

Introduction

1 Kant's Theory of Normativity?

Whatever we think about, there is more to being true than being taken as true. Kant's philosophy agrees with this assumption of our everyday realism. We make judgments about natural facts, and these judgments are true if they state what is the case, or if the states of affairs they describe exist. Natural facts are the truth-makers of our judgments; they 'satisfy' our words. Besides natural facts, we seem to be able to make judgments about other kinds of facts as well; for example, that the shortest distance between two points is a straight line, or that slavery is an offense against humanity, or that Josef Albers' silkscreen "Portfolio 1, Folder 7, Image 2" is a masterpiece of art (see the cover of this book). On the basis of our everyday intuition that there is more to being true than being taken to be true, we may then ask from a contemporary philosophical realist perspective: What are the truth-making facts corresponding to those alleged truths in mathematics, ethics, and aesthetics?

However, even though Kant's critical philosophy includes an answer to this question, it does not address it directly. For in order to be able to justify our answer we have to step back and clarify what the 'objects of our thoughts' are. What we usually mean by this notion is, first, what one thinks, i.e., the content of our thought, and second, what one thinks about, i.e., the intentional object, or the object our thought refers to.¹ For Kant, the decisive question then is: "What is the ground of the relation of that in us which we call 'representation' to the object?" (10:130). Or, what are the conditions of the possibility for something to count as an object in the second sense? And since thoughts become normatively 'visible' only in judgments, according to Kant, this translates into a question about the basic rational constraints on our claims about the 'is' and the 'ought' of such objects, including human attitudes. What are the fundamental norms of the validity of our judgments? The basic thesis of this book is that these norms take the form of synthetic a priori principles, according to Kant. Synthetic a priori principles represent the structure of the 'space of reason.' They are the core of Kant's theory of normativity.

¹ For this classical distinction, see Prior, *Objects of Thought*, 1971, 3.

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Yet, is the title of this study not a grave anachronism? After all, Kant never uses the term ‘normativity.’ ‘Normativity,’ it may seem, is a contemporary buzzword that has its home in debates on meta-ethics and perhaps some other sub-disciplines of analytic philosophy. Historically, however, this is not correct. In eighteenth-century Germany the noun *Normativ* was used in legal matters for ‘bill,’² and the adjective *normativ* was used in the juridical sense of ‘binding.’³ The noun *Normativität* was, presumably for the first time, used in nineteenth-century theological and juridical treatises in the sense of ‘authority,’ relating to the Scripture and the law respectively.⁴ Kant himself uses the term *Norm* in a number of theoretical, practical, and aesthetic contexts, meaning “a prescribed rule, or law, that one has to observe strictly and must not contravene,” as Zedler’s *Universal-Lexicon* defines it in 1740.⁵

More importantly, the ubiquity of concepts such as ‘law,’ ‘lawfulness,’ ‘rule,’ ‘objectivity,’ ‘validity,’ and the like in Kant’s major writings serves as a first clue to the centrality of problems of normativity, and it is the overall claim of this book that Kant does have a systematic account of what it means for judgments to be normative. Kant’s critical answers – in the plural – to the question ‘How are synthetic judgments a priori possible?’ amount to an original theory of normativity.

In the epistemic context, synthetic judgments a priori must be acknowledged as the fundamental norms for our mathematical and empirical cognitions. This means that in order for our pure or sensible intuitions to count as cognition they must be conceived in lawful, i.e., spatio-temporal and conceptual, forms. Kant argues for the objective validity of those synthetic principles as they manifest the conditions of the possibility of experience. Synthetic judgments a priori make explicit the lawfulness of our experience as “perception in accordance with rules.”⁶

In the moral context, the categorical imperative as a practical synthetic judgment a priori determines the validity of our maxims. Here Kant argues

