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# Kant and Degrees of Responsibility

Degrees of responsibility are important for both our moral and legal practices. However, in viewing every human action as either entirely determined by natural necessity or entirely (transcendentally) free, it is unclear how Kant could account for this. In this paper, I consider three recent attempts to accommodate degrees of responsibility within a Kantian framework, but argue that none of them work.<sup>i</sup>

This takes the following structure: I begin (§1) by laying out the basics of Kant's theory of freedom, before (§2) turning to the problem of degrees of responsibility. Here, I advance my main claim, namely that, transcendental idealism precludes Kant from being able to vindicate our everyday judgements concerning degrees of responsibility. I then (§3) consider three possible Kantian solutions to this problem: (§3.1) Patrick Frierson's appeal to markers and common-sense; (§3.2) Korsgaard's appeal to the practical standpoint; and (§3.3) Claudia Blöser's account of degrees of praise- and blameworthiness. However, I argue that none of these possible solutions overcomes the problem, and conclude that transcendental idealism makes it very difficult to account for degrees of responsibility. In doing so, I hope to clearly articulate a challenge to Kantians, and to provoke further conversation on this topic.<sup>ii</sup>

## 1. Kant's Theory of Freedom

I want to begin by briefly laying out the basics of Kant's theory of freedom. For this, it helps to start with his conception of the world. Kant views the world (of sense) as determined by natural necessity. And he worries that this conception of nature might make freedom – and morality – an illusion.

Of course, there is a lot to say here, but in what follows I am going to frame this discussion around Laplace's demon, as I think it helps bring out the distinctive nature of Kant's position (and ultimately, its shortcomings). Consider the following famous passage from Laplace:

We ought then to consider the present state of the universe as the effect of its previous state and as the cause of that which is to follow. An intelligence that, at a given instant, could comprehend all the forces by which nature is animated and the respective situation of the beings that make it up, if moreover it were vast enough to submit these data to analysis, would encompass in the same formula the movements of the greatest bodies of the universe and those of the lightest atoms. For such an intelligence nothing would be

uncertain, and the future, like the past, would be open to its eyes. (*Philosophical Essays on Probabilities*, p.2)

Kant's worry is that this conception of nature precludes freedom. If everything in nature is determined by natural necessity (and in principle, predictable), then there is little room for a libertarian conception of freedom.

Transcendental Idealism is Kant's solution. It posits two orders of things:<sup>iii</sup> one governed by natural necessity, and one not. We can thus accept that the world of sense is governed by natural necessity, but make room for freedom outside of it.<sup>iv</sup> Thus according to Kant, we have the world of sense, which is subject to natural necessity, and the noumenal, which is independent of such necessity.<sup>v</sup> In positing these two orders, he opens up a space that makes freedom and natural necessity com-possible.

Of course, there is much more than can be said about transcendental idealism and Kant's theory of freedom, but I want to stop here for now. For our purposes, what matters is that Kant accepts an entirely determined (and in principle, predictable) conception of nature, but finds a way to preserve a libertarian conception of freedom in the face of it.

We can now return to Laplace. Here is Kant in the second *Critique*:<sup>vi</sup>

One can therefore grant that [...<sup>vii</sup>] we could calculate a human being's conduct for the future with as much certainty as a lunar or solar eclipse and could nevertheless maintain that the human being's conduct is free. (V: 99. 12-9)

As far as experience goes, it might look like we have no freedom. However, transcendental idealism has opened up a way in which we can still be free.

The advantage of this approach is clear. Kant has found a way to insulate freedom against the world of sense. No matter what science reveals, it cannot threaten the possibility of freedom. Unfortunately though, there are also drawbacks to this approach. I am sympathetic with Kant's attempt to preserve a libertarian conception of freedom, but think that his attempt to insulate freedom against the world of sense is ultimately unhelpful. In the next section, I will argue that transcendental idealism makes it hard to account for both *interaction* between freedom and the world of sense, but also *knowledge* of freedom in experience. Before I turn to this however, I want to clarify three things.

Firstly, in this paper, I am primarily talking about *transcendental* freedom. This is a libertarian conception of freedom.<sup>viii</sup> Kant himself describes it as "a faculty of absolutely beginning a state" (A445/B473), that is, the ability to *initiate* causal chains. He also conceives this freedom as "an independence of [...] reason itself [...] from all determining causes of the world

of sense” (A803/B831). Finally, Kant thinks of everything in space, time and experience as determined,<sup>ix</sup> and so conceives transcendental freedom as outside of space and time, and something that we cannot experience. (I will return to say more about this in §3.1).

Secondly, for Kant there is a crucial connection between transcendental freedom and morality.<sup>x</sup> Kant does not often speak of responsibility, but he does make clear that transcendental freedom is the real ground of *imputability* (A 448/B 476),<sup>xi</sup> that is, regarding someone as the author of their actions.<sup>xii</sup> Kant is also clear that, without transcendental freedom, morality would be a phantasm for us.<sup>xiii</sup> In this paper, I follow Kant in assuming that a libertarian conception of freedom is required for imputation and responsibility.

