

IAN WATSON  
O  
*Department of Law,  
University of Dundee,  
United Kingdom*

# KANTIANISM, POSTMODERNISM AND CRITICAL LEGAL THOUGHT



KLUWER ACADEMIC PUBLISHERS  
DORDRECHT / BOSTON / LONDON

IAN WATSON  
O  
*Department of Law,  
University of Dundee,  
United Kingdom*

# KANTIANISM, POSTMODERNISM AND CRITICAL LEGAL THOUGHT



KLUWER ACADEMIC PUBLISHERS  
DORDRECHT / BOSTON / LONDON

A C.I.P. Catalogue record for this book is available from the Library of Congress.

ISBN 0-7923-4745-5

---

Published by Kluwer Academic Publishers,  
P.O. Box 17, 3300 AA Dordrecht, The Netherlands.

Sold and distributed in the U.S.A. and Canada  
by Kluwer Academic Publishers,  
101 Philip Drive, Norwell, MA 02061, U.S.A.

In all other countries, sold and distributed  
by Kluwer Academic Publishers,  
P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

*Printed on acid-free paper*

All Rights Reserved  
© 1997 Kluwer Academic Publishers  
No part of the material protected by this copyright notice may be reproduced or  
utilized in any form or by any means, electronic or mechanical,  
including photocopying, recording or by any information storage and  
retrieval system, without written permission from the copyright owner.

Printed in the Netherlands

## TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1	
Immanuel Kant and the Foundations of Critique	4
CHAPTER 2	
Freedom, Responsibility and Judgment	36
CHAPTER 3	
The Crisis of Judgment	57
CHAPTER 4	
Postmodern Bourgeois Liberalism	78
CHAPTER 5	
Critical Legal Studies and Beyond	113
CHAPTER 6	
Relativism and the Return of the Moral Self	133
BIBLIOGRAPHY	158
INDEX	169

## INTRODUCTION

It has been recently suggested that Kantian legal thought resembles a 'heresy driven underground' (Weinrib 1988, p.950). In one sense this is true. There are few confessed Kantian legal theorists, and relatively little overt Kantian legal writing. It is, however, the purpose of this book to suggest that there is a considerable amount of covert Kantianism abroad in contemporary legal thought. Indeed, it will be suggested that, aside from the already established schools of Kantian relativism and formalism, much of the current writings of critical and postmodern legal thought are firmly established upon Kantian foundations. This book will proceed as a genealogy, tracing the descent of a particular family of legal thought. To an extent, it will be an exercise in the history of legal theory, though without any of the grander claims to universality which such histories tend to pronounce, and without making any claim that the genealogy requires a consistent historical context. Ultimately, it will be suggested that the genealogy reveals a far greater degree of common ground in contemporary legal thought than is often surmised. Rather than perceiving Kantianism and critical legal thought to be polar opposites, it will be suggested that they merely represent varieties of thought which enjoy a number of common genealogical characteristics. Kantians are not, then, heretics. An alternative metaphor sees Kantians, postmodern and critical legal scholars as siblings, prone to squabbling, questioning relative legitimacy, and threatening ostracism, but, ultimately, all members of the same family, sharing certain family characteristics ensured by a common ancestry.

The book is comprised of six chapters. The first chapter re-examines Kant. It seeks to place Kant's legal writings, most obviously found in *The Metaphysics of Morals* and a number of other political essays, in the wider context of his critical project. Most obviously, such a context includes each of the three major *Critiques*. One of the central themes of this chapter is the suggestion that the most important of these is the third *Critique*, of *Judgement*. It is in this *Critique* that Kant addresses most immediately the faculty most suited to political judgment, and his presentation of the *sensus communis* and related provisions for communicative rationality should be seen as the most pertinent philosophical context with which the *Metaphysics* and other political essays should be read. It will be suggested that the entire genus for the postmodern project, and the more reconstructive elements of critical legal thought, lies in Kant's third *Critique*.

The following five chapters chart the development of Kantianism across various twentieth century approaches to legal and political thought. The second chapter suggests that one particular engagement with Kant is of pivotal importance to the emergence of both critical political and postmodern legal thought. This engagement is commonly termed the Heidegger-Kant 'dialogue'. Heidegger, as we shall see, repeatedly acknowledged that his reading of Kant provided the essential impulse for his philosophical endeavours. His *Rektorat*, a text which has caused so much recent controversy, can only be understood in the context of this 'dialogue'. The same is certainly true of Heidegger's much vaunted 'turn' to language and aesthetics, which has provided the foundation for the postmodernism of Derrida, Lyotard, Rorty and host of

others we shall consider in subsequent chapters. The second part of this chapter will consider the work of Hannah Arendt, perhaps Heidegger's most famous pupil. It has been suggested that it is Arendt who writes the political thought from which Heidegger shied away. Arendt provided the political analogue to the Heidegger-Kant 'dialogue', and she did so by rewriting political theory in the express terms of Kant's third *Critique* and the conception of judgment.

