

# Practical judgment as reflective judgment: On moral salience and Kantian particularist universalism

Sabina Vaccarino Bremner 

Department of Philosophy, University of  
Pennsylvania, Philadelphia, Pennsylvania, USA

## Correspondence

Sabina Vaccarino Bremner, University of  
Pennsylvania, Cohen Hall 463, 249 S. 36th St,  
Philadelphia, PA 19104, USA.  
Email: [svbremner@gmail.com](mailto:svbremner@gmail.com)

## Abstract

Moral particularists and generalists alike have struggled over how to incorporate the role of moral salience in ethical reasoning. In this paper, I point to neglected resources in Kant to account for the role of moral salience in maxim formation: Kant's theory of reflective judgment. Kant tasks reflective judgment with picking out salient empirical particulars for formation into maxims, associating it with purposiveness, or intentional activity (action *on ends*). The unexpected resources in Kantian reflective judgment suggest the possibility of a *particularist universalism*, where recalcitrant particulars directly inform, and in some cases revise, moral principles. Such an account improves on particularist accounts of moral salience and moral perception: rather than deriving moral sensitivity solely from an agent's upbringing or cultural resources, the reflective dimension is situated alongside the universalist dimension of moral principles typically identified with Kantian ethics, allowing for a critical approach both to moral universals and to the reception of moral particulars.

## 1 | MORAL PARTICULARISM AND GENERALISM

This paper is part of a broader project to develop a Kantianism that espouses an ethics of principles, but also bestows a role to the *revision* of moral principles. The resources for such an account, I claim, are to be found in Kant's theory

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of reflective judgment, the cognitive power required for forming new concepts or principles on the basis of experience. On the view I begin to develop here, reflective judgment involves both the incorporation of *new moral particulars* and the *revision of moral universals* on the basis of such discoveries. I ground this view in Kant's account of teleological judgment in the *Critique of Judgment*, where the power of judgment's function in forming maxims on the basis of experience is isolated from the guidance of the moral law. A *reflective dimension* of practical reason can thereby be discerned, one operative alongside the moral dimension generally identified with Kant's practical philosophy. The reflective dimension, on this proposal, is implicated in the formation and revision of maxims, while the moral dimension pertains to the moral law and permissibility of maxims once formulated.

An advantage of this proposal is that it offers a means of responding to at least one influential line of critique of Kantian universalism. Those who characterize virtue as sensitivity to circumstance or context (McDowell, 1978; McDowell, 1998; Nussbaum, 1986, 1990), mode of perception or way of seeing one's situation (Audi, 2013; Williams, 1981), or responsiveness to novel combinations of reasons in context rather than applications of principles (Dancy, 1993, 2004), charge Kantians with failing to capture these aspects of morality. Kantian universalism, they claim, fails to address the moral role of grasping particulars to which no preexisting general moral rule or principle definitively seems to apply.<sup>1</sup> In such cases, what is needed is an ability to recognize salient features of one's context, improvising novel moral responses to them, rather than the mere application of a rule.

I contend that the choice between moral sensitivity and moral principle is a false one, and I show below why I take Kant's theory of reflective judgment to bear this out. On the view I defend here, the revisability of what we take to be salient, and the ensuing incorporation of new salient features into principles, is precisely what concerns Kant's account of reflective judgment. As I begin to show here, this account bears out that particulars can directly *inform* principles. The relation between universal and particular can be understood as a two-way dependence rather than as mere application.<sup>2</sup>

In what follows, I start by examining some of the principal objections to Kantian universalism from particularism: the problem of moral salience, as well as the closely related problem of relevant descriptions. I then turn to several predominant Kantian strategies for responding to the problem proposed by Onora O'Neill, Barbara Herman, and Hannah Arendt, showing why I take them to fall short on interpretive and theoretical grounds. Next, I flesh out an account of the reflective dimension of practical deliberation: while interpreters have tended to accord a reflective dimension to theoretical judgment alone, I point attention to passages where Kant's view allows for extending a role to the reflective in practical judgment. I suggest that the operations of teleological judgment, in forming maxims to guide empirical inquiry, elucidate the contribution of the reflective dimension in isolation from the moral dimension, since, unlike other judgments, teleological judgment lacks a corresponding (determining or moral) dimension. I then turn my attention to Kant's conception of *moral* maxims, where the reflective dimension is operative in revising maxims to accommodate newly salient particulars. I conclude by returning to particularism and generalism to show how I take my account to offer a solution to some of the deficiencies of particularism.

## 2 | THE PROBLEM OF MORAL SALIENCE

Particularist approaches to ethics charge Kantian universalism with failing to acknowledge the moral relevance of perception or sensitivity to context. To act morally, on such accounts, does not consist primarily in adherence to pre-determined rules; it instead calls on an agent's ability to recognize which features of her circumstances are relevant to moral deliberation. As Nussbaum characterizes the appropriate conception of virtue, "Excellent choice cannot be captured in general rules, because it is a matter of fitting one's choice to the complex requirements of a concrete situation, taking all of its contextual features into account" (1990, pp. 71–73). Rather than mere application of rule, what is called for in such cases is the "ability to recognize the salient features of a complex situation", such that the fitting moral response can spontaneously be improvised (1990, p. 74).

The role of moral salience poses a problem to Kantian ethics because the categorical imperative, often conceived as a test, can only determine the moral permissibility of maxims that have *already been formulated*, once the morally relevant features of situation taken to call for one action rather than another have been factored in. As Dancy puts the objection, the categorical imperative tells us only that it is wrong to act on a maxim that cannot be universalized; it does not act “as a test of whether a consideration is morally relevant” (2004, p. 68). To be able to apply a given moral principle, agents have to know which features of their proposed action are of moral import—or, even more basically, they must first know whether a given situation calls for action or not.

Particularism, on this view, thus demonstrates that the introduction of new moral considerations can alter our ultimate moral conclusions. Take Dancy's characterization of the following groupings of reasons for acting:

1. If you are causing someone pain, you are doing something wrong. ( $p \rightarrow q$ )
2. If  $p$  and the pain is a statutory punishment for a recognized offence, you are not doing something wrong. ( $[p \ \& \ r] \rightarrow \neg q$ )
3. If  $p$  &  $r$  and the punishee was unjustly convicted, you are doing something wrong. ( $[p \ \& \ r \ \& \ s] \rightarrow q$ ) (Dancy, 2004, pp. 8–9)

Dancy takes reasoning chains (1–3) to tell in favor of particularism and against universalism, since, on his view, a particular feature (such as  $p$ ) can count against an action in one context, such as (1), and in favor in another, such as (2). Ultimately, which one it will be comes down to the context in which one acts, and whether one is sufficiently perceptive to notice each of the features salient to one's course of deliberation.

Another way of capturing the objection is in terms of what the Kantian literature has termed the problem of relevant descriptions (O'Neill, 1975, 2018), a charge initially formulated by Elizabeth Anscombe. Anscombe (1958) contends that since the permissibility of maxims depends on the description of the action one employs, and since any given action admits of innumerable possible descriptions, the universalization procedure for determining permissibility is “useless” (27). If, to continue using Dancy's example, I choose to describe my action as “I am causing someone pain”, I will, following the reasoning in (1), conclude my action to be morally wrong; if I choose to describe my action as “I am inflicting statutory punishment for a recognized offense”, I will, following (2), take it to be morally justifiable. Or, in an example Anscombe (1957) herself gives: an agent poisons a group of Nazis by putting toxic chemicals into their water supply. Anscombe argues that this agent can justifiably describe his action as “moving his arm”, “operating the pump”, “replenishing the water supply”, or “poisoning the inhabitants”. The same action admits of all four possible descriptions, picking out different salient features of the action-context in each case. And, since the results of the categorical imperative procedure differ depending on the description supplied, the problem of relevant descriptions, much like the problem of moral salience, poses a concern for Kantian ethics. The specific action description “I am moving my arm” can be universalized across all agents, but the more general description<sup>3</sup> “I am fatally poisoning the inhabitants of this house” results in a contradiction, and therefore cannot be universalized.<sup>4</sup>

Anscombe concludes that Kant's moral philosophy cannot tell us how to *formulate* our maxims, but only how to adjudicate the morality of already formulated maxims.<sup>5</sup> Since the same action admits of many possible descriptions—in other words, many possible maxims can apply to the same action—Kantian moral theory cannot speak to important morally relevant content that pertains to the very question of moral admissibility the categorical imperative was to adjudicate.<sup>6</sup> The problem of relevant descriptions bears directly on practical judgments that arise in ordinary deliberation, since not only is it the case that agents *can* offer varying descriptions of the same action, picking out this or that salient feature of their action-context, but it is also the case, in terms of their action phenomenology, that they often *do*. As Allen Wood notes, “My intentions can be described—not artificially but quite accurately—in greater or lesser detail, at higher or lower levels of generality, by mentioning or omitting this or that feature of the situation” (1999, p. 103).

### 3 | RESPONSES TO THE PROBLEM

There have been two principal avenues available to Kantian ethicists seeking to respond to the particularist challenge: one can either embrace moral salience, or one can reject the problem altogether. Opting for the former, however, prompts a further interpretive dilemma: to accommodate moral salience, one must either account for how moral salience can be derived from Kant's moral philosophy, or alternate resources for it, external to Kant's moral philosophy, must be found.