Thirdly, I need to be careful in claiming that transcendental idealism *insulates* freedom from the world of sense. In general, for Kant, the noumenal is the ground of the world of sense.<sup>xiv</sup> Transcendental freedom can thus be the ground of actions in the world of sense, and therefore it would be wrong to say that transcendental freedom and the world of sense are entirely insulated from each other.<sup>xv</sup> However, there still remain two ways in which Kant does insulate freedom from the world of sense. Firstly, even though transcendental freedom can be the ground of actions in the world of sense, we cannot experience it as such; and thus, transcendental idealism allows Kant to maintain that freedom is possible (and in particular, it is possible that *we* are still free), no matter what we experience.<sup>xvi</sup> Secondly, even though the noumenal is the ground of the world of sense, the world of sense does not ground the noumenal. Consider, for instance, the following passage from Eric Watkins (2005: 328):

Kant makes clear that the grounding relationship is one-way and not reciprocal. [...] he remarks that “such an intelligible cause, however, will not be determined in its causality by appearances [...]” (A537/B565). Similarly, “reason therefore acts freely, without being determined dynamically by external or internal grounds temporally preceding it in the change of natural causes” (A553/B581). Things in themselves ground appearances, but appearances do not ground things in themselves.

So conceived, while transcendental freedom can ground actions in the world of sense, the world of sense cannot determine transcendental freedom. (This will end up playing an important role in §3.)

In this section, I have laid out some of the basics of Kant’s theory of freedom. I want to now turn to consider degrees of responsibility, where I will argue that transcendental idealism makes it difficult for Kant to account for this.

## 2. The Problem: Degrees of Responsibility

In the first *Critique*, Kant discusses a malicious lie (A 554-5/B 582-3). He begins by considering this “voluntary action” through its “moving causes”, which we find in “the person’s empirical character”. And in doing so, “one proceeds as with any investigation in the series of determining causes for a given natural effect” (A 554/B 582). Kant then claims the following:

Now even if one believes the action to be determined by these causes, one nonetheless blames the agent, and not on account of his unhappy natural temper, not on account of the circumstances influencing him, not even on account of the life he has led previously; for one presupposes that it can be entirely set aside how that life was constituted, and that the series of conditions that transpired might not have been, but rather that this deed could be regarded as entirely unconditioned in regard to the previous state, as though with that act the agent had started a series of consequences entirely from himself. (A 555/B 583)

He continues, and then ends the paragraph with the following strong claim:

[...] the action is ascribed to the agent's intelligible character: now, in the moment when he lies, it is entirely his fault; hence reason, regardless of all empirical conditions of the deed, is fully free, and this deed is to be attributed entirely to its failure to act. (A 555/B 583)

When one tells a malicious lie, the world of sense reveals this to be entirely determined by one’s empirical character. The action however, can also be ascribed to one’s intelligible character, and here, one is “fully free” and the lie is “entirely his fault”

As we saw in the previous section, Kant views the natural world as entirely determined by natural necessity, and locates freedom outside of it. Human action is thereby conceived in a dualistic way: every action is either in the world of sense, and thus entirely determined; or outside the world of sense, and accordingly entirely free from such empirical conditions.

In the second *Critique*, Kant repeats this claim:

[...] every action [...] is to be regarded in the consciousness of his intelligible existence as nothing but the consequence and never as the determining ground of his causality as a noumenon. So considered, a rational being can now rightly say of every unlawful action he performed that he could have omitted it (V: 97. 37 – 98. 8)

Moreover, at least in the second *Critique*, Kant seems to think that this is something we agree with:

The judicial sentences of that wonderful capacity in us which we call conscience are in perfect agreement with this. (V: 98. 13-14)

However, this does not seem quite right. And we can see this through thinking about actual judicial sentences. Judges and juries navigate a difficult terrain. They have to determine

whether people are guilty or not, but they also account for mitigating circumstances – there are various things that can impair our judgements, and various circumstances that excuse our behaviour (to a lesser or greater degree).<sup>xvii</sup> But by separating freedom and the world of experience in the way he does, it is unclear how Kant could accommodate this.

This seems to be a serious shortcoming of his practical philosophy. In certain cases, it is important to allow for degrees of responsibility.

Take a simple example: If you and I both steal a chicken, all other things being equal, we have committed the same wrong and should be held equally responsible. However, if we both steal a chicken, but someone drugged you beforehand, then I am more responsible for this theft than you are. And this responsibility can come in degrees: You could be drugged such that you *totally* lost control of what you were doing, or *mostly* lost control, or *partly* lost control, and so on.

Judgements about degrees of responsibility are especially important in certain areas of our moral and legal practices. In what follows, I want to bring this out through briefly considering children and mental illness.<sup>xviii</sup>

As children grow, they typically become persons. In this process, we see their agency develop *over time*. And as this happens, they become *more* responsible. To return to the previous example, if we both steal a chicken, but I am an adult and you are 14, then I am more responsible for this than you.<sup>xix</sup> Given Kant's previous claims, it is unclear how he could accommodate this.<sup>xx</sup>

Kant's locating freedom outside of experience, space and time, also causes problems in thinking about mental illness. Consider, for instance, someone who suffers from a condition such that their agency is occasionally diminished. The very notion of diminished agency seems to conflict with Kant's claim that every human action is either entirely determined or entirely free.

Moreover, such cases raise more general problems for Kant's account. Again, think of someone, who requires medication in order to retain their agency. This is a relatively straightforward case of conditions in the empirical world – taking medication – affecting whether or not someone is free, and someone's freedom coming and going over time. However, this causes problems for Kant, who insists that freedom occurs outside of time.<sup>xxi</sup>

I do not need to push hard borderline cases on Kant here, but rather any clear case of someone having more or less agency and responsibility (or indeed, any clear case of someone becoming an agent, or losing and regaining their agency over time). These cases are important to our moral and legal practices and it is unclear how Kant could accommodate them.

