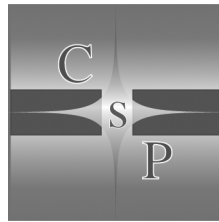


Natural Law:
Historical, Systematic and Juridical
Approaches

Edited by

Alejandro N. García, Mario Šilar
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CHAPTER ELEVEN

KANT ON THE LAW OF NATURE AS THE TYPE OF MORAL LAW: ON THE “TYPIC OF THE FACULTY OF PURE PRACTICAL JUDGMENT” AND THE GOOD AS THE OBJECT OF PRACTICAL REASON

JOSÉ M. TORRALBA

1. Introduction. Natural law and natural right in Kant’s philosophy

Kant is not remembered in the history of philosophy as a theorist of natural law. However, as some recent studies have shown, this fact need not inevitably prompt the conclusion that the concept of natural law is alien to Kantian philosophy, nor that Kant himself ignored the specific problems of iusnaturalism.¹ In my view, there are at least three areas in

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Quotation from Kant’s works —Immanuel Kant, *Kant’s gesammelte Schriften*, ed. Akademie der Wissenschaften (Berlin: 1902 ff.)— 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* —Immanuel Kant, *Kritik der reinen Vernunft*, ed. Jens Timmermann, nach der 1. und 2. Orig.-Ausg. ed. (Hamburg: Felix Meiner, 1998)—, cited by first (A) and second (B) editions, and the *Lecture on Ethics* —Immanuel Kant, *Vorlesung zur Moralphilosophie*, ed. Werner Stark (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*), *GMS* (*Groundwork of the Metaphysics of Morals*), *MS* (*The Metaphysics of Morals*) and

which the concepts and problems of (classical and modern) iusnaturalism as a whole play a key role in the Kantian ethical and juridical systems.

The first of these areas is the general framework that shapes Kantian ethics, which may only be understood in the context of the debates between intellectualists—such as Leibniz, Wolff and Baumgarten—and voluntarists—such as Pufendorf and Crusius—. ² The key distinction between conditioned and absolute necessity, ³ on which the idea of the categorical imperative depends, is a valuable example in this regard; the distinction is rooted in Crusius's critique of the Wolffian idea of perfection. ⁴ The acknowledgement that the principles by which the will is

VzM (Lecture on Ethics). Unless otherwise stated, English translations are taken from Immanuel Kant, *Practical philosophy*, ed. Mary J. Gregor, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996).

¹ See Alejandro G. Vigo, "Kant's Conception of Natural Right," in *Contemporary Perspectives on Natural Law. Natural Law as a Limiting Concept*, ed. Ana Marta González (Aldershot: Ashgate, 2008), 121-40.

² Schneewind's work on modern moral philosophy is an invaluable contribution to discussion of these questions. See Jerome B. Schneewind, "Pufendorf's Place in the History of Ethics," *Synthese* 72 (1987): 123-55; ———, "Kant and the Natural Law Ethics," *Ethics* 104 (1993). Schneewind, "Kant and the Natural Law Ethics," 53-74; ———, *The invention of autonomy. A history of modern moral philosophy* (Cambridge: Cambridge University Press, 1998). Henrich and Schmucker's studies of the origin and development of Kantian philosophy are also of fundamental significance. See Joseph Schmucker, *Die Ursprünge der Ethik Kants in seinen vorkritischen Schriften und Reflexionen* (Meisenheim: Hain, 1961); Dieter Henrich, "Der Begriff der sittlichen Einsicht und Kants Lehre vom Faktum der Vernunft," in *Die Gegenwart der Griechen im neueren Denken. Festschrift für Hans-Georg Gadamer zum 60. Geburtstag*, ed. D. Henrich, W. Schulz, and K.-H. Volkmann-Schluck (Tübingen: Mohr – Siebeck, 1960), 404-31; ———, "Über Kants früheste Ethik. Versuch einer Rekonstruktion," *Kant-Studien* 54 (1963): 404-31; ———, "Hutcheson und Kant," *Kant-Studien* 49 (1957): 49-69.

³ Kant articulates the distinction in the *Preisschrift* (1762): "Wer einem andern vorschreibt, welche Handlungen er ausüben oder unterlassen müsse, wenn er seine Glückseligkeit befördern wollte, der könnte wohl zwar vielleicht alle Lehren der Moral darunter bringen, aber sie sind alsdann nicht mehr Verbindlichkeiten, sondern etwa so, wie es eine Verbindlichkeit wäre, zwei Kreuzbogen zu machen, wenn ich eine gerade Linie in zwei gleiche Theile zerfallen will, d.i. es sind gar nicht Verbindlichkeiten, sondern nur Anweisungen eines geschickten Verhaltens, wenn man einen Zweck erreichen will." Immanuel Kant, *Untersuchung über die Deutlichkeit der Grundsätze der natürlichen Theologie und der Moral*, 2:298.

⁴ "...daraus denn zweyerley moralische Nothwendigkeit entstehet, nemlich die gesetzliche Verbindlichkeit, und die Verbindlichkeit der Klugheit. (...) Einige nehmen die moralische Nothwendigkeit in einem andern, nemlich in einem

governed, and on which its corresponding objects depend, cannot be reduced to the principles of the understanding provides a further example; this fundamental thesis of Kant's critical ethics derives from the voluntarist tradition.⁵ Similarly, Kant's attitude with regard to the source of normativity—that is, the bindingness (*Verbindlichkeit*)⁶—is of special significance. Kant joins Crusius in asserting that the bindingness is the fundamental moral concept, but their positions diverge when Kant rejects the idea that the source of normativity is either the divine origin of (natural) moral law or man's awareness of his dependence on God.⁷ Kant holds that the source and ground of its unconditional exigency pertains to moral good in itself. In contrast to the Woffian conception,⁸ moral good is

solchen Verstande, da sie eine Gattung von der *necessitate consecutionis* wird. Nemlich die moralische Nothwendigkeit ist bey ihnen diejenige, da ein vernünftiger Geist durch gewisse Vorstellungen des Guten zu etwas determiniert wird." Christian A. Crusius, *Entwurf der nothwendigen Vernunft-Wahrheiten*, 2. Nachdruck der Ausgabe Leipzig 1745 ed. (Hildesheim – Zürich – New York: Olms, 2006), §131, 213-14.

⁵ See Henrich, "Über Kants früheste Ethik," 415. Likewise, Pufendorf's theory of moral entities is relevant to an understanding of the Kantian distinction between theoretical and practical reality; such entities are "realities" independently of the properties of the natural world. See Samuel Pufendorf, *De jure naturae et gentium*, ed. F. Böhling (Berlin: Akademie, 1998), vol. 4.1. §2-20; and Schneewind, *The invention of autonomy*, 138 ff.

⁶ "*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*). "*Verbindlichkeit*" is similar in meaning to "*Verpflichtung*". For instance, duties of virtue and legal duties impose different kinds of bindingness. Compare also the contrast between "*Tugendpflicht*" and "*Tugendpverpflichtung*". See *MS*, 6:218, 390, 410.