² The German word for *Normativ* was once *Reichsgutachten*; both terms are obsolete today, and have been replaced by *Gesetzesvorschlag*. See, e.g., “An die Kirchen-Visitatoren des Amts Neumünster: Normativ der Schul=Præstandorum für die Dorfschaften des Amts Neumünster, 6. May 1793,” in *Chronologische Sammlung der im Jahre 1793 ergangenen Verordnungen und Verfügungen für die Herzogthümer Schleswig und Holstein*, Kiel, 1795, pp. 34–36, and “An Ihre Römisch=Kaiserl. Majestät allerunterthänigstes Reichs=Gutachten, *de dato* Regensburg den 15ten Julii 1771, Die Abstellung einiger Handwerks=Mißbräuche, ins besondere des sogenannten blauen Montags betreffend,” Regensburg: Neubauer, 1771.

³ See, e.g., Gönner, Nicolaus Thaddäus, *Teutsches Staatsrecht*, Landshut: Krüll, 1804, 458.

⁴ See, e.g., A. W. Dieckhoff, *Die evang.-luth. Lehre von der hl. Schrift gegen Dr. v. Hofmann’s Lehre von der hl. Schrift und vom kirchl. Wort Gottes vertheidigt*, Schwerin: Stiller, 1858, 15 (“Normativität der heil[igen] Schrift”), and *Allgemeine Literatur-Zeitung*, vol. 4, Ergänzungsblätter, Halle, Leipzig: 1809, 354 (“die Normativität älterer Gesetze”).

⁵ Johann Heinrich Zedler, *Grosses vollständiges Universal-Lexicon aller Wissenschaften und Künste*, vol. 24, Leipzig und Halle: Zedler, 1740, 1311 (my translation).

⁶ *Refl* 2740 (late 1770s), 16:494.

that for finite reasoners like us, it is the potential discrepancy between a maxim (subjective principle of action) and the moral law (objective principle of action) that characterizes the a priori syntheticity of the categorical imperative. For finite reasoners the consciousness of the moral law includes (1) their practical reason's grasp of an 'ought,' or more precisely, the stipulated universal form of their maxims; and (2) a specific attitude toward this 'ought,' or more precisely, the acknowledgment of one's own commitment to that 'ought.' Kant's concern about 'lawfulness' in the practical context is not immediately about this or that justification of our willing, or even about justified actions, but rather about the *justifiability* of our maxims.

In the aesthetic context, the synthetic a priori principle of purposiveness determines the subjectively universal validity of our judgments of taste. Here Kant argues that we are entitled to claim universal validity for our judgments of taste if they reflect our pleasant experience of the beautiful in nature and art (1) without any further interest related to this pleasure, (2) without relying on preconceived concepts of the beautiful, (3) without relying on the representation of an objective purpose of the beautiful object, and (4) without basing that claim to universal validity on anything but the presupposition of a common sense distinctive of finite reasoners like us.

Unifying these different contexts, it is synthetic principles a priori that make explicit the conditions of our theoretical, practical, and aesthetic judgments' *validity*, and in this sense, provide the framework for the 'space of reason,' including both what Kant calls sensible and supersensible nature. It is the idea of our everyday and scientific judgments' *lawfulness* in light of those synthetic principles that marks the center of Kant's theory of normativity.

However, even if the title of the present study is no anachronism and Kant's arguments for synthetic principles a priori add up to a theory of normativity, the notorious vagueness of the term 'normativity' means that it requires further attention. With reference to more recent attempts at clarifying this notion in Kant, in what follows I will try to specify its meaning as it pertains to Kant's critical philosophy.