The problem here is both metaphysical and epistemological. On the metaphysical side, it is not clear how the world of sense and freedom could *interact* to allow for degrees of agency and responsibility. The epistemological dimension of the problem stems from Kant's conception of experience; in viewing experience as entirely determined by natural necessity, it is not clear how we could *know* anything about others' freedom.

One option available to Kant is to claim that freedom is *inscrutable*, and that we can neither comprehend nor explain how it works.<sup>xxiii</sup> While this might fend off the metaphysical problem, it seems to make the epistemological problem worse; even if we accept that there is some way in which freedom and the world of sense interact, this inscrutability would preclude us from making judgements about degrees of responsibility.

Kant concludes his discussion of freedom in the Transcendental Dialectic as follows:

[To show] that this antinomy rests on a mere illusion, and that nature at least **does not conflict with** causality through freedom – that was the one single thing we could accomplish, and it alone was our sole concern. (A 558/B 586)

I think this is telling. Kant sets about showing how freedom is possible, in the face of the threat of a world entirely determined by natural necessity. And as we saw in §1, transcendental idealism makes this possible. However, it does so at a price – it makes it difficult to accommodate degrees of responsibility. Of course, Kant could just insist that this is not his concern. However, he then owes us an explanation of why this is the case; as I have just sketched, degrees of responsibility are important for our moral and legal practices.

Indeed, in the *Metaphysics of Morals*, Kant himself seems to appeal to degrees of responsibility:

*Subjectively*, the degree to which an action *can be imputed (imputabilitas)* has to be assessed by the magnitude of the obstacles that had to be overcome. – The greater the natural obstacles (of sensibility) and the less the moral obstacle (of duty), so much the more merit is to be accounted for a *good deed*, as when, for example, at considerable self-sacrifice I rescue a complete stranger from great distress.

On the other hand, the less the natural obstacles and the greater the obstacle from grounds of duty, so much the more is a transgression to be imputed (as culpable). – Hence the state of mind of the subject, whether he committed the deed in a state of agitation or with cool deliberation, makes a difference in imputation, which has results. (VI: 228. 11-22)

This seems like it could form the basis of a much better position. We no longer blame everyone, in every circumstance, equally for their actions.<sup>xxiii</sup> However, it is unclear how Kant could vindicate these judgements given his conception of experience. The passage from the

*Metaphysics of Morals* makes it sound like we can account for interaction between the obstacles of sensibility and the motive of duty. But it is hard to see how this is compatible with transcendental idealism, where, as Kant outlined in the first (and second) *Critique*, every action is to be regarded in either two ways: 1) as an action in the world of experience, where it is entirely determined by natural necessity; or 2) as an action in the noumenal world, where it is entirely free. This set-up leaves little room for degrees of responsibility.

### 3. Three Recent Responses

I now want to consider three possible solutions available to Kant: (§3.1) Frierson's appeal to markers and common-sense; (§3.2) Korsgaard's appeal to the practical standpoint; and (§3.3) Claudia Blöser's account of degrees of praise- and blameworthiness. I will argue that none of these proposals succeed.

#### 3.1. Common Sense and Markers for Freedom

One initial response might be that Kant can overcome these problems, by appealing to some relevant features of experience that can help us determine degrees of responsibility.<sup>xxiv</sup> But transcendental idealism does not allow for this. Kant is clear that we cannot experience transcendental freedom.<sup>xxv</sup>

Frierson recognises that we cannot *experience* transcendental freedom,<sup>xxvi</sup> but nevertheless attempts a solution on Kant's behalf, appealing to – what he calls – *markers*, and common sense. I should note that Frierson's solution addresses a more general problem, namely whether Kant could determine which beings are morally responsible *at all*, but if his solution is successful, it would provide a way for Kant to link our experience in the world of sense with transcendental freedom, and this might also help with degrees of responsibility.<sup>xxvii</sup>

Frierson's initial suggestion is that, while we cannot experience freedom, and thus there can be no direct empirical evidence for it, nevertheless, things in the world of sense can serve as *markers* for freedom. He claims that:

[...] insofar as the cause of an action can be traced via one's desires to cognitions that lie in the understanding (in the broad sense), one is morally responsible.

[...] In general, then, Kant answers the question of what warrants ascribing moral responsibility in particular cases by appealing to the empirical fact that the relevant agents have properly functioning higher cognitive faculties. (Frierson 2014: 176)



Frierson accepts that these functioning higher cognitive faculties do not provide direct *evidence* that someone is free, as they remain empirical. Nonetheless, he still thinks that these faculties provide empirical *markers* for freedom, where a marker is a partial representation of something.<sup>xxviii</sup> If that were the case, then maybe Kant could accommodate some judgements about freedom in experience, which might in turn, open up the possibility of accommodating judgements about degrees of responsibility.

I am fine with the thought that proper functioning higher cognitive faculties reveal our freedom – conceived as either markers or evidence. However, I do not think that Kant can help himself to this, given his conception of experience. Indeed, Frierson (2014: 177-85) himself insists that, given Kant’s conception of experience and the epistemic limits of transcendental idealism, these markers are neither necessary nor sufficient for the ascription of transcendental freedom or moral responsibility.

They are *insufficient* for the following reasons (Frierson 2014: 178):

[...] precisely because these empirical markers are empirical, they cannot provide any direct evidence that a person has that *transcendental* freedom that is the necessary condition of the possibility of moral responsibility.

