

# Enlightenment, reason and universalism: *Kant's Critical Insights*

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**Abstract** ‘Universalist’ moral principles have fallen into disfavour because too often they have been pretexts for unilateral impositions upon others, whether domestically or internationally. Too widely neglected has been Kant’s specifically Critical re-analysis of the scope and character of rational justification in all non-formal domains, including the entirety of epistemology and moral philosophy, including both justice and ethics. Rational judgment is inherently normative because it is in part constituted by our self-assessment of whether the considerations we now integrate into a candidate judgment have been integrated as they *ought*, so as to form a cogent, justifiable judgment. Constitutive of this self-assessment is that rational judgments must be based upon considerations which *can* be communicated to all others, such that they too can assess them as sufficiently cogent justification; also constitutive of this rational self-assessment is that we actually engage with others who *do* assess our judgments. Kant’s Critical principles rule out in principle any unilateral imposition upon others, whether in cognition or morals. Using Kant’s Critical principles and methods in connection with ‘practical anthropology’ and the enormously important domain of *acquired* rights and obligations shows how Kant had already justified fundamentally universal principles of justice which can be institutionalised in variously distinctive cultures, and which form the proper bases for our acquired, specifically social rights and obligations, including those of friendship and community.

**Keywords** Moral constructivism · Moral realism · Moral universalism · Justice · Friendship · Mutual recognition · Moral objectivity · Moral autonomy · Critical philosophy · Hobbes · Hume · Rousseau · Kant

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## Introduction

Universalist moral principles face a wide array of contemporary objections. Before wading into these troubled waters, let me first say that, in contrast to most Anglophone philosophers of the Twentieth Century (C.E.), I use the term ‘moral philosophy’ to designate the genus of practical philosophy, which has two proper, coordinate species: ethics and *ius* or theory of justice. Universalist moral theories have been criticised for rationalising European imperialism, for neglecting the positive character of community and for obscuring the values of friendship. Though various universalist theories may exhibit such faults, I am concerned that a much more subtle and important form of universalist moral theory has been unwittingly shunted aside, an approach obscured by needless divisions within philosophy amongst those who compartmentalise philosophical issues, periods and methodological loyalties. Here I sketch the rudiments of this view to highlight one of its virtues: it identifies and justifies some basic, core moral principles governing our actions and interactions, whilst allowing for many various ways of instantiating or instituting these principles in society and in our behaviour.

The view in question is Kant’s version of what I call ‘Natural Law Constructivism’. This phrase may sound oxymoronic: most natural law theories require moral realism, whereas most constructivist moral theories reject moral realism. There is, however, an important, distinctive form of moral constructivism which identifies and justifies very basic moral norms, whilst neither invoking nor denying moral realism, by showing that certain moral norms are required for finite rational agents like us to live and to act at all on our globe. The historical development of Natural Law Constructivism coincides with its systematic development: Natural Law Constructivism was inaugurated by Hume, greatly improved by Rousseau, refined by Kant, augmented still further by Hegel—and then obscured by various demands for simplicity and factional loyalty.<sup>1</sup> Especially in moral philosophy we must follow Einstein rather than Quine: Everything should be made as simple as possible, though no simpler.<sup>2</sup>

In presenting some basic features of Natural Law Constructivism I exploit an important feature of Kant’s moral philosophy. Kant’s *Metaphysics of Morals* seeks to identify and to justify (what he calls) ‘metaphysical’ moral principles which hold for all rational agents as such. Kant stresses, however, that applying these principles to the human condition requires what he calls ‘practical anthropology’ (*GMS* 4:388, 412; *MdS* 6:216–7).<sup>3</sup> This practical anthropology catalogues basic features of our

<sup>1</sup> An example of factional loyalty masquerading as methodological purity is the long and heated debate about ‘methodological individualism’, which too often served as a banner under which to promote substantive individualism; see Westphal (2003), §§32–37, (2013d).

<sup>2</sup> Einstein (2000), 314. Ockham’s principle of explanatory parsimony is a methodological principle for choosing between two otherwise equally adequate scientific theories, a rare coincidence. Quine, however, insists on ontological parsimony—this is his (1969, 134) ‘preference’ for ontological ‘desert landscapes’—in advance of philosophical analysis, though to the detriment of his own semantics; see Westphal (2015), §§4–5.

<sup>3</sup> Kant’s works are cited by the initials of their German titles, and by volume:page numbers of Kant (1902, 2009); the abbreviations used are listed in the References.

specifically human form of finite rational agency, our basic capacities and incapacities, so far as these are relevant to determining how we can and ought to act. Kant (*MdS*, 6:469) assigned 'practical anthropology' to an unwritten 'appendix' to his system of moral principles, though his examples provide much information about this topic. Yet we can disagree with Kant about some points of practical anthropology whilst agreeing with his principles of morals. Without detailing specifics, I suggest that many objections to Kant's moral principles stem from misunderstanding these features of his moral philosophy.<sup>4</sup>

I depart from Kant's stated practical anthropology in three regards: First, I respond to Kant's pessimism about human inclinations and fallen human nature as Rousseau did to Hobbes, by noting that deformities of human character often have much more to do with social conditions than with our natural capacities and propensities. Second, I accordingly emphasise more than Kant the ways in which and the extent to which our wants and desires can be shaped—for better or for worse—by our upbringing, education and enculturation.<sup>5</sup> Third, I reject Kant's (official) strict dualism between our rational and sensible capacities, to allow—as did Aristotle and Hegel—for active harmonisation of intellectual virtues with virtues of character, and hence also for morally worthy mixed motives. With these *caveats* in place, consider now some basic features of Natural Law Constructivism.<sup>6</sup>

