

THE HUM(E)AN FACE OF
KANT'S POLITICAL JUDGMENT

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Valuation can be a deeply creative exercise on its own, and the criteria of what people actively ‘value’ (as opposed to tolerate) and have reason to value (rather than passively accept) can work towards remedying the biases automatically reflected in the mechanical calculus of utilities.¹

1. Introduction

How does Kant’s third Critique, the *Critique of the Power of Judgment*, fit in his political philosophy?² According to Hannah Arendt’s influential view, it is central: Kant “never wrote” a political philosophy, and what is politically most interesting about Kant’s philosophy is in fact in the third Critique. We get something similar if we think of the political influences of the book: many post-Kantians, particularly the Romantics, seemed much more excited about the doctrine of the third Critique than about Kant’s political works. For their *Bildung*-centered conceptions of freedom, the third Critique may have seemed to offer exactly what the Doktor ordered, or at least more so than the rest of Kant’s theoretical philosophy.

The third Critique does play a role in Kant’s political philosophy, we agree, but it is different and significantly more circumscribed than either Arendt’s or the Romantics’ views. Kant does have a well-developed and arguably sophisticated political philosophy — developed over time in his “occasional” but not insignificant essays and culminating in the *Rechtslehre*, the first part of the late *Metaphysics of Morals*. In this philosophy, the particular doctrine expressed in the third Critique does have a role to play. In this paper, we illustrate it.

Central to our argument is to remember Kant’s philosophy in general as a response to challenges posed by David Hume, and we suggest the ways in which the doctrine of the third Critique fits in this project. On the basis of this analysis, we make the following claims. First, in general, Kant’s conception of politics is a response to what we will call the “political economy” conception of politics, namely that politics concerns *only* the distribution of material resources. Second, however, we argue against what we call the “romantic” conception of politics. In Kant’s conception, politics necessarily involves questions about the

¹ Sen 2002, 634-5.

² We cite Kant’s texts with in-text parentheticals which abbreviate the text’s title, the volume and page number of the Akademie Ausgabe and, where we use an English translation, the page number to that translation. Abbreviations and the translations used are listed at the beginning of the bibliography. In general, we use the now standard *Cambridge Edition of the Works of Immanuel Kant*.

distribution of resources, but they are not conceptually primary. *Human culture*, we argue, is what is conceptually primary in Kant's understanding of politics.

We further argue that this particular understanding of the political makes room for a specific kind of politics. It is here that the second contribution of the third Critique becomes apparent. Political judgment, we argue, is one kind of specifically formal *activity*.

Although we rely heavily both on Kant's texts and secondary work, the paper is not primarily exegetical: we do not claim that our interpretation is necessarily the view Kant himself held or would have held. In a properly Kantian way, we merely suggest that our interpretation is a fruitful way of connecting the third Critique to Kant's political philosophy.

1.1 HUME'S CHALLENGE AND KANT'S POLITICS

Hume argued that rationalist attempts to validate claims about the world fail and that all knowledge we could have was probabilistic. Kant found the anti-rationalist argument compelling, but despaired of the idea that all knowledge claims — particularly meta-claims about what knowledge claims were about — would be only probabilistic. There had to be, he thought, *necessity* at some level about our assertions about the world for them to even count as potential knowledge. This didn't apply only to knowledge claims, either: in his analysis, the very logic of an "ought" required the kind of necessity you just couldn't get out of induction, or convenient but contingent sentiments. In other words, normative judgments also had a built-in necessity, and that necessity had to be validated somehow.

None of this is news. But we take this idea that Kant's philosophy is a response to specifically Humean challenges further and argue that it is, in part, also true of Kant's political philosophy. And we focus, in particular, on the third Critique. There are some *prima facie* points of connection. Hume had famously argued in book III of his *Treatise* that the solutions to the cooperative conflicts in which humans almost invariably find themselves and which he called politics ultimately depended on a fortuitous but human-independent fact about our hardwiring: "Nature provides the remedy in the judgment and understanding." Mother nature had rigged us in a way that would help us solve our disagreements, disputes, and competition over scarce resources. This wasn't a non-agentic solution: we still had to use those two capacities, and Hume was abundantly aware of the fact we didn't always use them well. But we would use them well enough, often enough. However, from a Kantian perspective, the contingency — nature's remedy — that this solution depended on, should look, well, too contingent; it lacks the kind of necessity that theoretical rigor calls for.

And this is, in part, true. We will show that Kant's political theory is preoccupied with offering grounds that aren't just contingent or, to borrow a phrase from a latter-day Kantian theorist, John Rawls, a "*mere modus vivendi*." But, at the same time, there are surprisingly Humean elements in Kant's political philosophy. Famously (or notoriously), Kant takes the human physical condition as an important point of departure for his political philosophy: nature made us out of such crooked piece of wood (*aus so krummem Holze*) (IUH 8:23) that it is pointless to expect anything straight to come out. And, at the same time, that very crookedness can stand us in good stead: it gives us our "unsocial sociability" (*ungesellige Geselligkeit*) that moves history forward (IUH 8:20)³.

Some commentators have argued that the suggested Humean features of Kant's political philosophy are in tension with his emphasis on human autonomy, and that this renders the political theory either useless, or should, at least, be grounds for dismissing the teleological parts.⁴ We want to do something else. With terrible literal-mindedness Nietzsche might call Germanic, we want to focus on Hume's thought that nature's remedy comes via the power of *judgment* and turn to Kant's treatment of that very capacity. The locus classicus for the treatment is, of course, the third Critique.

Admittedly, this point alone is a pretty weak ground for making the connection between Hume and Kant's political philosophy via the third Critique. But it is not a complete contrivance, and we hope to bear out in what follows why not. Most importantly, although there is little evidence that Kant's explicit political theory tries to respond to Hume, there are good reasons to think that the conception of a person that Hume and Kant work with in trying to solve the cooperative conflicts of politics stem from their theoretical philosophy. And so, of course, insofar as Kant finds Hume's empiricism a problem to which he is to provide a solution, it will also figure in his political philosophy on the background.

But why the third Critique? The third Critique is not, *pace* Arendt, part of Kant's political philosophy. It is, however, Kant's sustained treatment of the human capacity for judgment, and insofar as it's in that capacity that one solution to cooperative conflicts lie, it is the place to turn. Furthermore, the third Critique has another important connection to the Humean idea of politics because it has a long treatment of *teleological* judgment and, necessarily related, nature's purposiveness. Recall that a "critique" of some thing in the Kantian sense is the investigation of the conditions of possibility for that thing. A critique of teleological judgment is, in a way, the evaluation of whether claims such as "Nature

³ This idea is further developed in *Perpetual Peace*.

⁴ See, e.g., Yovel 1980.

provides the remedy in judgment and understanding” make sense, or on what terms or understanding they might make sense.

Not surprisingly, it turns out that the Kantian evaluation refuses to vindicate the Humean solution in the terms Hume intended. But it does not fully reject it, either. Again, in keeping with the rest of Kant’s theoretical philosophy, the solution comes through the kind of Copernican hypothesis he employs in the first Critique: Let’s turn our assumptions around and see where we get. Instead of taking nature’s remedy as some empirical given, it is up to us to posit a certain way nature works and the way we fit in its system. In most general terms, what emerges is a conception of politics broader than Hume’s. Politics is about cooperative conflicts over the distribution of resources, but it is *also* and primarily — to put the point in lofty Enlightenment terms — about the cultivation of humanity and specifically human *culture*.