[...] anything that fits into a natural series of causes and effects cannot be equivalent to transcendental freedom. This is quite straightforward, because Kant *defines* transcendental freedom as “independence from everything empirical and so from nature generally” (5:97)

And these markers are *not necessary* because (2014: 182-3):

[...] natural necessity of any kind can be grounded in an intelligible character than can be transcendently free [...] there is nothing *preventing* the ascription of an intelligible character, and with it transcendental freedom, to any empirical object at all.

Where then does this leave Frierson’s account? He acknowledges the limitations of anything empirical in ascribing freedom or responsibility. In the end, his solution relies upon Kant’s appeal to common human reason. Frierson (2014: 186-8) claims that, in our common-sense moral judgements, we can distinguish between responsible and not-responsible beings, and also remarks that Kant is concerned with vindicating these (and other) common-sense moral judgements. He notes that (2014: 186):

The method for determining what the appropriate markers are starts with common-sense moral judgements about responsibility.

However, this is not a solution – it is the very problem at hand. The problem is that transcendental idealism precludes Kant from vindicating these judgements in the first place. I

should note that here, I am not expressing scepticism about the possibility of knowledge of other agents, nor scepticism about the possibility of knowledge of degrees of responsibility. I am instead arguing that given transcendental idealism, Kant cannot vindicate this knowledge. Frierson's invoking Kant's appeal to common-sense does not overcome this problem.

### 3.2. The Practical Standpoint

Another possible solution runs as follows: Kant cannot admit any *experience* of freedom, but that is fine. Experience concerns the *theoretical* standpoint, where when it comes to morality, we occupy the *practical* standpoint. And this allows us to overcome the problem at hand. The basic thought is that, from the *theoretical* standpoint, everything appears determined by inclinations, but from the *practical* standpoint, we can observe freedom. And here, we can make judgements about degrees of responsibility.<sup>xxx</sup>

Allow me to share Korsgaard's characterisation of the two-standpoint view from *The Sources of Normativity*:

The afternoon stretches before me, and I must decide whether to work or play. Suppose first that you can predict which one I am going to do. That has no effect on me at all: I must still decide what to do. [...] The freedom discovered in reflection is not a theoretical property which can also be seen by scientists considering the agent's deliberation third-personally and from outside. (Korsgaard 1996b: 96)

Korsgaard is channelling Kant here. She has replaced Laplace's demon with a scientist, but otherwise the setup is the same. She accepts that the world of experience is entirely determined and predictable, but attempts to preserve freedom by locating it elsewhere, in the first-person perspective of a deliberative agent.<sup>xxx</sup>

Unfortunately though, this suggestion faces the same problems as Kant's. Consider for instance a simple case: I treat a rational adult differently than I do a toddler. One is (transcendentally) free, and the other is not. Now, Kant does not allow us to determine this through experience – in experience, we just encounter two beings determined by natural necessity. And it is not clear how the practical standpoint could help here. From the practical standpoint, how can we distinguish between a person and a toddler? It is not enough to say “we just do”. This sidesteps the important issue of how Kant can vindicate these practices, given his conception of experience. The appeal to the practical standpoint instead merely shifts the question to: How do we know which beings occupy the practical standpoint? Kant's conception of experience precludes an easy answer to this question.

For these reasons, the two-standpoint view does not help with experiencing freedom, and thereby cannot help with our judgements about responsibility, or degrees of responsibility. Korsgaard herself holds the two-standpoint view for other reasons, but does recognise that it causes problems when it comes to degrees of responsibility, in particular, a lack of flexibility in our judging others as not always entirely responsible for their actions.<sup>xxxii</sup> She offers two independent considerations here, to overcome this problem.

The first is the thought that, in the world of sense, we can view actions as “determined by moral thoughts and aspirations” (1996a: 210). However, this is not possible for Kant. The practical standpoint allows us, from the first-person, to conceive of ourselves as independent from the world of experience, but it does not give us a new third-personal conception of *experience* or a new form of *intuition*. That would move us far beyond Kant.

The second consideration is an appeal to Kant’s claim that we should (VI: 466. 28-30) “throw the veil of philanthropy over [others’ ...] faults, not merely by softening our judgements but also by keeping these judgements to ourselves”. This is good advice, but it does not help with the problem at hand, as we are still no clearer about how Kant could vindicate judgements of degrees of responsibility.

### 3.3 Blöser’s Proposal

In a recent paper, Claudia Blöser has put forward an innovative proposal trying to help Kant on this front. She draws a distinction between degrees of *accountability* and degrees of *praise-* and *blameworthiness*, and argues that while Kant cannot accommodate the former, he can account for the latter. She further claims that this is the most pressing issue concerning degrees of responsibility, and thus hopes to defend Kant on this score.

In what follows, I put some pressure on Blöser’s proposal. I agree with her that Kant cannot account for degrees of accountability, but I disagree with her contention that this is not a pressing problem. I also challenge her claim that Kant can accommodate degrees of praise- and blameworthiness. I argue that transcendental idealism constrains Kant, such that it is unclear how he could adequately accommodate degrees of responsibility in either case.

#### 3.3.1 Degrees of Accountability

Blöser (2015: 183) agrees that it would be problematic to view every human action as either entirely determined by natural necessity or entirely transcendently free. She remarks that:<sup>xxxii</sup>

A moral theory that does not allow for excuses or mitigating reasons neglects a central feature of our everyday and legal practice. (Blöser 2015: 183)

Blöser also accepts that Kant is stuck with this position when it comes to whether people are accountable or not. As she notes, transcendental freedom is an all-or-nothing concept – you are either transcendently free or you are not, and it is hard to make sense of this status changing over time. Given this, Blöser (2015: 204-5) accepts that Kant cannot make sense of degrees of accountability. However, she goes on to claim that this is not a pressing issue.<sup>xxxiii</sup> She takes the pressing issue to be whether Kant can account for degrees of praise- and blameworthiness, which she argues that he can. I will turn to this in the next section. For now, I want to say something more about her treatment of degrees of accountability.