⁷ Kant expresses it as follows in his university lectures: "Crusius meynt, alle Verbindlichkeit beziehe sich auf die Willkür eines andern, nach seiner Meynung wäre also alle obligation eine necessitation per arbitrium alterius. Es hat zwar den Schein, daß man bey einer obligation necessitirt wird per arbitrium alterius; allein ich werde necessitirt durch ein arbitrium internum aber nicht durch ein arbitrium externum." *VzM*, 43.

⁸ "Und hieraus können wir verstehen, wie die sinnliche Begierde und der Wille keine besondere Kraft von der vorstellenden Kraft der Seele erfordern. Nemlich wir haben oben gesehen, daß die sinnlichen Begierden sowohl als der Wille aus Vorstellungen des Guten entspringen." Christian Wolff, *Vernünfftige Gedanken [Deutsche Metaphysik]*, 2. Nachdruck der Ausgabe Halle 1751 ed. (Hildesheim – Zürich – New York: Olms, 1997), §878, 544. Hutcheson's influence was also key

defined as independent of any object or state of the world or state of nature; it is dependent on conformity to the “wanting” of the pure will—that is, conformity to the ends of pure practical reason. The conclusion Kant reaches is that adequate comprehension of the good is independent of any knowledge of the world; rather, it depends on an originary “moral comprehension” (*sittlichen Einsicht*).⁹

Thus, Kantian ethics may be described as a response to the emblematic problems and challenges of the modern theory of natural law.¹⁰ As a response, it is unquestionably original; while it draws on elements of both voluntarism and intellectualism, the whole amounts to more than an exercise in the syncretism of parts: Kant’s motive was not merely irenic. What makes Kantian philosophy revolutionary, in fact, is the creative synthesis he forges from different approaches, through which he claims to have resolved once and for all the difficulty involved in wholly accounting for human morality. Kantian philosophy does not emerge from a vacuum; rather, it is the only possible solution that remains after all other moral systems have been ruled out.¹¹ Neither formalism nor the concept of autonomy is Kant’s starting-point; they come as conclusions to his work, after long years of reflection and debate with his contemporaries.

to Kant’s rejection of Wolff’s position. See Schmucker, *Die Ursprünge der Ethik Kants*, 87-95.

⁹ See Henrich, “Der Begriff der sittlichen Einsicht und Kants Lehre vom Faktum der Vernunft,” 77-122.

¹⁰ Schneewind sums up this perspective as follows: “Kant’s relation to the [modern] natural lawyers is thus complex. He is indebted to them for his belief in the importance of the unsocial sociability of our nature, and he accepts the consequent need to build a moral outlook around obligation. Yet he rejects their insistence that morality requires obedience to another. Both aspects of this relation to natural law theory are evident in Kant’s distinction between hypothetical and categorical imperatives. He plainly uses it to do the work done by the natural lawyers’ distinction between counseling someone and obligating someone. Like them he distinguishes what has to be done for personal reasons from what is socially necessary, and like them he identifies the latter with what is morally significant and of overriding importance. But Kant’s way of drawing the distinction quite strikingly omits any place for a counselor or obligator. It is, of course, no small difference.” Schneewind, “Kant and the Natural Law Ethics,” 64.

¹¹ See *KpV*, 5:39-41.

The doctrine of right in *MS*,¹² wherein Kant critiques theories of natural law inspired by Aristotelian philosophy because they defer to natural inclinations, is the second area in which the problematic issue of natural law arises. The characteristic method of Kantian practical philosophy, which he himself describes as the “paradox of method” (*Paradoxon der Methode*),¹³ is incompatible with any reference to the *sensible* nature of human being.¹⁴ Nevertheless, Kant uses iusnaturalist terminology and adopts the modern conception of natural right to a significant extent.¹⁵ The following two issues exemplify this approach (other examples are also to be found).

First, the contrast between positive law and the right to freedom; given that it is native, and not acquired, the right to freedom is defined as a natural right.¹⁶ As Vigo puts it: “as a native right, freedom belongs to everyone ‘by nature’ (*von Natur*), independently of any possible juridical act, while all other rights are based on the corresponding juridical acts.”¹⁷ Hence, Kant’s approach rests on an appeal to nature as the referent by which the rights due to persons are determined, in a way that appears to parallel the iusnaturalist tradition. However, for Kant, the person’s appeal to nature has a different meaning: the nature in question is not empirical nature, but rational nature—that is, the defining characteristics of human being as endowed with reason, not as a function of its belonging to a given natural species. This idea is a touchstone of Kantian practical philosophy: the metaphysics of morals cannot be based on anthropology.¹⁸

¹² The manual used in his university lectures is the most direct influence in this regard: Gottfried Achenwall, *Anfangsgründe des Naturrechts – Elementa iuris naturae*, ed. Jan Schröder (Frankfurt am Main: Insel Verlag, 1995), in which the theories of Grotius, Hobbes, Cumberland, Pufendorf, Thomasius and Wolf, among others, are discussed. See Otfried Höffe, ed., *Immanuel Kant. Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie, 1999), 11-16.

¹³ See *KpV*, 5:62 ff.

¹⁴ See Friedrich Kaulbach, *Studien zur späten Rechtsphilosophie Kants und ihrer transzendentalen Methode* (Würzburg: Königshausen & Neumann, 1982), 49-54.

¹⁵ The doctrine of right (*Rechtstlehre*) addresses the basic elements of all law — natural and positive; thus, it rests on the most fundamental level of natural law. See Peter König, “Episodischer Abschnitt, §§32-40”. In *Immanuel Kant. Metaphysische Anfangsgründe der Rechtslehre* (edited by Otfried Höffe), 147-151.

¹⁶ See *MS*, 6:237-238.

¹⁷ Vigo, “Kant’s Conception of Natural Right,” 133.

¹⁸ See *GMS*, 4:389; *MS*, 6:216-217.

Second, and as a result of the first, for Kant, too, the term “natural law” denotes an external law, but one which is different to “positive law.” He explains his position as follows:

Obligatory laws for which there can be an external lawgiving are called external laws (*leges externae*) in general. Those among them that can be recognized as obligatory a priori by reason even without external lawgiving are indeed external but natural laws, whereas those that do not bind without actual external lawgiving (and so without it would not be laws) are called positive laws. One [external legislation] can therefore contain only positive laws; but then a natural law would still have to precede it, which would establish the authority of the lawgiver (i.e., his authorization to bind others by his mere choice).¹⁹

Thus, the realm of natural right corresponds to the pure part of the *Rechtslehre*, which, as Vigo explains,

includes the system of rights which originate from the native right of a person to freedom, given the conditions laid down by the principle of coexistence of freedoms in the Universal Law of Rights. This then is the subject area of juridical science (*Rechtswissenschaft, iurisscientia*), the object of which is none other than the systematic knowledge of the ‘doctrine of natural right’ (*natürliche Rechtslehre, Ius naturae*).²⁰

The parallel between the functions of natural right at the heart of the *Rechtslehre* and what is reflected in both classical and modern iusnaturalist tradition is unquestionable. The reason for this is obvious: in both cases, the idea of natural right defers to moral law, and thus serves to establish the relationship that must exist between (positive) law and moral principles.²¹ The fact that both juridical duties and moral duties are rooted

¹⁹ *MS*, 6:224.