However, the typographical gimmickry of our title is substantively important. Politics is ineluctably dual: it is about cooperative conflicts *and* about human culture. The views of the third Critique inspired the romantic post-Kantians — all the way to Nietzsche, we would argue — but they took things too far. They severed politics from the mucky business of ordinary life entirely. *Kultur*, particularly through *Bildung* became the full realization of freedom for the Romantics. The Kantian view, instead, remembers that our material existence is not just instrumentally necessary, but can *also* be part of our expression of our humanity.⁵

All this may suggest that we will focus only on the second part of the third Critique, viz. the Critique of Teleological Judgment, but, in fact, we will draw both from the first part — Critique of Aesthetic Judgment — and the second. One key aspect is the role of imagination (*Einbildungskraft*) in the activity of judgment. Imagination, in Kant’s theory, is a very specific technical term, but it is also connected to our ordinary understanding of it. It is important, first, because it is a necessary condition for cognition in general. (That is, for the human activity of making judgments, whether epistemic, aesthetic, moral or political.) Second, it is important for *political* judgment specifically.

All this is still operating at a very high level of abstraction, and ultimately we want to bring things down to actual political theory and political practices. The political implications of the account we offer are, first, consistent with Kant’s explicit political theory. This isn’t just a happy coincidence, but a test of the plausibility of our account, given Kant’s

⁵ This might strike someone as more Hegelian than Kantian. Sure, it does resemble Hegel’s view, but it is important to see it as Kantian.

preoccupation with developing a consistent philosophical system. And, second, we want to show that the account is generally politically valuable. As we suggest above, it's a conception of politics that is attentive to the unavoidably instrumental aspect of politics but also goes beyond it. In that way, it strikes a constructive balance between what we might generally call the political economy conception of politics and the romantic conception of politics.

2. Nature Makes a Move, or the Humean Conception of Politics

The “official” Humean challenge Kant takes up in his critical philosophy is Hume’s skepticism about the metaphysical grounds for our knowledge claims. Here we want to take up the view presented in the early sections of book III of the *Treatise*, namely Hume’s conception of politics and what he takes to be the sources of solution to political problems. Let us review some key features of that account.

On its face, it might almost seem appropriate to speak of the Kantian face of Hume’s politics. After all, having just dismissed reason as sufficient moral motivation in part I of book III, he seems to re-elevate reason — or at least “judgment and understanding,” which are almost the same thing in this context — to a central place. Justice is an *artificial*, i.e., human-dependent, virtue, not a natural one, he argues. And it is a solution to a problem *set* by nature.

Nature’s first move — to borrow a phrase from game theory — is problematic. This sets up the conditions later commentators have come to call the Humean circumstances of justice. First, we find ourselves in the condition of relative scarcity: there are enough resources for everybody to survive, but there isn’t enough to give everybody what they want. This is because nature has rigged us with “incommodious affections”: our desires lead us to preferences greater than our needs and to tension with collective welfare on which we nevertheless depend, since nature has also made us social beings. We find ourselves, in short, in circumstances in which resources *could* be distributed to have everybody survive if we only cooperated in the right sort of way, but in which our own desires militate against that cooperation. It is a cooperative conflict, to borrow Amartya Sen’s phrase, which we can call politics. And it is all nature’s doing.

Fortunately, while nature has set the problem for us and also refuses to solve it, it has also given *us* tools that allow us to solve it: “nature provides a remedy in the judgment and

understanding, for what is incommodious in the affections.”⁶ We soon realize, Hume says, we are all better off if we create conventions for the regulation and distribution of resources:

This can be done after no other manner, than by a convention enter'd into by all the members of the society to bestow stability on the possession of those external goods, and leave every one in the peaceable enjoyment of what he may acquire by his fortune and industry.⁷

Judgment and understanding bring this about because they allow us to understand our interests better: they help us realize our incommodious tendency for instant gratification and the corollary, our discounting of the future. They also play an inferential role (which is why they are close to reason): the establishment of this convention is not a one-time affair — recall Hume’s repudiation of the social contract — but, instead, it emerges over time, and our inductive rationality shows us the benefits of conventions of justice and, at the same time, “gives us confidence of the future regularity” of the conduct of our fellows.⁸

It is important to see that although nature is at bottom the benefactor, and although Hume’s account is empiricist, it is not a reductionist account: it doesn’t take justice all the way down to nature. Instead — as Hume so explicitly declares — justice is an *artificial* virtue, a social convention created by us humans. (In fact, Hume can be effectively used for *anti*-reductionist purposes, as Simon Blackburn has recently done.)⁹ It isn’t some unvarnished, reductionist naturalness that makes it problematic for a Kantian. Rather, it is the contingency of the account.

The contingency comes in two problematic and related ways. First, Hume takes human interests as given. They are not unproblematic — they are “incommodious,” after all — but the badness is pragmatic, not moral. A rational reflection on my current desires will lead me to conclude that acting on them is counter to my long-term interests. At no point, the Kantian would protest, does any inference hang from my realization that something might be *wrong*. For Hume, this is of course a feature of the argument, not a bug. But for a Kantian, it would not suffice. Of course, one might ask who made the Kantian the boss, but there is a way of scaring up the problem that doesn’t presuppose any Kantian penchant for independent normativity. This is the problem of the Humean account as a functionalist one.

Hume doesn’t claim that we always successfully solve the coordination problems by creating the right kinds of conventions. But he does suggest that we mainly do so or, more

⁶ Hume 1978, Bk. III Pt. II §ii, 489.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Blackburn 2004, ch. 13.

specifically, that sustainable (and surviving) societies will have done it. For the most part, humans turn out to have figured out the right way to proceed, and that, from a Humean perspective, is pretty much the strongest thing there is to be said for the solution. “It seems to have worked, so it’s good,” is the structure of the argument. It is one of the things that lead people to categorize Hume as a conservative, but although we think that is not quite right, it is not our concern here. Our concern is the functionalist logic of the account: a practice makes sense as long as it solves a problem; end of story. But as philosophers of social science have been arguing for a long time, functionalist accounts are question-begging, even in explanatory terms: they leave open the question of why *this* convention, and not *that* one, which might have accomplished the same thing.

So despite justice being an artificial virtue, and despite its seeming dependency, in a proto-Kantian way, on our rational powers, it is not a Kantian account, and a Kantian would have serious problems with it. It is the givenness of interests that ultimately limits the Humean conception of politics to the cooperative conflicts *over resources*. Or, to put it in another way, it is the Kantian’s questions about normativity that will broaden politics beyond resource distribution.

A few more related observations. The Humean conception of politics and the reason he thinks it a good feature of his theory that no independent normativity gets presupposed follow from his famous guillotine. This is the argument that apparently unavoidably severed the is from the ought, description from normativity. This didn’t mean that there would be no place for oughts in Hume’s system, of course — justice is one kind of ought, after all — but merely that they were not to be derived deductively from any facts. And as Hume’s moral theory tries to show, even for a theorist the hope that oughts can be compellingly derived from anything, that is, be given a systematic defense that at the same time would be a binding one, is a chimera.