The first horn has been tackled, most famously, by Barbara Herman, and her account of “rules of moral salience” (RMS). Herman argues that the results of the categorical imperative are subject to what agents take to be relevant content to be incorporated into their deliberative procedure, where the issue of which content is relevant is to be settled through RMS. Herman agrees with the particularist, then, that pure moral principle (including the categorical imperative) is not sufficient; agents must also be able to discern “the moral marks of their actions and circumstances” (1993, p. 78; see also Herman, 1996). Yet RMS are “not themselves moral rules”; they are rules for judging context inculcated through socialization and moral training, and as such are contingent rather than necessary, dependent on culture and education (1993, p. 75).

While the strategy of embracing salience helps to account for moral responsiveness, it lacks textual basis in Kant's own expressed views, posing a problem for the Kantian grounding of RMS. Since this grounding cannot be located in the categorical imperative procedure, which applies only to already formulated maxims, Herman traces RMS to the formulation of the moral law as a fact of reason (5:29). The fact of reason draws our attention, on her view, to our consciousness of ourselves as moral agents, and thus to the conditions of our own moral agency, directing us, in turn to the marks determinate of human agency (1993, p. 85).<sup>7</sup> These, she claims, are aspects of moral experience that are not reducible to the categorical imperative procedure, and that therefore can help to orient a Kantian account of moral salience.

However, Kant seems not to have had RMS in mind when he articulated the idea that the moral law appears to us as a fact of reason. The context in which he does so is by situating it as a premise in an argument leading directly to the formula of universal law, FUL (5:30), one of the formulations of the categorical imperative. Indeed, in this passage FUL is given the title “Fundamental Law of Pure Practical Reason” without any explicit transition between Kant's introduction of the “moral law” and FUL as the “fundamental law”, raising the possibility that what he means to pick out with the term “moral law” in this context just *is* the most basic formulation of the categorical imperative.<sup>8</sup> This undercuts Herman's claim that the moral law can be used to ground RMS *independently* of the categorical imperative procedure.

The second horn—rejecting the problem altogether—has been advanced by Onora O'Neill (2018), who objects to the invalidity of the point of view on action that moral salience theorists presuppose. O'Neill charges particularists with taking up the stance of spectators or observers rather than *doers* of action. Thus, such accounts rest on a confusion between theoretical and practical cognition, since morally “perceiving” or evaluating situations involves theoretical judgment rather than practical: “A fair amount of ethical writing 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” (124n).<sup>9</sup> Thus, practical judgment is “neither determinant nor reflective”, since it involves what O'Neill terms “indeterminate universals” that *lack* already given particulars: practical judgment “must be undertaken *before* the relevant particular exists: we cannot pick out future act-tokens” (2018, p. 123). The role of moral salience in practical deliberation is therefore limited to a mere “preliminary” to action, an “early warning system” (1989, p. 184; 2018, p. 18): action strictly speaking is about *shaping* the world rather than observing or judging it.

But how, then, to understand the agent's generation of maxims, or indeed, formation of intentions? What would it mean to apply an “indeterminate universal”, such as humanity or autonomy, in abstraction from specific aspects of one's situation? Is it tenable to conceive of the moment of action as altogether divorced from consideration of

context? And how should such a view be brought to bear on the formation of maxims themselves—maxims, which, in O'Neill's original formulation, should “be individuated only by referring to a person, and so to a place and a time”, such that one's maxim can be “inappropriate to the situation” (1975, pp. 62, 247)?<sup>10</sup>

By way of a partial response, O'Neill claims: “The appraisal of situations, and of their details, is of course of great ethical importance—if we do not notice the bullying we cannot consider whether to desist... But noticing and appraising a situation is not practical judgement: having noticed the bullying we still need to decide whether to desist or to intervene” (2018, p. 89). In other words, for O'Neill, the question of moral salience, while “ethically important”, is one of *theoretical* judgment rather than practical judgment. But notice that a given perception of a particular moral situation already often guides the moral response: judging a given situation to be “bullying” rather than “teasing” already suggests that the right response is to intervene, not to laugh it off. O'Neill's claim that practical judgment has to do solely with shaping the world rather than perceiving it risks leading to the un-Kantian conclusion that the practical question in such cases concerns, first and foremost, the *consequences* of action over the crafting of a fitting response.

What alternatives then remain if both strategies fall short—both Herman's attempt to accommodate moral salience within Kant's moral philosophy, and O'Neill's rejection of moral salience altogether? One promising and well-known route, albeit one often ignored among Kantian ethicists, is presented by Hannah Arendt, who takes recourse to alternate resources in Kant to account for the particularist aspects of moral judgment. In particular, where Herman overlooks the role of reflective judgment in ethics, and O'Neill censures it, Arendt famously embraces it. She uses the model of aesthetic judgment to counter what she takes to be Kantianism's overly rigoristic reliance on the application of rules—as in the example of Adolf Eichmann, who took himself to be acting on Kantian principles even when organizing Nazi death camps. What is needed, she argues, is not moral principle, but the exercise of judgment, as in the case of judging a beautiful object for which, Kant claims, a definite concept is lacking: “The faculty of judgment, which one may call, with some justification, the most political of man's mental abilities... is the faculty to judge particulars without subsuming them under those general rules which can be taught and learned until they grow into habits that can be replaced by other habits and rules” (1971, p. 446; see also 1963, pp. 136, 295). Arendt can therefore be taken to concur with a key line of argumentation in particularist accounts of moral perception<sup>11</sup>: genuinely moral action requires the judgment of particulars that should not ultimately be subsumed under an externally imposed “general rule” or habit.

Yet Arendt's view, too, faces interpretive and broader philosophical challenges. Arendt reads Kant's account of aesthetic judgment in particularist terms, and ascribes to a model of morality derived from this very particularism (Arendt, 1970, pp. 15, 53–55, 61, 67). As I show below in more detail, however, Kant's account of reflective judgment, whether aesthetic or teleological, is not strictly particularist, nor is it non-conceptual: while it is right to say that aesthetic particulars cannot be *subsumed* under existing universals, they do play a constructive role in forming *new* universals.<sup>12</sup> This aspect of reflective judgment is even more pronounced in the case of teleological judgment, which does explicitly involve conceptual determination from the outset: it “proceeds in accordance with concepts” and “with particular principles” (5:194).

Attending to these nuances in Kant's account is instructive: judgment here does not take the form of judging each particular in *independence* from universals, but demonstrates that particulars can *shape* universals. The options, in other words, are not restricted to either applying rules that are already given or treating particulars solely as particulars. As I show, the relation between moral particular and moral universal can be understood in terms of a new model: as a two-way dependence rather than mere subsumption<sup>13</sup> or application.

## 4 | AN ALTERNATE APPROACH

Taking into view all three proposals for construing Kant's ethics in light of the problem of moral salience, it is clear that, while each is instructive in its own right, more work remains to be done to fully address the problem. I therefore

suggest building on all three accounts in the following fashion: I concur with Herman that moral salience has a place in practical reasoning, one not captured by the categorical imperative alone. But rather than attempting to ground moral salience in the moral law as fact of reason, I bite O'Neill's bullet: moral salience *is* the purview of reflective judgment; it is *not* the domain of the moral law or categorical imperative (what I will later term the “moral dimension” of practical reasoning).<sup>14</sup> However, in taking recourse to reflective judgment to account for this aspect of ethical deliberation, I do not construe it, as Arendt does, in particularist terms. Instead, on my account, reflective judgment is implicated in the reception of salient features and ensuing formation of universals: moral concepts or (what interests me primarily in this paper) maxims.<sup>15</sup>

In so doing, I take the role Kant accords to reflective judgment in both Introductions of the *Critique of Judgment* to also apply to *moral* reasoning.<sup>16</sup> Reflective judgment is there defined not in terms of its activity in taking in particulars as such, but in forming *new* generals or universals on the basis of particulars:

To reflect... is to compare and to hold together given representations either with others or with one's faculty of cognition, in relation to a concept thereby made possible. (20:211; First Introduction).

The power of judgment 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 a 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 reflective [*bloß reflektierend*]. (5:179; Published Introduction).

Thus, while determining judgment, one major topic of the first *Critique*, subsumes the experiential manifold under already given rules (the categories, or existent empirical concepts), reflective judgment forms or finds *new* “universals” in encountering matter that cannot be subsumed under the existing repertoire of rules. Reflective judgment seeks a universal for a particular that is given, while determining judgment seeks particulars to which universals such as the categories, which are *already* given, can be applied.<sup>17</sup>

In considering the role reflective judgment plays in practical reasoning, it is helpful to take on board a suggestion made in the literature on Kantian theoretical cognition, where the interdependence of reflective and determining judgment has been acknowledged for some time (Bell, 1987; Guyer, 1990; Floyd, 1998; Allison, 2001, p. 20; Ginsborg, 2015). As Longuenesse notes, Kant is careful to characterize the aesthetic and teleological judgments that comprise the focus of the third *Critique* as “*merely* [*bloß, nur*] reflective judgments.”<sup>18</sup> This usage suggests that both determining and reflective judgments have a reflective aspect, but only reflective judgments are *just* reflective: “The peculiar feature of aesthetic and teleological judgments is not that they are reflective judgments (*for every judgment on empirical objects as such is reflective*); it is rather that they are *merely* reflective judgments, judgments in which reflection can never arrive at conceptual *determination*” (Longuenesse, 2001, p. 163). All empirical judgments thereby comprise a *reflective dimension*, insofar as they presuppose the functions of comparison, reflection, and abstraction Kant describes as necessary “subjective conditions under which we can arrive at concepts” in the Amphiboly chapter of the *Critique of Pure Reason* (A260/B316).<sup>19</sup> But only “reflective” judgments are *uniquely* reflective in that they lack the possibility of ultimately subsuming their objects under concepts, retaining only these reflective functions.<sup>20</sup>

My proposal in this paper is that a reflective dimension could be extended to the case of *moral* reasoning, as well as theoretical reasoning.<sup>21</sup> “Merely” or “purely” reflective judgments would thereby be differentiated from judgments that combine reflective and determining, or reflective and moral, aspects. On this reading, aesthetic and teleological judgments, as “merely” or “only” reflective, would constitute paradigm cases for studying the general function of reflective judgment, since both aesthetic and teleological judgments lack a corresponding theoretical or moral dimension.<sup>22</sup> Attributing a broader role in this manner to the reflective in cognition helps to explain why Kant characterizes reflective judgment in both Introductions not narrowly in terms of aesthetic or teleological judgment,

but more broadly, as I showed above, in terms of the formation of new universals on the basis of undeterminable particulars (20:211; 5:179).