²⁰ Vigo, “Kant’s Conception of Natural Right,” 135. See *MS*, 6:229. Vigo also points out that the natural right would also have a “critical and regulatory” function in relation to existing juridical systems.

²¹ Kaulbach accounts for the way in which Kant attempts to frame the relationship between law and ethics in the *Rechtslehre* as follows: “Die besondere Metaphysik des Rechts nimmt sich vor, die empirische Ansprüche des positiven Rechts mit den reinen Moralgrundsätzen der praktischen Vernunft zu einem Gesamtsystem zu vermitteln. (...) Die vermittelnde Rolle fällt dabei demjenigen Gesetz zu, welches er als das ‘natürliche’ bezeichnet hat: also dem kritisch geläuterten Vernunftrecht.” Friedrich Kaulbach, *Studien zur späten Rechtsphilosophie Kants und ihrer transzendentalen Methode* (Würzburg: Königshausen & Neumann, 1982), 144-45.

in the same principle should not be forgotten in light of the clear distinction drawn between right and morality in Kantian thought; that principle is moral by nature: the categorical imperative. Legislation depends on the principle of freedom in both the *Rechtstlehre* and the *Tugendlehre*, but the difference between them is reflected in the type of coercion (*Zwang*) or constraint (*Nötigung*) involved; that is, depending on whether the bindingness is with respect to the external use of freedom or the free determination of the will.²²

The third area in Kant's work in which natural law surfaces is the focus of this chapter: the relationship between the legality of nature and the legality of freedom articulated by Kant, in which natural law is framed as the type of moral law. In fact, two formulations of the categorical imperative rest on this relationship: as a universal law and as a law of nature. The meaning of the term "natural law" in this context is different to the normal meaning of the term in iusnaturalism; here it denotes the laws of the natural world—that is, the principles which govern the causal chain of phenomena. In any case, however, Kant defines the principle of morality (the categorical imperative) in terms of natural legality. Thus, it may be said that Kant addresses one of the characteristic problems faced by theorists of natural law; that is, to determine what the first precept of that law is, by which good may be distinguished from evil, and on the basis of which derived obligations or particular duties rest.²³

²² See *MS*, 6:381; Schneewind, *The invention of autonomy*, 526.

²³ The difference between modern and classical iusnaturalists becomes evident in this regard; whereas the starting-point for the former (Grotius and Pufendorf, for example) is the need to overcome social conflict, the latter focus to a greater degree on the rational nature of human being. In the well-known Thomist phrase, the first principle of practical reason is: "good is to be done and pursued and evil avoided." The passage from which this axiom is taken reads as follows: "Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum. Et super hoc fundantur omnia alia praecepta legis naturae, ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta legis naturae, quae ratio practica naturaliter apprehendit esse bona humana. Quia vero bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda. Secundum igitur ordinem inclinationum naturalium, est ordo praeceptorum legis naturae." Thomas Aquinas, *Summa theologica* (Madrid: BAC, 1954), I-II, q. 94, a. 2. The argument posited here — that is, natural law as the type of moral law — does not imply that the positions adopted by Kant and Thomas Aquinas be read as in any way similar, nor that the first practical principle each proposes be taken as

2. The delimitation of the morally possible and the constitution of the object of pure practical reason

2.1. The faculty of judgment and the object of pure practical reason

The argument that the law of nature is a type of the moral law is articulated in an obscure, often overlooked section of the *Critique of Practical Reason*, which comes at the end of the second chapter of the Analytic and is entitled “On the typic [*Typik*] of the faculty of pure practical judgment.”²⁴ This is one of the few places in his work where Kant explicitly addresses the faculty of practical judgment—or, in other words, the judicative function of practical reason.²⁵ The significance of this position for the current discussion lies in Kant’s view that the criterion required to pass moral judgment on actions is conferred on the faculty of judgment by the legality of nature. This criterion is the following “rule” (*Regel*): “Ask yourself whether, if the action you propose were to take place by a law of the nature of which you were yourself a part, you could indeed regard it as morally possible through your will.”²⁶ The rule is clearly one of the formulations of the categorical imperative, to which Kant makes no reference at any point in the section; nor does he refer to the “fundamental law of pure practical reason” which he articulates in §7 of the Analytic.²⁷ In my view, this omission may be explained by the fact

interchangeable; indeed, the opposite is more likely: the general structures of their ethical systems are very different. Moreover, while it may seem little more than a distinction in terms of detail, the key difference between the two principles proposed is the following: whereas Kant’s principle is imperative in form, Aquinas’s is articulated in the gerundive, which assigns it to the realm of the veritative (and cognoscitive). See Ana Marta González, *Moral, razón, naturaleza*, 2 ed. (Pamplona: Eunsa, 2006), 126-28, who follows G. Grisez and F. Inciarte in this regard. In any case, the fact that both Thomas Aquinas and Kant were faced with the *same problem* is noteworthy; to which each provided a *different solution* in order to fulfill *similar requirements* — that is, in the final analysis: to enable moral judgment.

²⁴ See *KpV*, 5:67-71. I translate “*Urteilstkraft*” as “faculty of judgment” and “*reine praktische Urteilstkraft*” as “faculty of pure practical judgment”.

²⁵ See José M. Torralba, *La facultad del juicio en la filosofía práctica de Kant* (Hildesheim – Zürich – New York: Olms, 2008 (forthcoming)).

²⁶ *KpV*, 5:69.

²⁷ “So act that the maxim of your will could always hold at the same time as a principle in a giving of universal law.” *KpV*, 5:30.

that Kant's purpose in the section on the typic is to show how the universality of the legality of nature may be used in moral judgment and, as a consequence, enables the formulation of the moral principle (the categorical imperative). To express the same position in different terms, the categorical imperative is here defined as the "canon of moral appraisal [*Beurtheilung*]." ²⁸

A basic distinction that underwrites clear understanding of the function of the categorical imperative in the Kantian moral system must be addressed at this point. Two complementary functions are ascribed to the categorical imperative: it is the principle of the judgment of actions and the principle of the determination of the will. ²⁹ Strictly speaking, autonomy requires that pure reason be capable of both functions: moral judgment and the determination of the will so that it may act in accordance with that judgment. ³⁰ Given that it enables the reader to distinguish between the points at which Kant refers to moral autonomy as the capacity by which the moral law *immediately* determines the will and those wherein he merely considers the capacity of reason to establish what is morally good, this distinction is of significant methodological import. Kant makes explicit reference to this difference in the section on the typic:

This comparison of the maxim of his actions with a universal law of nature is also not the determining ground of his will. Such a law is, nevertheless, a type for the appraisal (*Beurtheilung*) of maxims in accordance with moral principles. ³¹

The example Kant furnishes in this regard sheds considerable light on the issue: in the case of deception, no-one may hold without contradiction that they would like to see the lie become a universal law; this does not

²⁸ *GMS*, 4:424. Beck translates the term as "estimation" rather than "appraisal". See Immanuel Kant, *Critique of Practical Reason*, ed. L. W. Beck, trans. Lewis W. Beck (Chicago: The University of Chicago Press, 1949).