Notwithstanding the important Kantian elements in Hume’s conception of politics, the above shows that Kant mainly disagrees with Hume. Against that backdrop it is worth noting that the two theories do share some key features. For our purposes, the central one is that Kant, like Hume, does take some things as given, beyond questioning or argument. The first one is one way of understanding the nature of humans as a species: we are finite rational wills. We are animals, and unavoidably so. We can’t ever hope to transcend our humanity, as Rousseau, on some interpretations, had hoped.¹⁰ At the same time, we do have

¹⁰ See LaVaque-Manty 2002, ch. 4.

rational wills, which do seem to be able to transcend nature's finiteness. *Why* we are this sort of being — an ambiguous hybrid of angels and cattle, as Kant puts it — is beyond our inquiry. Second, and related, what is given is where we find ourselves: this is Kant's argument of the *globus terraqueus* (RL 6:352, 489). We find ourselves on the Earth, which sets constraints on our material resources and brings us to unavoidable proximity to other humans. Kant doesn't quite — and the "quite" is important for our argument — call this the circumstances of politics, as Hume does, but he comes close. And this fact, again, is given and beyond our inquiry.

3. Arendt's Kant, and Ours

To prepare for our treatment of the third Critique, we spend this section discussing some of the reasons we find Hannah Arendt's reading of Kant's political philosophy problematic. We use this slightly backward approach not in order to criticize Arendt as much as to highlight areas that are relevant for our argument below.

Arendt glibly dismisses Kant's official political philosophy. Famously, she begins her lectures on Kant's political philosophy by declaring that Kant "never wrote a political philosophy," and that what he did write on politics he "did not take them too seriously" (7).¹¹ There is ample reason to disagree. It may well be true, as Arendt says, that Kant's political writings do not constitute a "fourth" Critique, and that many of his political writings are, in fact, *political*, not philosophy in the sense that the critiques are philosophical: they are not an investigation into the conditions of possibility of politics. Politics, as Kant characterized it, is "applied branch of right" (*ausübender Rechtslehre*) (PP 8:370, 338), and as such not subject to an a priori investigation of the conditions of its possibility. Rather, what the *Groundwork of the Metaphysics of Morals* and the second Critique established was the possibility of "the right," and thus political philosophy would take the form of a "metaphysics," in Kant's language. That he did write, as part one of the *Metaphysics of Morals*, the so-called *Rechtstlehre*. One can argue, furthermore, that the occasional writings on politics do, in addition to being political, try to develop the ideas that culminate in the doctrine of the *Metaphysics of Morals*. Over the last several decades, there has been an increase in the literature on what that theory is. Although there are disagreements — some of them significant — it is fair to say we can meaningfully talk of Kant's having written a sophisticated and interesting political philosophy.

¹¹ We cite Arendt 1992 with in-text parentheticals.

To be sure, Arendt's claim stems not from her not knowing Kant's oeuvre, but from her particular conception of politics. In that sense, our disagreement on this score is not an interpretive disagreement, but a substantive one. However, there is an interpretive dimension. Kant was, as is well known, almost obsessed with the systematicity of his critical philosophy, and his interpreters have at least a *prima facie* license to understand all his work either as pieces of the system or as points in its development. Therefore, we fundamentally diverge from Arendt in the way she reads the third Critique. For her, it's the most promising source in the construction of the political philosophy Kant never wrote. For us, insofar as it is useful for thinking about Kant's political philosophy, it has to be consistent with a meaningful interpretation of that philosophy in general. Below, we suggest that the interpretation we offer satisfies that condition.

We turn now, specifically, to Arendt's interpretation of the third Critique and, by extension, Kant's theoretical philosophy, and flag other points of divergence. The common feature in all these points is a conflation of empirical, on the one hand, with the theoretical or conceptual, on the other. There is a veritable tradition of reading Kant's theoretical philosophy — the theory put forth primarily in the first Critique and, to some extent, in the third — as an account of human empirical psychology. On that interpretation, what Kant is up to is, at least in part, trying to describe the functionings of the human *brain*, and what these days would be identified as the purview of cognitive neuroscientists and empirical psychologists. Of course, Kant is not taken to have a modern understanding of such functionings; instead, he is seen as someone who subscribes to relatively common 18th-century "faculty psychology." In that view, the physical cognitive apparatus consists of various faculties which have some particular set of physical properties and ways of working.

The culprit for this interpretation of Kant's theory is, in part, Kant himself. First, the concept Kant uses — *Vermögen* — can be translated as "faculty," and that conveniently led particularly his 19th-century interpreters, who were in the thralls of their own faculty psychology (the most notorious of which is phrenology), to read Kant in those terms. Second, given the fact that Kant — like everybody else in the 18th century — lacks even a minimally sophisticated empirical psychology, he sometimes conflates the theoretical and the empirical himself. Put in another way: he can't help conflating the issues since he doesn't have good theories of the distinction available to himself.

Even then, however, it is a mistake to read Kant as talking about empirical psychology. First, he is, for the most part, very clear that his theory of cognition is *conceptual*, his language of faculties describes capacities which are more like *skills* than physical organs

we have or don't have, and cognition is *action*, i.e., agentic, as opposed to behavior, i.e., instinctual. Here is Kant in his *Anthropology from a Pragmatic Point of View*, a book in which is devoted to charting the relationship of our understanding of humans both as physical and moral beings:

When the word “understanding” means the capacity of cognizing rules (which is done through concepts), so that the understanding comprises the entire *higher* cognitive capacity, then we should not understand the rules as those whereby *nature* guides a human being in its behavior, which is what happens in animals guided by natural instincts. Instead, we should only understand them as those rules that the human being *makes* himself. (A 7:197)

Second, interpreting Kant's theory as outlining conceptual relations and agentic actions simply makes more of the theory make sense. On the other hand, conflating the conceptual and the empirical turns the theory into nonsense, at worst, and at best makes it obsolete, given that 18th-century faculty psychology no longer enjoys empirical adequacy. The conflation also makes obscures key issues. For example, it obscures the very project of the third Critique, which as we discuss below is the reconciliation, *Übergang*, of nature and freedom.

So, to keep things clear and to avoid misunderstanding, we will translate *Vermögen* as a “power” or “capacity” and talk, in general, of cognition as agentic action, not as some unspecified form of causal functioning in our wetware.

Yet, Arendt does seem to read Kant through a faculty psychology. This leads, in our view, to a host of problems. She conflates cognition as a set of conceptually governed *actions* with empirical faculties. Most puzzlingly (one is tempted to say embarrassingly) she equivocates between two meanings of “taste,” namely between taste as pertaining to human aesthetic judgments and the taste for which tongue is the relevant organ (64). The German term, *Geschmack*, is homonymic in the same way the English term is, and Arendt may be onto an interesting etymological connection here. Kant's own discussion in his *Anthropology* flags this: most fundamentally taste is about making discriminations (A 7:239). But he immediately also notes that the term has attained a broader application and that it can refer to a completely non-empirical practice of making aesthetic discriminations on the basis of rules. In other words, he essentially repeats how he understands “taste” in the third Critique. Furthermore, in the discussion in the *Anthropology*, he adds a remark in which he offers a conjecture on the puzzling homonymy: it has to do with using mealtimes for social

enjoyment (A 7:242). But there is nothing either in the third Critique or the *Anthropology* that would license Arendt's conflation.

Less oddly, but more importantly, Arendt's conflation of the conceptual/theoretical and causal/empirical relations leads her to a radical misunderstanding of the so-called *sensus communis*, a central concept in the third Critique's "Critique of the Aesthetic Power of Judgment." Although Kant is explicit both in his preliminary discussion of the *sensus communis* in §§18–22 of the third Critique and in his Deduction of the legitimacy aesthetic judgments in §§38–42 that he is talking about a priori conceptual relations, Arendt reads the *sensus communis* as both a conceptual feature of all human judgment *and* as an empirical sense. We return to this issue below in our discussion of the *sensus communis*.

