

Draft 5

2.5 Kant on Indeterminacy, Judgement and Interpretation ¹

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Nobody has written more or more illuminatingly on judgement than Immanuel Kant. Yet some of his views on judgement are quite often ignored, and there is disagreement about others. Here I shall discuss the main distinctions that he draws between types of judging and their links to other types of cognitive action, including practical and theoretical reasoning. I shall leave aside some thoroughly explored aspects of Kant’s writing on judgement, including the forms of judgement and the specific roles of judgement in epistemology, aesthetics and teleological reasoning.²

Indeterminacy of meaning provides the background to Kant’s accounts both of theoretical and of practical reasoning, and of judgement. Yet indeterminacy is often seen as a problem for practical reasoning, and in particular for practical judgement. There have, for example, been endless criticisms both of Kant’s ethics and of more recent ‘Kantian’ ethics, which accuse them of ‘empty formalism’ and of failure to identify determinate, action-guiding demands. Yet judgement supposedly brings indeterminate principles to bear on particular cases.

As Kant sees it reasoning, understanding and judgement are all of them rule-governed, but all deploy incomplete rules. Consequently the relevant rules cannot tell us just how to judge, and “at some point we have to judge immediately, spontaneously”³. Is this a

¹ An earlier version of this paper was given as the de Gruyter Lecture at the American Philosophical Association meetings in Chicago in March 2016. I am grateful to Rudolf Makkreel for helpful comments on successive versions.

² For an outstanding bibliography, see Robert Hanna, *Kant’s Theory of Judgment*, Stanford Encyclopedia of Philosophy, revised edition 2013.

³ David Bell, ‘The Art of Judgement’, *Mind*, 96, 1987, 221-244, p 226.

problem? Does it matter if we can reach only indeterminate claims about the way things are or about what to do?

A first thought might be that it is often not necessary to reach highly, let alone wholly, determinate judgements. In answering truth-oriented questions, including empirical questions, indeterminate (generic, approximate, vague, schematic) answers are often enough, and aiming for greater let alone complete determinacy may be neither necessary, nor possible, nor useful. Only where we calculate rather than judge should we expect to reach wholly determinate results. But is there parallel comfort to be had if Kant’s account of practical reasoning and judgement cannot yield determinate answers? Deliberation aims to guide action, and act-tokens (like other particulars) will be determinate in all respects. Indeterminacy, it seems, cannot be shrugged off in practical matters.

I shall look at some connections between judgement and indeterminacy through the lens of Kant’s scattered discussions of judgement and interpretation. I begin with comments on his well known distinction between *determinant* (alternatively: *determining*, *subsumptive*) judgement and *reflective* (alternatively: *reflecting*) judgement, concentrating on the sorts of cognitive action they require, and then turn to *practical* judgement and ways in which it differs both from determinant and from reflective judgement.

1. Incomplete Rules for Judgement

Kant famously maintained that reason deals with ‘universals’, that is abstract or indeterminate structures such as concepts, rules, principles, and laws, while judgement makes claims about particular cases. But he also insists that there can be no complete rules for judging. To find complete rules for the application of any given rule would require a further rule, and so on into unending regress:

If the understanding in general is explained as the faculty of rules, then the power of judgment is the faculty of **subsuming** under rules, i.e. of determining whether something stands under a given rule...or

not. ...if it [the understanding] wanted to show generally how one ought to subsume under these rules, i.e. distinguish whether something stands under them or not, this could not happen except once again through a rule. But just because this is a rule, it would demand another instruction for the power of judgement, and so it becomes clear that although the understanding is certainly capable of being instructed and equipped through rules, the power of judgment is a special talent that cannot be taught but only practiced. Thus this is also what is specific to so called mother-wit, the lack of which cannot be made good by any school; for although such a school can provide a limited understanding with plenty of rules ... the faculty for making use of them must belong to the student (*dem Lehrlinge*) himself. *CPR* A132-33/B171-72; cf. *CJ* 5:169⁴

The problem afflicts not only ‘students’, but everyone. As Kant immediately points out:

A physician therefore, a judge, or a statesman, can have many fine pathological, juridical, or political rules in his head, of which he can even be a thorough teacher, and yet can easily stumble in their application (*Anwendung*), either because he is lacking in natural power of judgment (though not in understanding)...or also because he has not received adequate training. *CPR* A134/B 173⁵

In this passage Kant emphasises the indeterminacy of all uses of the faculty of judgment, but seemingly mainly has in mind the limitations of *determinant* or *subsumptive* judgement, in which a ‘universal’ (concept, principle, rule or law) is given, and the aim is to *apply* it to a case that is to hand. He is surely right that anyone (physicians, judges, statesmen and other experts included) may fail in applying concepts, i.e. in subsuming particular cases under them. In applying concepts to cases we have at some point to go beyond the rules, and may be guided by examples,

⁴ *CPR* A133/B172. Quotations from Kant’s writing use the Cambridge translations of Kant’s works, abbreviated titles and the standard Prussian Academy volume and page references. Cf “... judgement cannot always be given another rule by which to direct its subsumption, for this would go on to infinity”, *TP* 8:275.