²⁹ This distinction holds true in all of Kant's moral writings during the critical period (See *GMS*, 4:407-412; *KpV*, 5:44-45, 78, 159-160; *MS*, 6:375); nevertheless, only rarely does Kant articulate it in an explicit way. In contrast, numerous references are to be found in the university lectures: See, for example, *VzM*, 69 and Henry E. Allison, *Kant's theory of freedom* (Cambridge: Cambridge University Press, 1990), 68 ff.

³⁰ See Dieter Henrich, "Ethics of Autonomy," in Henrich, Dieter. *The Unity of Reason. Essays on Kant's Philosophy*, ed. Richard L. Velley (Cambridge (Mass.): Harvard University Press, 1994), 89-121.

³¹ *KpV*, 5:69.

prevent the subject from regarding his own particular case as exceptional, even though he is aware that his action contravenes the moral law.

In the section, “On the typic of the faculty of pure practical judgment,” Kant addresses the moral principle insofar as it is the principle of judgment; its role in the determination of the will is sidelined in the discussion. Given that the principal function of the faculty of pure practical judgment is to constitute the object of practical reason, that is, to establish the object to which a morally determined will corresponds, this clarification is of great significance. Moreover, the second chapter of the *Analytic*, entitled “On the concept of an object of pure practical reason,” which concludes with the section on the typic, explores the relationship between the good and the object of the will. The conclusion reached is well-known: the good is not a property of the object brought about as the result of action; rather, to the extent that the will defers to the moral law as the principle of determination, it is a property of the will.³² However, there is a corresponding object to every determination of the will—even a pure determination, in which no object is involved. The reason for this is straightforward: there can be no determination of the will, as the faculty that activates the subject’s action, without reference to an object, as the result of that determination.³³ This statement may be read as an axiom of the theory of action. Nevertheless, given that determination by the moral law is—in a certain sense—prior to and independent of the objects that may flow from it, the object that corresponds to the pure determination of

³² *KpV*, 5:60-67.

³³ The distinction between two meanings of the object should be noted: the object of the faculty of desire — the effect of action in the world; and the object of practical reason (empirically conditioned or pure) — the maxim in itself. All of this depends on the complex Kantian theory of action. For the purposes of this chapter, the significance of the object of practical reason *qua* maxim, which is the principle of determination of the faculty of desire and gives rise, in turn, to the effect in the world of phenomena, should be borne in mind. That there are two levels of maxim should also be noted — first order (the principle of determination of the faculty of desire) and second order (the *ground* of determination). That the will’s determination by the moral law necessarily connotes an object means that it corresponds to a second order maxim (also known as *Gesinnung*), which is the ground of the faculty of choice (*Willkür*). See Lewis W. Beck, *A Commentary on Kant’s Critique of Practical Reason* (Chicago: University of Chicago Press, 1960), 92; Jens Timmermann, *Sittengesetz und Freiheit* (Berlin – New York: W. de Gruyter, 2003), 149-154; Maria Schwartz, *Der Begriff der Maxime bei Kant* (Berlin: Lit, 2006), 19-24.

the will is formal.³⁴ Thus, the object of pure practical reason sets the limits on the framework in which a will determined by the moral law may ‘want’—that is, the framework of the “morally possible—.”

2.2. The function of the faculty of judgment in the determination of the modality of the categories of freedom

In the section concerning the faculty of pure practical judgment, Kant makes explicit reference to what has been outlined above:

The concepts of good and evil first determine an object for the will. They themselves, however, stand under a practical rule of reason which, if it is pure reason, determines the will a priori with respect to its object. (...) A practical rule of pure reason first, as practical, concerns the existence of an object, and second, as a practical rule of pure reason, brings with it necessity.³⁵

The practical rule of pure reason by which the good will is determined to act is also the rule that sets limits on the framework of the morally possible; that is, on what the good will may want. The object that corresponds to a morally determined will is constituted by this setting of limits; thus, the integrity of the will determined exclusively by the moral law is guaranteed. Kant addresses this question in the Analytic section of *KpV*: if pure practical reason were incapable of determining its corresponding object *by itself*, autonomy would be nothing more than a pipe-dream. In contrast, Kant holds that the object corresponding to such a determination may be wholly constituted *a priori*. The section on the topic contains his argument in this regard.

The judgment concerning what the good will may want sets the limits on the framework of the morally possible. The formula of the categorical imperative is the criterion of judgment. Kant expresses his position in the following terms: “If the maxim of the action is not so constituted that it can stand the test as to the form of a law of nature in general, then it is

³⁴ This does not mean that the moral determination of the will is determination in a vacuum; the object of pure practical reason and the object of the faculty of desire (the effect of the action) are related. In fact, the pure determination of the will is the principle on which the *entire* process of action on the subject’s part depends.

³⁵ *KpV*, 5:67.

morally impossible.”³⁶ The possible maxims of the will are judged by the faculty of pure practical judgment so that their modality may be determined. This statement may only be understood if the doctrine concerning the unity of the typic of the faculty of judgment with the “categories of practical reason” or the “categories of freedom”³⁷ is taken into account; this, too, is an obscure and often overlooked passage which is of great systematic significance in the *Critique of Practical Reason* as a whole.³⁸

Kant draws up a table of the categories of freedom, which is similar to the table of categories proposed in the *KrV* and structured according to the same four groups: quantity, quality, relation and modality.³⁹ These categories comprise an *a priori* synthesis of all the possible forms that the maxims (as practical principles of the determination of the will) may take, encompassing the pure and the empirically conditioned; they sum up the different modes in which the will may be determined.⁴⁰ Thus, the table of categories supplies an *a priori* map of the practical sphere.⁴¹ The role of

³⁶ *KpV*, 5:69-70.

³⁷ *KpV*, 5:65-67.

³⁸ In my view, the best accounts of this issue are provided by: Claudia Graband, “Das Vermögen der Freiheit: Kants Kategorien der praktischen Vernunft,” *Kant-Studien* 96 (2005): 21-65; and Robert J. Benton, “Kant’s Categories of Practical Reason as Such,” *Kant-Studien* 71 (1980): 181-201. Although I disagree with some of its basic theses, the work of Susanne Bobzien, “Die Kategorien der Freiheit bei Kant,” in *Kant. Analysen – Probleme – Kritik*, ed. H. Oberer and G. Seel (Würzburg: Königshausen & Neumann, 1988), 193-220, is both complete and valuable. A more detailed textural analysis of the passage dealing with the categories of freedom is to be found in Torralba, *La facultad del juicio en la filosofía práctica de Kant*.