There are further points of divergence.

First, in discussing Kant's theory of aesthetic judgment, Arendt subscribes to a view that has in the literature come to be called the "two-acts" view. At issue is what happens when a person makes an aesthetic judgment, that is, claims of some object or another that "This is beautiful."

Recall briefly the layout of the human cognitive apparatus for Kant. Humans have three higher cognitive capacities: understanding, judgment, and reason. "Below" them is the lower cognitive capacity, sensibility, through which the objects of cognition arrive at the cognitive process, through sensible intuition. Somewhere between the higher and lower capacities — here, scholarly agreement diverges — are what we might call supporting capacities, the most important of which is imagination (*Einbildungskraft*). The "raw" material in sensible intuition is an unordered manifold; imagination orders it in a way that makes it possible for a concept, which comes from understanding, to be applied upon it. This application — strictly speaking, the subsumption of the now ordered manifold under a concept — is judgment. This is the *general* structure of all cognition, including epistemic judgments (claims of knowledge), moral judgments (e.g., claims of right and wrong, duty and permissibility), and aesthetic judgments. (Arendt says that only aesthetic judgments are "strictly speaking" judgments [72], but whatever there is to be said for this, it is not Kant's view.) It is important to remember, again, that everything in this scheme of cognition is agentic, not causal in some other way. It is what the cognizer *does*. To be sure, experiential cognition — or simply experience, as opposed to pure thinking — has a causal component: something in the world acts on our senses, and it is that action that "shows up" in sensible intuition as the manifold to be cognized. But that's where natural (as opposed agentic) causality ends; the rest of the theory is not, as we said above, not about how our wetware

functions. (And as a result, the Kantian account is, at least, *prima facie* independent of the truth of competing neuroscientific models of the brain.)

Now Arendt, like many other Kant interpreters, claims that there are “two mental operations in judgment:” the ordering of the manifold in imagination, and then reflection on it — the subsumption of it under the concepts of understanding (68).¹² The two-acts view is a perfectly sensible interpretation, and seems at least partly licensed by the way Kant talks. But as Hannah Ginsborg has argued in her groundbreaking work on Kant’s theory of cognition, it makes for both textual and conceptual trouble.¹³

Let’s think about the issue through a question Kant asks: whether the feeling of pleasure precedes the judgment of an object as beautiful or follows it (KdU 5:217, 102).¹⁴ The question is tricky by itself, and confounded by the fact that Kant seems to be giving two opposite answers in different parts of the Critique and in the unpublished First Introduction. Commentators who insist on reading Kant as writing about psychological processes in the human mind tend to have a hard time getting rid of the air of paradox, whereas a non-psychological reading dispels it. This is Ginsborg’s solution: “*Qua* judgment about the pleasure, the judgment of taste has as its determining ground the universal communicability of the pleasure. *Qua* judgment demanding agreement with itself, the judgment has as its determining ground the feeling of pleasure.”¹⁵ So, again, the relationship between the judgment and the feeling of pleasure is a purely conceptual one, not causal. The aesthetic judgment is a predication of a state of mind as one that is of self-perpetuating character because that’s just what pleasure is conceptually, in the Kantian view. Of course, none of this is independent of causal relations — the aesthetic judgment is, after all, about a state of mind occasioned by the world impinging on the agent’s sensibility — but the relevant considerations aren’t about the causal relations. And there are no two separate acts of the mind.

This last point is controversial, and we don’t intend ours as the conclusively correct view.¹⁶ But the point is that it suggests why the conflation of the conceptual and the empirical leads to greater interpretive difficulties with the doctrine of the third Critique than one that keeps them separate.

¹² The most important advocate of the two-acts view in the analytic tradition is Paul Guyer; see Guyer 1979.

¹³ Ginsborg 1990.

¹⁴ Discussion in this paragraph comes from LaVaque-Manty 2002, 149-150.

¹⁵ Ginsborg 1990, 37.

¹⁶ See Allison 2001, 110-118 for a review of the controversy between Guyer and Ginsborg. Allison comes closer to Guyer on his interpretation.

The preliminaries out of the way, we now turn to the third Critique. We proceed in what might strike the reader as a backward order: we focus first on the doctrine in the second part of the book, the less-read “Critique of Teleological Judgment,” and tease it out on a macro-level point about human culture. We then return to the actual structure of human cognition and the features of the practice of judgment specifically.

4. Judgments: Teleological, Aesthetic, Political

4.1 THE GOAL OF THE THIRD CRITIQUE

The idea of *Übergang* from nature to freedom — or the reconciliation of nature and freedom — is the central preoccupation of the third Critique. Recall that Kant’s critical project originally was to answer the three central questions of philosophy: What can I know? What ought I to do? What may I hope? By the time Kant comes to writing the third Critique, the third — essentially a theological question — is no longer the central animating question for the work. Insofar as Kant deals with the theological issues directly, he deals with them in *Religion within the Limits of Mere Reason* and in occasional essays like “The End of All Things.” But the question does figure in the third Critique, even if it is on the background. It is behind the question of reconciling nature — determinism, mechanistic causality — with freedom, which in his philosophy is a different kind of causality.

As Stuart Hampshire points out, one important figure that looms large behind the preoccupation of the third Critique is Leibniz and Leibniz’s idea of sufficient reason in particular.¹⁷ Kant is trying to make sense — make sense in the most robust way possible — of the contingency of phenomena in the world, especially if we assume an omnipotent god. Why was I born the day I was born? Why was I born in the first place? “*Warum bin ich ich,*” as the narrator asks at the beginning of Wim Wenders’ *Wings of Desire*, “*und warum nicht Du?*” Why does the leopard have spots and tiger stripes? Why is the Earth where it is, and not four feet to the left? Leibniz’s notion of sufficient reason had an answer: everything is the way it is because God has a sufficient reason to put it there, and even though we can’t know it, it allows us to make sense of life.

The notion of final perfection — the maximum amount of being — is for Leibniz the shortest bridge that leads us from fact to value, and from acceptance of the various causal connections and natural laws in nature that we discover to a full understanding of why these causal connections and lawlike necessities must be as

¹⁷ Hampshire 1989.

they are, when we survey them as a whole. We do not understand the connections that we observe if they remain a mere list or catalog of laws, and if we have not grasped the interconnections between them, and their perfect coherence within a larger and complete design.¹⁸

The other figure that looms even larger behind the project and who makes it impossible for Kant just to endorse Leibniz's theodicy is Hume. It's Hume's undercutting rationalist arguments like Leibniz's that has brought Kant to a point where nature and freedom are different conceptual perspectives into the world and in need of reconciliation.

This helps us see how the "original" critical question of what we may hope remains on the stage. And one way to keep it there is to think about how nature affects — or ought to affect — our end-setting. As Barbara Herman and others have argued, the conventional wisdom of Kant as a hedonist regarding non-moral ends is problematic: our end-setting is *not* independent either of moral or epistemic considerations.¹⁹ Our ends are not given. Furthermore, there is a relationship between *my* end-setting and what I may hope for myself, in this life or a presumed afterlife. Sure, it is important to remember the Protestant context in which Kant writes — however distant his philosophy is from any Lutheran orthodoxy — and remember that my end-setting and my pursuit of those ends might not have all that much to do with what I may hope for myself.