Blöser offers the following argument in defence of Kant's claim that transcendental freedom is an all-or-nothing affair:

[...] we do not want to see our status as persons easily questioned, and therefore it is plausible to claim that the enjoyment of this status is an all-or-nothing affair. (Blöser 2015: 204)

Blöser remarks that we do not want to have our status as persons *easily* questioned, and concludes that it is therefore plausible to think of the enjoyment of this status as an all-or-nothing affair. But these are not the only two options. We do not have to resort to constantly challenging our status as persons. Instead, we can just continue with our actual practices. We distinguish between children and adults, treat people in conditions of diminished agency appropriately, and allow for mitigating circumstances.<sup>xxxiv</sup> And in viewing transcendental freedom as an all-or-nothing affair, it is unclear how Kant can accommodate this.

Indeed, Blöser (2015: 204) herself acknowledges that a problem remains here for Kant's view:<sup>xxxv</sup>

A serious objection to Kant's intransigence with respect to accountability is that children are gradually developing capacities of responsible agency. In the case of the mentally ill, too, Kant assumes that there are different degrees of mental impairment [...].

However, Blöser (2015: 204) goes on to offer a partial defence of Kant on this, proposing that he would view these degrees of freedom as degrees of empirical or practical – rather than

*transcendental* – freedom. She remarks that this raises the question of how these two types of freedom are connected, and relatedly, how we can conceive of children becoming full persons.

Blöser (2015: 205) attempts to defend Kant here, claiming that the “[t]he transition from child to full person is beyond any empirical explanation”. However, this seems to overstate things. We do have some empirical explanations of how children develop into persons – they require education, and the right capacities, for instance.<sup>xxxvi</sup> This is not a mystery. The mystery is how Kant could accommodate this, given that he locates freedom outside of experience, space and time.

In the end, Blöser’s (2015: 205) main proposal on this issue is that the “distinction between child and adult could be understood as a *normative* distinction.” This suggestion runs as follows:

One plausible suggestion is that, if a certain threshold of empirical freedom is reached, a subject can be regarded as transcendently free, i.e. as a full person. In this sense, accountability could be a threshold-concept. (Blöser 2015: 205)

She continues:

Thus, whereas the empirical capacity to act rationally might allow for degrees above and below this threshold, the normative status of a person and, equivalently, accountability, should be understood as an all-or-nothing affair. (Blöser 2015: 205)

And finally, she concludes that:

This view allows for a distinction in kind when it comes to the normative question of who the addressees of duties are, but it allows for degrees on the empirical level. (Blöser 2015: 205)

In these passages, Blöser argues that our status as persons should be treated as a normative distinction, and that both it and accountability should be understood as all-or-nothing affairs. However, it is not clear what the grounds for this claim are.<sup>xxxvii</sup> Earlier, we saw Blöser claim that we do not want to have our status as persons easily questioned, and conclude that it is therefore plausible to think of the enjoyment of this status as an all-or-nothing affair. As I noted though, this is too quick; we can be careful not to *easily* question our status as persons, but that does not mean that this need be an all-or-nothing affair.

Another important claim in these passages is that “if a certain threshold of empirical freedom is reached, a subject can be regarded as transcendently free”. The problem with this is

that, for Kant, *everything* in experience can be explained in terms of natural causes. As we saw Frierson (2014: 169) note earlier:

[...] *every* human deed fits into a series of events that is governed by natural necessity. The universality of natural necessity seems to cut off the possibility of the most obvious sorts of empirical-scientific tests for “freedom”.

In order to substantiate her claim, Blöser would have to provide an account of how empirical freedom provides reasons for thinking that someone is transcendently free. But as we saw in the previous section, it is difficult to see how such an account could work, given transcendental idealism and Kant’s conception of experience.

In summary, Blöser acknowledges that cannot accommodate degrees of accountability, but offers a partial defence of Kant on this. And I have attempted to put some pressure on this defence.

### 3.3.2. *Degrees of Praise- and Blameworthiness*

I now want to move on to Blöser’s claim that Kant can allow for degrees of praise-and blameworthiness.

She begins with the passage from the *Metaphysics of Morals*, that we considered earlier:

*Subjectively*, the degree to which an action *can be imputed (imputabilitas)* has to be assessed by the magnitude of the obstacles that had to be overcome. – The greater the natural obstacles (of sensibility) [...<sup>xxxviii</sup>], so much the more merit is to be accounted for a *good deed*, as when, for example, at considerable self-sacrifice I rescue a complete stranger from great distress.

On the other hand, the less the natural obstacles [...], so much the more is a transgression to be imputed (as culpable). – Hence the state of mind of the subject, whether he committed the deed in a state of agitation or with cool deliberation, makes a difference in imputation, which has results. (VI: 228. 11-22)

Blöser (2015: 191) thinks that this captures a “widespread opinion”, namely that “the greater an effort required to perform a good action, the more we praise the person who performed it.”