Referring to H.L.A. Hart, who in his *The Concept of Law* argues against John Austin's 'command theory' of law, Andrews Reath notes that Kant's idea of a law is best understood in terms of power-conferring, constitutive rules. As in the legal sphere, where not all laws are general commands, or orders, backed by threat and legal coercion, for Kant not all laws are fit "to the model of coercive rules requiring individuals to perform or omit certain types of action."⁷ They should rather be seen as "rules by which individuals . . . can create rights and duties."⁸

⁷ *Agency and Autonomy*, 2006, 177. ⁸ *Ibid.*

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Focusing on Kant's practical laws, Reath argues that the role of moral imperatives is not exhausted by limiting permissible actions through requirements and prohibitions. Rather, "the Categorical Imperative is, and is understood by Kant to be, a principle that is constitutive of a certain kind of rational activity and that creates and confers on rational agents certain powers."⁹ At this point we do not need to go into detail about Reath's (or anybody else's) interpretation of the categorical imperative, whether or not Reath's interpretation is constructivist, or even whether or not a constructivist interpretation is the most appropriate (see Chapter 8). Here I am merely concerned with the nature of the bindingness of laws. There seems to be a *prima facie* difference between imperative, or command laws, that obligate or prohibit certain types of action (e.g., to pay taxes), and power-conferring, or constitutive laws, that enable subjects to engage or participate in certain types of activities (e.g., to get married).

What is relevant for Reath's account of Kant's categorical imperative as a power-conferring norm is his distinction between two levels of norms. Whereas the one 'Categorical Imperative' is power-conferring and constitutive of certain activities, according to Reath, particular categorical imperatives may include "substantive moral principles that determine duties, rights and permissions, or conclusions about how agents ought to, or may, act in a specific situation."¹⁰ By contrast, the singular 'Categorical Imperative' confers a number of powers, or "specifications of autonomy," as Reath also calls them, on agents. Based on Kant's Formulae of Universal Law, of Humanity, and of the Realm of Ends, he lists, "(1) the power to formulate and act from reasons and principles that can justify one's actions to other rational agents; (2) the power to confer a value on objects, activities, and states of affairs which other agents must acknowledge, by adopting them as the ends of one's rational choice; (3) the power to adopt principles that can serve as practical laws – for a community of moral agents – that is, principles to which one can appeal to resolve questions of justification, or questions about the normative status of an action."¹¹ And he concludes: "So understood, the Categorical Imperative is a 'norm for norms': it is the higher-order norm by which one can assess the substantive norms that underlie particular choices and that might be cited in their justification."¹² Whereas the Categorical

⁹ *Ibid.*, 180. ¹⁰ *Ibid.*, 181. ¹¹ *Ibid.*, 182.

¹² *Ibid.*, 181. More recently, Reath has clarified this in conversation as follows: "The Categorical Imperative is the constitutive principle of morality, of moral requirement, of good willing, of justifiability. But that leaves open the question of why one ought to recognize its authority, or why it binds. Part of Kant's resolution of that issue (at least in *GMS*) involves showing that the supreme principle of morality can be re-described as the law of a free will. That is to say, if the principle of moral requirement is also the constitutive principle of free agency, then you are committed to morality insofar as you think of yourself as a free agent, and that is necessarily built into the practical point of view. So the interesting use of the Categorical Imperative as

Imperative is a power-conferring, and in this sense, constitutive norm, lower level categorical imperatives actually obligate or prohibit certain types of action.

Yet this account of the normativity of laws has not passed unchallenged. Even though Clinton Tolley's primary target is Kant's formal logic, which he contrasts with Kant's ethics in several respects, he raises an important question that pertains to the present problem of the normativity of laws in general: If a law is constitutive of an activity, can this law still be considered normative? In order to understand his negative answer, we have to clarify some of the concepts involved. According to Tolley, if a law is constitutive of a certain activity, then you cannot fail to obey the law while still participating in that activity. For example, in chess whoever draws the rook diagonally, or the bishop horizontally, does not simply make a 'bad' draw, but rather fails to play chess. Playing chess means, among other things, to move the rook horizontally or vertically but not diagonally. By contrast, if a law is meant to be normative it is necessary for you to be able to fail to obey the law while still be participating in that same activity.¹³ So, whoever runs a red light violates a traffic rule but is still performing the activity of driving, riding a bike, or walking along the street. Hence, according to Tolley, a law is normative only if it meets the following conditions.