But there is a connection: what I may hope has a non-theological dimension as well, and on that dimension the role of human culture is important. Human culture provides one *Übergang* from nature to freedom, that is, one way of reconciling our being natural beings and our being agents, and human culture circumscribes how I may and ought to think about what I can be and become.

This is cryptic. To make it less so, we turn to thinking about the structure of the third Critique and its central concepts.

One of the enduring puzzles about the structure of the third Critique is the apparent difference between the first part of the book — the Critique of Aesthetic Judgment — and the second — the Critique of Teleological Judgment. The former is more or less straightforward for us, although we should also remember that Kant uses "aesthetic" *both* in the old sense, i.e., as pertaining to sensibility in general, and in the modern sense, as pertaining to matters of beauty, art, and the like. The second type of judgment is less

¹⁸ Hampshire 1989, 146.

¹⁹ Herman 1998.

familiar to us as anything meriting an analysis — nay, critique — of its own. It has to do with attributions of purposiveness to entities in the world, particularly to nature.

There are many ways to begin reconciling the apparent difference between the two types of judgments. Kant himself offers them to us. First, both types of judgments share a structural similarity: they are judgments that don't attribute any objective qualities or properties to the objects they judge. "Beauty" is not an objective quality of a piece of art; it isn't even a secondary quality like color. It is simply a kind of report of the *judger's state of mind*, rather than about the object. No aesthetic realist, Kant. And the same is true of the purposiveness of nature: Kant is explicit that there isn't any *real* purpose to nature. He merely says that we must think so, introducing another instantiation of his familiar "as if."

This means that Kant does not think that nature *objectively* is purposive, i.e., purposive as a matter of fact. But he does think that the assumption of nature's purposiveness is one of those transcendental "as ifs" without which it's hard to make sense of the world and, specifically, the contingencies we find in the world.

The standard view is that Darwin made that particular "as if" unnecessary about biology: we *can*, the view goes, make sense of natural development and even natural "progress" without any theory of end-directedness; the theory of natural selection does it for us. This is, in fact, an aspect of a more general fact about the natural world. The difficulty about the contingency of the world has much to do with the fact that Kant operates with a starkly mechanistic conception of nature. The mechanistic notion, which Kant inherits from Descartes, sees nature as strictly mechanistic, literally as machines. But, as Klaus Dusing points out, the development of modern chemistry — specifically, the recognition of stochastic processes — was enough to render this conception of nature insufficient, and the theories of evolution and quantum mechanics brought down any mechanistically deterministic conceptions of nature in biology and physics, respectively.²⁰ In other words, if we can make sense of contingencies of the phenomenal world with the principles of science itself — and we now can — then there is no need to postulate a transcendental "as if" about nature's purposes.

However, while that is true, we might notice that even we, who have nicely dynamic and stochastic theories of science at hand, seem to have an unavoidable penchant for talking about nature in purposive terms. Even evolutionary biologists, especially in giving popular accounts of their theories, seem almost entirely unable to resist talk of "selecting *for*" and the

²⁰ Dusing 1990, 156.

like, even if they insist that they don't really mean things in the teleological way. For example, in his well-known book about the "selfish" gene, Richard Dawkins cautions against his readers taking the metaphor literally.²¹ But perhaps there is a way in which such teleological talk provides meaningful order, and not just a convenient heuristic or a metaphor, for our conceptual universe. Some of us do think it proper, perhaps even more generally desirable, to avoid teleological language when thinking about nature, but we also want to entertain the idea that teleological talk may be meaningful even post-Darwin. What we need to figure out is *how* such talk is meaningful and, specifically, whether the Kantian approach is a good one, given the changes in our scientific understanding of the world.

How does Kant understand nature's (transcendental) purposiveness? Let's begin by figuring out what he means by "purposiveness." As he spells out in the third Critique, purposiveness is "lawfulness of the contingent" (*Gesetzlichkeit des Zufälligen*) (KdU 5:404,274). What does lawfulness of the contingent mean? We can understand Kant by following a distinction he makes between the *mechanism* of nature and the *technique* of nature. Both are ways of understanding nature as systematic, but the former belongs to the realm of biology, physics, and chemistry — to the realm of natural science, which is subject to determining epistemic judgments. The latter, on the other hand, belongs to the realm of teleology and is subject to reflective judgments. We saw above that the strictly mechanistic conception of nature is mistaken and appears to obviate the need for a teleological judgment, but let's assume, for the sake of argument, that it doesn't. (Let's make ourselves ignorant of Lavoisier, Darwin, and Einstein, in other words.) That helps us understand the technique of nature: it's nature's *contingent* exercise of its causality. Causality is, of course, a lawfulness, as Kant establishes in the Second Analogy of the first Critique. The flower (or more likely the weed) that grows in my garden grows according to specific causal laws, but it is contingent that it emerges there and then, in the particular way it does, instead of on the neighbor's yard, and two feet taller. To understand that contingency, we assume, Kant argues, that nature put it there according to some rule. It is the same way as when I apply a technique, I have some rule for it. Since, nature doesn't really do anything intentionally, we're dealing with an assumed purposiveness, or purposiveness without a purpose (*Zweckmäßigkeit ohne Zweck*) and so conformity with a law without a law (*Gesetzmäßigkeit ohne Gesetz*). But the assumption nevertheless helps make sense of why it is that flowers or weeds grow anywhere.

²¹ Dawkins 1989.

In this way, for Kant, the teleological explanation of nature is one kind of heuristic for explaining it (KdU 5:411, 280). It is necessary, in his view, because the merely mechanistic explanation cannot account for the complexity and contingency of the natural world and so runs the risk of sending reason “wandering about among figments of natural capacities that cannot even be conceived” (ibid.). That is why it is one of those transcendental “as ifs” we must assume. At the same time we should not think that we can just use the teleological explanation: “It is of infinite importance to reason that it not allow the mechanism of nature in its productions to drop out of sight and be bypassed in its explanations; for without this no insight into the nature of things can be attained” (KdU 5:410, 279). Instead, using only teleological explanation becomes a form of “mere fanaticism” (KdU 5:411, 280).²²

4.2 HUMAN CULTURE AND THE PRIMACY OF THE OUGHT

Two questions arise. First, we now see why Kant thinks teleological judgments are necessary, but since the need comes about only as a result of his scientific backwardness, why should we care? And, second, what does any of it have to do with politics? An answer to the first question takes us to an answer of the second.

Recall Leibniz’s sufficient reason. When we ask, “Why is the world the way it is?” the Leibnizian answers, “It is the way it ought to be” because God, in her infinite wisdom and omnipotence, made it so. “Is,” in the Leibnizian model, *follows from* the “ought.” Let’s call this *the primacy of the ought*. Hume’s guillotine had in severing any strong connection between the is and the ought also undermined this primacy, but Kant is hoping to re-establish it. The transcendental “as if” about the purposiveness of nature does it.

How? Kant can’t just turn to premises about God’s will; he does agree with Hume that a rationalist argument like that is effectively out of the running. And the attribution of purposiveness to nature, insofar as it might help, has the unfortunate feature that it depends on outdated science — besides which it only establishes the double need for *both* mechanistic *and* teleological judgments of nature. That doesn’t yet get us a primacy of the ought in any domain.