⁵ Cf. Kant’s comment on “physicians or jurists who did well during their schooling, but [are] at a loss when they have to give an expert opinion”, *TP* 8:275.

analogies or resemblances, or even by mere whim or hunch. Hence Kant repeatedly describes judgement as ‘blind’, and suggests that examples provide “the leading-strings [*Gängelwagen*—lit. “the go-cart”] of judgment” (*CPR* A 134/B174).

However, determinant judgement is only one type of judgement, and Kant also writes extensively on reflective and on practical judgement. He distinguishes determinant from reflective judgement as follows:

The power of judgement in general is the faculty for thinking of the particular as contained under the universal. If the universal (the rule, the principle, the law) is given, then the power of judgment, which subsumes the particular under it ...is **determining**. If, however, only the particular is given, for which the universal is to be found, then the power of judgment is merely **reflecting**. *CJ* 5:180; cf. *FI* 20:211

While a particular – e.g. some object, situation, text or action—must be given for both these sorts of judging, in reflective judging no ‘universal’ (concept, rule, principle, law) is given. Rather reflective judging must *find* a ‘universal’ by which the particular can (best) be described or interpreted. Reflective judging is *more* open than determinant judging, although as noted above determinant judging too is not mechanical, but ‘a matter of judgement’. Since most concepts are vague or boundaryless, criteria for their application in determinant judging will be irremediably incomplete; only concepts that are exhaustively defined within some formal system can have definitions that wholly eliminate indeterminacy.⁶

In determinant judging, we start with some concept (or concepts) and seek to *apply* it (or them) to a case that is to hand: we ask ‘Is this bird a sparrow?’, ‘Is this killing a murder?’ But in reflective judging we start with less: a case, but no concept or concepts. We then ask what *sort* of case it is: ‘What sort of a bird is this?’, ‘What sort of a crime— or perhaps what sort of an act— is this?’. Reflective judging is needed

⁶ Kant takes a particularly strict view of the possibility of offering definitive analyses of concepts. He claims that “only mathematics has definitions” (*CPR* A729/B757 ff) and that other concepts can have no more than *explanations* or *expositions* that are to varying degrees indeterminate.

where cases or situations, actions or texts, must be interpreted, and is fundamental not only to Kant’s accounts of aesthetic and of purposive inquiry, but to his numerous discussions of textual interpretation. ⁷ Reflective judging *embraces* indeterminacy: its aim is not to resolve or minimise indeterminacy, but to find further indeterminate ways of describing, articulating or interpreting cases. Reflective judging may variously seek ways of interpreting cases that are revealing or interesting, or on the other hand tendentious or partisan.

Practical judging is different again, and is neither determinant nor reflective. Like the other types of judgement, it deploys indeterminate ‘universals’ (concepts, rules, principles, laws), but here no particular is ‘given’. Practical judging must be undertaken *before* the relevant particular exists: we cannot pick out future act-tokens. It can therefore be *neither* a matter of applying concepts (i.e. subsuming particular cases under them) *nor* a matter of finding or devising (what are taken to be) useful, interesting or revealing concepts or descriptions for particular cases. It is *neither* determinant *nor* reflective, neither a matter of application nor a matter of interpretation. ⁸

Everyone, experts included, makes judgements of all three sorts. *Determinant* judgement may be needed to answer questions such as ‘Is this patient’s fever malaria?’; ‘Was A’s removal of B’s possessions theft?’; ‘Does this public body have a power to raise additional taxes?’. *Reflective* judgement may be needed in order to consider more openly what *sort* of disease a patient’s symptoms suggest, what *sort* of crime the available evidence suggests, or which *sort of* legislation could fulfil a manifesto pledge adequately. *Practical* judgements may be needed to

⁷ See Rudolf A. Makkreel *Orientation and Judgment in Hermeneutics*, University of Chicago, 2015 esp. p 63 ff. for discussions of Kant’s references to various ‘orientational contexts’ (field, territory, domain and habitat) that reflective judging may use in seeking apt ways of characterising or interpreting cases.