³⁹ However, the argument here is not that there is an exact parallel, in which each refers to its corresponding theoretical category.

⁴⁰ The categories are “without exception, *modi* of a single category, namely that of causality, insofar as the determining ground of causality consists in reason’s representation of a law of causality which, as the law of freedom, reason gives to itself and thereby proves itself a priori to be practical.” *KpV*, 5:65. The category of causality is that of the categories of nature or the understanding. Morality refers to the ground of determination of causality, not to the effects of such causality. From the phenomenal point of view, good and evil are not properties pertaining to the effects of causality; however, from the noumenal point of view, the subject is capable of altering the ground of determination of causality, thus engaging in action.

⁴¹ The kind of relationship that obtains between will and action, or agent and object, is contained in the maxim when it is adopted by the will as the principle of

the faculty of pure practical judgment is to determine the modality of the various maxims presented to it by reason, and which have already been constituted as such in terms of quantity, quality and relation. Thus, all possible objects of the will may be known *a priori* as good or evil.

The question of how the category of modality is determined by the faculty of judgment arises in this context. In my view, the modality of the categories of freedom, like the theoretical categories, defer to possibility, reality and necessity.⁴² This three-fold division mirrors the different meanings pertaining to the good: the problematic, pragmatic and moral. Firstly, “problematic good” is that which is *useful* to the attainment of a *possible* end. Secondly, for Kant, *usefulness* is also the criterion of “pragmatic” good; however, the end involved is *real*, not merely possible: the happiness of human beings is a case in point. Finally, moral good is independent of any relation to an end, nor is it grounded on usefulness; its realization is of an unconditional or *necessary* nature.⁴³

Given that the most general function of the faculty of judgment is to establish the correspondence between a particular instance and the rule, the kind of good pertaining to the different objects of the will may be known *a priori* by the faculty of pure practical judgment in accordance with the rule or practical principle on which each depends. The parallel between the three-fold meaning of the good and the three kinds of imperative framed by Kant is obvious. The faculty of judgment verifies the correspondence of a given maxim to one or other of these imperatives.⁴⁴ The rule by which the morality of a given maxim may be known is expressed by Kant as follows: “Ask yourself whether, if the action you propose were to take place by a law of the nature of which you were yourself a part, you could indeed regard it as morally possible through

determination. The key point at issue is whether the relationship is determined by the object (the result of action) or, in contrast, if the agent is capable of imposing his own order, independently of the object. This relationship is that of “wanting” (*das Wollen*) or “desiring” (*das Begehren*). See *MS*, 6:211-213.

⁴² See *KrV*, A:80/B:106.

⁴³ See *GMS*, 4:414-415; *VzM*, 30-31; Beck, *A Commentary on Kant's Critique of Practical Reason*, 131 ff. On the (frequently misunderstood) relationship between duty and the good in Kant's work, see Herbert J. Paton, *The Categorical Imperative. A Study in Kant's Moral Philosophy* (New York – Evaston: Harper Row, 1967), 103-12, 16-17.

⁴⁴ See Rainer Enskat, “Autonomie und Humanität. Wie kategorische Imperative die Urteilskraft orientieren,” in *Systematische Ethik mit Kant*, ed. H.-U. Baumgarten and C. Held (Freiburg – München: Karl Alber, 2001), 82-123.

your will.”⁴⁵ The question of what may be known of the modality of maxims by means of this rule—or test—arises in this context. In light of the discussion thus far, it seems clear that the rule distinguishes the “morally possible” from the “impossible.”

However, the three categories of modality presented by Kant in the table of the categories of freedom are as follows: (1) the permitted (*das Erlaubte*)—the forbidden (*das Unerlaubte*); (2) duty (*die Pflicht*)—contrary to duty (*das Pflichtwidrige*); and (3) perfect duty (*vollkommene Pflicht*)—imperfect duty (*unvollkommene Pflicht*).⁴⁶ A superficial reading suggests that the distinction between possible and impossible corresponds to the first group of categories: the permitted and the forbidden. Nevertheless, this is not in fact the case because the categories of freedom not only defer to the forms of ‘wanting’ of *pure* reason, but also to those of *empirically conditioned* reason, which involve “a priori the manifold of *desires* to the unity of consciousness of a practical reason commanding in the moral law, or of a pure will.”⁴⁷ All possible desires are synthesized in the categories. Thus, the modality must encompass all the variables involved in the framing of the principle of determination (the maxim) of the will. As Kant himself noted in the introduction to the *KpV*, these variables may be summarized in terms of the three kinds of imperatives: those concerning skill, the pragmatic, and the categorical—“We have here to do only with the distinction of *imperatives* under *problematic*, *assertoric*, and *apodictic*.”⁴⁸

The key to this argument rests on the distinction between physical possibility and moral possibility—or, in other words, between technically-practical principles and morally-practical principles.⁴⁹ The categorical imperative is a morally-practical principle of the determination of the will and the ground of moral possibility; problematic and assertoric imperatives, on the other hand, are technically-practical principles which are grounded on physical possibility—that is, the possibility of the will having an effect in the world—that is, to attain an end by means of its action. Thus, moral possibility, to which Kant refers in the section concerning the typic, must not be confused with physical possibility, the realm of technically-practical principles. A refined interpretation of this

⁴⁵ *KpV*, 5:69.

⁴⁶ See *KpV*, 5:66.

⁴⁷ *KpV*, 5:65.

⁴⁸ *KpV*, 5:11, note.

⁴⁹ *KpV*, 5:57-58 and *KU*, Ak 5:171-174.

kind enables a clear understanding of Kant's explanation of the first two categories of modality (the permitted and the forbidden):

In the table of categories of *practical* reason under the heading Modality, the *permitted* and the *forbidden* (the practically objectively possible and impossible), have almost the same sense in the common use of language as the immediately following categories, *duty* and *contrary to duty*; here, however, the *first* mean that which harmonizes or conflicts with a merely *possible* practical precept (as, say, the solution of all problems of geometry and mechanics), the *second*, that which is similarly related to a law *actually* [*Wirklich*] present in reason as such [*überhaupt*].⁵⁰

Thus, whether or not something is permitted depends on the subject's 'desiring' of a given end. "Thus, for example, it is *forbidden*, to an orator, as such, to forge new words or constructions; this is to some extent *permitted* to a poet; in neither case is there any thought of duty."⁵¹

Neither do the second categories—duty and contrary to duty—yet refer directly to moral duty; rather, they express what is common to all kinds of imperative: that a given practical principle be made obligatory. This applies to prudential, as well as to moral, imperatives.⁵² In the case of the imperative of happiness, the imperative orders the carrying out of an action—that is, it is the cause of an effect in the world—independently of incentive (*Triebfeder*). In contrast, the conformity of the maxim to the moral law is not in itself sufficient in the moral sphere; rather, the incentive for which the maxim is adopted as the principle of determination must also be the moral law itself, not the appeal of the representation of the reality of the object. If this latter condition is not met, one may speak only of legality (*Legalität*). As a consequence, it may be said that the

⁵⁰ *KpV*, 5:11, note. Bobzien's interpretation of this passage appears to be mistaken; she reads the three categories of modality as referring to the moral law. See Bobzien, "Die Kategorien der Freiheit bei Kant," 213-14. The problem arises because Bobzien draws on a few quotations from the *MS*, in which Kant defines the permitted and the forbidden, rather than deferring to Kant's own explanation, in order to account for this passage in the *KpV*. As is pointed out below, the quotations on which Bobzien draws are relevant to the discussion, but not to an interpretation of the table of the categories of freedom.