Chapters three and four reconsider the two dominant contemporary strands of postmodern political thought. The first charts the development of postmodernism in French philosophy, from Sartre to Foucault, and from Derrida to Lyotard; a development which has become commonly known as the 'crisis of judgment'. It will be suggested that each of Sartre, Foucault, Derrida and Lyotard write as an engagement not just with Kant, but more precisely with the Heidegger-Kant 'dialogue'. Sartre tried to recover a Heideggerian humanism by returning to Kant, before finally abandoning the project to follow Heidegger into language. Foucault's later political writings are all confessed engagements with Kant's later essays, most particularly *What is Enlightenment?*. Lyotard and Derrida, so often pronounced as the leading figures of postmodernism, both acknowledge that their writings are underpinned by a determination to extrapolate the ramifications of Kant's admission of the concept of judgment to political thought. Justice, Derrida concludes, is judgment.

Chapter four considers an alternative postmodern engagement; that which Richard Rorty has termed 'postmodern bourgeois liberalism'. According to Rorty, not only he, but also a number of other contemporary North American philosophers are writing in response to Heidegger's engagement with Kant. It is this which makes them 'postmodern' liberals. Two of these perceived Heideggerians are John Rawls and Roberto Unger. It is the purpose of this chapter to examine the veracity of Rorty's claim. In the case of Rawls, so often pronounced to be the most influential of contemporary Kantians, the Heidegger-Kant 'dialogue' provides an essential context by which his controversial shift from a 'theory' of justice to a 'political' liberalism can be understood. At the same time, Unger's movement towards an analogue of 'politics' and 'passion' enjoys a similar context when compared to precisely the same movement made by Kant, towards a metaphysics of morality which is at once an analogue of right and virtue. It is certainly no coincidence that Unger's final resting place, upon a conception of responsibility in law and in ethics, is precisely that mapped out by Heidegger's engagement with Kant.

The final two chapters return to the more immediately jurisprudential, considering contemporary critical and Kantian legal thought. Chapter five charts the development of critical legal theory, from its earlier political manifestations to its later turn towards textualism and postmodernism. This turn, it is suggested, is precisely that determined by the Heidegger-Kant 'dialogue' and its evolution in the alternative postmodernisms examined in chapters three and four. Specific consideration of the writings of 'critical' legal scholars, such as Peter Gabel, Allan Hutchinson and Drucilla Cornell, provide evidence of precisely such an evolution. Rather than presenting a

## CHAPTER 1

### IMMANUEL KANT AND THE FOUNDATIONS OF CRITIQUE

#### 1 Critical Moral Philosophy

##### *The Origins of Kant's Critique*

Like any philosopher, Immanuel Kant spent his intellectual life picking and choosing certain things with which he had sympathy and certain things with which he had not. He was brought up and educated in an uncompromisingly Pietist protestant environment. As an extreme Lutheran theology, Pietism stressed the practice of religion, and a practical religion. It was a populist Protestantism, which emphasised the individuality and the 'dignity' of the ordinary person. Equally importantly, Pietism also stressed the destiny of the individual to strive for a highest good of moral perfection. It was an active 'lived' theology, and Kant's subsequent religious writings were to reveal a deep distrust of dogmatic theology. The impulse towards moral virtue came from within, and this was to become the central assertion of Kant's theory of duty and obligation, around which he built his critique of practical reason.

In the wider world, Kant was caught in the midst of the Enlightenment. The power of reason, it was suggested, would enable mankind to push back the barriers of every science and every art. The drive for determination geared German culture and learning. It was this over-confidence which Kant, crucially, came to doubt (Velkley 1993, p.81). The greatest influence was undoubtedly that of Rousseau. Kant read *Emile* with a peculiar intensity, because it, more than any other book, convinced him of the need to respect the individual, and its capacity as a self-governing moral agent. In notes which he made on first reading *Emile* and *The Social Contract*, Kant commented: 'Rousseau set me straight... I learn to honour men, and I would find myself more useless than a common labourer if I did not believe this observation could give everyone a value which restores the rights of humanity.' (Schneewind 1992, pp.312-4) Above all he remained a committed believer in the idea of human progress, that which in *What is Enlightenment?* he referred to as 'man's emergence from his self-imposed immaturity.' (Reiss 1991, pp.58-9) And he certainly retained a fervent belief in the need to progress beyond established philosophical dogmas, if humankind was itself to progress towards Enlightenment. Emancipation would be self-emancipation. It was the idea that the logic of pure reason alone would somehow suffice in the presentation of an active practical philosophy which troubled Kant. Like the Pietist influence, it was the Enlightenment attitude, as represented by Rousseau, which convinced Kant that nothing was sacred, and above all, that it was the individual, as the source of criticism, who really mattered.