(1) The 'subjects' of the law – those beings which are governed by, or subjected to, the law – must both be able to succeed *and be able to fail* to act (or be) in accordance with the law.

(2) The *subjects* of a norm *must retain their identity* as beings that are subjected to this specific sort of law regardless of their (actual) accord with it. . . .

(3) The *laws must retain their validity* or bindingness over their subjects regardless of the (lack of) *actual* adherence to the norms by their subjects – though, to be sure, there must be the *possibility* of such adherence (to uphold the traditional formula that 'ought' implies 'can').¹⁴

So, according to Tolley, chess rules would be constitutive, but not normative, because you cannot fail to obey them without losing your status as a chess player. By contrast, traffic rules are normative, because even if you fail to stop

constitutive is as constitutive of free agency – since that is part of establishing the normative authority of morality. That seems to get us the idea that a single principle is both constitutive and normative: the Categorical Imperative is constitutive of free agency (roughly, free agency is the power that it confers) and normative for action (it prescribes how we ought to exercise our agency)."

¹³ See also Lavin ("Practical Reason," 2004, 425: "a reasoner is subject to a principle only if the reasoner can go wrong in respect of it"), who also gives a list of other proponents of this 'error constraint' on normativity.

¹⁴ "Kant on the Nature of Logical Laws," 2006, 375.

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at the red light you retain your identity as a road user who is subject to traffic rules. Applying these stipulations to Kant's theory of normativity, it seems that synthetic principles a priori cannot be both constitutive *and* normative.

Tolley's set of conditions is in part an elaboration on Lanier Anderson's account of normative rules. But Anderson's interest, at least prima facie, is not the contrast between constitutive and normative rules. He focuses primarily on the distinction between natural and normative rules and a Kantian concept of normativity that might be difficult for neo-Kantian psychological interpretations to grasp. Against this kind of psychologism – Anderson mentions Fries, Lange, and Meyer, among others¹⁵ – it has been argued by those whom Anderson calls 'orthodox neo-Kantians,' such as Cohen, Natorp, Cassirer, Windelband, and Rickert, that "reducing a normative rule of reasoning to an exceptionless, descriptive psychological law"¹⁶ misses the structure of rational discourse. And he clarifies that in the Kantian framework, 'normativity' is meant to refer not only to practical but also to theoretical reasoning.

While Kant's most famous discussions of that point concern freedom and morality, it was always meant as a more general defense of normativity. Theoretical judgments, too, are held to normative standards of justification. They would be threatened by a thoroughgoing naturalism, since the realm of nature is governed by exceptionless laws, potentially closing off the possibility of distinct right and wrong judgments and thereby eliminating any sense to talk of judgments being correct. The worry, then, is that under naturalistic assumptions our judgments would not count as *knowledge* in a normative sense, even if they happened to be true.¹⁷

According to this neo-Kantian distinction between natural and normative rules, our reasoning – no matter whether theoretical, practical, or otherwise – is at least in part governed by certain laws of reason, generally speaking,¹⁸ in a way that is radically different from the way in which physical objects, including human bodies, are governed by laws of nature. This account of normativity essentially invokes what Douglas Lavin calls the "participation requirement," according to which "the relevance of a principle to what happens in the world is mediated by the conceptual activity of that which is under it. The contrast is, of course, with the rather unmediated grip that a physical law has on what is, in some other sense, subject to it."¹⁹

¹⁵ For the psychological approach to Kant's first *Critique* in contrast to the transcendental approach, see also A. Richardson, "The Fact of Science," 2006, 215.

¹⁶ "Neo-kantianism," 2005, 292. ¹⁷ Ibid.

