichte states that it does not and cannot err, because it is a judge above which there is no higher court of

judgement over action, whose only mission is to judge if the all the necessary care (*Behutsamkeit*) has been taken in the objective judging, that is, if extreme care (*Gewissenhaftigkeit*)<sup>31</sup> has been taken. It is the self-judgement of the subject, which cannot guarantee the truth of the (objective) judgement, but does guarantee the sincerity of the subject, and therefore, the necessary certainty for decision-making –be it either a decision to act or to continue deliberating– and thus avoids, in any case, a return to the infinite. In this sense, conscience is defined as “the faculty of moral judgement [*Urteilstkraft*], passing judgement [*richtende*] upon itself” (*Rel.*, 6:186).

How can such a judgement, where the subject becomes the object, be possible? Precisely because, in conscience, the faculty of practical judgement appears in a *merely* reflective form. We must not forget that conscience belongs to the “presupposed aesthetic notions” (*ästhetische Vorbegriffe*), and the judgement it makes can be defined as a “sensible perception of one’s own subjectivity”<sup>32</sup>. Kant believes that in conscience the subject becomes “transparent” to herself and cannot deceive herself about the sincerity and care taken in her moral judgements<sup>33</sup>.

### 3. From the principle of judgement to the principle of determination

Conscience closes the circle of forms that the faculty of judgement can adopt. In the typic of the *KpV* the faculty of *pure* practical judgement appears in its *merely* determinative role. In the *Metaphysics of Morals*, the normative framework laid down by the categorical imperative is specified –also *a priori*, because it is a purely applied ethic– within the system of the duties of virtue, with reference to the “moral, but affected by sensibility,” character of the human being, and thus gives the basic guidance for all later moral judgement.

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appeal. See *Das System der Sittenlehre*, § 15, in Fichte, J. G., *Gesamtausgabe*, I, 5 (ed. Bayerische Akademie der Wissenschaften. Stuttgart – Bad Cannstatt: Friedrich Frommann, 1977), 152-164.

<sup>31</sup> On this point, we must remember that Kant is –although it is not clearly stated in his published works– in constant critical dialogue with the doctrine of Baumgarten, as can be seen in his university lectures; see *VzM*, 129-130, 236-246; Baumgarten, A. G., *Ethica Philosophica*, §177, 28:916. The following text from the notes taken by Vigilantius is unambiguous: “Baumgarten setzt das Gewissen blos in der subsumtione factorum nostrorum sub legem. Dies heißt also das Gewissen der Urteilstkraft der Seele gleich achten, als welche die facta judicantis den Regeln des Verstandes unterwerfen würde. Hieraus würde die Rechtmäßigkeit oder Unrechtmäßigkeit der Handlung hervorgehen, aber nicht, ob der Handelnde mit Gewissenhaftigkeit verfahren” (*Metaphysik der Sitten Vigilantius*, 17:615-616).

<sup>32</sup> See Wieland, W., *Urteil und Gefühl*, 127-129, 166-167.

<sup>33</sup> See *MS*, 6:437-441 and also Nessler, G., “Einige Bemerkungen zu dem Satze: ‘Das Gewissen kann nicht irren’”, in *Zeitschrift für philosophische Forschung*, XXVII (1973): 445-449. The study by W. Heubült (*Die Gewissenslehre Kants in ihrer Endform von 1797* (Bonn: Bouvier, 1980)) is the most complete on the subject and offers priceless interpretative keys (such as the difference between *Naturgewissen*, *Vernunftgewissen* and *Idealgewissen*), which we cannot deal with here.

The duties of virtue are morally-practical principles, but they do take human nature into consideration, that is, the subjective conditions of the application of moral law, which is, strictly speaking, the only morally-practical principle. In this work we also find the third and final level of application of moral law –that of casuistry– which, although not part of the system (it is simply an additional factor), is indispensable. At this *empirical* level, we find the knowledge of *Anthropology from a Pragmatic point of view*, and the faculty of practical judgement uses this knowledge to mediate between particular actions and moral law, by using its determinative and reflective function. Finally, in conscience the faculty of judgement appears in its *merely* reflective form, as it does not judge objects (actions or maxims), but rather the subject herself, which is possible because of its aesthetic nature, that is, belonging to sensibility.

These three forms make up the judicial activity of reason, that is, the *principium diiudicationis*. Their mission is to supply the necessary knowledge of good and evil. But the decisive question, which has been almost ignored up to this point, is how this knowledge can *move* the will so that it will decide to behave correctly, that is, how reason can also be a *principium executionis*. In my opinion, the connecting point of the two principles is to be found precisely in the moral conscience, as Kant believes that this conscience not only judges the (subjective) attitude of the agent, but also *moves* her to follow what she has (sincerely) judged to be a moral duty. Conscience –an inevitable fact– moves the will by affecting “moral feeling by its act” (*MS*, 6:400), that is, by participating in the composition of motives or incentives (*Triebfeder*) for the determination of choice. And thus, something as inconceivable as a practical use of *pure* reason begins to make sense at the heart of Kantian criticism<sup>34</sup>.