She then offers a reading of this passage. The basic idea is that, in acting morally, we face varying degrees of sensible obstacles, which Kant locates in the varying strengths of our inclinations. She claims that:

[...] the person for whom strong inclinations motivate a wrong action has to overcome greater obstacles to omitting that action than the person who is in a state that permits ‘cool deliberation’. (Blöser 2015: 192)

We can now turn to the core of Blöser's own proposal. Blöser (2015: 196) claims that:

[...] for human beings, being transcendently free does not mean acting without any consideration of empirical constraints. Persons exercise their non-empirical capacity in the empirical world and therefore always have to cope with empirical influences. Consequently, [...] precisely those empirical circumstances that do not completely undermine the 'power of reason' of the person and thereby the status of the event as a free action can count as excusing reasons.

This is an innovative proposal. Blöser recognises the confines of Kant's system, and attempts to find a way to accommodate degrees of influence of empirical factors upon people's actions, and thereby to allow for some degrees of responsibility.

However, I think that the confines of Kant's system are too great, such that he cannot help himself to Blöser's proposal. I will now make this case, focussing on both the metaphysical and epistemic issues that this proposal raises.

For one, it is unclear how we are to make sense of degrees of sensible obstacles, given Kant's both conception of freedom and transcendental idealism. Transcendental freedom involves independence "from all determining causes of the world of sense" (A 803/B 831). Such a conception of freedom seems to exclude the possibility that there could be varying degrees of overcoming sensible obstacles to our acting morally.

One option here, might be to claim – as Blöser (2015: 195) does – that transcendental freedom is a *capacity* to act independently from all determining causes of the world of sense. So conceived, when transcendental freedom is exercised, the exercise of this capacity might involve independence from all empirical obstacles, but there could still be empirical obstacles to whether or not this capacity is exercised in the first place.

I am not sure that this overcomes the problem at hand. Consider the following example. If I tell a malicious lie, and in doing so exercise my transcendental freedom, then this lie is to be *wholly* imputed to me; as I exercise my transcendental freedom in this case, I am independent from *all* determining causes in the world of sense, and thus the fact that I had a bad upbringing, my present circumstances, and other empirical obstacles do not affect me. My worry is that, since transcendental freedom involves independence from *all* determining causes in the world of sense, even if we allow that there might be empirical obstacles to whether or not this capacity is exercised in the first place, this still does not adequately accommodate degrees of responsibility, because in the cases where this capacity *is* exercised, the agent still seems to be fully free – entirely independent from all determining causes in the world of sense.<sup>xxxix</sup>

There is a related epistemic problem here, which we touched upon in previous sections. For Kant, we can only *experience* empirical character, which is determined by natural necessity. As such, we do not *experience* morality resisting inclinations, never mind varying degrees of sensible inclinations resisting morality. As we saw in earlier, in the *Metaphysics of Morals* (VI: 228. 11-22), Kant describes the relationship between merit, culpability and the magnitude of natural obstacles that we face. Now, even if Kant could make sense of how these things relate, transcendental idealism precludes us from experiencing it, and thus Kant is unable to vindicate his claim that (VI: 228. 11-3): “the degree to which an action *can be imputed* (*imputabilitas*) has to be assessed by the magnitude of the obstacles that had to be overcome.” This might be correct, but transcendental idealism precludes us from experiencing the overcoming of sensible obstacles.

There is one special exception here, namely the fact of reason, where I feel the moral law pull against all of my sensible inclinations.<sup>xi</sup> However, this is not *experience*, it is an exclusively first-personal awareness.<sup>xii</sup> When it comes to third-person experience, we do not encounter morality resisting sensible inclinations – we only encounter the world of sense, determined by natural necessity.<sup>xiii</sup> This precludes Kant and Blöser’s suggestion that we can experience varying degrees of sensible inclinations resisting morality in other people, and apportion praise and blame accordingly. Unfortunately, the epistemological limits of transcendental idealism preclude this.

### 3.4 Final Thoughts

Before I finish, I want to briefly consider three final thoughts.

Firstly, in the *Religion within the Boundaries of Mere Reason*, Kant outlines three different stages or grades [“Stufen” (VI: 29. 16)] of the propensity to evil in human nature. These are: 1) *frailty* of human nature (or weakness of will); 2) *impurity* of the human heart, where “actions conforming to duty are not done purely from duty” (VI: 30. 7-8); and 3) *wickedness*, “the propensity of the power of choice to maxims that subordinate the incentives of the moral law to others (not moral ones)” (VI: 30. 10-2). With these different stages or grades, one could argue that, even if we are always either entirely responsible or not responsible at all, we could still be fully responsible for *different* sorts of failings.<sup>xiiii</sup> Kant then might be able to distinguish between being entirely responsible for weakness of will (*frailty*), impurity of motives, and subordinating the moral law to non-moral incentives (*wickedness*); and we might be able to adjust our praise and blame accordingly.



Unfortunately, I think that the epistemic limits of transcendental idealism preclude us from being able to judge between these three cases. Kant claims that: “The real morality of actions (their merit and guilt), even that of our own conduct, [...] remains entirely hidden from us.” (A 551n/B 579n). As I have argued in the previous sections, we do not experience transcendental freedom, and thus we cannot know whether someone acted out of frailty, impurity or wickedness. In addition, even if this proposal were successful, it would only allow Kant to accommodate *some* judgements of degrees of responsibility, and would not fully vindicate our moral and legal practices in this area; it would give us three different sorts of failings, but would not allow for degrees of responsibility *within* these three different failings.

Secondly, I contend that degrees of responsibility are important in *both* moral and legal contexts.<sup>xiv</sup> To return to the simple example from section 2: If you and I both steal a chicken, all other things being equal, we have committed the same wrong and should be held equally responsible, both morally and legally. However, if we both steal a chicken, but someone drugged you beforehand, then I am more responsible for this theft than you are, again morally and legally.

