

## THE NORMATIVITY OF KANT'S FORMULA OF THE LAW OF NATURE

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**Abstract:** Many Kantian scholars have debated what normative guidance the formula of the law of nature provides. There are three ways of understanding the role of FLN in Kant's ethics. The first line of interpretation claims that FLN and FLU are logically equivalent. The second line claims that there are only subjective differences, meaning that FLN is easier to apply than the abstract method of FUL. The third line of interpretation claims that there are objective differences between FLN and FUL in the sense that each formula has an irreducible role in Kant's ethics. In this article I will show that the first and second lines of interpretation cannot fully explain Kant's account of FLN and I will propose a new interpretation which pertains to the third type. I will explore the schematism model to understand the role of FLN and argue that it is an intermediary principle that fills in a practical gap between the moral law and action. In the end, I will consider a possible objection against this understanding which claims that the schematism model is not applicable to practical judgment since nothing is given in experience.

**Keywords:** formula of the law of nature (FLN), schematism, practical judgment.

### I. INTRODUCTION

Kant offers his promised formula of the categorical imperative by analysing the concept of duty as a non-experiential concept: „There is therefore only a single categorical imperative, and it is this: *act only according to that maxim through which you can at the same time will that it become a universal law.*“ (GMS 4: 421)<sup>1</sup> We would have expected from Kant to conduct a thorough philosophical investigation to explain the promised formula. But he sets aside the

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<sup>1</sup> References to Kant's works give the standard German abbreviated title, followed by the volume and page in the Academy Edition of Kant's works. I used the English translation of the Cambridge Edition of the Works of Immanuel Kant.

task and introduces a new formula based on the analogy with natural laws: „Since the universality of the law according to which effects happen constitutes that which is actually called nature in the most general sense (according to its form), i.e. the existence of things in so far as it is determined according to universal laws, the universal imperative of duty could also be expressed as follows: *so act as if the maxim of your action were to become by your will a UNIVERSAL LAW OF NATURE*“ (GMS 4: 421). According to Kant’s idea of a twofold metaphysics, not only moral laws are universal, but also the form of nature is determined by the universality of laws. Thus, the categorical imperative can have a different linguistic variant, namely, to will a maxim that it become a universal law of nature.

It is not clear why Kant has introduced this new formula, coined the formula of the law of nature (FLN), beyond the mere analogy. There is no straight forward explanation of its function and importance for moral judgment. The new variant is just introduced by analogy and immediately after applied to the four cases of duties, instead of the formula of the universal law which is the single categorical imperative. This is odd for Kant’s strategy to identify and establish the supreme principle of morality. Many have asked why Kant introduces laws of nature into the realm of morality. What does the conformity with a law of nature inform from a normative perspective, especially for a philosopher who is a champion of the facts – norms distinction? The puzzle around the new variant is represented by the tension between what constitutes the normativity of the formula of the law of nature and the fact that laws of nature determine the physical causality of natural events. Moral standards „do not merely *describe* a way in which we in fact regulate our conduct“ (Korsgaard 1996b, 8); instead, „they make *claims* on us; they command, oblige, recommend, or guide“ (Idem). So, the puzzle is about what claims makes FLN on us.

To solve this, many Kantian scholars have debated whether the formula of the law of nature has an independent function from the formula of universal law (FUL) and what kind of guidance it provides. If FLN and FUL are equivalent<sup>2</sup>, then the problem is solved since the function of FLN is that of FUL. Whatever normative guidance FUL has, it is transferred to FLN. If the two formulas are not equivalent, then we have to explain further the normative dimension of this peculiar formula, which is apparently stated in naturalistic terms.

There are three ways of understanding the role of FLN in Kant’s ethics. The first line of interpretation claims that there is no significant difference between FLN and FLU, other than linguistic form. Basically, the two formulas are logically equivalent. The second line claims that there are only subjective differences, meaning that FLN is easier to apply than the abstract

<sup>2</sup> Some authors (Pogge 1998) claim that the formulas are intensionally (logical) equivalent, while others (Engstrom 2009; Timmermann) claim that the formulas are extensionally equivalent, i.e. the formulas provide the same practical results.

method of FUL. Psychologically, FLN is more intuitive than FUL. The third line of interpretation claims that there are objective differences between FLN and FUL in the sense that each formula has an irreducible role in Kant's ethics. FLN has a theoretical function which is independent of FUL because it brings new theoretical constraints in moral judgment.

In this article I will show that the first and second lines of interpretation cannot fully explain Kant's references to FLN and I will propose a new interpretation which pertains to the third type. Despite those scholars who argue that FLN cannot be reduced to FUL because FUL can be applied only by means of FLN, I will develop a different account for the objective difference<sup>3</sup>. I will explore the schematism model to understand the type of practical judgment and argue that FLN is an intermediary principle that fills in a practical gap between the moral law and action. This practical gap exists only in the case of imperfect rational beings. In the end, I will consider a possible objection against this understanding which claims that the schematism model is not applicable to practical judgment since nothing is given in experience. As Onora O'Neill points out, the problem of practical judgment is exactly that a state of affairs does not exist and we have to decide what course of action we should pursue. I will argue against O'Neill that something is given even for practical reason, namely the maxim of action.

## II. EQUIVALENCE, SUBJECTIVE DIFFERENCE, OBJECTIVE DIFFERENCE

There are three ways of understanding the formula of law of nature among Kantian scholars: (i) FLN is equivalent with FUL, (ii) FLN is subjectively different from FUL, (iii) FLN is objectively different from FUL.

The equivalence interpretation claims that FLN and FUL are essentially the same, despite different linguistic variants. Guyer (2006) argues that FLN is essentially the same as FUL, on the basis that it presupposes the same methodological question. Our actions take place in nature. Therefore, when we ask whether we can will a maxim as a universal law we presuppose the same requirement as the question whether we can will a maxim as a universal law of nature (Guyer 2006, 192). Even if in the latter case the concept of law of nature is added, both questions presuppose that the universalised maxims ought to determine our actions in the natural world. Because human actions are at bottom natural events, it seems redundant to add „of nature“ to „universal laws“ in the universalizability procedure. Others briefly state that FLN is just a mere variant of FUL, and bypass the issue whether it is much more to FLN than FUL (Korsgaard 1996; Reath 2006; Timmons 2006).<sup>4</sup> On

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<sup>3</sup> Surely, the claim that FUL can be used only by means of FLN is false because, as I will point out, there is enough textual evidence against it.

<sup>4</sup> Onora O'Neill in her analysis does not mention FLN among the formulas of the categorical imperative (1989).

this interpretation FLN is discarded with regards to whether it has any role at all in Kant's ethical theory.