At the same time as doubting the certainty of pure reason, Kant was equally troubled by the march of Humean scepticism and its utilitarian undercurrents. According to Hume we could only know our sensations, and nothing more, and according to the utilitarians, we should then aim purely to please the greatest number in

radical alternative to Kantianism, it can be seen that such critical legal scholarship is in fact written as part of the Kantian genealogy. This suggestion is reinforced by the affinities which such a writing enjoys with the orthodox and received Kantianism considered in the final chapter. The first part of this chapter examines the relativist and formalist alternatives presented by Ernst Cassirer, Gustav Radbruch and Ernest Weinrib. Their emphasis on legal form does not preclude the critical emphasis on political substance. It merely defines it. The codeterminative compatibility of form and substance, as the essential feature of an entire Kantian legal philosophy, is appreciated by the most influential exponent of Kantianism in contemporary legal thought, Ronald Dworkin. Dworkin's presentation of law's 'empire' and life's 'dominion' describes both the form and the substance of a Kantian legal theory, of right and of respect. It is, as we shall see, precisely the same analogue as that presented, not just by Kant, but by such as Arendt, Unger and Rorty.

It is, of course, necessary in concluding this introduction to emphasise that the purpose of this book is not to erase distinction. It would be absurd to suggest a precise congruence between any of the theories and theorists to be shortly considered. Even those who would recognise a common affinity, such as Kant and Weinrib, or Heidegger and Arendt, are distinct in many important ways. Rather, the essential ambition of this study is to emphasise certain common characteristics which can serve to bind together a number of theories which are too often presumed to be absolutely distinct. The Kantian engagement, or genealogy, provides a common foundation. It may not be the only one. But it is one.



any way our instinct should care to drive us. But for Kant there had to be more. There had to be an order, and there had to be a determining ground. He rejected pure subjectivity with the same conviction that he doubted pure objectivity. Critical philosophy was directed towards establishing the parameters of both, and placing them within a discrete philosophical system. It was not a matter of choosing between alternatives, and taking a relative stance. It was a matter of rendering the alternatives irrelevant to philosophical thought (Arendt 1982, p.32).

Critical theory was not of course a new idea, and Kant never pretended that it was. Certainly for Kant the original and overriding influence was Socratic, and Kant himself acknowledged that the critical exercise would itself proceed 'in Socratic fashion' (Kant 1781, pp.xxxi). He was impressed by Socrates's refusal to ally himself with established sects and dogmas, and by his determination to render philosophical thought practical. Like Socrates, Kant wanted to perfect the rigour of critical method. As Hannah Arendt has suggested, Kant did indeed want to become the 'all-destroyer' of established metaphysics, but at the same time, he wanted to reconstruct (Arendt 1982, pp.36-9). Moreover, as Socrates had done, Kant wanted to open up the possibilities of reconstruction to the ordinary man. Critical theory would be both a populist and a practical theory, just as Pietism and the Enlightenment demanded. Following the publication of the *Critique of Pure Reason* in 1781, he expressed the hope that he could revise it to make it more digestible for the ordinary reader, and two years later commented, 'every philosophical work must be susceptible of popularity; if not, it probably conceals nonsense beneath a fog of seeming sophistication.' (Arendt 1982, p.39) Only the active practical use of moral reason could avoid the stagnation of a dogmatic analysis. The need to describe and determine a practical reason became the driving force behind Kant's later critical work, and the desire to present a workable metaphysics of morals remained an ambition from his earliest days, only to be realised finally in 1797.

Prior to his critical 'turn' Kant's research had concentrated on the philosophy of science. Yet, even by 1760 he was convinced of the need for a critical philosophy and the following decade was spent exploring the possibilities of critique, and by 1765 Kant was totally unsure about the role that metaphysics had to play in philosophy, particularly a practical philosophy. By now Kant's ambition was to design a practical metaphysic of morals. In the process of trying to pin down a practical metaphysics, and exploring these ideas for his *Dissertation*, published in 1770, 'a great light', or so he subsequently described it, dawned upon him (Beiser 1992, p.51). This 'great light' was the possibility of a dichotomy between reason and sensibility, which could prevent sensibility from infecting moral laws. What Kant now suspected, and directed his energies towards during what has become known as the 'silent decade' of the 1770s, was the possibilities of thus preserving the principle of internal freedom.