Of course, a full discussion of the difference between our moral and legal practices in Kant is beyond the scope of this paper. In this paper, I have claimed that we have some reasons to want to accommodate degrees of responsibility in both cases, and I have argued, *pace* Frierson, Korsgaard and, Blöser that transcendental idealism precludes Kant from doing so. As we saw earlier, Blöser (2015: 183) claims that:

A moral theory that does not allow for excuses or mitigating reasons neglects a central feature of our everyday and legal practice.

I agree, and I hope to have put some pressure on both Kant’s and contemporary Kantians’ attempts to account for this.

I want to end by considering one final thought. One could reformulate the upshot of my paper in terms of a simple dilemma: either one accepts Kant’s theory of freedom, or one has a workable account of degrees of responsibility. Otherwise expressed, perhaps Kant cannot accommodate degrees of responsibility, but this might be a price worth paying in order to keep his theory of freedom. I think this is mistaken. This dilemma only bites if Kant’s is the only plausible (libertarian) account of freedom. I think there are other better accounts available, but do not have the space to make this case. For what it is worth, I take it that the key is to expand one’s conception of nature such that it can accommodate a libertarian conception of freedom. The details of this however, I cannot go into here.<sup>xiv</sup>

## Conclusion

In viewing human action as either entirely determined by natural necessity or entirely transcendentally free, Kant faces a problem when it comes to degrees of responsibility. I have considered three possible ways of accommodating degrees of responsibility within a Kantian framework, but have argued that they all fall short. In doing so, I hope to have clearly articulated a challenge to Kant, and to provoke further conversation on this important topic

It remains to be seen whether there is another way in which Kant can account for degrees of responsibility, but for what it is worth, I doubt that he can. Moreover, I take this to be one specific example of a general problem that Kant faces. I suspect that transcendental idealism makes it difficult to account for elements of our moral practices that involve time or require knowledge of freedom in the empirical world, including moral education, knowledge of other agents, and degrees of responsibility.

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<sup>i</sup> I want to thank helpful audiences at the University of Leeds and the University of West England, as well as Bob Stern, Martin Sticker, and two anonymous referees for useful comments on earlier versions of this paper.

<sup>ii</sup> I would like to thank an anonymous referee for prompting me to re-structure this paper and to make the structure clearer at the outset.

<sup>iii</sup> For the time being, I want to side-step the complicated issue of how exactly we are to understand Kant’s distinction between the world of sense and the noumenal, as I think that the problem of degrees of responsibility applies to any account of transcendental idealism. I will return to say something more about this in §3.2

<sup>iv</sup> Kant claims that this is “an indispensable task of speculative philosophy” (IV: 456. 16-7); cf. Bxxix

<sup>v</sup> See, for instance: A 557/B 585; IV: 457. 16-9.

<sup>vi</sup> Cf. A 549/B 577.

<sup>vii</sup> In this deletion, Kant writes: “if it were possible for us to have such deep insight into a human being’s cast of mind, as shown by inner as well as outer actions, that we would know every incentive to action, even the smallest, as well as all the external occasions affecting them” (V.99. 12-6). In this paper, I leave aside the question of whether this is possible.

<sup>viii</sup> Kant famously refers to (what we would call) a compatibilist conception of freedom as the “freedom of a turnspit” (V: 97. 19), and declares such attempts to solve the free-will problem as a “wretched subterfuge” (V: 96. 1). I agree with him, but will not make that case here.

<sup>ix</sup> See, for instance, V: 97. 21-32.

<sup>x</sup> In this paper, I leave aside Kant’s conception of autonomy. I think there are interesting things to be said about degrees of autonomy, but this topic deserves a paper-length treatment of its own. I hope to provide this elsewhere.

<sup>xi</sup> For an extended account of responsibility and imputation in Kant, see Blöser (2015: 184-8).