⁸ A fair amount of ethical writing, often with Wittgensteinian or hermeneutic sympathies, has tried to construe ethical judgement as reflective. This is plausible only for ethical judgement about existing or past cases, where the particular to be judged can be given. It is not possible for practical judgements about what to do, which do not seek to ‘appraise’ or ‘attend to’ or ‘evaluate’ existing situations. Attentiveness to current situations is *at most* a preliminary for *practical* judgement, and reflective judging cannot bear on particular acts an agent will have done at some future time. See Onora O’Neill, *Instituting Principles: between Duty and Action*, in Mark Timmons, ed., *Kant’s Metaphysics of Morals: Interpretative Essays*, Oxford University Press, 2002, 331-347 and above, xxx-xxx

decide *which* medicine to prescribe for a particular patient, *what* sentence to impose on a convicted offender or *how* to allocate the revenue brought in by a new tax.

2 Reflective Judgement, Interpretation and Authority

Kant’s claim that in reflective judgement “the universal is to be found” can seem puzzling. How are we to look for, recognise or select one rather than another ‘universal’ (concept, rule, principle, law) as apposite? In particular, how are we to do so where an appeal to the free play of cognitive capacities could be risky or misleading, and hermeneutic inventiveness downright irresponsible? Given the incompleteness of rules, judging will always be spontaneous to a degree, but Kant often comments disparagingly on uses of reflective judgement that are *merely* spontaneous, and discusses two more disciplined ways of judging reflectively that are spontaneous, but not *merely* spontaneous. One appeals to *authority* and the other to *reason*.

In daily and professional life the assumptions used to guide reflective judgement often appeal to authority. They rely on the received views and established norms of accepted practices and institutions. Kant sees appeals to authorities and their requirements as entirely legitimate *in appropriate contexts*. He repeatedly maintains that expert, professional or institutional judgement and interpretation is rightly guided by legislation, precedents, doctrines and authorised versions of texts that are taken as authoritative in the relevant professional and institutional contexts.

For example, in *The Conflict of the Faculties* and other late works⁹ Kant distinguishes the ‘higher’ university faculties of theology, law and medicine from the ‘lower’ faculty of philosophy (roughly humanities), and argues that the former not merely *may* but *must* appeal to authority in interpreting the doctrines, laws, professional practices and canonical texts of their domains. These ‘higher’ faculties are so-called because they are

⁹ Including *Towards Perpetual Peace* (PP 1795), *Theory and Practice* (TP, 1793), *Religion within the Limits of Reason Alone* (R, 1793) as well as *The Conflict of the Faculties* (CF 1798) *add vol nos as in biblio*

established by the state for its own purposes, such as training pastors for the established Church, lawyers who master the law of the land, and physicians who can be certified as fit to practice. These experts not merely *may* but *must* defer to the powers that establish their authority and define their competence, and their interpretation of cases and texts rightly draws on authorised versions, received doctrines and established precedents.

Kant indeed insists that the ‘higher’ faculties may appeal *only* to authority, and that their members should not reason about the laws, doctrines or interpretations to which they are bound in duty by the authorities they serve:

So the biblical theologian (as a member of a higher faculty) draws his teaching not from reason but from the *Bible*; the professor of law (*der Rechtslehrer*) gets his not from natural law, but from the *law of the land*... As soon as one of these faculties presumes to mix with its teaching something it treats as derived from reason, it offends against the authority of the government... (CF 7:23; cf R 6:109, R 6:115-6)

Biblical theologians must not look beyond ecclesiastical tradition and established doctrine in interpreting canonical religious texts; their counterparts in the faculty of law must not look beyond the law of the land:

The jurist, as an authority on the text, (*der Schriftgelehrte Jurist*) does not look to his reason for the laws that secure Mine and Thine, but to the code of laws that has been publicly promulgated and sanctioned by the highest authority (if, as he should, he acts as a civil servant) ...[and must] straightway dismiss as nonsense the further question whether the decrees themselves are right. (CF 7:24-5)

However, Kant does not view authorised or doctrinal interpretation as the only adequate approach to reflective judging. The *philosophical theologians* of the ‘lower’ faculty must meet different standards. They must take practical reason and the moral principles that it can establish as “the highest interpreter of the scriptures” (CF 7:41). For them the “the moral improvement of men constitutes the real end of all religion of

reason, it will comprise the highest principle of all Scriptural exegesis” (R 6:102). Similarly in the domain of politics the task of justifying a reasoned approach to public affairs is assigned to the *moral politician* who “takes the principles of political prudence in such a way that they can coexist with morals” (PP 8:372).¹⁰ The philosophical theologian and the moral politician *may not* appeal to authority **note parallel**, and they *must* bring practical reason and thereby morality to bear on interpreting texts and judging situations. The tasks of the ‘lower’ faculty are therefore onerous. To interpret texts and to justify policies they must first determine which moral principles practical reason can establish, and then show how those principles can guide interpretation and action. I shall take these tasks in that order.