*The Critique of Pure Reason*

Eleven years after the *Dissertation* the *The Critique of Pure Reason* announced the arrival of Kant's re-modelled critical philosophy, based on this distinction between reason and understanding, and sensibility, and the locus of freedom. In doing so, as has been suggested, he set the agenda for philosophical debate for the following two centuries. It was to be followed seven years later by the *Critique of Practical Reason*. The third of the three major Critiques, *of Judgement* was published in 1790. The three Critiques, together with the *Groundwork of the Metaphysic of Morals*, published in 1785, define the critical philosophical project. It is important to realise that Kant never envisioned any grand sequence of Critiques directed towards some unified goal (Henrich 1992, p.6). Each *Critique* was designed to be discrete. The simple truth is that each time Kant felt the need to revise his critical philosophy. But from its very first expression in 1781 this critical philosophy represented a fundamental assault on the traditional metaphysical position. The classical Greek metaphysics had sought meaning outside the individual. For Kant it was certainly not a question of abandoning metaphysics; 'it would survive even if all other sciences were swallowed in the abyss of an all-destroying barbarism.' (Kant 1787, pp.xiv) But dogmatism had led rational metaphysics into dispute and created what Kant called a 'need of reason', an 'irresistible necessity' to critically reconstruct metaphysics. Kant welcomed the opportunity that the age presented to the critically aware philosopher, and in the Preface to the first edition to the *Critique of Pure Reason*, he established the critical programme. The sceptical reaction against metaphysics was, he suggested:

not produced by lightness of mind, but by judgement of the age, which has matured and no longer tolerates being put off with illusory modes of knowledge... Our age is the genuine Age of Criticism, to which everything must submit... This calls upon reason to undertake anew the most difficult of tasks - that of knowing itself - and to institute a tribunal that will assure to reason its legitimate claims while dismissing its groundless pretensions; not by enforced decrees, but in accordance with its eternal and unalterable laws. This tribunal is the critique of reason itself. (Kant 1787, p.xi)

It is clear that the concern with the political, and thus the jurisprudential, was pervasive even at the very outset of the critical project. Onora O'Neill has stressed the presence and power of juridical metaphor, and in particular its ability to convey the centrality of a communicated and communicative political ethics, geared to the accommodation of plurality. Kant thought in terms of 'tribunals', of 'debate' and of 'community'. The limits of reason are those described by the 'tribunal'; in other words, by those who engage in its constructive capacity (O'Neill 1986, 1992).

In rejecting Hume's scepticism Kant acknowledged that it aroused him from a 'dogmatic slumber'. In refuting Hume, Kant was forced to concentrate on the mind, and its powers of apperception. We subjectively perceive objects, and we do so critically. The process was necessarily inter-relational. By the first 1781 edition of the *Critique of Pure Reason* Kant was committed to the distinction between objects themselves and our

critical perception and understanding of them. At the same time Kant wanted to provide foundations for the laws of science as a metaphysics of experience. This would leave space for, and be complemented by, a free-will bound only by moral laws, and not by the laws of nature. As rational agents men could not be constrained by scientific knowledge or experience, in the guise of laws of nature. The *Critique*, as its Preface suggested, was geared to maintaining this distinction between objective reason and sensibility (Kant 1987, pp.xxiv-v).

For Kant, then, meaning lay not outside but, rather, within the morally driven individual. It was a matter of reason, not logic. Because we alone have a pure practical moral reason, we alone can self-govern, self-create and self-determine. Understanding now required a creative contribution by the cognising subject, and this contribution required the accommodation of experience as a parallel to reason:

Understanding may be regarded as a faculty which secures the unity of appearances by means of rules, and reason as being the faculty which secures the unity of rules of understanding under principles. Accordingly, reason never applies itself directly to experience or to any object, but to understanding, in order to give to the manifold knowledge of the latter an *a priori* unity by means of concepts, a unity which may be called a unity of reason, and which is quite different in kind from any unity that can be accomplished by the understanding. (Kant 1781, p.302)

It was only an accommodation. The idea of metaphysics was still the right one, but a critique was necessary in order 'to lay down the complete architectonic plan... to guarantee...the completeness and certainty of the structure in all its parts.' (Kant 1787, p.27) Kant remained convinced of the need to reinvest and reconstruct a rational metaphysics that was at the same time critical. If critical philosophy concentrated upon reason rather than objects, as Kant advocated that it must, then it would need to investigate the *a priori* conditions of causal knowledge. Causal knowledge is always experiential knowledge: 'When we experience something, we always pre-suppose that something else has gone before which it follows according to some rule.' (Kant 1787, p.240) Critical philosophy was thus directed towards addressing the nature of this causal synthetic theory of understanding, the given *a priori* objects and the creative empirically generated subject. The burning question for Kant was how the synthetic *a priori* concepts were possible.