#### 4.1 | Reflective judgment and practical purposiveness

To show that a reflective dimension indeed obtains in practical reasoning as well as in theoretical reasoning, I need to demonstrate two claims: first, that reflective judgment is implicated in practical purposiveness as well as natural purposiveness, and second, that practical purposiveness is crucial for Kantian ethics. I will then return to the question of moral salience to examine how the reflective dimension of practical reasoning can help meet the particularist challenge—improving both on Kantian universalism as traditionally conceived, and on particularisms in ethics. I will have to be necessarily cursory in the interpretation of reflective judgment I advance in doing so: it is not my focus in this paper, given my concern with particularism and maxims of action, to elaborate a full defense of my interpretation of reflective judgment or of Kant's aims in the *Critique of Judgment*. Nevertheless, I think there are enough elements in my account potentially illuminating for the problem of moral salience that it can be presupposed for the purposes of my argument.<sup>23</sup>

Can reflective judgment plausibly be conceived as playing a role in practical purposiveness, as well as natural? Reflective judgment is governed by the principle of purposiveness: “The power of judgment, which with regard to things under possible (still to be discovered) empirical laws is merely reflective, must think of nature with regard to the latter in accordance with a *principle of purposiveness* for our faculty of cognition” (5:184). Indeed, purposiveness is often taken to be the central topic of the *Critique of Judgment* as a whole.<sup>24</sup> More specifically, this principle is reflective judgment's a priori (yet merely subjective) principle of *natural* purposiveness: that nature is conducive to our cognitive powers and is ordered in an intelligible way (5:185).

Yet Kant defines the notion of “purposiveness” (*Zweckmäßigkeit*) at issue as, most basically, *practical* purposiveness, or intentionality in action: action as aimed at a purpose (a telos), or end (*Zweck*). In §10, “On Purposiveness in General”, Kant defines a purpose as “the object of a concept insofar as the latter is regarded as the cause of the former”, and purposiveness as the “causality of a concept with regard to its object” (5:219). As Zuckert glosses the point, “Purposes are aims of intentional activity: they are objects (products or actions) conceived by agents and brought about in accord with those intentions” (2021, p. 353; see also 2007, pp. 78–79); Ginsborg concurs that Kant's first sense of purposiveness “appears to be restricted to products of intentional causality” (2015, p. 230).<sup>25</sup> Practical purposiveness, then, refers to *intentionality*: directedness toward an aim, choosing means to one's ends, guided by one's concept of it, or intention involving it. The *Critique of Judgment's* close connection to the practical through “purposiveness” is unfortunately sometimes missed in translation; Kant frequently employs the term *Zweck* (purpose) in his moral philosophy, but this is translated as “end”, not “purpose”—most famously in the formula of humanity as an end in itself (*Zweck an sich selbst*) (4:428–437). Yet Kant stresses that the core notion—*Zweck*—is the same in both domains, advancing nearly identical definitions in both the *Critique of Judgment* and the *Metaphysics of Morals*.<sup>26</sup>

Natural purposiveness (as “suitability” or “usefulness”, in particular to judgment or cognition, or the “purposiveness of nature for our understanding”, 5:187) is a second sense of purposiveness derivative from the first, more basic, sense (Zuckert, 2007, p. 80). Kant claims that “merely” reflective judgment judges nature in *analogy* to practical purposiveness, or “art”: the purposiveness of nature is a “concept... distinct from that of practical purposiveness (of human art as well as of morals), although it is certainly conceived of in analogy with that” (5:181). Thus, in attributing purposiveness to nature, we analogically attribute our own agency and practical rationality to it, as if nature were intentional and agential, like we are. Practical purposiveness plays an “analogical” role in judgments of natural purposiveness because in the latter case, “where objects of nature are *merely* judged as if their possibility were grounded in art”, such judgments “do not determine anything about the constitution of the object nor the way in which to produce it” (20:200–201; my italics). In other words, *practically purposive* judgments concern the production

of objects which are suitable to our practical aims, shaping the world directly through our judging activity; judgments of *natural purposiveness* instead shape thought *about* the world, conceiving of phenomenal objects in a fashion suitable to our *cognitive* aims (namely, to be known by us).<sup>27</sup>

On my reading, the pure employment of the power of judgment (“mere” reflective judgment) enables us to isolate the *form* of purposiveness, of the purposive judging activity common to *both* merely reflective judgment *and* to practically purposive activity as such, since, in the former case, no object is produced. “Mere” reflective judgments are therefore purposive without the practice, without the activity, arising in the subject’s stance as spectator of empirical objects, rather than as actor. Practically purposive judgments, in contrast, encompass *both* reflective and practical dimensions,<sup>28</sup> as Kant suggests by devoting the opening section of both Introductions to analyzing them (20:195–201; 5:171–3). Thus, in the taxonomy of the three faculties given in both Introductions, Kant cites practical purposiveness, “art”, as the power of judgment’s “product” or “application” (20:246, 5:198).<sup>29</sup> Indeed, I have argued elsewhere that the “culture of art”, or cultivation of practical purposiveness, is the point of unification of the *Critique of Judgment* as a whole (Vaccarino Bremner, n.d.).

In the *Critique of Judgment*, Kant ultimately situates the reflective power of judgment as *mediating between* the theoretical and the practical. Kant tells us that the power of judgment “can occasionally be annexed to either of them,” to theoretical or practical philosophy, “in case of need”, constituting an “intermediary” or making possible a “transition” between them (5:168; 5:196).<sup>30</sup> Reflective judgment, in being positioned as intermediary between the two, suggests that reflective judgment is bound up with *both* theoretical and moral judgment. Kant never fully spells out what he means by this characterization of reflective judgment, indicating many suggestive points of connection throughout the *Critique of Judgment*.<sup>31</sup> Yet one way to make sense of the mediating role Kant accords to reflective judgment is that it is called for when it comes to those concepts, such as purposiveness, and those aspects of cognition, such as maxim formation, that combine moral and theoretical modes of reasoning, or that provide the possibility of transitioning from one to the other. To be sure, this argument is never consistently developed in the *Critique of Judgment*, since, throughout, Kant is principally concerned with “mere” reflective judgment rather than the reflective dimension of cognition as such. Nevertheless, we have begun to see that there are numerous indications that important resources for practical reasoning can be traced to reflective judgment, as the domain for purposive judging activity in general.

## 4.2 | Practical purposiveness and Kantian ethics

Even if it is granted that reflective judgment is implicated in thinking purposiveness in general—practical as well as natural—the objection still arises that practical purposiveness is merely a matter of *theoretical* cognition, rather than moral. Such an objection might be posed from O’Neill’s vantage point in claiming that moral salience is merely theoretical and therefore not relevant to practical cognition as such: moral salience arises only in judgments of how things *are*; it does not figure in practical judgments that shape the world in accordance with a conception of how it *should be*. This takes us to the further question of whether practical purposiveness is even relevant to Kantian ethics. After all, Kant opens the *Critique of Judgment* in both Introductions by claiming that “practical precepts” constitute moral philosophy only “*when and if their principle [Prinzipien] is not borrowed from the concept of nature, which is always sensibly conditioned*” (5:173). Thus, an intention of action not grounded in a moral “principle” is only a part of *theoretical* philosophy, not moral philosophy, since in this case the will is “determined through natural incentives”, concerning only “the nature of things” as they already are (5:172, 20:198). Yet, even in the *Critique of Judgment*, Kant nevertheless characterizes practical purposiveness in general as a mode of *freedom*: for instance, as “the freedom of [man’s] causality” or “production through freedom” (5:368, 5:303; see also 5:368, 5:431, 6:213, 6:381, 6:384), including in cases which seemingly have nothing to do with morality, such as adorning clothing with ‘colorful bird feathers’ (5:368). Kant seemingly undermines himself—newly *withdrawing* the general

domain of practical purposiveness from morality when ‘naturally determined’ (Papish, 2018) while at the same time attributing to it “freedom”.<sup>32</sup>

By way of an initial response to this apparent contradiction, I take Kant to be drawing a distinction in these sections between empirical and moral motivating grounds of the will, rather than advancing a more general claim against the role of empirical reflection in moral reasoning as such; indeed, I take his central point to be that the domain of practical intentionality, while ultimately *subject* to moral evaluation, *cannot be reduced* to the “moral dimension” of the will’s motivation.<sup>33</sup> Indeed, Kant’s moral theory admits an important role to considerations of the “nature of things” alongside the command of the law. Kant distinguishes maxims from laws, for instance, in that laws are prescriptive, while maxims have an indispensably *descriptive* aspect:

A *maxim* is the subjective principle of acting, and must be distinguished from the *objective* principle, namely the practical law. The former contains the practical rule determined by reason conformably with the conditions of the subject (often his ignorance or also his inclinations), and is therefore the principle in accordance with which the subject *acts*; but the law is the objective principle valid for every rational being, and the principle in accordance with which he *ought to act*, that is, an imperative. (4:421n).