Humans naturally look to the purpose for which things are and although through our investigations into the mechanism of nature we can explain certain things, i.e., why grass

²² We are deviating from the Guyer-Matthews translation and translating “*schwärmerish*” as “fanatic.” Kant made an important distinction between enthusiasm (*Enthusiasmus*) and fanaticism; the latter is a form of pathology, while the former only flirts in emotional instability. For a longer discussion of this issue, see LaVaque-Manty 2002, 145-153.

grows up instead of down and why it tends to be green, we still do not know why grass. However, and Kant concedes, in a way this is too easy to refute: grass feeds the animals and we (some of us) eat the animals. So grass is green so that it can photosynthesize sunlight for energy to grow and that allows the animals to...and so on and so forth. But then you get to the final question: “why is it necessary that human being exist?” (KdU 5:378, 250) In other words, in the mechanistic line of investigations we do not “arrive at any categorical end, but all of this purposive relation rests on a condition that is always to be found further on, and which, as unconditioned, (the existence of a thing as a final end) lies entirely outside of the physical-teleological way of considering the world” (ibid.). This is why it is necessary for us to “subordinate the principle of mechanism to the teleological principle” in the explanation of things as natural ends (KdU 5:417, 286).

To put this in another way, there is a set of phenomena in the world that doesn't *prima facie* seem accountable by the mechanistic conception of nature *at all*: i.e., awareness humans have of themselves as end-setters, or what we might call the phenomenology of freedom.²³ And this gets our teleology a bit richer.

So in order to arrive at a categorical end, we ought to view nature as if it were purposive and acted in accordance with a principle of ends (KdU 5:378, 250). On this view we investigate not the mechanism but the technique of nature. In this manner, and through our teleological power of judgment, we can posit nature as a system of natural ends culminating in a final end of nature. Nature, in all of its empirical diversity, becomes an interconnected whole. We get a big picture.

The human being “is the ultimate end of the creation of here on earth, because he is the only being on earth who forms a concept of ends for himself and who by means of his reason can make a system of ends out of an aggregate of purposively formed things” (KdU 5:426–427, 294–295). This formulation seems, in many ways, as problematic as it might be promising — it appears to license the rampant use of nature for human purposes, for example — but we want to focus on the promising for now.

Let's take stock. The argument, in short and a bit loosely, is this:

- (1) An explanation of phenomena in the world require both determining judgments about the mechanisms of nature and reflective judgments about the purposes of nature.

²³ Contemporary reductionists do try to make even freedom compatible with “mechanistic” nature, and determinists have of course famously rejected it as an illusion. It is beyond the scope of this paper to take on those arguments.

- (2) However, one set of readily apparent phenomena is not accountable by the mechanistic conception. That is the human phenomenology of freedom.
- (3) The phenomenology of freedom is accountable for by the teleological judgment.
- (4) The phenomenology of freedom is a necessary condition for all human action and judgment. You can't explain anything unless you presuppose yourself to be capable of explanation, which is a kind judgment, which is a kind agentic activity.
- (5) So we must assume human agentic activity as "the ultimate end of creation," which also means this purposiveness is primary for all human endeavor.

Like Leibniz, Kant establishes the primacy of the ought, but his ought does not depend on an a priori rationalist argument about God's will, but on a transcendental conception of human freedom. Here, all he needs is the *phenomenology* of freedom, i.e., our sense that we seem to have choices. Of course, transcendental validity of freedom had received its own validation in section III of the *Groundwork* and, more fully, in the second Critique.

So Kant has an account that effects the *Übergang* of nature and freedom or, in other words, responds to Hume's skeptical theoretical challenge.²⁴ But we still need to see in what way it offers a response to what we have treated as Hume's political challenge.

The answer is *culture*. Consider: there are two ways in which we can conceptualize humanity as nature's final end, Kant says (KdU 5:429f, 297). One is the happiness of individual human beings, the other is human culture (ibid.). Kant's anti-eudaimonism rules the former out: although our happiness is not given, as we observed above, and so Kant is not a hedonist about non-moral ends, our happiness is still bound up with "the course of nature," as Kant observes in a melancholy footnote to §83. It is important to understand what this means, even if we might want to discount Kant's excessive (and uncharacteristic) melancholy about the enjoyment of life. Specifically, it is important to understand that Kant will not advocate a conception of culture that is completely alienated from nature (which is, one could argue, the Romantic mistake). The key distinction is between what a person *enjoys* and what a person *does* (KdU 5:343n, 301). And since doing — as agentic activity — is the ultimate purpose, i.e., conceptually primary, the pursuit of happiness cannot be it:

The production of the aptitude of a rational being for any ends in general (thus those of his freedom) is **culture**. Thus only culture can be the ultimate end that one has cause to ascribe to nature in regard to the human species (not its own earthly

²⁴ See §IX of the second Introduction, at KdU 5:195f, 80f.

happiness or even merely being the foremost instrument for establishing order and consensus in irrational nature outside him). (KdU 5:431, 298)

Only on this conception can we even think of nature as purposive: “Thus nothing is left but the value that we ourselves give to our lives through that which we do not merely do but also do so purposively and independently of nature that even the existence of nature can be an end only under this condition” (KdU 5:434, 301).

Why would it be a mistake to conclude with the Romantics that the conception entails total independence of nature? After all, Kant explicitly uses the language of “independence” here. Again, the goal of the third Critique is about effecting the *Übergang* of nature and freedom and that freedom is a kind of causality: causality is a feature of the natural world, and another way of describing the *Übergang* project is to say that Kant is trying to establish freedom’s causality in the world.²⁵ Or, as he puts in a note at the end of the second Introduction, “even the causality of freedom (of pure and practical reason) is the causality of a natural cause (of the subject, as a human being, thus considered as an appearance) subordinated to the former” (KdU 5:196, 81).

In other words: There is a mind-independent natural world (the “Refutation of Idealism” in the first Critique shows Kant is not a metaphysical idealist), and it is in that world that we effect our freedom, even as we assert the independence of our agentic freedom from it. It does set some constraints on us, and its mechanisms are not subject to our wishes; to think so would be, as we saw, to be a fanatic. What the teleological judgment of nature’s purposiveness does is balance between the mechanistic conception, on the one side, and our freedom, on the other.

We finally can connect this to politics. Notice, first, that despite all the abstraction in the discussion about the primacy of the ought, it is an ought *for us*. It binds us in a particular way:

As the sole being on earth who has reason, and thus a capacity to set voluntary ends for himself, ..., [and] if nature is regarded as a teleological system, then it is his vocation to be the ultimate end of nature; *but always and only conditionally, that is subject to the condition that he has the understanding and the will to give to nature and to himself a relation to an end that can be sufficient for itself independently of nature, which can thus be a final end, which, however, must not be sought in nature at all.* (KdU 5:431, 298; emphasis ours)

Therefore, we ought to not only relate to each other individually as ends but more importantly, in this respect, as part of humanity as the final end and to bring about the

²⁵ Ellis 2005.

conditions that will enable us to develop our end-setting capacities. So the idea of culture has real content for us.