The three distinct sections of the *Critique* set out to re-establish the position for a metaphysics that was not determined solely by nature. In doing so, it has been suggested, Kant opened the door for the critical relativism of the following three centuries (Parsons 1992, p.90). There is certainly no doubt that the entire transcendental theory which Kant constructed destroyed the rigidity of the Cartesian divide between self-knowledge and the knowledge of objects. In the 'Transcendental Aesthetic', Kant isolated a theory of sensibility which established that experience comes to us in a spatio-temporal form, which can be thus known *a priori*. In other words, the infinitude of the spatial and temporal dictates that objects are prior to our experience of them, otherwise, as Kant suggests, 'we should be landed in the absurd conclusion that there can be appearance without anything that appears.' (Kant 1781, p.25) Sensibility is immediate. Kant began the 'Aesthetic' by suggesting: 'In whatever matter and by

whatever means a mode of knowledge may relate to objects, intuition is that through which it is in immediate relation to them.' (Kant 1781, p.19) So our most immediate experience of objects is sensitive and not cognitive. Concepts, in other words general reflective representations, or as Kant calls them 'principles', are then abstracted or synthesised as *a priori* synthetic knowledge, from *a priori* intuitions.

In the 'Transcendental Analytic' he established a 'metaphysics of experience', which provided universal concepts fundamental to all knowledge, which could be called 'categories' (Kant 1781, pp.79-81). The 'Analytic' was a theory of given understanding, which added distinct *a priori* concepts of synthetic understanding and judgment to the *a priori* sensibilities. Being only 'particular determinations', the universality which experience 'provides' is 'never... strict or true, but only assumed or comparative universality' (Kant 1787, pp.3-4). The 'Analytic' renders sensible representations as empirical, in other words spatially and temporally determined, contingent concepts. The natural or empirical world is causally governed and so making sense of experience is only possible in the context of causal reality. But because experience can never 'provide' strict universality, any judgment of causation must be grounded, additionally, in an *a priori* source of knowledge. Kant's 'Analytic' furnishes form and order, so that knowledge can be constructive and synthetic, rather than just receptive, analytical and purely empirical.

Kant now develops this possibility of grounding empirical causation in the 'Transcendental Dialectic', wherein he revealed the antinomies and contradictions which follow from a purely transcendental logic of reason. Kant suggested instead a critical metaphysics of understanding, as a transcendental account of interaction. He thus provided *a priori* explanation for the need for law governed relations in the natural world, what he termed the 'universal laws of nature', and what had been identified in the 'Analytic'. In other words, there is interaction in the non-empirical sphere and a reflected interaction in the empirical or natural sphere which we experience. Kant concludes the 'Dialectic' by stressing the parallel nature of this complementary accommodation:

We require the principle of the causality of appearances among themselves in order to seek and to be able to provide natural conditions for natural occurrences i.e. causes of appearance. If this is conceded and is not weakened through any exception, then the understanding, which in its empirical employment sees in all events nothing but nature and is justified in so doing, has everything that it can require, and physical explanation can proceed unhindered on their way. Now it does not do the least violence to this if one assumes, even if it is otherwise only imagined, that among natural causes there are also some that have a faculty that is intelligible only in that their determination to action never rests on empirical conditions, but on mere grounds of reason, though in such a way that the action in the appearance from this cause is in accordance with all the laws of empirical causality. (Kant 1781, p.545)

The 'mere grounds of reason', are what Kant calls 'Ideas of reason', and it is the confusion of these Ideas with experiential concepts which has characterised the 'errors of metaphysics'. Kant designs the Ideas, as part of his transcendental system, to provide principles as a 'unity of reason' (Kant 1781, pp.310-32). They will, in a sense, frame

the experiential substance of understanding, but the two will remain, conceptually, rigorously apart. Although they will provide a kind of guide to virtuous moral behaviour, there will be no practical use for the Ideas of Reason. They are, he stresses, 'merely ideas' (Kant 1781, p.328). A syllogistic logic, 'will contain the origin of special *a priori* concepts which we may call pure concepts of reason, or transcendental ideas, and which will determine according to principles how understanding is to be employed in dealing with experience in its totality.' (Kant 1781, p.321)