Maxims are defined as descriptive<sup>34</sup>: they consider the conditions of the subject, calling on her to pick out her desires (her “inclinations”), as well as her “ignorance”. Indeed, this is what I take Kant to mean in drawing the distinction between maxims and laws as one between merely subjective as opposed to objective or universal validity: while a maxim is “the subjective principle of willing”, the “objective principle (i.e., the one that would also subjectively serve all rational beings as the practical principle if reason had complete control over the desiderative faculty) is the practical *law*” (4:400). This is not to say that maxims are not also normative—as Longuenesse claims, the distinction can also be conceived as one “between a rule that we assign to ourselves (what we ought to do) under a condition particular to ourselves, and a rule that is binding for all” (2005, p. 252)—but there is no way to draw such a distinction without considering one’s sense of what one’s particular condition consists in, thus comprising an assessment of how things currently stand in the world.

It is therefore characteristic of maxims that they encompass our *sense* of our desires, inclinations, degree of ignorance, and other salient factors that bear on our action, as assessed from our particular standpoint. They are formed in accordance with our (at times deficient, or ignorant) perception of the empirical conditions in which we act, the particulars of our action-context: they reflect how the world *shows up to us* as finite human reasoners. The subjectively descriptive aspect of maxims distinguishes them from laws: a maxim picks out merely how a *given* “subject acts”; abstracted from the question of its universalizability, it does not (yet) make a claim to how an agent *in general* “ought to act”. Maxims, in incorporating salient particulars of context, therefore reflect differences *between* subjects: “A principle that makes certain actions duties is a practical law. A rule that the agent himself makes his principle on subjective grounds is called his *maxim*; hence different agents can have very different maxims with regard to the same law” (6:225). A maxim is distinct from law in that it is *made* by a given subject, reflecting how the world appears from her point of view.

Kant claims that we act on *purposes* or *ends*, and that our purpose is picked out by the maxim of the action: “All maxims have: (1) a *form*, which consists in universality... (2) a *matter*, namely an end [Zweck]” (4:436). Maxims, in setting forth a purpose, are therefore *expressions of one’s practical purposiveness*, such that “ethics can also be defined as the system of the ends [System der Zwecke] of pure practical reason” (6:381). Thus, practical reason must *conform* to subjective conditions, in particular to one’s purpose: “In practical cognition... the principles that one makes for oneself are not yet laws to which one is unavoidably subject, because reason, in the practical, *has to do with the subject*, namely with his faculty of desire, to whose special constitution the rule can variously conform” (5:20, my emphasis). Maxims are subjectively *normative* in that they necessitate the adoption of a given purpose, formed in accordance with the agent’s desires, thereby reflecting the agent’s sense of what is good or fitting for her to do.

We can see how the reflective and moral dimensions come together if we examine the universalization of maxims. If maxims are *merely* subjective, laws are *merely* objective: the former abstracted from the question of universalization, the latter from the empirical conditions of the acting subject, such that “the law contains no condition to which it was limited” (4:420). But the merely subjective condition of a proposed maxim can be taken to “also hold objectively”, not just subjectively: “You must therefore *first consider your actions in terms of their subjective principles*; but you can know whether this principle *also holds objectively*” by “conceiving yourself as *also giving universal law through it*” (6:225). In other words, the reflective domain of maxim formation and the moral domain of law cooperate in situated practical deliberation—of maxims conceived as universalizable.

We can construe this process of universalization as not only one of top-down application, as it is often presented, but also as one of bottom-up reflection, insofar as the agent *compares* her representation of her particular condition against an (indeterminate) universal. It thus meets Kant's definition of reflective judgment as “compar[ing] and hold[ing] together given representations either with others or with one's faculty of cognition, in relation to a concept thereby made possible” (20:211; compare A260/B316). In so doing, the agent forms a maxim, reflecting particular features in context she takes to be salient, which can ultimately be vindicated as a universal—a *particularized universal*.<sup>35</sup>

We can therefore see why Kant adds the qualifiers “*bloß*” and “*nur*” not only to the reflective dimension set against theoretical determining judgment (as we noted above), but also to *moral* reason, to define the scope of moral legislation: “Legislation through the concept of freedom takes place through reason, and is *merely [bloß]* practical. *Only in the practical alone [nur allein im Praktischen]* can reason be legislative” (5:175; my emphasis). Yet this still leaves a domain of practical reasoning, that of practical purposiveness and therefore of maxim formation, *not* solely or directly governed by reason: as the passage continues, “conversely, however, where rules are practical, reason is not on that account immediately legislative” (5:175). In stressing that universalizing one's maxim consists in asking oneself whether the “maxim can *also hold as a universal law*”, Kant indicates that the subjective normativity of maxim formation is only *limited* by one's representation of universal law—not replaced by it (6:225; 4:402–403, 4:412).

### 4.3 | The example of maxim formation in teleological judgments

How should we make sense of the cooperation of the reflective and moral dimensions? I have claimed that we can think of “mere” reflective judgment as isolating the *form* of purposive judging in general, which, in the practical case, is bound up with the motivation of the will. Thus, it's helpful for our purposes to consider one of the central examples Kant advances of merely reflective judgment: how can we make sense of the mere *form* of purposive judging activity without the possibility of any guidance by the moral law? Here, I will focus on teleological judgment, due to several key features that distinguish it from the other paradigm case of merely reflective judgment—aesthetic judgment. The “teleological power of judgment relates its representation of purposiveness to the object not by means of feelings but through concepts... it relates its reflection entirely to reason (not to feeling)” (20:250–251). That is, where aesthetic judgment is famously taken to *lack* any relation to concepts (or principles) and instead relates its representations to objects through feeling (as Arendt also claims), teleological judgment *begins* with a concept or principle and relates this reflection directly to reason. Second, and relatedly, “a teleological judgment compares the concept of a product of nature as it is with one of what it *ought to be*. Here the judging of its possibility is grounded in a concept (of the end) that precedes it” (20:240). Thus, the concept in question is specifically the concept of *an end*, which is employed to advance explicit “ought” claims—albeit for the activity of judging, rather than for acting; aesthetic judgment, by contrast, is “purposive... without a purpose”, or end (5:306).<sup>36</sup> In each of these respects, teleological judgments share central features with practical judgments.

There is another important reason for examining teleological judgment: one issue in assessing the domain of maxim formation is, as Herissone-Kelly (2018) points out, that “proper examples of maxims are remarkably thin on

the ground in Kant's works"; in fact, there are only five "plausible candidates for true examples of maxims in Kant's writings on moral philosophy" (23). It therefore seems promising to extend one's focus to the examples of maxims found elsewhere in Kant's writings. Indeed, Kant's account of teleological judgment provides an extensive case study of the process of maxim formation, and in particular, of the role of salience within the generation of maxims, yet has gone virtually unnoticed in the literature on moral maxims.

To initiate a course of teleological reasoning, Kant claims that we must presuppose a determinate principle,<sup>37</sup> or "maxim" (5:376), a characterization consistent with reflective judgment's definition in general ("a mere faculty for reflecting on a given representation, in accordance with a certain *principle*", 20:211, my emphasis). This is because, while in the case of determining judgments, a concept, a cognitive rule, can guide the activity of judgment,<sup>38</sup> and in practical judgments there is the moral law, reflective judgments lack any conclusive determination (beyond the formal "concept of an end", 20:240) and must therefore *first presuppose* a principle.

Kant characterizes these principles of reflective judgment as "maxims" (20:205, 20:219, 5:182, 5:184) and "heuristics" (20:205, 5:411) as opposed to laws. As examples, he cites common sayings, such as "the maxims [*Maxime*] that everything in the world is good for something, that nothing in it is in vain" (5:379).<sup>39</sup> Such principles "do not say what happens... but rather how [things] *ought* to be judged": in other words, they are normative, claiming "logical objective necessity" (5:182). However, the "ought" in question is merely "subjectively valid", in that judgment gives itself its own normativity in the course of its reflection (20:225; 5:186). In other words, what Kant means by terming the principles of reflective judgment "heuristics" or "maxims" is that they are *subjectively normative*, as distinct from the objective normativity of moral and theoretical laws. While the moral law *is* objective, these teleological maxims only *claim* objectivity, because, unlike the moral law and the categorical imperative that follows from it, they only govern our *own* cognitive procedure in judging nature; while "transcendental" and "a priori" for our own exercise of judging, we are not justified, Kant thinks, to apply them directly to nature from the outset (5:182, 5:376).<sup>40</sup>

Alongside these transcendental maxims, Kant claims that there are also more specific maxims that emerge in the course of empirical investigation, thus arising from experience. For example, the concept of internal purposiveness, as in an organism, follows from what Kant characterizes as an empirical "principle" (namely, "an organized product of nature is that in which everything is an end and reciprocally a means as well"): "This *principle is of course to be derived from experience*, that is, experience of the kind that is methodically undertaken and is called observation" (5:376). This empirical maxim is guided by the transcendental maxims Kant refers to earlier: its "universality and necessity... cannot rest merely on grounds in experience, but must have as its ground some sort of a priori principle" (5:376). Thus, the specificity of the principle of internal purposiveness is "empirical", while also grounded in a more basic, and more general, transcendental maxim that imbues it with normativity (5:376).