The very claim that interpretation – whether of texts or situations, objects or action – can be guided by reason may, however, seem implausible. Might not the only alternative to reflective judging that invokes authority be an appeal to untrammelled spontaneity, for example to individual choice or preference, subjectivity or enthusiasm? Kant accepts that this is possible—indeed popular—but emphatically rejects the idea that spontaneity *alone* offers an adequate approach to reflective judging, or specifically to the interpretation of texts. In *What is Orientation in Thinking* he writes sarcastically about relying solely on spontaneous or ‘lawless’ choice or enthusiasm and concludes that doing so leads to cognitive and moral shipwreck:

... the unavoidable consequence of declared lawlessness in thinking (of liberation from the limitations of reason) is that freedom to think will ultimately be forfeited and – because it is not misfortune but arrogance which is to blame for it—will be *trifled away* in the proper sense of the word. (WOT, 8: 145)¹¹

¹⁰ He contrasts the admirable ‘moral politician’ who subordinates political judgement to practical reason with the self-serving ‘political moralist’ who subordinates political judgement to self-interest: “...[the] political moralist ... frames a morals to suit the statesman’s (=politician’s) advantage” (PP 8: 372) and favours “an immoral doctrine of prudence”, (PP 8: 374-6).

¹¹ See also “...we cannot derive or convey the recognition of laws, and that they are moral, on the basis of any sort of feeling ... if we do not wish to open wide the gates to every kind of enthusiasm. Feeling is private to each individual ... thus we cannot extol it as a touchstone for the genuineness of a revelation since it teaches absolutely nothing...and no cognition whatever can be based on this ” R 6: 114

As Kant sees it, the interesting and important choice is therefore not between interpretation that appeals to authority and interpretation that relies on mere spontaneity or enthusiasm, but between the former and interpretation that relies on reason. Only appeals to reason can support interpretation that neither appeals to authority, nor is wantonly lawless and risky. But what exactly does reason require and what can principles of reason contribute to the task of interpretation?

4. Vindicating Reason: Form and Scope

The *Critique of Pure Reason* begins with a dismal account of what generally passes for human reason, which Kant thinks often misleads us. The iterated use of everyday patterns of theoretical reasoning—causal inference, mathematical reasoning—can lead to the metaphysical illusions later discussed in the Transcendental Dialectic. The fundamental categories of experience are simply that: their legitimate use is confined to experience, which is error prone. On the other hand, appeals to ‘authorities’, whether custom or law, individual preference or shared practice, can yield no more than *conditional* reasons for action and *doctrinal* readings of texts, so cannot reach or convince those who reject or query the authorities invoked. Kant often seems as unconvinced by claims that there are *general* or *unconditional* standards of reason as any sceptic or postmodernist. Yet he aims to offer a critique of reason that does not lead to sceptical or erratic conclusions.

His strategy for vindicating an account of reason is to articulate the *minimum* that would-be reasoners must offer those whom they seek to convince either to believe what they claim or to act as they propose. Anything that is to convince others must, he argues, put forward claims that those others could in principle grasp or follow, or propose principles of action (maxims) that those others could in principle adopt as guides to action. Those who aim to convince others *must* therefore reject claims that their intended audiences *could not* follow in thought, or *could not* adopt for action. And those who want to offer reasons to *all* others must provide *unconditional* considerations that *all* others could follow in thought or could adopt for action, so *must* reject

proposals and principles that some (let alone many) others *could not* follow in thought or *could not* adopt for action.

Kant variously calls the universalised formulation of this negative and doubly modal requirement, the principle of *Universalisability*, or the *Categorical Imperative* or ‘*the supreme principle of (practical) reason*’. The best-known version runs “act only on that maxim through which you can at the same time will that it be a universal law”.¹² So the grandly titled ‘supreme principle of reason’ apparently demands *only* that reasoned acting, speaking and thinking be based on principles that *can* be willed as universal laws. As Kant sees it, this principle is basic to theoretical as well as to practical reasoning: it is the supreme principle of reason *tout court*.¹³

At first thought there seems to be a lot to be said against the idea that this meagre little principle is the supreme principle of reason. It seems to demand too much and to offer too little. It seems to demand too much by requiring fully reasoned thought and action to be in principle followable by *all*. It seems to offer too little because it can be read (or misread) as setting negligible constraints on thought, speech or action. Should not those who aim to offer reasoned proposals do more than make proposals that others could understand, or could adopt for action? For example, should not reasoned thinking or acting provide a basis for reaching *agreement* (as Habermas and Rawls have suggested)? However, on closer reading the constraints of universalisability may be neither negligible nor excessive, either for practical or for theoretical purposes.