The second line of interpretation admits only a subjective difference between FLN and FUL. Two reasons have been provided for this claim: intuitive applicability and intuitive understanding. Firstly, many scholars claim the FLN is much easier to apply than FUL. Only from the point of view of application can FLN be differentiated because it brings the moral law closer to intuition (Timmermann 2007; Wood 1999). For this reason it should not be considered an independent and separate principle of morality (See Stratton-Lake 1993). Thus, FLN is an intuitive variant of FUL. As Wood puts it, „Kant evidently thinks that it is easier to apply the test to a maxim if we think of it not as a normative law (a law *simpliciter*) but as a law of nature“ (1999, 80). Secondly, although FLN does not express an independent moral principle, it makes more intelligible the moral requirements of FUL. Sedgwick argues that Kant bothered to introduce the new formula in order to clarify the implications of the standard of universalizability for our actions. We ought to act according to maxims which can be willed as universal laws. FLN refers to causal laws of nature which are universal, thus it gives an instance of the concept of universal laws (Sedgwick 2008, 111). By providing us with an instance of the concept, we are supposed to grasp more easily the meaning of the concept (Banham 2003, 69).<sup>5</sup> It is believed that most often the best way to understand something is to work on examples.

The third line of interpretation claims that Kant's introduction of FLN is not motivated only by exhibiting a mere analogy. There is more to FLN, namely a substantial premise necessary for the application of FUL, considered an abstract procedure in need of content. Paton (1971) and Rawls (2000) are representative for this line. Paton argues that the formula of law of nature provides an empirical teleological knowledge of our human nature. For this reason FLN is a necessary and distinct principle of practical reason. In order to reach substantial moral conclusions about particular cases, it is necessary, on Paton's account, to identify natural ends of human beings that we must conform to: „it is clear that in applying this formula we assume empirical knowledge of nature (particularly of human nature) and its general laws“ (Paton 1971, 146-147).<sup>6</sup> Rawls argues that FLN is a necessary procedure for the application of the moral law, which is for perfect rational beings. Because we are limited in our cognitive and moral capacities, FLN takes into account the normal conditions of human life (Rawls 2000, 167). The procedure of FLN determines the content of moral law as it is applied to imperfect rational beings from the natural world. Rawls departs from Paton in that he points out

<sup>5</sup> Banham defends the thesis that FLN has an analytic function of explaining the concept of universal law.

<sup>6</sup> Paton's interpretation is still influential. For example, Valentin Muresan (2013, 46) claims that we cannot know directly which maxim can be made a universal law, „but only indirectly, with the help of the concept of law of nature“.

not only biological-teleological facts but also social facts of human life which FLN is meant to introduce in the moral evaluation of particular cases.<sup>7</sup> This line of interpretation assumes that FLN is content based and its function is to apply a formal principle. Moreover, it is highlighted that Kant's introduction of FLN shows how mistaken formalistic interpretations of the moral law are. In Paton's words, „This shows again the absurdity of the view that Kant proposed to apply the moral law without taking into account any empirical facts.“ (1971, 147)

### III. FLN IN THE *GROUNDWORK* AND THE *CRITIQUE OF PRACTICAL REASON*

FLN is not Kant's main formula. The formula of universal law and the formula of humanity as an end in itself (FH) are the most prominent. FLN is not even explicitly mentioned in the *Metaphysics of Morals*, in contrast with Kant's generous usage of FH. However, Kant's references to FLN do not stop with the *Groundwork*. In the *Critique of Practical Reason* there is an entire chapter on how the law of nature is the type of the moral law. In what follows I will analyse Kant's references to FLN in the *Groundwork* and the second *Critique* and assess overall what kind of understanding support. I will contend that the *Groundwork* does not show a neat function for FLN separate from FUL, whereas the second *Critique* supports the objective difference view. But firstly, I will briefly address the equivalence understanding and show its implausibility.

Even though, as Guyer argues, both FUL and FLN have the same methodological question, whether we can will a maxim as a universal law (of nature), this does not imply the equivalence thesis. Consider two simple moral tests with the same methodological structure but clearly not equivalent. In a particular case we ask ourselves what our parents would have to say about the course of action and what our friends would have to say about the course of action. Even though both procedures require from us to imagine what other people would have to say about a course of action, it is clear that we have irreducible perspectives of evaluation. From the parents point of view safety can be the best moral choice, whereas, from the friends' point of view taking some risks can be the best moral choice. The addition of laws of nature to the universality method can change the angle of evaluation, even though all actions take place in the natural world. Another problem with this understanding is that it cannot explain why Kant even bothered to introduce a new variant, and why he dedicates an entire chapter in the second *Critique*.

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<sup>7</sup> „We must compare alternative social worlds and estimate the overall consequences of willing one of these worlds rather than another. In order to do this, we may have to take into account the rough balance of likely effects over time on our true human needs. For this idea to work, even in the kind of case discussed here, we require some account of these needs.“ (Rawls 2000, 174)

In the context of the *Groundwork* Kant does not ascribe any special role to FLN, thus supporting the view that FLN is only subjectively different from FUL. In the passage that bridges the introduction of FUL and FLN, Kant announces an explanatory function, which is meant to show more clearly what we think by the concept of the categorical imperative: „we shall at least be able to indicate what we think by it and what the concept means“ (GMS 4: 421). In the next passage, based on the analogy with natural laws, Kant renders the categorical imperative in terms of laws of nature. It seems that FLN is introduced in order to better explain what the concept of the categorical imperative is about, using the analytic method specific for the first two sections of the *Groundwork*.<sup>8</sup> Kant assumes that the analogy with the universality of the laws of nature can do a better job explaining what the universality of moral laws requires. The explanatory function seems even more plausible if we highlight Kant’s idea expressed in the *Religion* that a schematism of analogy is necessary to explain something which is not given in experience, as it is the case with moral laws. To understand God’s love for human beings we need the analogy with parental love. Kant claims that „we have here (as means of elucidation), a *schematism of analogy*, with which we cannot dispense.“ (RGV 6: 65)

After the formulas of the categorical imperative are applied to the four cases of duties, Kant states that between FUL and FLN there is a dissimilarity „which is indeed subjectively rather than objectively practical, namely to bring an idea of reason closer to intuition (according to a certain analogy)“ (GMS 4: 436).<sup>9</sup> Hence, there is no strict identity between the two formulas, as the equivalence interpretation assumes. The latter makes rational ideas more intuitive by means of analogy. There is an important difference in terms of applicability, namely that FLN is supposed to make more comprehensible the requirement of universalizability. But surely this does not bring theoretical input since there is no need to make something more intuitive.<sup>10</sup> A moral theory can do without intuitive procedures, at least regarding its grounding. Moreover, Kant recommends that in moral judgment we should always use the strict method of the formula of the universal law and only if we want to gain „access for the moral law“ we should use the formula of law of nature (GMS 4: 437). The moral law is easier to apply because we vividly imagine the maxim of our action function as a law of nature. This does not amount yet to a new function necessary for practical reason.