In sum, Kant argues that teleological judgment follows a normative procedure: presupposing a transcendental a priori maxim as a heuristic, proceeding in the course of empirical investigation on the basis of this maxim, and deriving subsidiary empirical maxims on the basis of the particulars encountered in experience. The empirical maxims are normative rather than merely descriptive due to their grounding in the a priori principle that was first presupposed. Meanwhile, the a priori maxim, initially just a heuristic, is given form by its (subjective) confirmation in the course of experience. The stipulation of the a priori principle leads to the formation of new, empirical maxims that further specify the content of the initial principle. "Nature does nothing in vain", because, for example, natural organisms show up to us as internally purposive, with every part serving a necessary function relative to the whole. Evidence for the initial maxim, then, is provided by reflecting on a particular feature (in this case, a natural organism), which then gives rise to new, empirically derived maxims, and in turn, these maxims give new form and specificity to the initial, guiding principle.

We can thus think of Kant's account of the procedure of teleological judgment as exhibiting a two-way dependence between universals and particulars. Attributing salience to certain particulars rather than others is guided by an a priori principle, which is itself reciprocally informed by the particulars one encounters. The empirical maxims

that result from this process are at once (subjective) *vindications* of the initial principle and determine it with specific content. But because the starting principle is merely a heuristic, nothing excludes the possibility that it might be *disconfirmed* by investigation.<sup>41</sup> The moment we take such principles to be unimpeachable rather than perpetually open to disconfirmation, Kant holds, we err into the transcendent, speculative realm (20:236). Indeed, the general procedure of teleological judgment, as Kant characterizes it, picks out the process by which the mechanical “rule” for judging nature comes to be revised in favor of a teleological one (at least when it comes to organic particulars).

#### Maxims of teleological judgment, as compared to practical judgment

Type	Transcendental maxim (heuristic) governing procedure	Empirical maxim (only after encountering relevant particular)	Specified maxim
Command	Natural purposiveness: Judge nature as purposive; “nature does nothing in vain”	Internal purposiveness: Judge organisms as natural purposes: as purposively ordered	External purposiveness: Judge natural purposes as themselves purposively ordered one to each other; as related by means-ends chains
Content	General	Specific	Generality imbued with specificity
Corollary in practical reasoning	Moral law (objective): Contribution of practical reason	Maxim (subjective): Contribution of reflective judgment	Maxim judged as law: Moral and reflective dimensions

#### 4.4 | Practical judgment as bottom-up reflection: Self-critique and revising universals

The procedure of teleological judgment Kant outlines allows us to make sense of how maxims can be *guided* by normative principles but nevertheless remain descriptive, encompassing empirical content. At the outset, we considered how the apparent severance of subjective maxims from objective laws threatened to render the role of the categorical imperative arbitrary, resulting in different conclusions depending on the formulation of the initial maxim. We can now see how the relation between maxims and laws can instead be rethought in terms of a greater degree of reciprocity between the two, where moral maxims are guided, but not determined, by laws, which are in turn informed and imbued with a specific “shape” by particular maxims. Indeed, practical judgments can be fruitfully compared to teleological judgments in that they, too, must be informed by experience to render the objective principle more determinate, generating subjectively given maxims to be employed in action. These subordinate maxims of practical reason, however, remain defeasible; upon attempting to integrate new particulars, they may require revision, or may be articulated in terms of newly available concepts. They also—though a full argument for this claim is beyond my scope in this paper—can flesh out the objective principles, categorical imperatives, with greater determinacy and richer content, such that the principle of humanity need not be understood as mere abstraction, but as issuing in *this* specific maxim (e.g., to “intervene in bullying”). In so doing, practical judgments exhibit a two-way dependence between particulars and universals comparable to teleological judgments, one that can be attributed to the fact that practical judgments also have a reflective dimension.

Indeed, Kant suggests the purview of practical judgment is to *generate* maxims, likening its role to reflective judgment in science:

The Doctrine of Right has to do only with narrow duties, whereas ethics has to do with wide duties. Hence the Doctrine of Right, which by its nature must determine duties strictly (precisely), has no

more need of general directions (a method) as to how to proceed in judging than does pure mathematics; instead, it certifies its method by what it does. But ethics, because of the latitude it allows in its imperfect duties, inevitably leads to questions that call upon judgment to decide how a maxim is to be applied in particular cases, and indeed in such a way that *judgment provides another (subordinate) maxim (and one can always ask for yet another principle for applying this maxim to cases that may arise)*. So ethics falls into a casuistry, which has no place in the Doctrine of Right. (6:411; my emphasis).

Kant here contrasts the constitutive, determining method of right (which, like “pure mathematics”, “certifies its method by what it does”), with the reflective procedure of ethics, which generates new universals (“maxims”) on the basis of “particular cases”. Indeed, Kant here establishes a distinction between the top-down, derivative procedure associated with right and the bottom-up, indeterminate process of ethics, which remains open-ended: “one can always ask for yet another principle”, such that the process of forming new universals is never complete.<sup>42</sup> Kant goes on to reinforce the comparison between reflective and determining procedures in claiming that “casuistry is, accordingly, neither a science nor a part of a science”—much like reflective judgment in teleology is distinguished from determining judgment in mathematics or physics in that it does not rise to the level of a systematic science (6:411; 5:417). This is because “casuistry is not so much a doctrine about how to find something as rather a practice in how to seek truth. So it is woven into ethics in a fragmentary way, not systematically... and is added to ethics only by way of scholia [marginal notes] to a system” (6:411). Indeed, Kant appends “casuistical questions” not to the wide-latitude imperfect duties, as often thought, but to the discussion of *perfect* duties detailed throughout the Doctrine of Virtue (6:423, 6:426; 6:428, 6:431, 6:433, 6:437).<sup>43</sup> Thus, there remains an important component of Kant's ethics, precisely that of practical judgment, which, due to its bottom-up reflection on particular features of experience, eludes the possibility of comprehensive ethical systematization.

To see how incorporating this bottom-up role for reflection might work in practice, we can consider the following, and apparently banal, case:

Marisol is at dinner with her friend, Lamar, who has just been laid off. Marisol spends the whole evening talking excitedly about new career opportunities without noticing Lamar's discomfort.

Marisol's subjective endorsement of her maxim of action (“sharing my recent good news with my friend”) may be morally permissible as far as can be determined through the categorical imperative procedure: indeed, she might take this specific maxim to be an expression of her commitment to a more general principle or duty (“being a good friend”, 6:469–473).<sup>44</sup> But she has missed salient moral information: Marisol might have noticed that Lamar finds himself in a much more unfortunate situation, such that dwelling at length on her own career news rather than his own feelings of precarity may make him feel slighted. She realizes, in other words, that her behavior at dinner is in conflict with her duty to be a good friend to Lamar. Attending to the situation might lead her to revise her maxim as “bragging” rather than “sharing my news with my friend”.

How might we think about this process of self-revision, a process which, as the problem of relevant descriptions reminds us, cannot be sought in the categorical imperative procedure alone? Here, we might consider Kant's account of teleological judgment, where initial heuristic maxims are informed by empirical particulars. In judging a natural organism, for instance, the initial maxim of natural purposiveness (e.g., “nature does nothing in vain”) is given new-found specificity and determinacy and gives rise to the new, empirically derived principle of internal purposiveness (with corresponding maxim: judge the organism as if it were purposively arranged). In other words, the starting heuristic is *revised* once applied to empirical circumstances, in coming to grips with a particular recalcitrant to the agent's prior perception of reality (here, of nature as mechanistically ordered).

We can think of Marisol as being faced with a similar process. What is incumbent on her is to attend to a particular unassimilable to her previous, and perhaps rote, realization of guiding principle (the imperfect duty of friendship)

in a specific maxim (sharing her good news). She has to notice, in other words, the conflict between the effects of her behavior on the world and her initial understanding of her behavior, and she has to be willing to revise what she is doing accordingly: to create a *new* universal, a maxim, that can better relate principle to world. In so doing, the initial principle is imbued with greater specificity and determinacy, as new ethical knowledge is formed in the ongoing practice of moral judgment: to be a good friend means that Marisol ought to attend to Lamar's feelings, to his own life circumstances, and alter her own responsiveness to him accordingly.

The picture I have just sketched is importantly different from particularism as such: it is not a *merely reflective* picture of moral reasoning, limited to perception of salience or the correct “reading” of situations (McDowell, 1996), but combines *both* moral and reflective dimensions of practical reasoning. Unlike the merely reflective case of teleological judgment (and unlike the strictly particularist picture), on the view I've elaborated here, Marisol also has the resources of the moral dimension of reasoning at her disposal, such that moral motivation can also help guide her perception of moral salience. The moral idea of humanity, for instance, might bring her attention to *human feelings* as salient features of her moral circumstances. Particulars can imbue universals with specificity, can lead us to revise our initial maxims or initial scope of duty, but the line of influence can also go the other way: moral universals can guide us in judging which particulars are salient.

