

Washington University Jurisprudence Review

VOLUME 6

NUMBER 1

2013

THE CRITIQUE OF JUDGMENT

INTRODUCTION

ANGELICA NUZZO
DAVID GRAY CARLSON

Our symposium is inspired by the observation that Kant’s theory of judgment, as unfolded in the *Critique of Pure Reason* (the so-called first *Critique*), is juridical in nature. In the first *Critique*, Kant introduces the project of transcendental philosophy. There, Kant frames the idea of a “critique” of reason in juridical terms. At stake is the task of setting up a tribunal in front of which reason could assess the legitimacy of that tribunal’s knowledge claims. Kant’s suggestion is that reason—or better, the understanding—is a source of legislation, a power to make law and to give law to nature, which is itself considered as the sum total of all spatial and temporal phenomena.

In the *Critique of the Power of Judgment* (the third *Critique*), Kant brings his critical project to conclusion. The juridical language is not abandoned. The third *Critique* addresses the question of judgment’s legislative power. In the first *Critique*, judgment is not so much a power capable of giving law as it is a function for applying the principles that constitute the understanding. In the third *Critique*, by contrast, Kant advances the new claim that judgment, at least in a peculiar employment, which is the “reflective” one, may be a faculty capable of legislating. The question of the third *Critique* regards the type of legislation that belongs to the power of judgment as well as the addressee of such legislation. What is this judgment that is capable of independent legislation? And what is the lawful domain over which such legislation extends?

We have invited a distinguished group of Kantian scholars (and critics) to address these themes.

The first contribution in our collection is Angelica Nuzzo's *Reflective Judgment, Determinative Judgment, and the Problem of Particularity*.¹ In her article, Professor Nuzzo explains how the third *Critique* advances the analysis of the first *Critique*. This development is required because in the perspective of judgment assumed by the third *Critique*, nature presents itself as "the seemingly chaotic 'labyrinth' of an infinite multiplicity of empirical forms for which only particular, empirical laws can be formulated."² The thread that leads the subject out of the labyrinth is, of course, reflective judgment—judgment in which the subject "finds" the universal under which a given particular is placed. This contrasts with judgment of the first *Critique*, where the universal is given and the particular is subsumed under the pre-existing universal. Particular stress is laid upon Kant's assertion that, while judgment is the faculty of subsuming under rules, there are no rules for subsumption, *i.e.*, there is no rule that itself can guide judgment in its operations (the "problem of stupidity"). Because of this, the first *Critique* suggests that the faculty of judgment is a peculiar natural "talent" that cannot be taught but only practiced. The third *Critique* instead suggests that the faculty of judgment is an *a priori* faculty that gives to itself its own *a priori* principle.

In *Kant on Teleological Thinking and Its Failure*, Manfred Baum discusses Kant's notion of purposiveness in nature with regard to organisms.³ Organisms—plants and animals—seem to be purposive. The purpose of the seed is to grow into a tree, for example. But, Kant says, any purposiveness is attributed to them by human theory. As Professor Baum explains it, Kant could present only a subjective view of natural law, which he could motivate but not validate, making Kant a critic but not a theorist (in the model theory sense) of judgment.

Tom Rockmore, in *Kant on Art and Truth after Plato*, explores the relation between Kantian aesthetics, as they unfold in the third *Critique*, and cognition.⁴ Professor Rockmore identifies the difficulty in Kantian aesthetics to be "his overly optimistic view of interpretation."⁵ He sees Kant as believing in "correct" interpretation, which pushes Kant toward an insufficiently critical "platonic" position—a position on interpretation that undergoes growth and development (ironically) between the first and the

1. Angelica Nuzzo, *Reflective Judgment, Determinative Judgment, and the Problem of Particularity*, 6 WASH. U. JUR. REV. 7 (2013).

2. *Id.* at 8.