#### 4. Conclusion. The specificity of what is practical in the application of moral law

Now that we have sketched the framework and the forms of the practical faculty of judgement in transcendental philosophy, we can state that one of Kant's basic interests in this matter is to ensure that the specificity of what is practical is respected. The architectonic division of philosophy into the theoretical (or of nature) and practical ( or of freedom) is not finally established until the *Critique of the Faculty of Judgement*, which explains that the true sense of

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<sup>34</sup> A full explanation of this statement requires a study of chapter III of the *Analytic of KpV*, which we cannot deal with here. But the doctrine of conscience (and moral feeling) in *MS* provides a fuller understanding of what is discussed there. In the *Vorlesung* Kant wrote: “Nobody can or ever will comprehend how the understanding should have a motivating power; it can admittedly judge, but to give this judgement power so that it becomes a motive able to impel the will to performance of an action – to understand this is the philosopher's stone” (*VzM*, 85 = *Moralphilosophie Collins*, 27:1428).

what is practical is what corresponds to the morally-practical principles and not to the technically-practical ones, which would be –in some way– mere “applied theory” (cf. *KU*, 5:171-176; *EE*, 20:195-205). The specificity of what is practical can be seen in the type of obligatory nature (*Verbindlichkeit*) in the moral directives. This is a bindingness which is not based on nature nor on its theoretical principles, because these only refer to what the world *is like*, and thus the only *ought to be* they can give rise to is conditioned and contingent. On the contrary, moral duty proposes an unconditional bindingness, which, if it is not found in nature, must come from freedom.

What is morally-practical thus is the basis for a “moral ontology” (practical reality) which constitutes the *other* principle of reality, on the same level as “natural ontology”<sup>35</sup>. This duality is the basis for the system of transcendental idealism. The expressive example that Kant uses to illustrate this thesis is that of good will, “a good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself” (*Grundlegung*, 4:394). Good will shows the intrinsic relationship between the ideas of duty and good: only what is good in itself and for itself demands unconditional duty. The basis for good – and therefore, for what is undeniably practical– is found in will controlled by duty. Good is the object that depends on morally-practical principles, that is, on moral law. And, in this situation, the decisive question that Kant feels he must answer is: How can duty *in itself* be a *practical* principle, that is a fundament for control of the will? In earlier sections we have given the explanations he can offer. But we must not forget –because it is at the very root of transcendental philosophy– that “reason would overlap all its bounds if it took it upon itself to *explain how* pure reason can be practical, which would be exactly the same task as to explain *how freedom is possible*” (*Grundlegung*, 4:458-459). In addition, if such an explanation really were *possible*, morality would lose its specificity and would fade away, “for there is no theory of what goes beyond the properties of nature” (*MS*, Ak. VI 217). Kant thus completes the primacy of practical reason over a theoretical one, and this is one of the most characteristic features of his

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<sup>35</sup> See Henrich, D., “Der Begriff der sittlichen Einsicht und Kants Lehre vom Faktum der Vernunft”, in Henrich, D. – Schulz, W. – Volkmann-Schluck K.-H., *Die Gegenwart der Griechen im neueren Denken* (Tübingen: Mohr – Siebeck, 1960), 77-122. In the critique the moral interest of reason is to be found, together with the existence of a “rational teleology” in human faculties that permits a passing between the two principles –theoretical and practical– and suggests supreme good as the *complete* object of practical reason. On this line of interpretation, see Llano, A., *Fenómeno y trascendencia en Kant*, 231-237 and 246-257, Cortina, A., “Los intereses de la razón en el criticismo kantiano”, in *Estudios de Metafísica*, 4 (1973-74): 81-95 and, more recently, Hutter, A., *Das Interesse der Vernunft. Kants ursprüngliche Einsicht und ihre Entfaltung in den transzendentalphilosophischen Hauptwerken* (Hamburg: Felix Meiner, 2003).

intellectual undertakings which both his “hypercritical friends” and, especially, later idealisms would take to its final consequences.

The application of morally-practical to nature is like –please excuse the ambiguity– the application of what is practical to theory. Part of the concept of causality by freedom is that moral law should be an influence (*Einfluß*) on nature. One of the routes of this influence is that which is covered by the philosophy of history and the fulfilment of freedom in history, whose end is the greatest good. But this greatest good is only an indirect, albeit unnecessary, effect of the application of morally-practical principles. On the contrary, the *proper* object of the application, its immediate “effect”, is the moral formation of the subject, that is, the moral condition of his character (*Charakter*) or inner attitude (*Gesinnung*). Although moral law (causality by freedom) certainly lacks objective theoretical reality, “it has (...) a real application which is exhibited *in concreto* in dispositions [*Gesinnungen*] or maxims” (*KpV*, 5:56). In other words, as what is decisive in Kantian ethics is the wanting (*das Wollen*) of a good will, morality belongs to the area of practical reality.