¹⁸ Here and in what follows, I use the phrase 'reason, generally speaking' to refer not to the specific higher faculty as Kant distinguishes it from understanding, among others. It rather refers to Kant's idea of all higher faculties, including reason, understanding, and the power of judgment, all of which are present in theoretical, practical, and aesthetic reasoning (see the first motto of this study). Section 2.1 deals with the conceptual vagueness related to 'reason' and other concepts.

¹⁹ "Practical Reason," 2004, 444.

As I will argue in Chapter 1, Kant himself is explicit about this element and cites it in theoretical as well as practical contexts. Early on his way toward his critical philosophy, he argues that “*differentiating logically* means recognising that a thing A is not B *Physically differentiating* means being driven to different actions by different representations” (2:60). And in the *Groundwork* he unmistakably states that “everything in nature works in accordance with laws. Only a rational being has the capacity to act *in accordance with the representation of laws*, that is, in accordance with principles” (4:412).

On a deterministic account of natural laws, to which Kant seems to subscribe (all things considered), the distinction between natural and normative laws maps onto the aforementioned distinction between constitutive and normative laws. Whereas natural, or constitutive, laws do not tolerate any exception without the objects falling under these laws changing their identity as those objects,²⁰ normative laws allow for failure without the subjects falling under them changing their identity as subjected to this specific sort of law. Put differently, in contrast to natural, or constitutive, laws, normative laws retain their validity for the subjects falling under them regardless of the subjects’ actual compliance. Specifying this distinction by taking into account that there may be “unusual cases in which normative rules were also exceptionless,”²¹ for example, rules that prohibit behavior that is physically impossible in the first place, Anderson summarizes this account of Kantian normativity as follows:

Normative rules are such that their validity cannot *entail* the absence of exceptions; that is, the normative rule itself envisions the possibility of exceptions, even though we might find out later, on the basis of circumstances unforeseen in the rule, that the exceptions turn out not to be possible. So even if ‘ought’ implies ‘can’ (in some sense of ‘can’), it cannot *imply* ‘does.’ Natural laws, by contrast, are supposed to have just this implication. We can therefore propose a test: the *direction of accountability* between the rule and the facts it covers is different in the two cases. For descriptive empirical laws, if there is a mismatch between a proposed law and the facts, we find fault with the law, and revise it to fit the data; with normative rules, however, we hold the facts accountable to the rule, and lay the blame for mismatches on them (they are *false* judgments, or *bad* actions). Normative rules, then, have standing, independent of the facts they cover. They retain their validity and remain binding, even when violated in fact.²²

Now, the conflict that Tolley envisions consists in the fact that Kant’s account of the laws of pure and general, or as we call it today, formal logic is commonly seen as normative while, in fact, it should be seen as non-normative. Yet clearly, ‘non-normative’ laws must not be confused with empirical laws, or what Anderson calls ‘descriptive’ laws. Unlike empirical laws the laws of formal

²⁰ E.g., if a <planet> does not follow the laws for *planetary* orbits, it may turn out to be a different kind of object, such as a satellite, a star or even a galaxy that are in different distances from us than the alleged <planet>.

²¹ “Neo-kantianism,” 2005, 292–93. ²² *Ibid.*, 293.

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logic are not taken to be based on induction (at least not within a Kantian framework). What empirical and logical laws are meant to share, however, is their status as constitutive, or definitive, of the relevant activity. Accordingly, the laws of formal logic may be seen as power-conferring in Reath's sense, that is, constitutive of the activity of thinking or judging.²³