The Ideas were determined as Kant's series of categories. It is important to stress that all the 'Ideas' were 'regulated' by the one unifying 'principle of reason'. In other words, all the 'Ideas' were 'forms' of the same 'principle'. As such the Ideas have an immanent rationality, whilst at the same time making a parallel provision for maxims of practical reason. It is only a regulatory provision, and as Kant was to re-assert as the thesis of his *Groundwork*, Ideas cannot prescribe any substantive content (Kant 1785, p.55). It is the laws of nature which, in prescribing various empirically generated contents, have the potential to externally constrain our freedom, and it is the practical nature of this constraint which Kant investigates in his *Metaphysics of Morals*. The role for a reconstituted metaphysics is to accommodate this by preserving a transcendental idea of infinite freedom, distinct from an empirically conditioned concept of freedom.

### *The Groundwork and the Critique of Practical Reason*

It was the realisation that the idea of freedom held the key to the development of a practical critical philosophy that prompted Kant to write the *Groundwork* (Henrich 1992, pp.22-3). The purpose of the *Groundwork* was to suggest that freedom was not just theoretical, but actual, and thus could provide the construction of fundamental universal laws of morality. In the *Groundwork* Kant constructed maxims as duties, to determine the relationship between internal and external freedom. Such maxims were principles of pure practical reason - the categorical imperative being the 'supreme principle of practical reason' - because they were generated by internal laws of morality, as distinct from external empirical sensibilities or instincts. They were thus principles derived solely from the 'freedom of the will' (Kant 1785, pp.129-30).

Actual examples of behaviour could never establish principles of the moral law. According to Kant it was 'absolutely impossible for experience to establish with complete certainty a single case in which the maxim of an action in other respects right has rested solely on moral grounds and the thought of one's duty.' (Kant 1785, p.74) The moral agent then, is one who understands and exercises his free-will, because this gives him the power to act in accordance with his Idea of moral laws, or maxims:

Only a rational being has the power to act in accordance with his idea of laws - that is, in accordance with principles - and only so has he a will. Since reason is required in order to derive actions from laws, the will is nothing but practical reason. If reason infallibly determines the will, then in a being of this kind the actions which are recognised to be objectively necessary are also subjectively necessary - that is to say, the will is then a power to

choose only that which reason independently of inclinations recognizes to be practically necessary, that is, to be good. (Kant 1785, p.80)

This is 'the formal principle of duty', which is a matter not only of freedom, but also, crucially, of responsibility.

Such a law, one which ought to be obeyed for its own sake, is a categorical imperative, which in its most basic generic form was stated by Kant to be: 'I ought never to act except in such a way that I can also will that my maxim should become a universal law.' (Kant 1785, p.70) Moreover as an internally prescribed moral law, the principle of free-will or autonomy demands: 'as the supreme condition of the will's conformity with universal practical reason - namely, the Idea of the will of every rational being as a will which makes universal law.' (Kant 1785, p.98) As a principle of pure practical reason, the categorical imperative was a principle of non-contradiction. Thus the imperative demands that each individual human being should, above all, act in such a way as not to contradict himself. Of course, in the practical empirical world of nature, this will not always be the case. In the Preface to the first *Critique* Kant had observed that human reason, whilst it may strive for unity, tends, at least initially, towards disharmony, and 'precipitates itself into darkness and contradiction.' (Kant 1781, pp.vii-viii) Thus, in the *Groundwork*, he suggests, 'the actions which are recognized to be objectively necessary are subjectively contingent, and the determining of such a will in accordance with objective laws is necessitation.' (Kant 1785, p.80) Thus, just as there is internal and external freedom, so there are internal and external constraints on freedom. There are the internal moral laws, and the external maxims or duties. They run together, but only the former, as 'Ideas', are principles of true freedom and universality.

The principle of free-will and the corresponding categorical imperative, being unconditioned, are thus synthetic *a priori* propositions, and thus require the 'synthetic use of pure practical reason.' (Kant 1785, pp.112-3) In the final section of the *Groundwork* Kant anticipated his next project, the 'Passage from a Metaphysic of Morals to a Critique of Pure Practical Reason'. Here the parallelism of the first *Critique* is expressed most clearly with the Idea of free-will and practical reason:

Hence, in spite of regarding myself from one point of view as a being that belongs to the sensible world, I shall have to recognize that, *qua* intelligence, I am subject to the law of the intelligible world - that is, to the reason which contains this law in the Idea of freedom, and so to the autonomy of the will - and therefore I must look on the laws of the intelligible world as imperatives for me and on the actions which conform to this principle as duties. (Kant 1785, p.121)