Kant maintains that anything that can count as an unconditional reason that could in principle reach *all* others must satisfy requirements both of *form* and of *scope*. Even reasoning that seeks only a limited audience must have ‘*the form of law*’, that is to say be based on concepts and principles that the relevant audience could in principle follow (in thought or in action, as the case may be). But reasoning that is to reach an unrestricted audience must have not only ‘*the form of law*’ but also universal *scope*, so must not rely on concepts or principles that some others could not in principle follow in thought or adopt in action. This combination of constraints on form and scope can be demanding, and

¹² G 4:421.

¹³ Cf. CPrR 5:3.

can justify a wide range of principles of action, including ethical duties, principles of justice and epistemic standards.

Incomplete reasoning that invokes ‘authorities’ of one or another sort can meet the first requirement, but not the second: its conclusions will often be law-like in form, but will not be universal in scope. Appeals to ‘authorities’ such as actual laws or regulations, actual customs or shared beliefs, indeed appeal to *law-like* principles that can be relevant to a plurality of cases: but they offer no reasons for those who do not assume or accept the relevant authorities to embrace specific beliefs or to act as proposed.

The *scope* of such reasoning is therefore inevitably conditional or limited. Kant calls it *heteronomous reasoning*, or (in a now obsolete sense of the term) *private reasoning*. When applied to the interpretation of texts it can yield *doctrinal* interpretations that take some authority for granted, so lack universal *scope*. When applied to proposals for action it can yield technical, conditional, and institutional conclusions, which once again lack universal scope.

Kant contrasts *conditional* reasoning with the *unconditional* reasoning needed to justify universal moral and epistemic norms, including norms of duty and of justice. If we reject principles that *cannot* in principle be adopted *by all*, we must reject principles of destroying or damaging others, of coercing or doing violence to them, and of undermining their capacities for action by deception or manipulation. Action on principles that aim to destroy, damage or subvert capacities for action cannot be thought of as universally available, since they aim to undermine or destroy (at least) some others’ capacities to act on like principles.¹⁴ Those who seek to coerce, to deceive, to oppress, to enslave, to do violence or the like therefore cannot offer *all* others reasons to act on the principles they espouse.

¹⁴ For present purposes I leave aside the derivation of the basic principles of imperfect duties, which are slightly more complex because the relevant principles of action refer to ends. See *Instituting Principles*, above xxx-xxx, and my *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, Cambridge: Cambridge University Press, 1996.

This line of argument can provide a basis for a plurality of substantive but limited conclusions about human duties. It will not show that there are duties to adopt unqualified principles of non-coercion, non-deception, non-oppression etc, or other unqualified principles forbidding the destruction or subjection of agents or their agency. However, it can show that those who seek to offer others reasons for action must *reject* principles of coercion, violence, deception, oppression etc.¹⁵ Important epistemic norms could, I believe, be given parallel derivations. These points offer *just* enough to suggest why the doubly modal, negative demand that Kant’s vindication of reason proposes is not one more appeal to authority and is not empty.¹⁶ For present purposes I leave it open whether this weak conception of reason supports a sufficient range of ethical and epistemic norms in order to return to questions about interpretation of texts and about practical judgement.

6. Reasoned Interpretation and Sacred Texts

Kant’s vindication of reason provides a basis for justifying a *plurality* of moral duties, that set constraints on action and are fundamental for practical judgement. But it is far from obvious how morality can contribute to the interpretation of texts.¹⁷ Yet Kant’s holds that the same principles of duty that can orient action in practical judgement can and should be used to interpret the sacred texts of religious traditions, including Christian Scripture: “...the sacred narrative... should at all times be taught and expounded in the interest of morality” (*R* 6: 132).

¹⁵ Duties form a plurality of mutually *qualifying* requirements: otherwise innumerable conflicts between principles of duty would undermine the practicality of duty. For parallel reasons, human rights are standardly seen as *qualified* rights.

¹⁶ For more detailed versions of the line of thought in this section see Part I of my *Constructing Authorities: Kant on Reason, Politics and Interpretation*. Cambridge University Press, 2016.

¹⁷ I shall focus here mainly on Kant’s account of the interpretation of religious texts ‘within the limits of mere reason’, and say very little about his parallel comments on legal reasoning and interpretation.