The text of the *Groundwork* further suggests that FLN is just a variant of FUL. Because there is an analogy between the universality of the moral laws and the universality of natural laws, the „universal imperative of duty could

<sup>8</sup> The fact that the analytic method explains concepts and brings no new knowledge supports this line of interpretation.

<sup>9</sup> Kant says that all the reformulations should be used in this way, not only FLN, but I will focus here only on the implications for FLN.

<sup>10</sup> There is of course a pedagogical need.

also be expressed as “the formula of law of nature (GMS 4: 421). At the end of section two of the *Groundwork*, Kant states in the same manner that „the categorical imperative can also be expressed as follows: *act according to maxims that can at the same time have as their object themselves as universal laws of nature*“ (GMS 4: 437). The justification for this analogical extension is not explicitly provided. If FLN „can also be expressed as“ FUL, without any explanation of why it is important to have a new variant of the categorical imperative, then FLN does not seem to have a special role. Only on the basis that there is an analogy between a moral law and a law of nature we cannot derive any substantial task for the FLN procedure. Other analogies could have been easily pointed out, such as that between moral laws and divine commands. We would have had a different variant of FUL, called the formula of divine command (FDC): act according to maxims which can be willed as divine commands. This is plausible since Kant claims that „To prescribe all human duties as divine commands is already contained in every categorical imperative“ (OP 22: 120). For religious persons FDC would probably be even more intuitive than FLN. The single fact that FLN „can also be expressed as“ FUL is not an indication that it has an objective independent function from FUL.

Looking at Kant's review of the formulae at 4:436–7, where he claims that there are „only so many formulae of the selfsame law, one of which of itself unites the other two within it“, another possible reason for the introduction of FLN can be depicted. It can be said that FLN was introduced as a variant of FUL to make sure FLN and FH can in conjunction lead to the idea of the kingdom of ends analogous to the kingdom of nature. This can be considered a possible reason why Kant goes beyond FUL as formulated in Section I of the *Groundwork* (GMS 4:402). All maxims have a form, which consists in the universality of the natural laws, a matter, which consists in an end in itself as a limiting condition, and a complete determination, which determines one's own legislation to harmonize into a possible kingdom of ends as a kingdom of nature. Since this progression take place analogously to the categories of understanding and one of which of itself unites the other two within it, it makes more sense to construe that the formula of kingdom of ends as kingdom of nature contains the idea „that maxims must be chosen as if they were to hold as universal laws of nature“ (GMS 4:436). Kant even claims that FUL and FH lead to the formula of autonomy: „all practical legislation lies *objectively in the rule* and the form of universality, which (according to the first principle) makes it capable of being a law ( or perhaps a law of nature ), *subjectively, however, in the end*; the subject of all ends, however, is every rational being, as an end in itself (according to the second principle): from this now follows the third practical principle of the will, as the supreme condition of its harmony with universal practical reason, the idea *of the will of every rational being as a universally legislating will*“ (GMS 4: 431). It seems that from FUL and FH follows FA, whereas from FLN and FH follows FKE. But even if this is the case, it does not follow what is the precise

function of FLN in Kant's theory overall, since the formula of kingdom of ends is introduced in the *Groundwork* and then ignored. Moreover, it is not so clear that FLN is necessary for the idea of kingdom of ends. Right after the review at 4: 436, Kant takes up the question how it is possible a kingdom of ends, and argues for two conditions: the fittingness of maxims for universal legislation *simpliciter*, without referring to natural laws, and the dignity of rational beings as ends in themselves (GMS 4: 439). Therefore, also FUL in conjunction with FH can lead to FKE. Further more, when Kant introduces for the first time in the *Groundwork* the concept of the kingdom of ends he states that it is „a very fruitful concept attached“ to the formula of autonomy (GMS 4: 433). These passages raise doubts regarding the suggestion that FLN is necessary for the derivation of FKE.

Also, in the context of the *Groundwork* there is the question whether the general formula Kant recommends for decision making, as opposed to just securing access, is FUL or the FUL/FLN pair, i.e. whether it is the role of FLN, FH, FA and FKE to gain access while FUL is reserved for decision making or whether FUL and FLN should be used for decision making and FH and FRE for securing access. Kant makes enough statements for a plausible construal of the text. Firstly, he explicitly nominates FUL, as a single formula, the strict method of decision making: „act according to the maxim that can make itself at the same time a universal law“ (GMS 4: 436). Secondly, he claims that in order to obtain access for the moral law one should analyze an action „through the said three concepts and thereby, as far as can be done, bring it closer to intuition“ (GMS 4: 437). The „said three concepts“ to which Kant here refers are the form, matter, and complete determination mentioned of the previous page. Under the concept of form Kant employs FLN. Therefore, it is most plausible to think that FUL is the strict method, whereas FLN (the form), FH (the matter), FKE (the complete determination) are the three said useful concepts for obtaining access for the moral law.

In the *Critique of Practical Reason* Kant dedicates an entire chapter to the procedure of using laws of nature in moral judgment. The chapter „Of the Typic of Pure Practical Judgment“ treats the problem of applying *a priori* laws of freedom to human actions as empirical events. Kant believes that the pure practical judgment faces similar difficulties as the pure theoretical judgment, but it also has particular ones. In the realm of theoretical reason, the application of the *a priori* categories to objects of experience is possible through a corresponding schema (a universal procedure of imagination) in sensible intuition. A schema represents *a priori* to our senses pure concepts and ideas. He thinks that the same problem can be solved for practical reason, using what can be called arguably a „schema of a law itself“ (KpV 5: 69). Kant sees in FLN the solution to the application of laws of freedom to actions as natural events, analogous to the transcendental schematism: „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



possible through your will" (*KpV* 5: 69). Even though the language is slightly different, we can easily identify here the FLN procedure which tests whether a proposed course of action is possible through our will as a natural law.

If in the *Critique of Pure Reason* the transcendental imagination is a theoretical device necessary for the application of pure concepts of understanding to objects of experience, then one can take the formula of law of nature to play a similar role, making possible the application of laws of freedom to actions as natural events.<sup>11</sup> Therefore, Kant assigns the function of a *a priori* rule of practical judgment to FLN, which provides the type of the moral law: „the moral law has no cognitive faculty other than the understanding (not the imagination) by means of which it can be applied to objects of nature, and what the understanding can put under an idea of reason is not a *schema* of sensibility but a law, such a law, however, as can be presented *in concreto* in objects of the senses and hence a law of nature, though only as to its form; this law is what the understanding can put under an idea of reason on behalf of judgment, and we can, accordingly, call it the *type* of the moral law.“ (*KpV* 5: 69) From this passage stems the theoretical difference between the moral law and the *type* of the moral law because the type is necessary to apply the moral law just as a schema is necessary to apply a category of understanding.<sup>12</sup> When Kant claims that a natural law is the type of the moral law, he does not refer to concrete laws of nature but only the form of the natural laws, which is provided solely by pure concepts of understanding. For this reason, FLN does not import any empirical content into moral deliberation contrary to the Paton-Rawls interpretation. The form of lawfulness of natural laws is the type of the moral law: „Hence it is also permitted to use *the nature of the sensible world* as the *type* of an *intelligible nature*, provided that I do not carry over into the latter intuitions and what depends upon them but refer to it only the *form of lawfulness* in general“ (*KpV* 5: 70).