⁵¹ *KpV*, 5:11, note.

⁵² That the prudential imperatives are also *objective* laws of reason should be borne in mind, given that they give rise to necessary determined actions. See *KrV*, A:548/B:576, *GMS*, 4:399, 412-416; Dieter Schönecker and Allen W. Wood, *Kants "Grundlegung zur Metaphysik der Sitten". Ein einführender Kommentar*, 2 ed. (Paderborn – München: Schöningh, 2004), 101-22.

categories of duty and contrary to duty refer to cases of practical necessity wherein the will is regarded as a natural cause—that is, the will is determined by means of technically-practical principles.

The last two categories—perfect and imperfect duty—are moral categories in the strict sense of the term; that is, the categories in which the concept of duty is read as “morally necessary” or necessary in a morally-practical sense. The question of the *typic* must be addressed again in this regard. Given that its function is to enable the *moral* judgment of maxims, it seems logical to conclude that Kant’s proposed rule serves to distinguish between perfect and imperfect duty. In fact, however, the rule serves only to distinguish the morally possible from the morally impossible; that something is morally possible need not entail that it be obligatory—that is, a duty.⁵³ In my view, this discrepancy between the classification of the categories of modality and the reflections on the *typic* may be attributed to two systematic reasons (in addition to a degree of carelessness on Kant’s part in the revision of his texts).

The first of these is that the formula of the universal law or of nature is only “a type for the appraisal of maxims in accordance with moral principles,”⁵⁴ to be complemented by the other formulations if the whole realm of moral normativity is to be encompassed—in particular, that which refers to humanity as an end in itself.⁵⁵ In this context, as a result, the formula of natural law would be essentially negative by definition—a permissive law (*Erlaubnisgesetz*)⁵⁶—whereas that referring to humanity

⁵³ Although it may seem paradoxical, the distinction between perfect and imperfect duty in the table of the categories of freedom is unrelated to Kant’s attempt, in the *GMS*, to derive and distinguish between the strict (*eng*) and wider (*weite*) meanings of duty on the basis of the formula of the universal law, through the distinction between “*denken können*” and “*wollen können*”. See *GMS*, 4:424. The explanation for this is outlined below.

⁵⁴ *KpV*, 5:69. The emphasis is mine.

⁵⁵ See Brigitta-Sophie von Wolff-Metternich, “Sobre el papel del juicio práctico en la filosofía moral de Kant,” *Anuario Filosófico* 37 (2004): 733-47; Verena Mayer, “Das Paradox des Regelfolgens in Kants Moralphilosophie,” *Kant-Studien* 97 (2006): 343-68.

⁵⁶ “In seinem Kern hat das Sittengesetz daher den Charakter eines Erlaubnisgesetzes, das unmittelbar einen Spielraum für legitimierungsfähige Maximen legitimiert und nicht ohne ihre Hilfe den Raum des von ihnen zu regulierenden konkreten Handelns erreicht.” Wolfgang Wieland, *Urteil und Gefühl. Kants Theorie der Urteilskraft* (Göttingen: Vandenhoeck & Ruprecht, 2001), 161.

would prescribe *positive* duties.⁵⁷ In any case, given that—in accordance with the fundamental principles of modal logic—the contrary to the forbidden is obligatory,⁵⁸ *some* positive duties may be derived from a negative criterion. For example, theft is forbidden; therefore, one is obliged to pay for what one obtains.

Moreover, the distinction between rules of judgment which determine moral obligations in a dual sense (negative and positive) is cognate with the *KpV* as a whole. To set limits on the realm of the morally possible is sufficient for the constitution of the object of pure practical reason, since it is a formal object. The positive prescription of moral duties is the task that Kant sets himself in the *MS*, through reflection on the idea of ends that are duties; this presupposes the application of the moral law—to a certain extent—to rational beings which are, at the same time, sensibly conditioned.⁵⁹

The second systematic reason, which explains the discrepancy between the table of categories and the doctrine of the typic, lies in the fact that the *moral* modalities (the permitted, the forbidden, the obligatory) ought to be included in the third group of the categories of modality; however, in order to do so, Kant would have to split the table of the categories of freedom, which—as has already been discussed above—encompass all the *practical* modalities (both the technically-practical and the morally-practical), not merely the *moral* modalities. It is not clear why Kant did not do so. What is clear, however, is that while the categories of freedom are at the heart of Kant's argument in the *KpV*, no further reference is made to them in his later works.⁶⁰ This does not mean that the classification of modalities in the table of categories and the development of the modalities on the basis of the typic are contradictory; rather, they are *complementary* positions. To assign the moral modalities to the third group—that is, the categories of perfect and imperfect duty—is enough.

⁵⁷ See *MS*, 6:388-389. See Schönecker and Wood, *Kants "Grundlegung zur Metaphysik der Sitten"*, 125 ff.

⁵⁸ See Ramón Rodríguez, *La fundamentación formal de la ética* (Madrid: Universidad Complutense, 1982), 172.

⁵⁹ The levels of application of the moral law, and their relationship to the different functions of the faculty of judgment are explored in José M. Torralba, "Facultad del juicio y aplicación de la ley moral en la filosofía de Kant," *Methodus* II (2007): 1-30.

⁶⁰ Kant intended to develop his metaphysics of morals on the basis of this table; nevertheless, the project was later set aside, without explanation.

In fact, in the *MS*, Kant defines the moral modalities in these exact terms. In the section entitled “Preliminary concepts of the metaphysics of morals,” he notes: “According to these [moral] laws,⁶¹ certain actions are *permitted* or *forbidden*, that is, morally possible or impossible, while some of them or their opposites are morally necessary, that is, obligatory;”⁶² later, he goes on to define what is morally permitted as follows: “That action is *permitted* (*licitum*) which is not contrary to obligation; and this freedom which is not limited by any opposing imperative, is called an authorization (*facultas moralis*). Hence it is obvious what is meant by *forbidden* (*illicitum*).⁶³ Obligation has a strictly moral meaning in this context: “*Obligation* is the necessity of a free action under a categorical imperative of reason.”⁶⁴

3. Natural law in moral judgment

The discussion thus far has supplied a description of the place in the system pertaining to the faculty of pure practical judgment in the constitution of the object of pure practical reason, in line with the doctrine of the categories of freedom. That Kant deploys the categorical imperative—in its formulation as the law of nature—as a rule by which the modality of the categories is determined has been noted. Moreover, that Kant does not rely on the doctrine of the categorical imperative articulated in *GMS*, but—at this point in the *KpV*—offers an argument for why the natural law may be put to work in moral judgment, has also been discerned. This final aspect merits further consideration if the argument that natural law is the type of moral law is to be clearly understood.