As this example begins to bring out, accommodating a reflective dimension of practical judgment alongside the moral allows us to get a grip on the prospect of a *critical attention*—both toward our assessment of morally salient particulars, and toward the universals brought to bear on them. Indeed, we have seen that maxims are characterized as *subjectively normative*, against the objective or universal normativity of the moral law: we have to *make our own* maxims, which will reflect aspects of our situation that cannot be generalized to the conditions of all others (“only I myself can *make* something my end”, 6:381).<sup>45</sup> If “the principles that one makes for oneself are *not yet* laws to which one is unavoidably subject”, such that the “act of freedom” of choosing one's own practical ends is not immediately *moral* freedom (5:20, 6:381, my emphasis), the domain of ethical subjective normativity is not to be identified with the normativity of the moral law per se. The integration of a reflective dimension of practical reasoning allows us to attribute this subjective normativity to *reflective judgment*, which bears a distinct mode of “autonomy”, one that “is merely subjectively valid”, in that judgment gives itself its own normativity in the course of its reflection (20:225; compare 5:186).<sup>46</sup> The autonomy of *judgment* was a domain of normativity that was newly emerging for Kant: by recognizing judgment as *itself* an activity or practice,<sup>47</sup> one at work in theoretical spontaneity as well as in the making of moral maxims, it serves as “intermediary” between epistemic normativity and ethical normativity. This new domain of normativity, as the reflective dimension alongside the moral, can be indirectly *guided* by the moral dimension and its laws, much like empirical maxims of teleological judgment are guided by heuristic transcendental principles, while still generating a domain of subjective normativity in its own right—a normativity, or “freedom”, which, if not solely *moral* freedom, can be construed as a mode of *creativity*, in which reflective judgment proceeds “not as it were merely mechanically, like an instrument, but *artistically* [*künstlich*]” (20:214).

Although the example I've just sketched is relatively ordinary, I take one advantage of it to be the generalizability of the commonplace experience it describes to broader processes of “making a concept possible” (20:211). Indeed, we need not think of such a process as limited to individual instances of deliberation, nor, as Kant makes clear, is it limited to maxims of intention. The creation of new normatively freighted concepts or amelioration of preexisting terms, for instance, can do much to make morally relevant features more explicit. The term “gentrification” was only coined once sweeping processes of displacement in London neighborhoods like Chelsea, Notting Hill, and Paddington were already underway, bringing a previously neutral, overlooked practice newly under moral evaluation (Glass, 1964); “sexual harassment” was coined when the members of a women's collective at Cornell University, in the course of discussing their shared experiences, decided to make it a political issue (Brownmiller, 1999). These terms, in turn, can figure into new maxims: redescribing my intention from “poorly contained rage” to “fighting back against my sexual harasser” can transform my sense of the moral valence of my behavior, and thus my behavior itself.

The process of revising one's own moral perception may profitably be construed as the purview of the critical self-reflection of judgment. Kant claims that conscience is “the moral faculty of judgment, passing judgment upon itself”, and refers to the epistemic maxim of “reflect[ing] on one's own judgment” (6:186, 5:295; see discussion in Ware, 2009). The critical assessment of one's maxims, then, is not limited to the application of a test, nor is it a matter of applying an additional rule (such as a rule of moral salience). Instead, it consists in a self-given exercise of judgment, one informed both by prior moral considerations and by the encounter with new particulars that fit at best uneasily with preexisting hermeneutical resources. Indeed, the unfolding process can perhaps be seen as a feedback loop, where the particulars inform our initial moral considerations, which, once given greater determinacy in this domain of moral experience, can thereby better guide us toward attending to features newly salient to us, and so on in turn. Thus, self-critique can be situated in a conception of moral reasoning as, in part, a *reflective* process, by which, in reciprocal fashion, particulars can direct scrutiny back toward the guiding universals.

If we carry this insight through, and thereby conceive of moral reflection as encompassing both top-down and bottom-up activities of the power of judgment, we can conclude that such a practice does not leave our guiding moral universals unchanged.<sup>48</sup> Indeed, Kant emphasizes our “subjective” understanding of given moral universals, reflecting their realization in particular conditions, alongside their “objective” status as ideals.<sup>49</sup> For instance, Kant claims: “With regard to perfection as a moral end, it is true that in its idea (objectively) there is only *one* virtue (as moral strength of one's maxims); but in fact (*subjectively*) there is a multitude of virtues, made up of several different qualities” (6:447). Or, in referring to virtue as such: “It is always in progress because, considered objectively, it is an ideal and unattainable, while yet constant approximation to it is a duty. That it always starts from the beginning has a *subjective* basis in human nature, which is affected by inclinations” (6:409). The generation of maxims from the bottom up ultimately impresses on the indeterminate, “in progress”, “approximative” moral universals themselves, imbuing them with a particular shape or depth—with greater determinacy or specificity, or with a better-delineated moral scope.

## 5 | RESPONDING TO THE PARTICULARIST

In this paper, I have offered a reading of Kant's moral philosophy on which the question of moral salience is the purview of what I have termed the *reflective* dimension of moral reasoning. I have derived the resources for such an account from Kant's theory of reflective judgment rather than from the moral law, but I have elaborated a reading on which reflective judgment, for Kant, is not *merely* particularist, but figures into the creation and revision of new maxims. The picture I have proposed does not require us to introduce elements extraneous to Kant's philosophy, but nor does it require us to read Kant as himself a particularist. This account of the workings of the reflective and moral dimensions of practical reasoning combines particularist and universalist elements, suggesting a two-way relationship between contextual features (particulars) and principles (universals). Thus, the picture we are left with is one on which universals are not merely applied to experience, but where particulars also *inform* universals, such that the relation between universal and particular can be understood as a reciprocal dependence rather than in terms of application alone.<sup>50</sup>

This is a view that not only responds to the particularist's objections to Kantianism, but gives them resources that *they themselves* need to fully accommodate moral salience. Indeed, the Kantian account I've elaborated here of the reflective and moral dimensions of practical reasoning gives us the dual resources of particularism and universalism—resources we would be hard-pressed to find in moral particularism alone. If the Kantian picture of moral reasoning they oppose is one of rote or mechanical application of universals to experience, the picture they risk committing themselves to is one on which moral reasoning is simply a matter of brute perception of “mute sense data or raw particulars” (Kukla, 2002, p. 335).

As Herman notes, particularists face “the problem of *new saliences*”, or the problem of how to address the possibility of *critiquing* one's own moral receptivity: for moral sensitivity “to take itself as the object of its own critical

regard" (2007, pp. 26–28). Particularists have no account, in other words, of how a process of something like a critical self-reflection of judgment can get underway. Virtue, on such accounts, is instead largely the result of prior inculcation or socialization.<sup>51</sup> As Jonathan Dancy notes, “for us it is probably too late” to acquire the right kind of moral sensitivity: “As Aristotle held, moral education is the key; for those who are past educating, there is no real remedy” (1993, p. 64).

On the particularist picture, then, there is no distance between education and our considered moral outlook. For the particularist, our capacity to act morally is the result of what we have been *taught* to believe virtue is and requires of us—and how well we have been taught it. But if our grasp of morality is primarily the product of prior processes of training and education of what content is morally relevant, it seems unclear how we can obtain a *critical* stance on that training, and with it, on our own constitution as agents in the world. If we are unfortunate enough to receive the *wrong* training (and it seems inevitable that in a non-ideal social world, some of our training *will* be wrong), what it would take to morally “consider things aright”, McDowell claims, is nothing less than a “conversion”, although, as he concedes, “admittedly, it is not straightforwardly obvious how we should think of this” (1998, p. 102). Consequently, an elitist undercurrent threatens the particularist picture of moral rectitude, one that has been easier for the particularist to embrace than to dispel.<sup>52</sup>

A reason this remains an open problem for particularism can be traced to the weight it gives to moral receptivity to the exclusion of considering how moral receptivity *reinforms* our initial normative concepts and principles. Since particularist approaches reject (or at least deemphasize) the role of moral principle altogether, the latter concern is, from the outset, positioned outside their purview. The only remaining option left in their arsenal is the idea of a wholesale transformation of an agent's perception, by analogy to the domain of “religious experience” (McDowell, 1998, p. 102).

In this paper, I have begun to suggest the possibility of a more fine-grained process of self-critique: I have proposed a two-way relation between rules and particulars, a position at odds with the particularist opposition between the particularities of experience and the generalities of a conceptual scheme. To universalize a maxim, I have suggested, requires first that one *create* this maxim, with a critical awareness of the possibility that it might require revision in the face of newly salient particulars. The incorporation of salient features into a maxim of action, I have claimed with the particularist, is one that holds moral relevance. But, I have argued, this dimension is no less central to the Kantian picture of practical reasoning, and indeed, is one with potential lessons for particularists. It is one important, in other words, not just for defending Kantian universalism against particularism, but for its implications for understanding moral deliberation in its own right.

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## ORCID

Sabina Vaccarino Bremner  <https://orcid.org/0000-0002-1439-2362>

## ENDNOTES

<sup>1</sup> Compare Larmore's objection to the view of Kantian practical judgment as a matter of mere application of rule: “Is it always true, however, that the rules have enough content to settle by themselves whether something falls under their concept? Is it always true that judgment has no other task than simply to see that such rules indeed suffice to identify what things the concept may be predicated of? This is so neither in the moral domain nor elsewhere as well” (Larmore 1981: 278).