Following Tolley, the 'normative interpretation,' which draws on passages from *Jäsche Logik*,²⁴ should be rejected in favor of a 'constitutive interpretation,' which finds support in the first *Critique* and other critical texts. In short, it would make no sense to say that one *ought to* follow, say, the law of non-contradiction simply because it is impossible to fail to follow this law while still performing an act of thinking. On Kant's account pure general logic "contains the absolutely necessary rules of thinking, without which no use of the understanding takes place, and it therefore concerns these rules without regard to the difference of the objects to which it may be directed" (A 52/B 76; cf. 8:195). Here I do not have to decide between a 'constitutive' and a 'normative' reading of Kant's pure general logic. It may turn out on closer inspection that only very few laws of formal logic are constitutive in the strict sense that Tolley suggests, and that Kant does not have to deny a person confused by a double negation the status of a thinking being. Or, as Allen Wood put it in conversation, "We can successfully engage in acts of thinking, for instance, while embracing contradictory beliefs. I think most people most of the time do."²⁵

What is relevant for my overall project is the following. It may be true that, for Kant, the laws of pure general logic are as analytic for any kind of understanding as the moral law is analytic for a holy will, as Tolley suggests.²⁶ Accordingly, in these two cases the laws could be seen not as imperative, but

²³ It seems that a law's status as constitutive in fact marks a genus of laws comprising different kinds, such as empirical and logical ones, but also laws of convention such as the rules of chess, or linguistic rules, such as grammatical ones. From a more pragmatic point of view, the difficulty with Tolley's concept of 'constitutive' might be that in many cases the absence of the 'error constraint' is not a trivial thing to determine. For instance, if someone fails to articulate their reasoning in a correct and complete syllogism, we would probably judge that inference as a failure without denying that person the status of a rational being. He or she is nonetheless taken to have believed, asserted, and inferred something. Likewise, if you confuse the subject-copula-predicate order in speech, your sentence may be judged grammatically incorrect while your articulation of words may still be seen as language – perhaps even understandable language.

²⁴ "In logic ... the question is not about ... how we do think, but how we *ought* to think. ... In logic we do not want to know how the understanding is and does think and how it has previously proceeded in thought, but rather how it ought to proceed in thought" (9:14).

²⁵ On this issue, see also section 4.2.2, and Chapter 4, footnote 48, in particular.

²⁶ Strictly speaking, the laws of pure general logic are not binding on a divine understanding simply because a divine understanding must be thought to be intuitive rather than discursive, according to Kant; see, e.g., *Religion Pölitz*: "God has no *conceptus* but pure *intuitus*, through which his understanding immediately cognizes every object as it is in itself, whereas every concept is something mediate, in that it originates from universal marks. But an understanding which cognizes everything immediately, an intuitive understanding, has no need of reason"

rather as defining the activities of thinking and holily willing respectively. This does not entail, however, that normative principles cannot be constitutive. In fact, this book is intended to demonstrate that Kant's principles of reason, generally speaking, are in some relevant sense normative for *and* constitutive of certain domains of judgments.

A modification of Tolley's account of 'constitutive' is required partly because the subject must be taken to be accountable for her performance, such that, even if she articulates a correct sentence, it does not count as a judgment of experience, a moral maxim, or a judgment of taste, *unless* it is imputable to her.²⁷ Hence, the rules of chess may be constitutive in Tolley's but not in my sense, since they may be obeyed by beings who do not satisfy Lavin's 'participation requirement,' mentioned above. Even a toddler with no clue about the rules of chess makes a valid move if she moves the rook horizontally. By contrast, when it comes to judgments what is important is not the *compliance* with principles *simpliciter* but the *imputable compliance*. Unlike moves in chess, judgments do not merely accidentally conform to those principles. They are rather liable to assessment in light of them. Merely emulating the words of her parents, even if the result has the form of a correct sentence, does not yet amount to a *judgment* imputable to the child. The sentence is not liable to assessment in light of synthetic a priori principles, because the child is not yet seen as a subject standing under those principles. Thus Kant's synthetic a priori principles may be constitutive *and* normative insofar as our judgments are liable to assessment in light of them.²⁸ The use of our reason, generally speaking, is normative if in a certain kind of cognitive activity we have a self-understanding of what we are doing that guides the activity (we take ourselves to be judging in a certain way). This self-understanding commits one to the