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- <sup>xiii</sup> In the next section, we will see this in Kant's discussion of a malicious lie, where he claims that (A 555/B 583): "[...] the action is ascribed to the agent's intelligible character: now, in the moment when he lies, it is entirely his fault; hence reason, regardless of all empirical conditions of the deed, is fully free, and this deed is to be attributed entirely to its failure to act."
- <sup>xiii</sup> In the final section of the *Groundwork*, for instance, he remarks that (IV: 456. 29-33): "[...] it is not left to the philosopher's discretion whether he wants to remove the seeming conflict [between transcendental freedom and natural necessity], or leave it untouched; for in the latter case the theory about this is a bonum vacans [or vacant good], of which the fatalist can with good reason seize possession and chase all moral science from its supposed property as possessing it without title."
- <sup>xiv</sup> See Watkins (2005: 325-9) for a defence of this view.
- <sup>xv</sup> In an earlier version of this paper, I had overstated my claim that transcendental idealism *insulates* freedom from the world of sense, and I am grateful to an anonymous referee for prompting me to clarify this.
- <sup>xvi</sup> Frierson (2014: 169n6) remarks that: "transcendental idealism [...] insulates Kant from naïve empirical-scientific arguments *against* freedom."
- <sup>xvii</sup> On the malicious lie, Bennett (1984: 106) notes that: "Kant's theory allows us to pass that judgment not only in this case but also in one where the natural causes of the lie involve a profound psychopathology in someone who is not vicious and is greatly given to shame."
- <sup>xviii</sup> Cf. Frierson (2014: 167-8); Blöser (2015: 204). For a full account of mental illness in Kant, see Frierson (2014: 189-214)
- <sup>xix</sup> Again, other things being equal, it seems that this can come in degrees: A 17-year-old is more responsible than a 14-year-old, who is more responsible than an 11-year-old, and so on.
- <sup>xx</sup> In an unpublished draft on moral education and transcendental idealism, Sticker and I discuss this – and other related – problem(s) at length.
- <sup>xxi</sup> For a fuller account of the problems caused by Kant's claim that (transcendental) freedom occurs outside of time, see Freyenhagen (2008).
- <sup>xxii</sup> See for instance: IV: 459. 4-15; V: 94. 2-7; VI: 138.19.
- <sup>xxiii</sup> At this point, one might ask an interesting question, namely, what is it that we are responsible for? Is it the determination of our will or our deeds? I think that the problem that I am considering applies to either account. In locating freedom outside of the world of experience, it is not clear Kant could accommodate interaction between the world of experience and freedom in either our will or deeds.
- <sup>xxiv</sup> Blöser (2015: 204-5) makes the point that this would be to appeal to *practical* rather than *transcendental* freedom.
- <sup>xxv</sup> See, for instance: Bxxviii; IV: 455. 13-4; IV: 459. 5-7; V: 30. 9-14; V: 48. 23-7. As Stang (2013: 104) remarks: "Kant adamantly and repeatedly claims that I have no empirical *knowledge* of the specific content of [...] the exercise of my noumenal (or intelligible) causality."
- <sup>xxvi</sup> See Frierson (2014: 52, 73, 77, 84, 169-70).
- <sup>xxvii</sup> One might argue that even if Frierson's account could vindicate our judgements about whether someone is responsible or not, it fails to vindicate our judgements about *degrees* of responsibility. This might be true, but I am going to argue that Frierson's account falls short in the first case – failing to vindicate our knowledge of other transcendently free agents in experience – and *a fortiori*, also falls short in trying to vindicate judgments about degrees of agency.
- <sup>xxviii</sup> It is not entirely clear what a marker amounts to, in this context. Frierson (2014: 170-1) remarks that: "the 'whole representation' would have to be a transcendently free self as the ground of an entire empirical character for which it is responsible". By contrast, presumably a marker would be a partial representation of a transcendently free self.
- <sup>xxix</sup> Here, I should note that, as with Frierson's solution, the two-standpoint view is not put forward primarily as a response to the problem of degrees of responsibility. However, like Frierson's solution, it is a possible way a Kantian could respond to this problem.
- <sup>xxx</sup> Here, she draws upon Kant's famous claim that we must act under the idea of freedom (IV: 447. 28- 448. 22). For a critical treatment of Korsgaard's reading of this passage, see Stern (2015: 219-223).
- <sup>xxxi</sup> At one point, she remarks that (1996a: 206): "The very idea of an action's being excusable or forgivable or understandable seems, to bring together explanatory and justificatory thoughts. The doctrine of the two standpoints seems to keep such thoughts resolutely apart."
- <sup>xxxii</sup> As we saw earlier (in §2), one might think that, in the *Metaphysics of Morals* (VI: 228. 11-22), Kant also came to agree with this. I shall return to Blöser's treatment of this passage in the next sub-section.
- <sup>xxxiii</sup> Blöser departs from Korsgaard on this. Blöser (2015: 206) claims that the most pressing issue concerns praise and blame, whereas Korsgaard (1996: 189) suggests that Kant is uninterested in blame and responsibility.
- <sup>xxxiv</sup> Again, I do not need to push hard borderline cases on Kant here, but instead any clear case of mitigating circumstances, someone becoming an agent, or losing or regaining their agency over time.
- <sup>xxxv</sup> I am very grateful to an anonymous referee for helping me to clarify Blöser's full position on this issue, as well as prompting me to think further about my own response to it.
- <sup>xxxvi</sup> See Sticker (2014) for a recent account of how moral education works in Kant.

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<sup>xxxvii</sup> In a footnote, Blöser (2015: 208n26) remarks that Schapiro (1999: 731) argues for this claim in more detail, but I cannot locate this argument in Schapiro.

<sup>xxxviii</sup> Kant also mentions “the less the moral obstacle (of duty)” (VI: 228. 14-15), but I have removed this here. Blöser (2015: 192-194) focuses on the natural obstacles; for the same reason, I have also removed Kant’s reference to “the greater the obstacle from grounds of duty” in the subsequent paragraph.

<sup>xxxix</sup> In section 1, we saw Watkins (2005: 328) claim that: “Kant makes clear that the grounding relationship is one-way and not reciprocal. [...] he remarks that “such an intelligible cause, however, will not be determined in its causality by appearances, even though its effects appear and so can be determined through other appearances” (A537/B565). Similarly, “reason therefore acts freely, without being determined dynamically by external or internal grounds temporally preceding it in the change of natural causes” (A553/B581).”

<sup>xl</sup> See V: 29. 28 – 30. 30.

<sup>xli</sup> See Grenberg (2013) for an account of the exclusively first-personal nature of the fact of reason; cf. Ware (2015).

<sup>xlii</sup> For an extended account of this epistemological problem, see Saunders (2016). See also Sticker (2016) for a recent account of the various ways in which Kant’s practical philosophy requires third-personal assessments.

<sup>xliii</sup> I am grateful to an anonymous referee for this suggestion.

<sup>xliv</sup> I would like to thank an anonymous referee for prompting me to clarify this.

<sup>xlv</sup> For a brief account of how the German Idealists attempted to move beyond Kant through accommodating a libertarian conception of freedom *within* nature, see Saunders (2016: 177-8); and for an extensive contemporary account of similar issues, see Steward (2012).