Kant reads the legality of nature as the type of moral law for the following three reasons (at least). First, this reading enables the establishment of some kind of relationship or reference between the precepts of moral law and actions in the world of phenomena, which is an indispensable condition for the possibility of moral judgment. Second, it allows Kant to argue that there is a certain degree of continuity between freedom and nature, and thus safeguard the integrity of what has been established by the *Faktum*.⁶⁵ Finally, formalism, the touchstone of Kantian morality, finds sure ground in the *form* of the legality of nature (which

⁶¹ I have altered Gregor’s translation, which reads “categorical imperatives”.

⁶² *MS*, 6:221.

⁶³ *MS*, 6:222.

⁶⁴ *MS*, 6:222.

⁶⁵ See *KpV*, 5:42 ff.

may be understood through the categories of nature); that form—universality and necessity—is the basis of all types of law, theoretical or practical. Each of these reasons is discussed in greater detail below.

At the start of the section concerning the *typic*, Kant holds that: “whether an action possible for us in sensibility is or is not a case that stands under the rule requires practical judgment, by which what is said in the rule universally (*in abstracto*) is applied to an action *in concreto*.”⁶⁶ However, such an undertaking would appear to be impossible, given that:

it seems absurd to want to find in the sensible world a case which, though as such it stands only under the law of nature, yet admits of the application to it of a law of freedom and to which there could be applied the supersensible idea of the morally good, which is to be exhibited in it *in concreto*.⁶⁷

The radical difference between the moral law (the rule) and action (the case) is similar to that between concept and intuition in the theoretical sphere. Nevertheless, the understanding may avail of the schematism which enables the application of the categories to the intuitions. The problem in this regard is that “the morally good as an object is something supersensible, so that nothing corresponding to it can be found in any sensible intuition.”⁶⁸ No schematism similar to that of theoretical judgment pertains to practical judgment.⁶⁹

However, Kant holds that an advantageous perspective is enabled in this regard: *pure* moral judgment, in the strict sense, does not require that law and case correspond to one another, but the determination of “the

⁶⁶ *KpV*, 5:67. Although Kant refers to “an action possible for us in sensibility,” the term “*maxim*” ought to have been used: action, in its *phaenomenal aspect*, is never susceptible to *moral* judgment. Kant states as much at a later point in his work: “Subsumption of an action possible to me in the sensible world under a *pure practical law* does not concern the possibility of the *action* as an event in the sensible world.” *KpV*, 5:68.

⁶⁷ *KpV*, 5:68.

⁶⁸ *KpV*, 5:68. Kant regards the attribution of intuitions to the moral good as a form of “mysticism”; the role of the *typic* is to prevent such mysticism and lead us to the “rationalism of the faculty of judgment”. See *KpV*, 5:70-71.

⁶⁹ Thus, Silber’s interpretation, wherein he holds that time is the schema of practical reason, is mistaken; although his position is innovative, it is not cognate with Kant’s thought. See John Silber, “Der Schematismus der praktischen Vernunft,” *Kant-Studien* 56 (1966): 261.

schema of a law itself (if the word schema is appropriate here).⁷⁰ This point lies at the heart of the doctrine concerning the *typic*, which may only be fully understood in light of everything that has been discussed thus far. The moral judgment of actions or of the maxims of actions is not the function of the faculty of *pure* practical judgment; rather, it is to supply the rule by which maxims and actions may *afterwards* be judged.⁷¹ This rule must fulfill two criteria: (a) that it may be applied in some way to objects of nature; and (b) that, as a rule, it be in agreement with the moral law—that is, that it may serve as a principle of the determination of the will. The formula of the law of nature meets these two requirements: (a) because it is a “law, such a law (...) as can be presented *in concreto* in objects of the senses;”⁷² and (b) because its legal *form* shares that of the moral law, “for, to this extent, laws as such are the same, no matter from what they derive their determining grounds.”⁷³ This is the sense in which the form of (natural) legality may be read as the type of moral law.

Thus, given that he interprets “the *nature of the sensible world* as the *type* of an *intelligible nature*,”⁷⁴ Kant ensures the “use in application for the law of a pure practical reason.”⁷⁵ In referring to natural legality and, in particular, to the *form* of this legality, Kant has “intelligible nature” in mind, which would arise if the morally determined will “were accompanied with suitable physical power.”⁷⁶ Strictly speaking, the moral law is the law that governs intelligible nature. Given the imperfection of human nature, this nature never becomes real; however, the *Faktum* of morality implies that “the counterpart of [intelligible nature] is to exist in

⁷⁰ *KpV*, 5:68. And he goes on: “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.”

⁷¹ In line with the distinction between the (reflexive and determining) judicative functions, Wieland has shown that the faculty of pure practical judgment performs a *merely* determining function, which is similar to that of the faculty of transcendental judgment in the *KrV*. See Wieland, *Urteil und Gefühl*, 164-65; Alejandro G. Vigo, “Determinación y reflexión,” *Anuario Filosófico* 37 (2004): 749-95.

⁷² *KpV*, 5:69.

⁷³ *KpV*, 5:70.

⁷⁴ *KpV*, 5:70. The key here is not to attribute to intelligible nature “intuitions and what depends upon them but refer to it only the *form of lawfulness* in general.”

KpV, 5:70.

⁷⁵ *KpV*, 5:70.

⁷⁶ *KpV*, 5:43.

the sensible world,”⁷⁷ which is the proper task of morality: to give sensible nature the form of intelligible nature without breaking any causal laws.⁷⁸ Sensible nature and intelligible nature are not two different *worlds*; rather they are two different spheres (*Gebiet*), each with its own legality. Given that only the *form* of legality is at issue—a form shared both by freedom and nature—it is possible to ‘move’ from one sphere to the other and to ‘apply’ moral law to nature.

Intelligible nature acts as a model because it is a nature in which the possible and the impossible are defined by the moral law. Something is morally possible if it may occur in an (*intelligible*) nature of which one is part. Thus, the faculty of judgment may avail of a reference point in its reflection on how the nature in which one lives *ought to be*. Moreover, to read the moral law as a law of a nature prompts its requirements in a concrete way. Moral judgment establishes the possibility or impossibility of a given practical principle; that is, of a *causal* principle in an intelligible nature.