Three years after the publication of the *Groundwork*, which was never intended to be anything more than a 'foundation' for a practical metaphysics, Kant did indeed produce his second *Critique*, of *Practical Reason*, which revised his 'Idea' of internally generated constraints on freedom, and presented a philosophy of ethics. In essence much of the second *Critique* repeats and develops what was laid out in both the first *Critique* and in the *Groundwork*. Freedom cannot be explained by reason, as Kant had

noted in the final pages of the *Groundwork*, and so all we can do is defend it against those who assert its impossibility, because they too cannot prove their claim (Kant 1785, p.127). Rather than struggling with the inability to prove the validity of pure practical reason, Kant simply suggests that we must possess a free-will because of our undeniable recognition that we are bound by the moral law. It is a presupposition of our awareness of ourselves. It is, quite simply, a 'fact of reason'. The moral law 'is given as an apodictically certain fact... of pure reason, a fact of which we are *a priori* conscious' (Kant 1788, p.47).

In concluding the *Critique*, Kant iterated perhaps the most famous lines in his entire moral philosophy: 'Two things fill the mind with ever new and increasing admiration and awe, the oftener and more steadily they are reflected on: the starry heavens above me and the moral law within me.' (Kant 1788, p.161) Practical reason, the reason within us, has replaced God: 'The same subject, who is also conscious of himself as thing in himself, considers his own existence, so far as it does not stand under conditions of time, as determinable only through laws that he gives himself through reason' (Kant 1788, pp.97-8). It is also the acknowledgement of responsibility. Human agents are so defined because they have the ability to exercise causal ie. empirical power, and the exercise will be with 'reference to an end.' It has been suggested that the idea of the purposiveness of all rational activity is the most important in Kantian philosophy (Sullivan 1989, pp.25-6). It certainly becomes the centrepiece of Kant's later writings, most obviously, the *Metaphysics of Morals*. So, as causal agents and as moral beings, we have the responsibility of placing ourselves under our own moral laws as laws of practical reason, which preserve us from the 'empiricism of practical reason, which places the practical concepts of good and bad merely in experiential succession.' (Kant 1788, p.124) Purposive action is determined purely by the exercise of the free-will bounded only by responsibility (Riley 1986, p.555). We will act then in accord with our free-will: the exercise of absolute causal self-determination. This provides for a moral good which, separated from purely empirical good, is intrinsically good and grounds the possibility of virtue and of a practical and active virtuous existence. This presentation of morally obligatory ends as duties represented the primacy of Kant's theory of ethics. Here Kant is most clearly building upon the formula of autonomy as developed in the *Groundwork*.

In the second *Critique* Kant was thus able to reinvest happiness, not in its rampant empirical sense, but as a practical complement to virtue and which tended towards a distinct empirical collective good. Kant was always aware that there 'must be a feeling side to human morality' (Sullivan 1989, p.132). But this remains irreducibly distinct as a subjective 'side'. Here Kant is making the conceptual accommodation that constructed a complementary natural imperative as a progression to a perfect end. He does so because, as ends in ourselves, we are subject to the imperative formula of the 'Kingdom of Ends': 'For rational beings all stand under the law that each of them should treat himself and all others, never merely as a means, but always at the same time as an end in himself. But by so doing there arises a systematic union of rational beings under common objective laws - that is, a kingdom.' (Kant 1785, p.101)

The final 'end' of the moral self is 'community'. We have a duty as autonomously acting individuals to create community (Sullivan 1994, pp.85-7, 152). At the same time, we have an empirically governed 'need' for an end to each activity, and so Kant provides three imperative formulae as a theory of ethics. The three formulae of the *Groundwork*, of autonomy, of respect for other persons, and of a kingdom of ends, as principles derived from the primacy of moral law, represent Kant's theory of ethics, of what it is 'virtuous' to observe and execute. These natural imperatives, as determined by the three formulae, could 'bring an Idea of reason... nearer to feeling', but it could only be an asymptotal progression (Kant 1785, pp.103-4). 'Empirically conditioned reasoning' gave rise to its own 'prudential' or 'pragmatic' rules, but not, of course, principles or moral imperatives (Kant 1788, p.16). All such rules 'appear' as imperatives, but only universal moral imperatives obligate us absolutely and unconditionally. The categorical imperative is thus an objective and at the same time, a subjective norm. The primacy of the moral law, or course, remains unassailable: 'the concept of good and evil is not defined prior to the moral law, to which, it would seem, the former would have to serve as foundation; rather the concept of good and evil must be defined after and by means of the law.' (Kant 1788, pp.62-3)

So just as there was an intrinsic freedom separate and prior to the external freedom, so there was also an intrinsic goodness prior to empirical goodness. As Kant was to re-emphasise in his *Metaphysics of Morals*, to strive for the intrinsic good is to be 'virtuous', and that is what the empirically good person 'ought' to do. It can only be a striving. The human moral condition prevents us from achieving 'holiness'. Moreover, as a purely formal imperative of non-contradiction, the moral law makes no statement with regard to substance. That is a question for ethics alone, and for the imperatives of the natural law.