- <sup>2</sup> Thus, my broader account bears a certain similarity to Iris Murdoch's characterization of moral experience as constituting "progress in understanding a scheme of concepts", where "as we move and as we look our concepts themselves are changing" (1970, pp. 383, 321–325). Importantly, however, Murdoch's view is ultimately universalist rather than particularist, given the role attributed to "understanding" moral universals (Bagnoli, 2011, pp. 222–223). See also Srinivasan (2018), p. 1415.
- <sup>3</sup> In calling it more general, I follow Anscombe's characterization of each progressive action description as dependent on "wider circumstances" than the one before it (1957, p. 46).
- <sup>4</sup> That is, it fails the *contradiction in conception test*; see O'Neill (1975), pp. 143–173.
- <sup>5</sup> See also Hegel's empty formalism charge (1807, §134).
- <sup>6</sup> Kantians have also noted many cases of apparent false negatives and false positives of maxim universalization, such as "I will buy clockwork trains, but not sell them" (O'Neill, 1975, p. 163), save "money by shopping in this year's after-Christmas sales for next year's Christmas presents" (Herman, 1993, p. 138, citing Scanlon ms.), or make "a false promise on Tuesday, August 21, to a person named Hildreth Milton Flitcraft" (Wood, 1999, p. 102). While the problem of false negatives and positives seems to more often arise with highly specific maxims, some intentions are in fact formed at greater levels of specificity, raising problems for interpretations that take maxims to only be formulable at the most general levels of description. On the specificity problem, see O'Neill (1989) and Gressis (2010).
- <sup>7</sup> I am indebted to Herman for clarifying these aspects of her position in correspondence with me.
- <sup>8</sup> On my view, the moral law consists in, but is not limited to, the various formulations of the categorical imperative. While I am therefore sympathetic to Herman's reading, the marshaled textual support still seems to me too meager to ground moral salience.
- <sup>9</sup> See also O'Neill (2002).
- <sup>10</sup> In later work, O'Neill gives an account of maxims on which they pick out only general policies or *Lebensregeln* rather than specific intentions (O'Neill, 1989, pp. 151–152). But, as Allison notes (1990, pp. 92–93), this line of interpretation fails to fit some of Kant's own examples of maxims, such as "Whenever I believe myself short of money, I will borrow and promise to pay it back, though I know that this will never be done" (4:422), as well as leaving unexplained how a specific intention is to be morally assessed.
- <sup>11</sup> In this paper, I use the term "moral perception" fairly loosely, to refer to any empirical grasp of morally relevant features of situations; I do not restrict my use to the literal perceiving or seeing of moral properties. For different senses of the term "moral perception", see Bergqvist and Cowan (2018, pp. 1–15). I am indebted to an anonymous reviewer for pressing me on this point.
- <sup>12</sup> Arendt's particularist interpretation of Kant's aesthetics has been predominantly influential in political theory; for neo-Arendtian approaches which similarly embrace particularism, see Ferrara (1998, 2008), Lara (2008), and Zerilli (2016). While my focus in what follows is on teleological judgment, I hold that Kantian aesthetic judgment is not straightforwardly particularist, either; in Vaccarino Bremner (2021), I claim that aesthetic judgments, too, lead to the creation or revision of concepts, and thus that aesthetic and teleological judgments are ultimately quite close in function.
- <sup>13</sup> I take reflective judgment to still have a subsumptive function, albeit not subsumption of particulars *under given concepts* (for an alternate reading, see Euler, 2018, p. 439): as Kant writes, "the judgment of taste... does not subsume under a concept at all", but instead calls on "the subsumption of the imagination itself... under the condition that the understanding in general advance from intuitions to concepts" (5:286–287). In the case of teleological judgment, the power of judgment *gives itself* a principle under which it subsumes particulars. Thus, reflective judgment is distinguished from determining judgment by its *self-legislative, autonomous* function in determining its own procedure of relating particulars to universals (20:225, 5:186), which, I claim below, can help to make sense of the subjective normativity of maxim formation.
- <sup>14</sup> Nevertheless, by way of the moral dimension's influence on the reflective, we can still construe moral salience as "guided", if indeterminately, by the moral law; below, I explain why I take the guiding role of heuristic principles for teleological judgment to be instructive in this regard.
- <sup>15</sup> This account is to be extended to the domain of moral laws as well; see Mills (2005) on the difficulty of divorcing empirical considerations from construal of moral principle in general, particularly when it comes to the role of racist bias on our application of principles such as the formula of humanity. In other words, I think even the most general moral principles at the core of Kant's moral theory admit the possibility of amelioration in a way the role of reflective judgment helps us to make sense of, a prospect I address briefly below.
- <sup>16</sup> In what follows, I refer to the "moral" as the restricted domain of moral motivation and the free determination of the will, and "practical" as the more general domain of intentionality, choice, and action on ends (whereas Kant's own use of

“practical” sometimes invokes the more restricted sense, and sometimes the more general). Part of my claim, however, is that even “morality” in the strict sense will require the cooperation of reflective judgment in assessing salience.

- <sup>17</sup> This usage marks a departure from the Aristotelian tradition, since Aristotle distinguishes “generals” from “universals”, whereas Kant’s full taxonomy in his logic includes “singulars” (picking out exactly one object), “particulars” (of indeterminate extension), and “universals”; see discussion in Lu-Adler (2014). To attempt to keep my discussion as consistent as possible with contemporary discussion, I restrict my usage in what follows to “particulars” and “universals” (where “universals” also include “generals”). I am grateful to Katja Vogt for helping to clarify this point.
- <sup>18</sup> See 20:220–221, 20:408–409, 20:223–224, cited in Longuenesse (2001), pp. 163–164. See also Kant’s claim that “the teleological power of judgment is not a special faculty, but only the reflective power of judgment in general, insofar as it proceeds in accordance with concepts, as is always the case in theoretical cognitions”—or in other words, that reflective judgment is always also operative in theoretical cognition (5:194).
- <sup>19</sup> There, Kant writes that “before all objective judgments we compare the concepts” implicated in the judgment with one another, and thus that “*transcendental reflection*... contains the basis for the possibility of objective comparison of representations with one another” (A262/B319, A262/B317); see also Makkreel (2015, pp. 61–66).
- <sup>20</sup> Some commentators take the paradigmatic instance of reflective judgment, and thus “mere” reflective judgment, to be aesthetic judgment, since in this case no concept is found (e.g., Gorodeisky, 2021, p. 377). I follow Longuenesse (2001, p. 163) and Allison (2001, p. 16), who each refer to both aesthetic and teleological judgments as “mere” reflective judgments, since I take issue with the strictly particularist reading of aesthetic judgment (Vaccarino Bremner, 2021). I am grateful to Ulrich Schlösser for pushing me on this point.
- <sup>21</sup> Reflective judgment has been related to Kantian morality in accounts including Munzel (1998), Recki (2001), Makkreel (2002), Longuenesse (2005, 237n), Klemme (2013), and Nuzzo (2014). The link in extant interpretations passes through themes not always taken to be central to Kant’s moral philosophy, including moral self-orientation (Munzel and Makkreel), political judgment (Nuzzo, following Arendt), the analogy to teleology in the *Groundwork* (Klemme), moral evaluation of already given or performed actions (Longuenesse), and the role of feeling in Kant’s moral psychology (Recki). I locate the relation in the problem of maxim formation, situating reflective judgment at the core of Kant’s account of practical deliberation.
- <sup>22</sup> It is in part for this reason, in my view, that Kant divides his study of reflective judgment, the *Critique of Judgment*, into two parts on teleology and aesthetics: these are prime case studies for the function of the reflective dimension of cognition more generally, theoretical and practical.
- <sup>23</sup> I am indebted to Yoon Choi for suggesting this formulation.
- <sup>24</sup> On the role of purposiveness in unifying the two parts of the Third Critique, see Ginsborg’s (2006) proposal of “normative purposiveness”; Zuckert (2007) on “purposiveness without a purpose”; and Allison (2001) on “purposiveness of nature”.
- <sup>25</sup> See also Ginsborg’s (2011, 2015) account of “a more fundamental normativity required for intentionality as such” derived from reflective judgment (2015, p. 11). Our two accounts are developed in different directions, but we both can be taken to agree that reflective judgment is somehow implicated in intentional activity.
- <sup>26</sup> Compare: “a purpose [Zweck] is the object of a concept insofar as the latter is regarded as the cause of the former (the real ground of its possibility)” (*Critique of Judgment* 5:219–220) and “an end [Zweck] is an object of free choice, the representation of which determines it to an action (by which the object is brought about)” (*Metaphysics of Morals* 6:384). The main difference seems to be the absence of “action” and “choice”, present in the latter definition, from the former, which is consistent with my interpretation of the distinction between mere reflection and morally evaluable action.
- <sup>27</sup> Due to my restricted scope, I am leaving aside much debated questions in the literature, including how to construe the notion of purposiveness at work in the *Critique of Judgment*, or even whether there is just *one* notion at issue; on this, see, for example, Guyer (1993), Allison (2001), Ginsborg (2006), and Zuckert (2007).
- <sup>28</sup> Where, ultimately, the practical dimension encompasses the moral dimension, in my terminology: that is, the “merely practical” precepts Kant discusses in these sections might not be morally motivated, but are nevertheless subject to moral evaluation; see discussion below.
- <sup>29</sup> In contradistinction to the understanding’s application to nature on the one hand, and reason’s application to morals or freedom on the other. Kant devotes §43 to the topic of “art in general”, as “production through freedom, that is, through a capacity for choice that grounds its actions in reason” (5:303), an analysis extended in §44 and following (on the *beautiful arts*)—one of the central topics of the *Critique of Aesthetic Judgment*.
- <sup>30</sup> In so doing, the activity of the power of judgment renders conceivable how “the concept of freedom should make the end that is imposed by its laws real in the sensible world”, securing a “transition from the manner of thinking in