The status of FLN is different in the second *Critique* from what has been said in the *Groundwork*. The procedure of the universality of natural laws is not just another variant of FUL which brings the moral law closer to intuition. It is an independent *a priori* rule for practical judgment which enables the application of the moral law to actions. If the *Groundwork* supports the view that between FLN and FUL there is only a subjective difference in terms of intuitiveness, the second *Critique* supports the picture that there is an objective difference just as a schema is theoretically different from a category

<sup>11</sup> It might be objected that the schematism analogy is not as useful as I take it to be because there is a significant difference between the proper schematism in the First Critique and the Typic of the Second Critique. Kant says that the Second Critique does not require a Schematism, and that the Typic merely fills the architectonic gap to solve a related problem (*KpV* 5: 68). Indeed this is the case, but as I will argue only part of the schematism model is useful. I do not take it as a complete analogy. The point is to focus on the idea of a priori rules of judgment.

<sup>12</sup> Wood sees in this chapter only Kant's attempt to make the abstract test of FUL much easier to apply, even though he acknowledges that the type is supposed to be analogous to the schematism (1999, 79).

of understanding. The objective difference line of interpretation is the most plausible, because it accounts for the type of practical reason. But the interpretation needs to be fundamentally different from the standard one which is content based. As we have seen, FLN contains only the form of lawfulness.

In what way is FLN necessary? In the realm of pure speculative reason, a category of understanding can be applied to objects of experience exclusively through a schema. Should we understand by analogy that FUL can be applied only through FLN? Is it impossible to apply the moral law directly? If this is how we understand the necessary function of FLN then we cannot explain Kant's claim that FUL is the „strict method“ to appraise what is morally right in particular cases without any appeal to laws of nature (GMS 4: 436). Kant applies solely FUL to reject the maxim of lying promise in the first section of the *Groundwork* (GMS 4: 403). Other examples can be found in his lectures on ethics right after the publication of the *Groundwork* (V-MS/Vigil 27: 496). Kant uses the universality of normative laws not only in his academic and pedagogic texts, but also in his applied ethics articles. A practical problem, analysed by Kant with FUL, is that of civil disobedience. When made universal, the maxim of civil resistance „would annihilate any civil constitution and eradicate the condition in which alone people can be in possession of rights generally“ (TP 8: 299). Moreover, in the *Metaphysics of Morals*, Kant argues that lying (in the ethical sense of the word) to achieve a good end „is, by its mere form, a crime of a human being against his own person“ (MS 6: 430). The „mere form“ of universality is, according to Kant, sufficient to show that benevolent lies are morally forbidden.<sup>13</sup> Therefore, we need to further clarify in what way is FLN necessary.

It seems that we cannot conceive the relation between FLN and FUL entirely analogous to the relation between a category of understanding and its schema. There are symmetries which show that FLN is not reducible to FUL, but there are also asymmetries which will provide the solution to the problem raised above. Next I will analyse what functions does the transcendental schematism serves.

#### IV. THE DOUBLE FUNCTION OF THE TRANSCENDENTAL SCHEMATISM

Kant conceives the transcendental schematism as part of the transcendental power of judgment, which is the capacity of deciding whether something is the case or not: „If the understanding in general is explained as the faculty of rules, then the power of judgment is the faculty of subsuming under rules,

<sup>13</sup> Although reacting to the problem of a supposed right to lie from altruistic motives, raised by Benjamin Constant, Kant is discussing the duty of veracity as a formal duty of right, not as an ethical duty, he takes the view that the universality standard is not respected in this case (VRML 8: 430).

i.e., of determining whether something stands under a given rule (*casus datae legis*) or not" (*KrV* A133/B172). If the understanding provides *a priori* rules, then how are we to apply them to objects of experience? We easily learn general rules about health and medical treatment, but we often err in their application. Suppose that an additional rule is provided, which tells us how to apply the previous rule, and then we still have to exercise its application in order to distinguish what case stands under that rule. The solution to supply new rules of rule application leads to a regress *ad infinitum*. Kant claims that for any new rule the capacity for its application to actual and possible cases must be exercised. There are criteria for cancer diagnostic, but there are no criteria for the application of those criteria. The faculty of judgment as a natural capacity or developed through experience is in charge of the process of rule application, which itself is ungoverned by general rules. This is why Kant believes that „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, either because he is lacking in natural power of judgment (though not in understanding), and to be sure understands the universal *in abstracto* but cannot distinguish whether a case *in concreto* belongs under it, or also because he has not received adequate training for this judgment through examples and actual business" (*KrV* A134/B173).

Kant faces the problem how to fill in the gap between *a priori* rules and cases from experience. Should we leave this job for the power of judgment understood as a natural capacity or as a capacity development through „examples and actual business"? Kant's answer is that transcendental philosophy, surprisingly, can deliver *a priori* rules of application for the categories of understanding: „the peculiar thing about transcendental philosophy is this: that in addition to the rule (or rather the general condition for rules), which is given in the pure concept of the understanding, it can at the same time indicate *a priori* the case to which the rules ought to be applied" (*KrV* B175). This is so because categories of understanding are to be connected *a priori* to their objects. Pathological, juridical, political rules are connected with their cases only *a posteriori*, the conditions of application being empirical. Thus, transcendental philosophy has *a priori* conditions of application. The transcendental power of judgment determines whether what is stated *in abstracto* by the rule will be connected *a priori in concreto*.

Kant argues that in order to apply a concept to objects of experience a relation of homogeneity is necessary between concept and object, „i.e., the concept must contain that which is represented in the object that is to be subsumed under it" (*KrV* B176). But concepts of pure understanding are entirely different and heterogeneous from objects that represent them *in concreto*, which is not the case with empirical and mathematical concepts. Kant gives the example of the empirical concept of a plate that is homogenous with the geometrical concept of circle because the form of roundness can be found in

the plate. The same cannot hold for concepts of pure understanding because, for example, the category of causality cannot be found in experience just as roundness is found in a plate.

An *a priori* intermediary is necessary to create a relation of homogeneity between phenomena and categories of understanding: „This mediating representation must be pure (without anything empirical) and yet intellectual on the one hand and sensible on the other. Such a representation is the transcendental schema“ (*KrV* A138/B177). A transcendental schema is a representation that must not be confused with a particular image, since it is the procedure of the imagination itself of providing a concept with its image (*KrV* B180). The transcendental imagination makes possible the way we represent *a priori* the empirical diversity. For example, the schema of the category of quantity is the number, „which is a representation that summarizes the successive addition of one (homogeneous) unit to another“ (*KrV* B182). The concept of number makes possible the representation of a multitude of objects (five or a hundred objects) in accordance with the concept of quantity. It is homogenous both with intuited objects and category of understanding.