So what emerges is a conception of politics that is an alternative to Hume's. The primacy of the ought solves the problem of the functionalist question begging. When we ask why we should try to effect principles of justice, or why they bind us, or why they make sense (pick your favorite formulation), Kant's now successful Copernican revolution offers the answer: That very question doesn't even make sense unless we presuppose a kind of normative purposiveness. Second, the primacy of the ought also has the consequence that politics is not primarily about the distribution of resources; it is *primarily* about human culture. However, against the Romantic conception, nature remains in the picture, and we remain, in some ways, at the mercy of nature, even as we struggle against its constraints. And so the distribution of resources does remain part of politics. It is a political question to ask what system or scheme for resource distribution makes the human pursuit of its culture possible.

We can connect this to Kant's thicker theory of politics, namely, to his particular brand of liberal republicanism. Less interesting for our purposes here are the details of that liberal republicanism than what kind of conception it is. Kant proposes, most fully in the *Rechtslehre* but already in the Appendices to *Perpetual Peace*, the theory of *provisional right*. The theory characterizes the relationship between normative political ideals and our contingent, non-ideal political contexts.²⁶ Very roughly: Provisional right enjoins political agents to evaluate existing conditions, institutions and practices in the light of their compatibility with the most fully realized "rightful condition" (*rechtliche Zustand*) in which human freedom can flourish. Existing conditions, practices and institutions may deviate or fall short from the ideal as long as they do not *undermine the possibility of a transformation* into such a condition.

Although the theory of provisional right puts the *idea* of non-ideal, historical stages of development front and center, the conception itself is purely conceptual. Similar, the conception of human culture is purely conceptual, even if it does enjoin actual human beings to a certain disposition. To put the problem more concretely, this political conception still lacks actual *politics*. To get the necessary dynamism in, we return to the question of the ought, and turn to the first part of the third Critique, the question of aesthetic judgment.

²⁶ The theory of provisional right is most fully developed in Ellis 2005. LaVaque-Manty 2002 also spends significant time in understanding Kant as offering a historicist, dynamic political theory, although it does not use the concept of provisional right.

4.3 THE NORMATIVITY AND THE PRACTICES OF JUDGMENT

Again, we'll take a bit of a detour. What we are proposing is that there are two ways of thinking about normativity in the third Critique: the ought with content, and the ought as feature of all human cognition, particularly judgment.

Formally, the power of judgment consists of nothing other than the capacities that are required by human being for the possibility of cognition in general (KdU 5:290, 170). It is this formal sameness that makes possible the normativity of judgments. It is the formal purposiveness that allows a judgment to claim universal validity: "the correctness of the principle for validly judging for everyone on subjective grounds" (KdU 5:291, 171). We presuppose, Kant suggests, that all humans share the same formal cognitive capacity, or, in slightly clearer terms, we assume that any human that cognizes, cognizes in the formally same way. (We know, empirically, that various failures and pathologies may actually prevent its functioning in this way.)²⁷ What is most interesting about the internal normativity of judgments is its connection with the aspect of universal communicability or the *sensus communis*.

Arendt recreates the *sensus communis* with the Aristotelian idea of speech: "the *sensus communis* is the specifically human sense because communication, i.e., speech, depends on it" (70). Furthermore, "this *sensus communis* is what judgment appeals to in everyone and it is this possible appeal that gives judgments their special validity" (ibid.). However, and in a rather important way, Arendt has this backward: it is the special validity of our judgments that allows for their universal communicability. The *sensus communis* stems from the fact that we all share the same capacity and that we (ought) to be using them in the same fashion. It is this sameness that enables us to communicate — thickly, meaning talk with and not simply at — each other. We *know* what it means when we make a certain type of claim. To know what it means when someone makes a claim is the *necessary precondition* for politics and more importantly the possibility of politics beyond the economic conception argued by Hume. Moreover, it gives us purchase to not only judge the validity of claims — i.e., what is to count as a certain type of claim — but also to negotiate and judge among competing claims.

However, before *actual* humans can make such substantive judgments, they need to have the *actual* capacity. Recall that the Enlightenment project (whatever exactly it is) is

²⁷ See the chapter "On the Weaknesses and Illnesses of the Soul with Regard to Its Cognitive Capacity" in *Anthropology*.

preoccupied with people's insufficient exercise of their rational abilities. Kant had famously characterized it as "self-imposed immaturity" in his essay on enlightenment; another way of getting at the problem would be to say that unenlightened people lacked judgment. Cultivation of judgment becomes important in several specific and related ways. First, the ability to make judgments properly is a necessary condition for a person's being able to make the sort of reflective judgment about human culture we discussed above. Second, this is *necessary* because of the openness of the conception of culture: its content can only be provided by actual human beings, reflecting on their actual historical condition. (This follows, in a way, from Kant's liberalism: he is neutral on any thick conception of the good and, as is well known, proscribes the imposition of any such thick conception in the strongest terms in "What is Enlightenment".) And, finally, the actual practice of judgment is, in an important sense, a way of *being a human person*. So the cultivation of the actual capacities of judgment is part of the project of enlightenment, and a person's actual practice of political judgment is the person exercising her political agency. To judge is to act.

Aesthetic judgment can serve as an important vehicle for the cultivation of judgment. (This is of course one of the ideas the Romantics found most exciting in Kant's theory.) First, given the non-objectivity of aesthetic judgments, they allow one to focus on the structure and nature of judgment itself, instead of on the content of the claim. Specifically, they train a person's imagination (*Einbildungskraft*). Here, it is useful to see that although Kant's concept of imagination is a technical term, it also does denote what we ordinarily understand by the term. Simply, to be able to use one's imagination is to be able to order the unordered manifold in sensible intuition so that it can be judged, i.e., brought under some concept. Put in another way, to use one's imagination is to be able to imagine ways in which things in the world might be thought of.

Now, there is a tricky problem here. Although aesthetic and even teleological judgments are non-objective, in that they do not ascribe actual properties to the objects of cognition, they are not really purely formal. That is, to be able to judge correctly is more than knowing the syntactical structure of judgments in ordinary language. "All hiffles are piffles" is nonsense; so is "The set of integers and Mozart's Requiem are a cat." Some such apparent errors may simply be errors of understanding (you have been under the mistaken notion that "piffles" are a concept) or reason (you missed the classes on set theory or logic). But there are rules for judging. The problem is that where the errors in judgment are not accountable for by reference to understanding or reason, there is no obvious way of spelling out the nature of the error or of correcting the judgment.

Hume offers a concrete illustration of this problem in his essay “On the Standard of Taste.” Like Kant, he is no aesthetic realist; he thinks that aesthetic judgments are, in an important way, relativistic. But, at the same time, he notes that we are not, in practice, fully relativistic about such standards:

But though this axiom [of the relativity of judgments of taste], by passing into a proverb, seems to have attained the sanction of common sense; there is certainly a species of common sense which opposes it, at least serves to modify and restrain it. Whoever would assert an equality of genius and elegance between OGILBY and MILTON, or BUNYANS and ADDISON, would be thought to defend no less an extravagance, than if he had maintained a mole-hill to be as high as TENERIFFE, or a pond as extensive as the ocean.²⁸

One might, of course, disagree with Hume, and simply dig in one’s heels on the absolute relativity of such judgments. But we think that Hume accurately characterizes both ordinary human practices and intuitions about the matter. And Kant is aware of the same dilemma:

Thus although critics, as Hume says, can reason more plausibly than cooks, they still suffer the same fate as them. They cannot expect a determining ground for their judgment from proofs, but only from the reflection of the subject on his own state (of pleasure or displeasure), rejecting all precepts and rules. (KdU 5:285-6, 166)

But he then goes on, by way of a solution sketch:

However, what critics nonetheless can and should reason about, in a way that is useful for correcting and broadening our judgments of taste, is this: not the exposition of the determining ground of this sort of aesthetic judgments in a universally usable formula, which is impossible, but the investigation of the faculties of cognition and their functions in these judgments and laying out in examples the reciprocal subjective purposiveness, about which it has been shown above the its form in a given representation is the beauty of its object. (Ibid.)