It is easy to miss the boldness of this thought. Kant does not claim that reason can extract an intrinsic moral meaning from sacred texts, which can then be expounded to the faithful. That approach to exegesis appeals not to reason but to established authority, is the stock in trade of Biblical Theologians and has guided millions of sermons. But Kant emphatically rejects the thought that a text *as such* could have unconditional authority. He writes that the Bible is no more than a book that has “fallen into human hands”¹⁸; that traditional faith may be no more than something which “chance... has dealt to us” based on a “revelation we happen to have”.¹⁹ He takes it that there is no intrinsic reason to suppose that contingent cultural documents and traditions are morally admirable, or even morally sound. The task of reasoned interpretation as undertaken by ‘philosophical theologians’ is therefore *not* to look for a true, inner or ‘original’ meaning in the Scriptures, but to *impose* a moral, hence reasoned, interpretation on them. Kant accepts that

This interpretation may often appear to us as forced...and be often forced in fact; yet, if the text can at all bear it, it must be preferred to a literal interpretation that either contains absolutely nothing for morality, or even works counter to its incentives²⁰

The same strategy of using reasoned and consequently moral interpretation can be applied to other sacred texts. Kant points out that the classical authors managed to interpret “the coarsest polytheism” as “symbolic representation of the properties of one divine being” (*R* 6:111) which served to bring their meaning closer to “a moral doctrine intelligible to all human beings” (*R* 6:111). He makes parallel comments on interpreting the sacred texts of Judaism, Islam and Hinduism: “for the final purpose of ...the reading of these holy books...is to make better human beings.”²¹

Of course, other ways of interpreting Scripture and other sacred texts abound. Some appeal to mere spontaneity, feeling or enthusiasm, others

¹⁸ (*R* 6:107)

¹⁹ (*R* 6:110)

²⁰ (*R* 6:110)

²¹ (*R* 6:111) None of this, Kant insists, gives the ‘lower’ faculty licence to reject or diminish popular religion, or to undermine the work of the Biblical theologians and scriptural scholars of the ‘higher’ faculty.

to one or another presumed authority. However, only interpretation that is guided by morality, hence by practical reasoning, avoids the arbitrariness of invoking either undisciplined spontaneity or arbitrary authority. Only it can shape interpretation in ways that are neither doctrinaire nor arbitrary. As Kant sees it, the discipline of reasoned interpretation is *negative* (it does not defer to presumed authorities), *law-like* (it embodies principles) and has *universal scope* (these principles are accessible to all). Reasoned interpretation will deploy the standards of practical reason—hence of the Categorical Imperative—and the principles of duty that it can vindicate and will aim at interpretation ‘in the interests of morality’.

This is strong stuff, and it is hardly surprising that the Prussian censors condemned Kant’s late writing on religion. He privileges principles of interpretation over the texts themselves, over the *ipsissima verba*. If we ask “...whether morality must be interpreted in accordance with the Bible, or the Bible... in accordance with morality”²² he asserts uncompromisingly that if literal interpretation does nothing for morality, a forced interpretation that is guided by reason, and so by morality, is to be preferred.

7 Why Practical Judgement is Different: ‘More Theory’

The tasks of theologians, of lawyers, of doctors and of other experts go beyond interpretation. They must also put expertise into practice, so must make practical as well as reflective judgements; as must all of us. Practical judgement may be variously instrumental, technical or professional, or moral, prudential and political, but it is neither determinant nor reflective since it is used to enact principles rather than to describe or interpret cases.

How much can an account of practical judgement show *about* moving from indeterminate principles to determinate acts that instantiate those principles? Kant comments in the *Critique of Practical Reason* that this can be difficult, but does not suggest how it is to be done:

²² (R 6:110 n)

...judgement *under laws of pure practical reason* seems therefore to be subject to special difficulties having their source in this: that a law of freedom is to be applied to actions as events that take place in the sensible world and belong to nature *CPrR 5:68* ²³

However in this passage he then states that the rule of judgement (*sic*) under laws of pure practical reason is : “ask yourself whether , if the action you were to propose were to take place by a laws of nature of which you were yourself a part, could you indeed regard it as possible through your own will” (*CPrR 5:69*). This rule, however, states how *practical reason* is to identify principles of duty, and does not offer an account of how *practical judgement* is to select one rather than another way of enacting principles of duty. An adequate account of practical judgement should surely offer more. It should show how agents can make judgements when the ‘universal’ (rule, concept, principle, law) is justified *but the particular is not given*.

The task of practical judgement is articulated more clearly in *Theory and Practice*, where Kant makes it explicit that it is not *applied to the world*, but rather is used to *shape the world* (in small part). In practical judgement we start with principles, which we then seek to enact, instantiate or realise. Practical judgement is quite different from reflective judgement, which can be used to evaluate existing or past states of affairs or situations, but not to guide action. In some cases practical judgement is institutional or technical, and in others it is moral. In both cases the task of judgement is not the application (*Anwendung*) of principles to existing acts, but their enactment or instantiation (*Ausübung*) in an actual situation. ²⁴ Practical judgement guides acts not yet performed rather than evaluating those already performed.