According to Kant the transcendental schema is the sole condition under which a category of understanding can be applied to objects of experience due to the homogeneity relation, which it makes possible. The schemata are the *a priori* conditions of the application of categories to objects of experience. Beings such *a priori* rules, Kant highlights that schemata serve a double task:

But it is also obvious that, although the schemata of sensibility first realize the categories, yet they likewise also restrict them, i.e., limit them to conditions that lie outside the understanding (namely, in sensibility). (*KrV* B186)

On the one hand, the *a priori* conditions of the schemata of sensibility „realize the categories“, that is, they point out under which conditions an object of experience can be subsumed under a category. I will call this the cognitive function of the schema: „the schemata of the concepts of pure understanding are the true and sole conditions for providing them with a relation to objects/ thus with significance“ (*KrV* A146). Without schemata, the categories of understanding are empty concepts. Concepts have significance only insofar as they have content provided by reference to objects of experience. Kant is already famous for his dictum: „Thoughts without intuitions are empty, intuitions without concepts are blind“ (*KrV* B75). On the other hand, schemata as *a priori* rules of the application of categories „restrict them, i.e., limit them to conditions that lie outside the understanding (namely, in sensibility)“. I will call this the restrictive function of the schema. The *a priori* conditions of schemata restrict the domain of application to conditions that lie in sensibility. Kant states that „if we leave aside a restricting condition, it may seem as if we amplify the previously limited concept; thus the categories in their pure significance, without any conditions of sensibility, should hold for

things in general, as they are, instead of their schemata merely representing them how they appear" (*KrV* B186). The categories of understanding have a broader application, not restricted to objects of experience. Without schemata, categories of understanding will also have a transcendent usage. This is the reason why schemata are limiting conditions. Without the restrictive function of the schemata, pure concepts will extend its application to things in themselves (*noumena*). A schema blocks the suprasensible usage of categories to things in themselves. It prevents the transcendental illusion of traditional metaphysics, which assumes the possibility of cognizing things as they are. This illusion is not a simple error, it is an inclination that „actually incite us to tear down all those boundary posts" (*KRV* A296).

Even though Kant believes this double task is obvious, many prominent Kantian scholars have ignored it (Guyer 1987; Allison 2005).<sup>14</sup> Nevertheless, as Kant briefly puts it the transcendental schematism „realizes the understanding at the same time as it restricts it" (*KrV* B187). In what follows I will analyse to what extent the type of the moral law is analogous to a transcendental schema, given the double function it serves.

## V. THE TYPE OF THE MORAL LAW

The type of practical judgment is introduced in the second *Critique* analogously to the transcendental schematism: „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*." (*KpV* 5:67) Just as theoretical judgment distinguishes whether an object or natural event *in concreto* belongs to the universal *in abstracto*, practical judgment determines whether a universal rule is applicable to actions *in concreto*, with the condition that the respective actions are physically possible. Further more, Kant believes that „the judgment of pure practical reason is subject to the very same difficulties as that of pure theoretical reason" (*KpV* 5: 68).<sup>15</sup> Laws of freedom determine *a priori* the will independently of anything empirical. However, all possible actions take place in nature and belong to experience. We are bound to act in the sensible world. Hence, practical judgment faces the problem of exhibiting *in concreto* the supersensible idea of morally good. In the case of theoretical reason the power of judgment

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<sup>14</sup> When Guyer analyses the transcendental schematism he focuses on the relation between schemata and what has been proven by the transcendental deduction, without referring to the double function (1987). Even though Allison makes a list with features of the transcendental schematism, he does not mention the double task either. (2005).

<sup>15</sup> Kant contends that practical judgment is subject to the same difficulties as theoretical judgment but also to particular difficulties. Despite this, he does not offer different explanations for each type of difficulty (general and particular). He provides the same reason to show that practical judgment has a particular problem and a shared problem with theoretical judgment: a law of freedom is a supersensible law that is applied to actions as natural events in the sensible world (*KpV* 5: 68).

faces the problem of exhibiting in objects of experience the categories of understanding, which are *a priori* transcendental concepts. Nevertheless, theoretical reason solved the problem by providing sensible intuitions and schemata, which present *a priori* to the senses pure concepts. But practical reason has no intuition to put under a practical law and no schema.

How can we apply at all the moral law to actions as natural events? Kant claims that even practical reason has a way around this: „the moral law has no cognitive faculty other than the understanding (not the imagination) by means of which it can be applied to objects of nature, and what the understanding can put under an idea of reason is not a schema of sensibility but a law, such a law, however, as can be presented *in concreto* in objects of the senses and hence a law of nature, though only as to its form; this law is what the understanding can put under an idea of reason on behalf of judgment, and we can, accordingly, call it the *type* of the moral law“ (*KpV* 5: 69). The moral law can be exhibited *in concreto* if we put under it the form of a law of nature which in turn can be exhibited in objects of experience. When we ask ourselves if a proposed action were to take place by a law of nature, we produce a vivid imagine of a sensible world in wich the moral law would function in a deterministic manner, where all human actions would be generated by strict natural causality.

Kant’s framing of the problem and the symmetries between theoretical and practical reason should not tempt us to believe that the type of the moral law has a cognitive function. Indeed, it is not clear what Kant understands by the application to actions *in concreto*. One way to pursue this is to take the example of theoretical judgment according to which actions are actual events that already took place and we have to decide whether something is the case. But as Lewis Beck notices, the application of a universal rule to action *in concreto* is not an assessment whether an action fits descriptively with the moral law by virtue of its cognitive correlate (1960, 157). In theoretical judgment what is said *in abstracto* is to be found *in concreto* (recall the geometrical concept of roundness). In practical judgment what is said *in abstracto* cannot be found *in concreto*. Lewis Beck explains this assymetry by claiming that the schema of case is always cognitive in function but there is no factual input available to the moral law because such a law is of what ought to be done not of what is (1960, 158). Sensible intuitions are available only for laws of nature, not for laws of freedom. This is why Kant cannot provide a schema of case through sensibility but a schema of a law itself through the faculty of understanding. Therefore, we can reasonably assume that by the application of universal rules to actions *in concreto* Kant understands decisions about the moral possibility of actions. To make a practical judgment means to see if an action is morally possible accoding to universal principles.

The ideas of pure reason are in principle not applicable to experience, whereas the categories of understanding must apply to objects of experience. This is a fundamental asymmetry between theoretical and practical reason.