This is one of the projects of the third Critique, of course, but what does it mean for actual practices. One solution might be to seize on Kant’s talk of examples here, and maybe to opt for a benevolent but paternalistic education. Let’s consider this for a moment.

Kant is not an “examples” theorist,²⁹ but in the third Critique, they play a greater role than in the other critiques and, as we saw, seem like a vehicle for the cultivation of aesthetic judgments. But although this was a necessary move, Kant was aware that it came with certain risks. Recall his worry in the first Critique:

²⁸ Hume 1987, 230. We quote from the PastMasters database, which uses the Miller edition cited here but also includes references to the standard Green and Grose edition.

²⁹ We are grateful to Ian Proops for putting the point in this way.

But then I looked at the size of my task and the many objects with which I would have to do, and I became aware that this alone, treated in a dry, merely *scholastic* manner, would suffice to fill an extensive work; thus I found it inadvisable to swell it further with examples and illustrations, which are necessary only for a *popular* aim, especially since this work could never be made suitable for popular use, and real experts in this science do have so much need for things to be made easy for them; although this would always be agreeable, here it could also have brought with it something counterproductive (KdV A:xviii, 103-4)

The potential for misunderstanding the role of examples is born out all too well by Arendt. Stemming from, and consistent with, her missteps in her interpretations of *sensus communis* and purposiveness, Arendt concludes that “examples are the go-cart of judgments”: it is only through reliance on examples that we can be certain of the soundness of our judgments (76). Although this is somewhat helpful, it is radically misleading.

After all, Kant continues: “Thus examples are the leading-strings of the power of judgment, which he who lacks the natural talent for judgment can never do without” (KdV A134/B173, 269). Arendt is correct in that examples are necessary aids to our development of our power of judgment, *but* as leading-strings, in the absence of a defect in the individual’s faculties, they are meant to be cast off at some point in an individual’s development. If they are not, then the aid to development becomes a hindrance, and while Kant is curiously fond of “leading strings” (*Leitbände*) and “go-cart” or a walker (*Gängelwagen*) as metaphors throughout his corpus, his use of them is almost entirely negative.³⁰ So it would appear that use of examples poses a Catch-22. However, for now, it is our task to examine Kant’s use of examples.

If the use of examples is so problematic, then why does Kant rely so heavily upon them in the third Critique? It is not by coincidence that Kant utilizes examples to illustrate his conceptualization of the power of judgment *and* that the development of our power of judgment requires that we do the same. What is at work in the power of judgment is the “free play of our faculties of cognition”: imagination and understanding in aesthetic and imagination and reason in teleological (KdU 5:217, 103). There are no determinate principles or rules governing the power of judgment, unlike, e.g., the understanding which has the categories and the imagination which has time and space. It is the power of judgment that “governs” the interactions of our imagination, understanding and reason. It contains all of the elements necessary for cognition in general (*ibid.* 102), but it is only by virtue of this capacity that we can *interact* with the empirical world.

³⁰ These are discussed in LaVaque-Manty’s other APSA paper, “Mature Kantians.”

Since it is not rule governed the power of judgment is something that “cannot be taught but only practiced” (KdrV A133/B172, 268–9). Practice here indicates two important aspects of the power of judgment: one, that it is something that we must develop and two, that it is never something that we perfect. It is through the practice of making judgment and the guidance of examples that we develop this capacity. They are models of what a proper judgment ought to be. More importantly is the fact that when we make a judgment we are claiming our judgment to be of “exemplary validity”: everyone ought to judge the object in the same way (KdU 5:239, 123). In Hannah Ginsborg’s words: “To make an aesthetic judgment about an object, in other words, is to judge that one is, in that very judgment, judging the object as it ought to be judged.”

How is this a solution to the dilemma Hume identifies? And how is it not elitist? Partly, it depends on how the exemplary practice is framed: are the critics and experts who we think do judge better than cooks (let’s agree with Kant) *getting something right* or *doing something right*? Kant’s view, we take it, is *more* the latter. And in that case, there is nothing wrong in attributing even a relatively great contingency to who gets to count as an expert at different historical moments, for example. At the same time, things aren’t completely open (we can talk, weakly, of “getting things right”) because doing something right still means ordering certain kinds of formal properties, many of which are experiential, in a particular way. But, as Kant says, no fact of the matter or proof can settle these issues.

Let us offer the following conjecture on how this matters politically. First, judging correctly is not trivial: people can fail at it. But, second, we have no objective criteria of what judging correctly might mean. We do have, on the one hand, the abstract criteria (established by the transcendental critique of judgment) and historically contingent but nonetheless real attributions of better and worse judgments, on the other hand. Now, third, to make a judgment is to put one’s action of judgment forward as exemplary, as the judgment that says “This is the way x ought to be judged.” The judgment may be aesthetic, or it may be cognitive, or moral, or political. If it is cognitive or moral, there are criteria independent of the action of judgment for evaluating it, and insofar as many political judgments involve the former two, likewise. But before such an evaluation, there is a way in which the very action of judgment is political action: it is a claim of one’s humanity and, as it were, of one’s right to act in that particular way. It is, in slightly different words, a

controversial claim to legitimate authority.³¹ That there is no fact of the matter on who counts as “doing it right” is what opens this as a political space.

5. Conclusion

We have argued that the third Critique fits in with Kant’s political philosophy in several related ways. First, we take Kant to be responding not only to Hume’s familiar metaphysical and epistemological challenges, but to his related but more specific political challenges. In particular, we argue that Kant’s conception of the primacy of the ought does this in two ways. First, it bridges the fact–value gap Hume had dug, but, second, it generates a richer conception of the political than Hume’s “political economy” conception of politics. The primacy of the ought establishes the primacy of human culture as a transcendental “as if” end for humans, and that takes politics beyond the question of “mere” resource distribution.

At the same time, we argue, against what we call the romantic conception of politics, in that Kant’s conception does not drop resource distribution from view. This is because nature sets constraints on us — even when it is conceived of through the teleological judgment as purposive. However, because those constraints are understood through the teleological judgment, they are normative and only indirectly natural. In other words, there are things we can’t do or be, but those depend in the first instance on how we understand ourselves, human culture, and nature.

Furthermore, we have argued that since that conception of politics is abstract, it makes space for actual politics, that is, the actual controversies over what we should do, and be, and what kinds of institutional arrangements make those doings and beings possible. In that sense, the third Critique offers both a conception of politics and political action.

³¹ The idea that “controversial claims to legitimate authority” are the hallmark of the political is developed LaVaque-Manty 2002. See also Herzog 1998.

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Abbreviation	Text	Translation (if used)
A	<i>Anthropologie in pragmatischen Hinsicht</i>	
IUH	<i>Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht</i>	
KdrV	<i>Critique of Pure Reason</i>	Kant 1998
KdU	<i>Critique of the Power of Judgment</i>	Kant 2000
PP	<i>Perpetual Peace</i>	Kant 1996
RL	<i>Rechtslehre</i> (pt. I of <i>The Metaphysics of Morals</i>)	Kant 1996

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