²³ Cf. earlier on the same page: ..“it seems absurd to want to find in the sensible world a case which though, as such it stands 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”.

²⁴ Cf “Man nennt einen Inbegriff selbst von praktischen Regeln alsdann Theorie, wenn diese Regeln als Prinzipien in einer gewissen Allgemeinheit gedacht werden, und dabei von einer Menge Bedingungen abstrahiert wird, die doch auf ihre Ausübung notwendig Einfluß haben”. (*TP 8:275*)

In *Theory and Practice* Kant first sets out an extended example of the use of practical judgement in enacting technical principles or rules. Technical practice is a matter of “effecting an end which is thought as the observance [Befolgung] of certain principles of procedure [des Verfahrens: of the activity] represented in their generality”, that is to say as a matter of living up to (*observing, conforming to, enacting, instantiating*) certain principles or standards. Here, he writes “The worth of practice rests entirely on its conformity with the theory underlying it” (TP 8:277)²⁵. Practical judgement is complex, because it is guided by “a sum of rules, even of practical rules [which is] called a theory”²⁶ (TP 8:275). It is not a matter of seeking to enact practical principles one-by-one. Kant concludes that having *more* rules, or ‘*more theory*’ is often helpful for practical judgement.

As I read these passages, the relation of principle to practice in practical judging is therefore quite different from that of principle to particulars in either determinant or reflective judging. Practical judgement is neither a matter of *subsuming* an available particular under a ‘universal’, nor a matter of *finding* an appropriate ‘universal’ for describing or interpreting an available case. Practical judgement is in the first place a matter of *living up to* principles, of *enacting* or *crafting* action to fit a principle: it aims to shape rather than to fit the world.

But why is having *more rules* or ‘*more theory*’ helpful for practical judgement? In *Theory and Practice* Kant illustrates this question for *two* types of practical judgement: technical judgements and moral judgements. He illustrates putting *technical* expertise into practice

²⁵ The sense in which practical rules are called ‘theory’ in these passages is evidently that they are *abstract* or *indeterminate*, and not that they are *theoretical* as opposed to *practical*: their intended use is to change rather than to fit the world.

²⁶ The German reads “Man nennt einen Inbegriff selbst von praktischen Regeln alsdann Theorie, wenn diese Regeln als Prinzipien in einer gewissen Allgemeinheit gedacht werden, und dabei von einer Menge Bedingungen abstrahiert wird, die doch auf ihre Ausübung notwendig Einfluß haben”. (TP 8:275). Kant makes it plain that he is focused on *theory guiding action*, rather than *applying to action* by using the word *Ausübung* (*enactment, instantiation*) rather than *Anwendung* (*application*). Practical rules are called ‘theory’ in these passages only because they are *abstract* or *indeterminate*, and not because they are *theoretical* in a sense that contrasts with *practical*: their intended use is to change rather than to fit the world.

with the case of an artilleryman who knows the relevant scientific theories (mechanics, ballistics), but finds that their relation to practice is imprecise. He may fail in practice because he lacks enough theory, so needs ‘*more theory*’, such as theories of friction and air resistance. *More theory* would enable him to understand and so to control the trajectory of projectiles more accurately. Kant concludes that

...in such cases it was not the fault of theory if it was of little use in practice, but rather of there having been *not enough* theory... Thus nobody can pretend to be practically proficient in a science and yet scorn theory without declaring that he is an ignoramus in his field... (TP 8:275-6).

A parallel demand for *more theory* can also support moral judgement, which is also a matter of working out how respect a *plurality* of constraints, including not only empirical, technical or institutional constraints, but the demands of duty. Practical judgement that respects “a theory based on the *concept of duty*” (TP 8:276) needs to respect the multiple constraints that are specified by a *plurality* of principles of duty: here too “the worth of practice rests entirely on its conformity with the theory underlying it” (TP 8:276).

Moral judgement too is not a matter of living up to one-duty-at-a-time. If we were to address principles of duty one-at-a-time, we would be less able to judge how best to enact them in actual situations than we are if we consider the plurality of duties that make legitimate claims. With commitment to a plurality of duties, unclarity reduces. For the task is then to identify ways of acting that reject principles of violence or coercion, of deception or dishonesty, and other principles that damage or victimise, while also exemplifying a range of imperfect duties as well as taking account of relevant non moral constraints. ‘More theory’ is helpful for moral judgement, which must fasten on action that satisfy a plurality of constraints.

However, commitment to a plurality of principles of duty will unavoidably still leave action underdetermined. Kant made this

explicit for the case of imperfect duties, when he wrote in *Metaphysics of Morals*: 18

...if the law can prescribe only the maxim of actions, not actions themselves, this is a sign that it leaves playroom (*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. (*MM* 6:390)²⁷

This also holds for maxims of action on perfect duties: indeterminacy cannot be eliminated, and practical judgement is never mechanical.