Among objects of experience Kant counts not only phenomena but also human actions. Nevertheless, the two uses of pure reason, practical and theoretical, relate to objects in fundamentally different ways. Theoretical reason has to do with the cognition of objects of experience as given in the sensible intuitions. „Practical reason, on the contrary, since it does not have to do with objects for the sake of *cognizing* them but with its own ability to *make them real* (conformably with cognition of them), that is, with a *will* that is a causality inasmuch as reason contains its determining ground; since, accordingly, it does not have to provide an object of intuition but, as practical reason, *only a law* for such an object“ (KpV 5: 89). Theoretical reason cognizes objects and practical reason realizes objects. The objects of practical reason are events created by human beings in virtue of their autonomy.

Kant misleads us when he claims that practical judgment faces the same difficulties as theoretical judgment. The former is not about a correspondence relation between thought and reality, but about a God like position where the rational agent has to originate something in experience. In the context of practical reason, the problem we face is how to decide which action is morally possible to create. It is not the problem of what is contained universally *in abstracto* to be exhibited *in concreto*, namely, that there is no corresponding object in experience to the supersensible idea of morally good. Such a perspective makes sense only for a naturalist, since moral properties supervene, correspond or are reducible to natural properties. However, for Kant the morally good is a supersensible property irreducible to a natural property. He argues that the objects of practical reason should not be empirical incentives and natural inclinations, which fall under the laws of nature. Therefore, the cognitive function of subsuming an object of experience under a category of understanding cannot be assigned to the type of pure practical judgment.

Kant also tells us that practical judgment has a specific problem not shared by theoretical judgment: „that a law of freedom is to applied to actions as events that take place in the sensible world and so, to this extent, belong to nature“ (KpV 5: 68). Laws of freedom are separate from the natural world but, nevertheless, they somehow have to be applied to sensible events such as human actions. We have seen that the application to actions should not be understood in a cognitive manner, but from a normative perspective, namely, what actions are morally possible. The subsumption Kant is talking about is a normative subsumption, which refers to the determination of the will as to whether a possible action is in conformity with laws of freedom. Practical judgment can subsume possible actions using the form of natural law as the type of the moral law. This does not show that the moral law can be exhibited *in concreto*, but only that we can have a representation of the determination of the will through the moral law using the form of natural laws which can be exhibited in actions as natural events: „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 possible through your

will“ (*KpV* 5: 69). Kant asks whether a proposed action that was to take place deterministically is morally possible through our own will. The universality of moral laws is applied indirectly to actions through the universality of natural laws. This means that the type is a procedure which provides a representation. Therefore, the formula of the law of nature as the type of practical judgment makes possible a representation of the universalization of maxims.

Both FLN and schemata are procedures of providing a representation for an idea of reason and for a concept of understanding. The concept of number makes possible the representation of multiple objects in intuition. FLN makes possible the representation of determining the will to action in space and time, even though it is not given in experience. We can imagine a possible world in which the maxim of false promise determines the will of all human beings in the same as the law of gravity determines the movement of all objects. We can stipulate a possible world in which a maxim made universal determines the actions of human beings with the „force“ of natural laws. This shows that the problem of the type is not to exhibit *in concreto* the moral law, but to provide a correct representation of the determination of the will by moral laws.

Kant states the condition that a law of freedom cannot be applied if we cannot give an example from experience: „in cases where causality from freedom is to be appraised it makes that law of nature merely the type of a law of freedom, because without having at hand something which it could make an example «in a case of experience», it could not provide use in application for the law of a pure practical reason“ (*KpV* 5: 70). Thereby, the type of practical judgment gives the needed example in a case of experience which makes possible the application for the laws of freedom.

The form of laws of nature as an *a priori* rule of application determines the universal condition under which alone the moral law is to be applied. The form of natural laws covers all possible actions. If in the case of theoretical judgment Kant says that schemata „restrict them [a.a. – categories of understanding], i.e., limit them to conditions that lie outside the understanding (namely, in sensibility)“ (*KrV* B186), then in the case of practical judgment, to paraphrase Kant, it can be said that the formula of the law of nature restricts or limits the application of the moral law to conditions that lie outside the sensibility of inclinations and empirical incentives. The framework is turned upside down. For theoretical judgment the correct conditions of application lie in sensibility to avoid the natural indication of traditional metaphysics, but for practical judgment the correct conditions of application lie outside sensibility. To grant that the conditions of application lie outside sensibility one must use the universal form of natural laws.

Nevertheless, Kant sometimes judges what is morally possible by using only the formula of universal law. As previously highlighted, he uses directly the moral law to judge particular cases of maxims. Therefore, both are used to test the permissibility of maxims. FLN does not anything to FUL with regards to establishing what we ought to do. Then, how are we to understand



Kant's statement that „without having at hand something which it could make an example in a case of experience, it could not provide use in application for the law of a pure practical reason“ (*KpV* 5: 70)? The restrictive function of the type provides the answer. FLN targets not only moral deliberation, but also moral choice since it is the *a priori* rule of practical judgement. Practical judgment is practical inasmuch as it determines choice. FUL does not contain conceptually a necessary connection between moral deliberation and action, whereas FLN does. To will a maxim as a universal law does not imply that choice will be determined accordingly, but to ask whether a proposed action were to take place by a law of nature of which we are a part implies conceptually what ever we make possible through our will it necessarily determines choice.

In the chapter of the Typic, Kant insists that the main danger for practical judgment is to fall into moral empiricism: „reason is entitled and even required to use nature (in the understanding's pure form of nature) as the type of judgment; the present remark will serve to prevent reckoning among concepts themselves that which belongs only to the typic of concepts. This, then, as the typic of judgment, guards against empiricism of practical reason, which places the practical concepts of good and evil merely in experiential consequences (so-called happiness)“ (*KpV* 5: 70).<sup>16</sup> We are, thus, constrained to use FLN in order to place the concepts of morally good and bad outside the „experiential consequences“ when we make a moral choice. The schemata block the supersensible usage of categories of understanding, whereas the „schema of the law itself“ blocks the sensible usage of the moral law. Through FLN it is possible to avoid the empiricism of practical reason. The type of practical judgment, as a procedure of procuring a representation when a maxim is made into law of nature, contains the *a priori* restrictions of applying moral laws. The restrictive function of FLN limits the application of the moral law to formal conditions of the understanding, i.e. the form of natural laws. To apply the moral law or to provide use in application does not mean here to determine the moral possibility of a maxim, but to establish the moral possibility of an action. The two are conceptually different since we can judge a maxim to be morally impossible but nevertheless we will choose it to determine the will to action.

There is an intrinsic fact about human nature that gives birth to empiricism of practical reason: self-love<sup>17</sup>. Because self-love is deeply rooted in

<sup>16</sup> The type limits also limits against what Kant calls „mysticism of practical reason“ (the introduction of supersensible intuitions in practical reasoning). However, Kant believes that „it is much more important and advisable to guard against empiricism of practical reason, since mysticism is still compatible with the purity and sublimity of the moral law and, besides, it is not natural and not in keeping with the common way of thinking to strain one's imagination to supersensible intuitions“ (*KpV* 5: 71).