### *The Critique of Judgement*

Almost immediately that the *Critique of Practical Reason* was completed Kant felt the need to revise it, and the following two years between it and the third *Critique of Judgement*, were again devoted to the problem of freedom. The crucial antinomy was still there, and the concern with the subjectivity of human understanding and the accommodation with reason dominated Kant's later writings. Eight years after the completion of the third *Critique*, in 1798, Kant wrote to a friend expressing his concern that the 'scandal of reason', the fact that 'reason contradicts itself', still remained (Arendt 1982, pp.9-10). In *The Metaphysics of Morals*, he stressed that our understanding of reason is restricted to an understanding of human reason ie. practical reason, and in the third *Critique* he stressed the practical effective reduction of a theory of causation and ends to contingent ends. As Gilles Deleuze stressed, the *Critique* is a treatise about 'ends'. It thus becomes an irreducibly political treatise. Only individuals could provide a contingent 'final end' (Deleuze 1995, pp.62-3). The third *Critique* represents the culmination of Kant's critique of reason because it concentrates on the



individual. Kant is unequivocal: 'without man...the whole of creation would be a mere wilderness, a thing in vain, and have no final end.' (Kant 1790, vol.1 p.108) In this sense it is a Copernican treatise of philosophy or, as has been suggested, the first truly existential treatise (Jaspers 1962, pp.78-88). In the words of Hannah Arendt, having worked through reason, 'Kant had found an entirely new human faculty, namely, judgment; but at the same time, he withdrew moral propositions from the competence of this new faculty.' (Arendt 1982, p.10) In part, then, it was the inevitable response to the determined limits, even the 'failure', of reason. Hans-Georg Gadamer suggests that the third *Critique* becomes 'the Critique of Critiques' (Gadamer 1975, p.40). In doing so it becomes the most political of the Critiques.

The whole tenor of the third *Critique* became one of reflection rather than truth. 'Thinking the particular' is itself reflection. The gap between sensibility and reason, nature and freedom, had widened into a 'great abyss'. The central problem was still how to bridge this gap, but the construction of a purely rational systematicity, by which he had hoped to bridge the gap in the *Critique of Practical Reason* was abandoned. In its stead Kant now strove to construct a mirror constitution for his faculty of judgment, what he termed 'a unity of affinity'. Nature enjoyed its own system. The faculty of judgment enjoyed the twin aspect of objective and subjective universal validity. Only judgments 'upon the good' possessed objective validity. Judgments of taste were subjective, but still enjoyed the 'possibility' of being 'valid for every one' (Kant 1790, vol.1 pp.55-7). It was no longer a matter of furnishing objective measures of understanding. The *Critique of Judgement* was concerned solely with furnishing a method of understanding. It was now a question of placing reflective hypotheses in particular social and historical contexts.

At the same time, Kant was clearly reluctant to abandon everything that had gone before. It was still essential that the individual's experience remained firmly grounded in reason. Otherwise the only alternative was an experience based on instinct, and this could provide only conditional goods (Kant 1790, vol.1 pp.435, 443). So in the third *Critique* Kant affirmed that 'it is, then, only as a moral being that we acknowledge man to be the end of creation.' (Kant 1790, vol.1 p.444) The solution which Kant presented in section 21 and primarily in section 40 of the *Critique* was the idea of communicative rationality or, as he termed it, a *sensus communis*:

a critical faculty which in its reflective act takes account of the mode of reflection of every one else, in order, as it were, to weight its judgement with the collective reason of mankind... This is accomplished by weighing the judgement, not so much with actual, as rather with the merely possible, judgements of others, and by putting ourselves in the position of every one else, as the result of a mere abstraction from the limitations which contingently affect our own estimate. (Kant 1790, vol.1 p.151)

In section 38 he had suggested that there were 'formal conditions' for judgment. In other words communication creates its own kind of uniformity in its conditions of understanding; its own kind of rationality. The centrality of communication to the critical project cannot be overemphasised. As Deleuze suggests, it is absolutely pivotal; any universality claims are dependant upon the communicability