Principles of duty that can be justified by appeal to the Categorical Imperative make serious demands, but each leaves action underdetermined, and so does their conjunction. This indeterminacy may be reduced but cannot be wholly eliminated by taking account of technical, legal and institutional constraints.²⁸ Taking account of a *plurality* of ethical and epistemic principles augments the extent to which principles can guide action, but does not yield algorithms for action, or for morally acceptable action. Yet if indeterminacy is ineliminable, may this not create unmanageable problems for practical and in particular for moral judgement? Will it leave agents trembling indecisively like Buridan’s ass each time they make a practical judgement? Can we say more about practical judging?

8. Picking, Choosing and Practical Judging

One way of understanding what practical judging demands is to view *any* action that violates no duty as morally adequate, and to accept that judgement can do no more. Why should we have to offer reasons for *picking* one rather than another act that satisfies the demands of duty? On some views, choice and reasoning need not select particular acts,

²⁷ Kant makes various more specific versions of this claim: “there is no law of reason [for cultivating one’s own perfection] for action but only a law for maxims of actions” (*MM* 6:392); “The law [of beneficence] holds only for maxims, not for determinate actions” (*MM* 6:393); “ethical obligation to ends ... involves only a law for *maxims* of actions” (*MM* 6:395).

²⁸ Similarly basic epistemic norms, such as ‘do not argue from inconsistent premises’ or ‘do not disregard evidence’, will leave belief and knowledge underdetermined, and here too indeterminacy can be reduced but not eliminated by augmenting evidence and refining arguments.

or even exhaustively specified act types, from others that are morally and functionally equivalent: practical judgement cannot and need not resolve indeterminacy ‘all the way down’. In ‘picking’ a tin of soup from a display where nothing except location distinguishes it from adjacent tins, there may be *no reason* to choose one rather than another tin.²⁹ Why need practical judgement reach further?

However mere picking may not be adequate where differences between available acts matter. Good practical judgement often needs careful discrimination, including discrimination between closely similar acts. Most practical judging is *not* like picking a tin of soup from a display, where the chosen tin sits on a shelf in its magnificent but barely discernible individuality (next to the unchosen tins). It is better exemplified by fluent speakers whose well-judged conversation simultaneously observes complex standards for truth-telling, for speaking grammatically, for confidentiality and for courtesy; or by accomplished dancers whose movements respect the music and traditions of a dance, and embody spontaneity while also communicating complex narratives and emotions; or by skilful drivers who not merely respect moral and legal requirements (safety, speed limits) but drive with anticipation, fluency and steadiness.

Good practical judgement is both spontaneous and well judged: it is intelligently spontaneous. Good moral judgement is intelligently spontaneous and respects a plurality of principles of duty. In moral judgement too having *more theory* is productive and formative for practical judgement. Moral judgement aims at action that is simultaneously reasoned, spontaneous and well judged. It may, for example, be both honest and kind, both helpful and protective of others’ self respect, while also meeting numerous conventional and technical requirements.

Kant rejects the arbitrary judgements of enthusiasts not because they exemplify spontaneity, but because their choosing manifests *only* spontaneity and ignores both reason and authority, so overlooking

²⁹ A distinction explored in Edna Ullmann-Margalit and Sydney Morgenbesser ‘Picking and Choosing’ *Social Research*, 1977, 757-767.

both morally and institutionally significant matters. Enthusiasts who make what he called 'a lawless use of freedom', and are likely to make capricious and morally inadequate practical judgements. However, spontaneity need not be lawless: disciplined spontaneity may attend either to the claims of authority, or to those of reason, and in the latter case to the claims of duty and epistemic claims as well as to the realities of situations and the permissible desires and aims of the agent and of others.

An account of good practical judgement needs to be anchored in attentiveness to a plurality of requirements and considerations. An account of good moral judgement needs to be anchored in attentiveness to the moral requirements as well as other requirements and considerations for which reasons can be given. When Kant remarked that "the power of judgement is a special talent that cannot be taught but only practiced." (*CPR* A132/B171) he indicates that judgement of all sorts is underdetermined by rules or theory, but can nevertheless be shaped by a plurality of rules that taken together provide enough context and structure for judgement of all sorts. In particular, a plurality of rules can provide *enough* 'theory' for good practical, and (where relevant) good moral judgement. Like determinant and reflective judgement, practical judgement is underdetermined by reason or by rules: but like them it is "capable of being instructed and equipped through rules" and can be intelligently responsive to and shaped by a plurality of rules, among them by moral rules with reasoned justification.