(28:1053). Tolley illuminates his claim about the non-normativity of pure general logic by analogy with Kant's distinction between the moral law as it relates to a holy will, "that is, such a will as would not be capable of any maxim conflicting with the moral law" (5:32; cf. 4:414), and the categorical imperative that is binding on finite rational beings like us. According to Tolley's distinction between 'normative' and 'constitutive,' the moral law would be constitutive for a holy will without being normative, simply because the holy will cannot be conceived as failing to follow the moral law. It belongs to the essence of the concept of a holy will that its maxims satisfy Kant's universal law requirement. By contrast, for intelligible, but also sensibly affected beings like us, the moral law takes an imperative form. It tells us how we ought to form our maxims, which implies that even if we fail to give our maxims a universally valid form, we are still acting on maxims – *bad* maxims, that is, in this case. On the relationship between the concepts of a holy will and a sensibly affected will such as the human will, see section 8.2. See also Chapter 4, footnote 48.

²⁷ Kant speaks of 'imputability' with respect to actions, and includes this idea in his account of the 'original-synthetic unity of apperception' with respect to the concept of judgment; see 6:223, 23:245, 4:304, B 131, 140–41, as well as section 5.4.2. I am grateful to Clinton Tolley for our conversations on this point.

²⁸ On this notion of liability to assessment, see also MacFarlane's account of Kant's pure general logic (*Logic is Formal*, 2000) as well as section 4.2.1.

relevant constitutive principles, which turns them from constitutive to normative, or, more precisely, explains how they can be both.²⁹

In a nutshell, Kant's synthetic principles a priori are constitutive *and* normative such that no combination of representations counts as a token of a certain type of judgment – of experience (or mathematics),³⁰ of morality (maxims), or of aesthetics – unless it is liable to assessment in light of the same type of synthetic a priori principles which it itself is a token of. Synthetic principles a priori are constitutive, since they are the conditions of the possibility of judgments of experience and mathematics, moral maxims, and the pleasantly exciting judging of beautiful objects. Without obeying those principles we cannot make judgments of those particular types. At the same time these principles are normative because subjects who stand under them may fail to obey them without them losing their validity for those subjects, and without those subjects losing their identity as beings who synthesize representations and articulate judgments. Consequently, Kant's synthetic a priori principles do not *entail* that we judge in accordance with them. *They are constitutive of certain types of judgments, and they are normative for finite reasoners using their cognitive faculties – reason, understanding, and the power of judgment – to make those judgments.* Even if we fail to obey those principles they remain binding on our faculties, and we may actually fail to obey them and still employ those faculties for judging. The principles are constitutive because without obedience to the principle, there is no judgment *of the given type*, but they are also normative, because we can make judgments that fail to count as that particular type, but which still count as judgments *of some kind*. So, we still do the activity of forming judgments, we just do it wrongly.

First, no combination of representations has objective validity in a judgment of experience, unless it is liable to assessment in light of the principles of the understanding. The normativity at work in the epistemic case is transcendental (to schematize pure concepts), and it yields a distinct type of possible failure that Kant calls dialectical. The synthetic a priori principles of the understanding are *constitutive* of our judgments of experience, since no judgment can be empirically true or false unless it conforms to those principles. At the same time those principles are *normative*, since we can always fail to form empirically true or false judgments in accordance with them, for example, by disregarding time in a causal relation. But as the *KrV* paralogisms and the antinomies manifest, even a surreptitious conclusion is still a judgment.

Second, no expression of our desire, or in a more Kantian diction, no expression of our 'material incentive' or 'relative end' represents a maxim as

²⁹ I am indebted to Andrews Reath for clarification of this point.

³⁰ Unlike judgments of pure mathematics, judgments of experience may be correct or incorrect without losing their objectivity. For Kant, transcendental objectivity does not entail empirical truth. See also section 3.2.3.