- accordance with the principles of the [theoretical] to that in accordance with the principles of the [practical]”, bridging a “gap” or “chasm” between the two (5:176; 20:244; 5:195).
- <sup>31</sup> For example, reflective judgment helps to make sensible “moral ideas”, to relate the cognizable order of nature to human freedom as “final end”, and invokes the *sensus communis*, whose universal communicability, Kant speculates, might be linked to moral reason (5:314–316, 5:353; 5:434; 5:240).
- <sup>32</sup> Freedom, as the argument of the third section of the *Groundwork* goes, can only be *moral* freedom, and indeed Kant suggests the same conclusion at 5:172 and 20:197–198.
- <sup>33</sup> The thorny issues of feeling and moral motivation are beyond my scope in this paper. However, on my view, the most plausible reading of Kant's moral theory would have to make sense of how Kant can hold that agents are practically conditioned *both* by empirical *and* moral motives—both by their own desires, as well as by freedom. As Herman notes, for Kant, “contrary to what one might have thought... our capacity to act morally is realized only through the pursuit of happiness” (2005, p. 26). The *Groundwork* might be construed as offering an account of the “merely”, or pure, *moral dimension*, isolated from the reflective dimension involving assessment of things as they already are (my focus in this paper), as well as from sensuous determination by feeling—much like the *Critique of Judgment* gives us an account of the isolated “merely” reflective dimension of cognition. This would help to explain Kant's more controversial comments in the *Groundwork*—that is, that compassion undermines moral worth (4:399–400). If his project in this text is to demonstrate the source of moral worth and to thereby *isolate the moral dimension*, any concomitant influence by feeling must be abstracted away, to the extent possible, in the examples under consideration. But in ordinary practical reasoning, both the reflective and moral dimensions are requisite: indeed, as I address here, maxims are *defined* in terms of the agent's current empirical conditions, including desires. Much more thus remains to be said about the connection between feeling and the power of judgment (defined as a “feeling”: 5:198).
- <sup>34</sup> For discussion of the descriptive character of this passage, see Gressis (2010); for views of maxims that defend their descriptive character, see O'Neill (1975, 1989) and Kitcher (2003).
- <sup>35</sup> In calling maxims “universals”, I have to be somewhat cursory. Maxims can be morally ‘universal’ if they can be applied to all. Yet maxims can also be more or less general or universal depending on how narrowly they are individuated relative to their action-context, as was already made clear in Anscombe's account of relevant descriptions. Nevertheless, insofar as they are discursive, they will always be at some remove from the empirical particulars themselves—in this sense, too, then, they are (more or less particularized) generals or universals (see note on this terminology above). Thus, unlike O'Neill (1975, p. 62), I do not take the practical task to be the constitution of a new *particular* (an action) on the basis of an indeterminate universal (a principle). Instead, the task is a bit more complex than this: bringing about a new *universal* (a maxim) on the basis of a *consideration of particulars* (the circumstantial features of action) in conjunction with an indeterminate principle.
- <sup>36</sup> Once again, I have to be cursory here—aesthetic judgment also relates in key respects to reason, and presents the *sensus communis* as an “ideal norm” of how others ought to judge (5:239). Thus, the account I'm giving here could certainly be extended to aesthetic judgment, in particular in examining the role of feeling in setting ends, rather than maxim formation.
- <sup>37</sup> This point introduces a complication to Ginsborg's (2015) account of the subjective normativity of our cognitive activity. Kant does not claim that what is warranted to initiate teleological reasoning is the adoption of a normative attitude in general. Instead, he holds that we need to posit “maxims”, or determinate principles—heuristics, rather than a general normativity of reasoning. This is relevant when it comes to the question of whether the normativity of reflective judgment may in certain respects be revisable, or subject to disconfirmation (see below): if one takes such normativity to be expressed in discursive maxims, this leads to different conclusions than if the normativity is taken to be, at bottom, primitive and *sui generis*; see, for example, the debate between Ginsborg (2015) and Geiger (2020).
- <sup>38</sup> “When we *reflect*... we need a principle just as much as we do when we determine, where the underlying concept of the object prescribes the rule to judgment and so takes the place of the principle” (20:211).
- <sup>39</sup> Kant gives several other such examples at 20:210 and 5:182, albeit terming them principles [*Grundsätze*] and formulas [*Formeln*].
- <sup>40</sup> Yet Kant suggests that reflective judgment plays a role not merely in forming new *maxims*, but ultimately also empirical laws (“the power of judgment... with regard to things under *possible (still to be discovered) empirical laws* is merely reflective”; 5:184, my emphasis), much as moral maxims must ultimately be considered under the aspect of law. Following this comparison through suggests a *generative*, bottom-up, model for moral *duties* (since universalizable maxims of action are still merely permissible or individual in scope, while duties, like empirical laws, ultimately *do* hold universally); see further discussion below, as well as in Herman (2021).
- <sup>41</sup> See Geiger (2020, p. 100). An accommodation of this point seems to me to be one of the upshots of Kant's theory of reflective judgment; for a partial defense, see Vaccarino Bremner (2021).

- <sup>42</sup> Indeed, Kant suggests that the picture on which practical judgment needs to be supplied with additional rules ultimately admits of a regress, pushing us back to the idea of a self-given exercise of judgment (6:411, compare A133). See also Ginsborg (2015, pp. 151–163).
- <sup>43</sup> When it comes to imperfect duties, there is not even room for casuistical questions to arise since the actions themselves are left up to free choice; for example, for the imperfect duty of self-perfection: “Which of these natural perfections should take *precedence*... [is a] matter left for him to choose in accordance with his own rational reflection about what sort of life he would like to lead.... While [this duty] does contain a law for the maxim of actions, it determines nothing about the kind and extent of actions themselves but allows a latitude for free choice” (6:445–446).
- <sup>44</sup> Doing justice to the degree of particularity or generality of maxims or principles in this respect, as well as their connection to duties, would require a comprehensive account of what Allison terms a “continuum of practical principles” (1990, pp. 93–94); see also Timmermann (2000) and Kant’s characterization in the *Religion* of “the ground of all specific maxims... which is itself a maxim” (6:20).
- <sup>45</sup> Compare the role of “contingent normativity” in Korsgaard (1996), pp. 125–129, 241–242; Korsgaard (2009), pp. 22–24, 211–212.
- <sup>46</sup> Kleingeld and Willaschek (2019) resist the typical understanding of “moral self-legislation” by distinguishing the moral law as universally *legislated by reason*, and moral maxims as *self-given* by the particular agent; indeed, support is derived for this view by pointing to “heautonomy” as the term Kant *actually* defines in terms of “self-legislation” (Kleingeld & Willaschek, 2019). Their proposal could be developed by locating the source of the “self-giving” of individual maxims in the reflexive normativity (“self-legislation”) of the power of judgment, in the course of its moral *practice* of judging what to do in a particular case.
- <sup>47</sup> On this point, see also A133-4/B172-3; as Longuenesse (2001, p. 7) notes, judgment is a “power” in the course of actualization (*Kraft*) rather than a “capacity” (or faculty), an “unrealized potentiality” (*Vermögen*).
- <sup>48</sup> This theme is one I am developing in work elsewhere.
- <sup>49</sup> This “subjectively rather than objectively practical” task, namely “to bring an idea of reason closer to intuition (according to a certain analogy) and thus to feeling”, to use Kant’s formulation in the *Groundwork* (4:436), is a key theme throughout the *Critique of Judgment*; see, for example, 5:314–316, 5:351–354, 5:377, 5:426–436.
- <sup>50</sup> Although I have targeted several Aristotelian accounts of ethics throughout this paper, it should be said that I think there is evidence in Aristotle for a view similar to the one I have here ascribed to Kant. Aristotle, too, emphasizes the role of moral universals *along with* moral particulars, claiming that virtue involves acting “as the correct prescription [*orthos logos*] lays down” (NE 1114b). As a result, “the rule for what is indefinite is itself indefinite, like the leaden rule used in building Lesbian-style; the rule adapts itself to the configuration of the stone, instead of staying the same shape, and the decree adapts itself to the facts” (1137b). Aristotle sees universals as indispensable components of practical judgment, but ones whose very nature can render them “deficient on account of [their] universality”, calling for correction by particulars (1137b). The right understanding of universals, then, is one on which they are “indefinite”, adapting themselves “to the shape of the stone”, or to particular moral features. Our (indefinite) universals guide us to consideration (“perception”) of particular features, but, in conjunction with this claim, “universals are arrived at from particulars” (1143b). For complications along these lines to the Aristotelian approach in contemporary ethics from scholars of Aristotle, see Moss (2014), Curzer (2016), and Hirji (2019).
- <sup>51</sup> “If the upbringing has gone as it should, we shall want to say that the way of seeing things... involves considering them aright, that is, having a correct conception of their actual layout” (McDowell, 1998, p. 101).
- <sup>52</sup> “There are very many people in the world today who live in terrible conditions of poverty and violence (for example, in the slums of large cities) which make it unreasonable to expect them to reflect on and criticize the lessons they are taught by the role models they have, people who frequently (and understandably) emphasize the importance not of the virtues but of looking out for yourself.... We do not expect people raised on garbage dumps outside a Third World megalopolis to be kind and generous in their everyday behaviour, but this is, I suggest, for the same kind of reason that we also do not expect them to play the piano or to do crosswords” (Annas, 2011, p. 31). Identifying morality with positions of social privilege seems exactly where we should not want moral theory to end up.

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