<sup>17</sup> By self-love Kant understands a „propensity to make oneself as having subjective determining grounds of choice into the objective determining ground of the will in general“ (*KpV* 5: 74).

human nature, it is very important for practical reason to guide itself against empiricism. To quote Kant at length, empiricism „destroys at its roots the morality of dispositions (in which, and not merely in actions, consists the high worth that humanity can and ought to procure for itself through morality), and substitutes for it something quite different, namely in place of duty an empirical interest, with which the inclinations generally are secretly leagued; and empiricism, moreover, being on this account allied with all the inclinations, which (no matter what fashion they put on) degrade humanity when they are raised to the dignity of a supreme practical principle and which are, nevertheless, so favorable to everyone’s way of feeling, is for that reason much more dangerous than any enthusiasm, which can never constitute a lasting condition of any great number of people“ (*KpV* 5: 71).

The restrictive function blocks the substitution of the motive of duty with an empirical interest in moral decision making. Here Kant has in mind the process on actually causing an action. Even if one knows that lying is not morally possible, self love would still determine to chose lying, which is natural „to everyone’s way of feeling“. Kant believes that the natural way of feeling is not just a passing inclination; it is an essential feature of human nature, which constantly determines human beings to adopt in action the empirical interests of self-love. Self-love is psychologically constitutive to human beings and it gives birth to a practical gap between the moral law and action. Against this human propensity, the form of natural laws as a rule of practical judgment gains a normative dimension. FLN is not necessary to determine the moral possibility of maxims, but to reject or adopt in action the right maxim, therefore to decide that the will causes the right action.

The type is the conceptual tool with which practical judgment assumes a necessary connection in the rational will between duty and action. The moral duty makes a claim on us to act in certain manner, but in the case of rational human beings what is said in theory is not always applied in practice, to paraphrase Kant’s famous essay. Our natural „way of feeling“ changes the necessary relation between theory and practice, and substitutes in action the universality of duty with the generality of empirical interests. This happens simply because human beings are the sort of beings which, according to Kant, are „affected by sensibility, as incentives of a different kind, and in whose case what reason all by itself would do is not always done, that necessity of action is only called an ought, and the subjective necessity is distinguished from the objective one“ (*GMS* 4: 449). The fact that the necessity of action for human beings is called an „ought“ implies the very possibility of not obeying it. The subjective necessity of action is whatever a rational agent decides to do at a particular moment. It springs from his life plans, desires, inclinations etc. In the case of rational human beings, a subjective incentive is „distinguished from the objective one“ because not always what ought to be done will actually be done. Kant knew that people do not necessarily reject the objective necessity of duty when they choose a different course of action, i.e. they make exceptions from the moral law: „everyone knows very

well that if he permits himself to deceive secretly it does not follow that everyone else does so, or that if, unobserved, he is hard-hearted everyone would not straightaway be so toward him" (*KpV* 5: 69). As rational human beings, we recognize the universality of moral duties and admit that it be should respected, but at the same time we tend to believe that certain actions, which will not be repeated or do not seriously harm others, are somehow personally permissible. Even though, we will personally make an exception from the moral law, we will not recommend others to do it. Universality is substituted with generality even when someone makes an exception in action admitting that the respective action should not be taken as an example.

To imagine if a proposed maxim were to take place by a law of the nature is to imagine a possible world where it is practically impossible not to act accordingly to the law. With the introduction of FLN Kant wants to draw attention that we often take the unjustified liberty of making exceptions in daily life because we do not correctly apply the moral law. Kant clearly describes this thought immediately after he uses FLN to derive the four duties from the *Groundwork*: „If we now attend to ourselves in every transgression of a duty, we find that we actually do not will that our maxim should become a universal law, since that is impossible for us, but that its opposite should rather generally remain a law; we just take the liberty of making an exception to it for ourselves, or (just for this once) to the advantage of our inclination.“ (*GMS* 4: 424) The formula of the law of nature targets explicitly the empiricism of practical reason which makes an exception from the moral law to the advantage of empirical incentives. By assuming a necessary connection between moral deliberation and determining the will to action, moral empiricism is not possible anymore. If a successful universalized maxim were to take place by a law of nature then all actions would be causally based on the respective maxim. No other incentive can play a role in action causation. According to Kant, all rational human beings recognize that if something is an obligation then it „must carry with it absolute necessity“ (*GMS* 4: 389). Thus, they have to admit that the universality of the moral law must determine a rational will with the same unfailingness as the form of natural laws causes events of possible experience. If the moral law is essentially based on universality then we should not have a different approach in action from the way natural laws govern the realm of experience. We do recognize the absolute necessity of the moral law, but when we fail to determine our will accordingly, even if it will not happen again, „the universality of the principle (universalitas) is transformed into a mere general validity (generalitas)“ (*GMS* 4: 424). The universalization of maxims as natural laws blocks the substitution of the universality of moral laws with mere generality because in the imagined scenario it is causally impossible to make the substitution.

To be consistent with the absolute necessity requirement we must accept that the universality of moral laws should have a similar „strength“ to natural laws. Principles of practical reason do not necessarily determine the human will because people can act contrary to duty. Instead, events from the

sensible world cannot take place contrary to natural laws. FLN asks us to imagine a world where we cannot act contrary to the maxim just made into a law of nature in order to apply it correctly. To will a maxim as a law of nature implies that not exception can be made in action from the universal validity of the moral law, just as objects of possible experience cannot physically „disobey“ the laws of nature.

The type of practical judgment is indeed an intermediary between the moral law and action. The formula of the law of nature through its restrictive function constrains us to merge in action objective necessity with subjective necessity, to actualize the necessary connection between duty and action. The test with the physical causality of natural laws has the advantage to carry a strong psychological constraint on practical judgment, showing that the moral impossibility of a maxim must be tied to the moral impossibility of an action. Willing a maxim as a natural law rather than a law *simpliciter* seems more demanding due to the fact that the universalized maxim automatically determines all possible actions. It leaves no room for the liberty to make exceptions at the moment of action, since everything takes place accordingly to the strict universality of physical determinism.<sup>18</sup>

When Kant speaks about the application of the moral law to actions as natural events, he does not have in mind a referential application of the way we use language to ostensibly name objects, but a practical application of causing the will to generate the right action. To apply the moral law is to determine the will to act accordingly. It is improper to say that the moral law is applied to actions in experience. Instead, it is adequate to say that the moral law is applied to the will which creates the right actions in experience. Wood, referring to Kant's use of the FLN in the *Groundwork*, claims that it „is not wholly clear what is supposed to be the force of natural necessity“ (1999, 80). My analysis shows how the force of natural necessity is tied to moral choice. The formula of the law of nature has a restrictive function on the application of the moral law, filling the gap between moral impossibility of a maxim and moral impossibility of an action. Natural necessity forces a rational human being to merge the two, by necessarily connecting the result of moral deliberation with action causation.