The second reason why the natural law may be read as the type of moral law has also—in part—been explained. To the extent in which causality through freedom “connects the concept of causality to conditions quite other than those which constitute natural connection,”⁷⁹ a continuity between sensible and intelligible nature exists. Insofar as all action is governed by the legality of nature, the causality of human being is unique. Nevertheless, different grounds of determination (*Bestimmungsgründe*) may shape the determination of one and the same causality. These grounds may be structured in two classes: appeal in the representation of the object and the moral law in itself. The ground of his causality, not the legality proper to natural causality, is altered when the agent determines to act in a moral way. The ‘effect’ of causality through freedom is the formation of the ground of determination. Thus, what is prescribed by moral law is

⁷⁷ *KpV*, 5:43. The reason why the normative nature of the moral law is not primary, but derived, becomes clear in this context: “Primär ist es [das Sittengesetz] ein *Seingesetz*, das *Seingesetz* des reinen Vernunftwillens als solchen, und folglich ist auch das Sollen in uns eigentlich eigenes notwendiges Wollen, d. h. das Bewußtsein einer Tätigkeit der reinen praktischen Vernunft, die nur deshalb ihre Wirkung nicht in Handlungen äußert, weil subjektive, ‘pathologische’ Ursachen sie daran hindern.” Joseph Schmucker, “Der Formalismus und die materialen Zweckprinzipien in der Ethik Kants,” in *Kant. Analysen – Probleme – Kritik*, ed. H. Oberer (Würzburg: Königshausen & Neumann, 1997), 110.

⁷⁸ See Alejandro Llano, *Fenómeno y trascendencia en Kant*, 2 ed. (Pamplona: Eunsa, 2002), 264-65.

⁷⁹ *KpV*, 5:69.

compatible with natural legality; and the possibility of continuity between both legalities⁸⁰ is pointed to by means of the ground of determination of the agent's causality.

The third reason is probably both the most important and the most widely known: Kantian formalism. This final reason rounds out the network of relations between natural law and moral law, and confers full meaning on what has been discussed thus far in this chapter. Given that principles which defer to some content or object are governed by the legality of nature, and thus are subject to pleasure and pain, Kant holds that moral principles must be formal by nature. The freedom of the will requires that the principles by which it is governed not be material. Kant addresses the issue in the second problem of the well-known Theorem III in the *Analytic*: "Supposing that a will is *free*: to find the law that alone is competent to determine it necessarily." The solution he proposes is as follows:

Since the matter of a practical law, that is, an object of maxim, can never be given otherwise than empirically whereas a free will, as independent of empirical conditions (...) must nevertheless be determinable, a free will must find a determining ground in the law but independently of the *matter* of the law. But, besides the matter of the law, nothing further is contained in it than the lawgiving form.⁸¹

Thus, given that Kant holds that any practical principle that defers to an object would as a matter of course have pleasure as the ground of determination, the basis of the Kantian conception of volition may be described as hedonist.⁸² Moreover, since pleasure and pain pertain to the

⁸⁰ See *KpV*, 5:48-57. The following quotation from Kant sums up this argument: "Now, however, the concept of an empirically unconditioned causality is indeed theoretically empty (without an intuition appropriate to it) but it is nevertheless possible and refers to an undetermined object; in place of that, however, the concept is given significance in the moral law and consequently in its practical reference; thus I have, indeed, no intuition that would determine its objective theoretical reality for it, but it has nonetheless a real application which is exhibited *in concreto* in dispositions [*Gesinnungen*] or maxims, that is, has practical reality which can be specified." *KpV*, 5:56. The modification of the ground of determination of causality consists in the 'construction' of the maxim that acts as a practical principle. See Allison, *Kant's theory of freedom*, 35-41, 146-52.

⁸¹ *KpV*, 5:29; See also *KpV*, 5:21-28.

⁸² Of course, on the whole Kant is an anti-hedonist (perhaps the most radical), but he nonetheless draws on an hedonist understanding of desire. See Rodríguez, *La fundamentación formal de la ética*, 36 ff.; Markus Willaschek, *Praktische*

subject's sensible nature, they are governed by natural legality, which is incompatible with freedom. Hence, Kant is left with no other option but to assert that the law by which the free will of human being is governed must, necessarily, be formal.⁸³

The two other distinctive facets of moral duty also pertain to the form of legality: unconditioned necessity and, therefore, universality.⁸⁴ This is the ultimate ground of Kantian ethics: the intrinsic connection between the moral good, the necessity and universality of duty, and the inescapably formal nature of the law by which the freedom of the will is governed. Moreover, Kant regards this connection as a given that imposes its authority on reason:

When I think of a *hypothetical* imperative in general I do not know beforehand what it will contain; I do not know this until I am given the condition. But when I think of a *Categorical* imperative I know at once what it contains. For, since the imperative contains, beyond the law, only the necessity that the maxim be in conformity with this law, while the law contains no condition to which it would be limited, nothing is left with which the maxim of action is to conform but the universality of a law as such; and this conformity alone is what the imperative properly represents as necessary. There is, therefore, only a single imperative and it is: *act only*

Vernunft. Handlungstheorie und Moralbegründung bei Kant (Stuttgart – Weimar: J. B. Metzler, 1992), 60-81.

⁸³ Two questions, whose import goes beyond the remit of this chapter, surface in this context. The first concerns whether or not the hedonist position, the basis of Kantian formalism, is sufficiently justified; that is, if an idea such as “rational desire” is in fact impossible. In this regard, see Thomas Buchheim, “Wie Vernunft uns handeln macht,” in *Die Normativität des Wirklichen. Über die Grenze zwischen Sein und Sollen*, ed. Th. Buchheim, R. Schönberger, and W. Schweidler (Stuttgart: Klett-Cotta, 2002), 381-413. The second question centers on Kant's determinist conception of the sensible world. This conception prompts the doctrine concerning the topic, among others, in order to explain the continuity between freedom and nature. A number of recent studies have shown that Kant's conception defers more to the rationalist philosophical debates of his time than to an inquiry into nature. See Juan Arana, *Los filósofos y la libertad. Necesidad natural y autonomía de la voluntad* (Madrid: Síntesis, 2005), 75-103.

⁸⁴ See Rainer Enskat, “Universalität, Spontaneität und Solidarität. Formale und prozedurale Grundzüge der Sittlichkeit,” in *Prinzip und Applikation in der praktischen Philosophie*, ed. Th. M. Seebohm (Mainz – Stuttgart: Akademie der Wissenschaften und der Literatur – Franz Steiner, 1991), 34-79; Paton, *The Categorical Imperative*, 148-49, 57-64.

*in accordance with that maxim through which you can at the same time will that it become a universal law.*⁸⁵

In the final analysis, therefore, given that universality is a basic requirement of any practical principle that lays claim to moral goodness, natural law may be described as the type of moral law.

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⁸⁵ *GMS*, 4:420-421. The discovery of the properties of morality is the principal fruit of the critique of practical reason; and hence, "to prevent empirically conditioned reason from presuming that it, alone and exclusively, furnishes the determining ground of the will." *KpV*, 5:16. In my view, the justification for defining necessity, universality and the absence of conditionality as the properties of morality lie in the nature of the will itself (*Wille*) as a faculty of the mind (*Gemüt*). That the critical method leads to the definition of the principles, concepts and objects corresponding to each of the fundamental faculties (*Grundvermögen*), as well as their valid use, should be borne in mind. See *KpV*, 5:46-47.

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