3. Manfred Baum, *Kant on Teleological Thinking and Its Failure*, 6 WASH. U. JUR. REV. 27 (2013).

4. Tom Rockmore, *Kant on Art and Truth after Plato*, 6 WASH. U. JUR. REV. 45 (2013).

5. *Id.* at 54.

third *Critiques*. From Kant's attitude toward interpretation, Rockmore argues, there emerges cognitive claims for aesthetic judgment. This emergence poses for Kant the difficulty of admitting the subjective character of aesthetic judgment, on the one hand, "while suggesting it yields knowledge in a way different from relying on concepts. . . . The arbiter of this relation is common sense, that is, the so-called free play of the cognitive powers."⁶ And the knowledge that aesthetic judgment produces is knowledge of the self, not knowledge of the beautiful object.

In his essay, *An Interest in the Impossible*, Todd Kesselman explores Kant's notion of "disinterested pleasure" in the beautiful.⁷ This pleasure is the harmony of two cognitive powers—the understanding and the imagination. The trick is to distinguish aesthetic pleasure from pleasure in the "agreeable," which would be nothing but heteronomy and therefore not a condition suitable to ground aesthetic judgment. Aesthetic pleasure must also be distinguished from moral pleasure, the side effect, (but not the determining ground), of an autonomous act. Kesselman reads Kant as denying the notion that the feeling entailed in encountering beauty is a mere signal of some underlying aesthetic reality. Instead, for Kant, the feeling of disinterested pleasure is the harmony itself, located in the subjective, rather than in the objective, realm. The harmony in question is the sustenance of a contradiction and therefore a "kind of logical ambivalence . . . disinterested *pleasure* as interest without interest; purposiveness without purpose as lawfulness without law; and, subjective universality as unity without conceptual unity."⁸

Rolf-Peter Horstmann's contribution is *The Problem of Purposiveness and the Objective Validity of Judgments in Kant's Theoretical Philosophy*.⁹ At the outset, Professor Horstmann immediately renounces the title of the article as misleading, as Kant has three different concepts of purposiveness, depending on the context:

The first relates to the possibility of empirical laws of nature and, somehow connected with it, to the possibility of empirical concepts. The second has to do with the theory of natural ends or of organized products of nature. . . . The third context has to do with aesthetics and concerns the explanation of the source of the validity of judgments of aesthetic appraisal. It is by no means clear whether in

6. *Id.* at 56.

7. Todd Kesselman, *An Interest in the Impossible*, 6 WASH. U. JUR. REV. 59 (2013).

8. *Id.* at 77.

9. Rolf-Peter Horstmann, *The Problem of Purposiveness and the Objective Validity of Judgments in Kant's Theoretical Philosophy*, 6 WASH. U. JUR. REV. 81 (2013).

all these contexts Kant relies on the very same conceptions of purposiveness¹⁰

Nor, as we learn, is there one single problem raised by these diverse concepts of purposiveness. Professor Horstmann reviews the contours of purposiveness across all three of Kant's *Critiques* and claims that it was natural organisms that could not be digested by the first *Critique*, thereby necessitating the third.

In *Is a Determinant Judgment Really a Judgment?*, Rodolphe Gasché explores Hannah Arendt's suggestion that the only real judgment is a reflective one.¹¹ Determinant judgments, Arendt thought, are not judgments at all. In a reflective judgment, the subject constructs the universal under which a particular is subsumed. In a determinant judgment, the universal is pre-given and the perceived particular is "determined" as falling under the pre-given universal. Professor Gasché thinks that Arendt's suggestion "paves the way for a political conception of judgment. This conception is needed in order to set what she calls the *Erscheinungsraum* constitutive of the political sphere radically apart from the political and public spaces characterized by violence"¹²