## VI. THE NATURE OF PRACTICAL JUDGMENT

I will now consider a possible objection to my proposal of understanding the formula of law of nature in conformity with the schematism model.

Kant admits two models of judgment: determinative and reflective judgment (*KU* 20: 211). Determinative or subsumptive judgment is a top-down model of judgment. We have to start from a general rule and determine

<sup>18</sup> This is what makes Sally Sedgwick believe that FLN is a hard test of moral permissibility (2008, 112).

whether an instance falls under it. Moral thought depends on the subsumption of the particular cases under universal principles. Universal moral principles have „to guide judgment or to discipline the mind in observance of duty“ (MS 6: 217). According to this model the basis of moral judgment is the provision of general principles. By contrast, reflective judgment is a bottom-up model. We have to start from particular cases and generalise corresponding rules. In the moral domain, this model is specific to casuistry and to particularism.<sup>19</sup> Casuistry guides a moral solution reached in a case to other cases on the basis of similarities and differences. Casuistry looks for paradigmatic cases in our moral practice, which represent the basis for moral arguments and have a decisive impact on moral decisions (Jonsen & Toulmin 1988, 306). Even though it rejects moral generalisations from particular cases, a narrow conception of particularism assumes that „the possibility of moral thought and judgement does not depend on the provision of a suitable supply of moral principles“ (Dancy 2004, 7). According to particularism to judge a situation means „to work out its practical profile and thereby come to see what response it calls for.“ (Dancy 2004, 193) Both casuistry and particularism assume that moral judgment is not essentially tied to the provision of universal principles, from which we need to start, and that moral reasons vary among different cases.<sup>20</sup> Kant's ethics is the counter pole of casuistry and, especially, of particularism.<sup>21</sup>

Onora O'Neill (2002) argues that the two models of judgment should not be mistaken with practical judgment. Determinative and reflective judgments belong to the theoretical model of judgment because something is already given (O'Neill 2002, 335). This model is adequate for medicine, biology, law. A doctor can determine a diagnostic in a top-down fashion, applying general criteria to the particular case, or in a bottom-up manner, establishing similarities between cases. No matter what method we choose, the case is already given. The same goes for criminal law, where the judge has decide on actions which have already been committed.

But as we previously saw, the problem of pure practical judgement is an *ante factum* problem. We do not judge whether someone has lied, we judge whether one should lie. O'Neill (2002) correctly infers that practical judgment faces a different problem, namely that the particular which has to instantiate a principle does not exist, and may very well never exist. Often people fail

<sup>19</sup> A narrow conception of particularism, which denies the very existence of moral generalisations, partly assumes the model. But a wider conception of particularism, which admits weak connections between cases, overlaps with casuistry. Such a conception has been called „moral verdict particularism“ and it claims that „a correct moral verdict can only be reached by paying close attention to the individual case – to what differentiates it from other cases as much as what it has in common with them“ (McNaughton & Rawling 2000, 256).

<sup>20</sup> Casuistry is less „variabilist“ than a narrow conception of particularism, since it admits that paradigmatic cases embed partly invariable reasons.

<sup>21</sup> This does not mean that Kantian ethics ignores variable features of particular situations (see Herman 1993, 73-93).

to create certain states of affairs. The nature of practical judgment is to decide what should be instantiated. The challenge is to produce an action on the basis of a maxim which incorporates a universal principle, not to evaluate *post factum* an instantiated action. O'Neill claims that determinative and reflective judgment cannot help us to understand practical judgment because they need a particular to be already given. The theoretical model of moral judgment is correct only if all moral judgment is retrospective. But the retrospective assumption is false since the objective is to guide actions which are not yet instantiated. Indeed, this is a strong objection to particularism since it must presuppose an instantiated case in order „to work out its practical profile“, as Dancy puts it (2004). Moreover, O'Neill claims that the schematism also tells us nothing about the nature of practical judgment. It makes no sense to subsume under principles something which is not instantiated. One simply cannot subsume what does not exist. Schematism needs a given object of experience in order to subsume it under a category. The implication of O'Neill's argument is that theoretical judgment (what is) plays no role in practical judgment (what ought to be).

O'Neill is right, against particularists, that the objective of moral judgment is to guide action, not to assess it *post factum*, but she is wrong to claim that the model of schematism is not adequate to understand the type of the moral law which guides practical judgment. Kant argues that practical judgment presupposes not only to establish the permissibility of a maxim but also to determine the action in accordance with the permissibility result. This is what makes it practical. The formula of law of nature as an *a priori* rule of practical judgment connects moral deliberation with moral choice. According to Kantian ethics to make a practical judgment means to conceptually validate a course of action using the universalization standard and to instantiate it. Indeed, the enactment of a moral result in our behaviour is not contained by the theoretical model.

But this does not mean, contrary to O'Neill, that the theoretical model of the schematism plays no role in practical judgment. She fails to distinguish conceptually between the moral deliberation and the determination of the will to action *per se*. What is subsumed by practical judgment under objective principles is the maxim, understood as a subjective principle of a proposed course of action, not the action *per se*, which is instantiated. And about a maxim we can meaningfully assert that it is given or that it exists, even though not in experience. Similar to the way we deliberate in our inner mental activity whether certain propositions make sense according to logical principles, a maxim is given in front of our „mental eyes“ to subject it to principled moral evaluation. We often ponder whether some idea is useful or an argument coherent. Therefore, it can be said that the argument or the idea is given to analysis. If we can say that thoughts exist then we can meaningfully say that maxims also exist. Indeed, actions are subsumptible only *post factum*, but the model of schematism cannot be ruled out because something is given, i.e.

the maxim. Maxims as proposed actions can be subsumed *ante factum* under principles. Whenever we face moral problems, thoughts and proposed courses of actions are given in our mental life, which are sorted out through moral deliberation. Therefore, it makes sense to use the schematism model in order to understand the type of practical judgment, as Kant himself did.

In Kant's view the nature of practical judgment is two-folded. Firstly, as rational agent we must engage in an inner deliberation of subsuming a maxim under the condition of qualifying as universal law. This process validates the subjective principle of action from a normative perspective. Secondly, we ought to use the result of inner moral deliberation to shape our actions. The result of qualifying as universal law of nature is necessarily enacted. Practical judgment forces us to merge in action subjective principles with objective principles. The formula of law of nature fills in the practical gap between subsumption and enactment. Kant strongly believed that for the realm of morality „the worth of practice rests entirely on its conformity with the theory underlying it“ (TP 8: 277). The formula of the law of nature helps us to do the right thing by connecting *a priori* the practice with the theory underlying it.

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