In *The Regress Argument in Kant, Wittgenstein, and the Pittsburgh "Pragmatists"*, Joseph Margolis addresses the denial by Kant (and Wittgenstein) that judgment can be reduced to "following a rule."¹³ Any such attempt to found judgment in this way leads to an infinite regress. Professor Margolis analyzes different attitudes toward this regress—that of Kant (qualified as it is by transcendentalism), Wittgenstein (who was profoundly opposed to transcendentalism), and the approach articulated by the "Pittsburgh School" (John McDowell, Peter Sellars, and Robert Brandom). The regress problem for Kant is "no more than a minor nuisance," whereas for Wittgenstein, the problem of regress has utterly disappeared for want of a transcendental position toward which the regress aims.¹⁴ In Professor Margolis's own view, "the regress problem is little more than a benign form of skepticism: it cannot be solved . . . but it can

10. *Id.* at 81.

11. Rodolphe Gasché, *Is a Determinant Judgment Really a Judgment?*, 6 WASH. U. JUR. REV. 99 (2013).

12. *Id.* at 101.

13. Joseph Margolis, *The Regress Argument in Kant, Wittgenstein, and the Pittsburgh "Pragmatists"*, 6 WASH. U. JUR. REV. 121 (2013).

14. *Id.* at 137.

be borne lightly enough as the honest consequence of abandoning every form of foundationalism and cognitive privilege.”¹⁵

The title of Rudolf Makkreel’s essay, *Relating Kant’s Theory of Reflective Judgment to the Law* eloquently describes his project.¹⁶ Of the three cognitive faculties—understanding, reason, and judgment—the understanding legislates the laws of nature. Theoretical reason takes on a judicial role by insisting upon a systematic order to these discovered laws. But this role must be compared with practical reason, which concerns itself with legislating the laws of freedom, not of nature. Judgment can also be legislative, but in a more restrictive sense. Whereas practical freedom concerns itself with universal moral laws, judgment is merely subjectively valid—heautonomous, not autonomous. The reflective judgment of aesthetic experience appeals to “a lawfulness without a determinate law.”¹⁷ Professor Makkreel interprets this statement as a contextualized sense of lawfulness that can also be applied to legal disputes. This concept is related to Kant’s *Metaphysics of Morals* where Kant adjudicates such issues as property rights.

Finally, in *Effect Precedes Cause: Kant’s Theory of the Self-in-Itself*, David Gray Carlson exploits the well-known dictum that one cannot know the thing in itself but only the appearance of it.¹⁸ Judgment of any object is to this extent heautonomous. When the object, however, is our own self, it is equally true that we can know only the appearance of ourselves, not the self-in-itself. The rules by which a subject lives are therefore legislated, though they are supposed to have been adjudicated. This means that the entire notion of rule following must be re-thought. It is not the case that the rules pre-exist the human act. This is an amphiboly, mistaking the appearance for the thing-in-itself. Rather, the effect of the rules (the human act) precedes the rules (which purport to cause the act). Law then becomes a project of self-justification not just to others but to our own selves. Because of this reversal of cause and effect, Professor Carlson names Kant a “philosopher noir.”¹⁹

These papers were presented on October 25–26 at the Benjamin N. Cardozo School of Law in New York City. We are very grateful to the Jacob Burns Institute for Advanced Legal Studies and the Rhett Morgan

15. *Id.* at 132.

16. Rudolf A. Makkreel, *Relating Kant’s Theory of Reflective Judgment to the Law*, 6 WASH. U. JUR. REV. 147 (2013).

17. *Id.* at 150.

18. David Gray Carlson, *Effect Precedes Cause: Kant and the Self-in-Itself*, 6 WASH. U. JUR. REV. 161 (2013).

19. *Id.* at 164.

Rountree Fund for generously supporting this project. Rhett Rountree was a student at the Cardozo Law School with an exceptional interest in critical philosophy. Tragically, Rhett was killed in a fall, and in his honor a fund was endowed to support projects on critical philosophy. Rhett would have enjoyed participating in *The Critique of Judgment*. He will be forever missed.