### Some basics of natural law constructivism

Preoccupation with egoism, greed and aggression have obscured the two most important points Hobbes established in his analysis of the non-governmental state of nature, namely these:

- (1) Unlimited individual freedom of action is impossible due to consequent total mutual interference. Hence the fundamental moral question is not, Whether individual freedom of action may or must be limited, but rather: What are the proper, justifiable limits of individual freedom of action?
- (2) Complete though innocent, non-malicious *ignorance* of what belongs to whom suffices to generate the total mutual interference characterised in the non-governmental state of nature as the war of all on all. Consequently, justice must fundamentally be *public* justice, to remedy such ignorance and thus to substitute social coordination for chronic mutual interference.

<sup>4</sup> The views and analyses I ascribe to Kant may not be familiar, nor obvious. The present analysis is based on my (2016a), and is corroborated and extended by my (2016c).

<sup>5</sup> My claim is comparative; Kant has much of value to say about moral education: see Herman (2007), 106–53.

<sup>6</sup> These same revisions to Kant's practical anthropology were made by Hegel; see Westphal (1991, 2005, 2013b, 2016d, e).

The second point may be called ‘the Innocent Problem’ of mutual interference. These two points entail that the most basic moral problems are fundamental problems of social coordination. Plainly these social coordination problems are problems of justice, but they are also fundamental ethical problems: One of our foremost ethical duties, as guides to individual action, is to abide by the dictates of justice! However flawed may be Hobbes’ positive solution to these problems, his incisive formulation of these two fundamental issues of moral philosophy remains decisive.

The social contract tradition, and especially Hobbes’ advocacy of absolute monarchy, raise the central issue about conventionalism and moral standards. If basic moral principles are artificial, must they also be arbitrary? No. This is Hume’s key insight:

Though the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them Laws of Nature.... (T 3.2.1.19)<sup>7</sup>

This insight is fundamental to Hume’s theory of justice, which inaugurates a distinctive approach to natural law theory,<sup>8</sup> an approach I call ‘Natural Law Constructivism’. The key to providing objectivity within a constructivist moral theory is not to appeal to subjective states of the kinds prominent in contemporary forms of moral constructivism, but instead to appeal to objective facts about our form of finite rational agency and circumstances of action which are basic to the human condition. More specifically, Hume’s theory of justice focusses on physiological and geographical facts about the vital needs of human beings, our limited capacities for acting, the relative scarcity of materials required for us to meet our vital needs and our ineluctable mutual interdependence. The principles Hume constructs on their basis merit the designation ‘Laws of Nature’ because for human beings they are utterly indispensable and so are non-optional.<sup>9</sup> If successful—elsewhere I argue in detail that it is—Hume’s Natural Law Constructivism breaks the deadlock in moral theory between moral realists and their detractors, by showing that their debate is irrelevant to identifying and to justifying basic, objective, universal moral principles. If moral objectivity can be justified without appeal to moral realism *nor* to its alternatives, this is a major breakthrough: we need not settle that protracted controversy in order to identify or to justify objective basic moral principles.

Hume’s (and likewise Rousseau’s, Kant’s and Hegel’s) most basic social coordination problems stem directly from Hobbes: Under conditions of relative scarcity of external goods, the easy transfer of goods from one person to another, the limited benevolence typical of human nature, our natural ignorance of who rightly possesses what, and our mutual interdependence due to human frailties, we require a system of rightful possession to stabilise the distribution and use of goods and

<sup>7</sup> Hume (2000), cited as ‘T’ by Book.Part.§.¶ numbers.

<sup>8</sup> See Haakonssen (1981), (1993), (1996), chapter 3, and Buckle (1991).

<sup>9</sup> ‘... if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species’ (T 3.2.1.19).

thereby to avoid chronic mutual interference.<sup>10</sup> The minimum effective and feasible solution to this social coordination problem is to establish, in principle and in practice, this principle: Respect rights to possessions! This is Hume's first Principle of Justice. Hume's three principles of justice are 'that of the stability of possession, of its transference by consent, and of the performance of promises' (*T* 3.2.6.1, cf. 3.2.11.2). His illuminating construction of his three basic rules of justice shows that these three principles count for us human beings as 'laws of nature' because without them human social life—and hence *all* of human life—is impossible.

In the *Treatise* Hume considers only a small core of the theory of justice. Two key omissions are these: Hume omits personal safety and security, and is silent about collective distribution, or collectively permissible distributions, of goods. Specifying only Hume's three rules of justice allows much arbitrariness about further principles and practices: Society and human life are also 'possible' under highly unjust conditions.

These issues were directly raised by Rousseau, who adopts, adapts and greatly extends Hume's constructivist method for analysing justice. Rousseau's *sine qua non* for just collective distributions of wealth is that no one is permitted to have any kind or extent of wealth, power or privilege which enables him or her to command unilaterally the actions of anyone else. That kind of dependence upon the personal will of others Rousseau rules out as an unjust infringement of any- and everyone's 'original' right to be free to act solely upon his or her own will.<sup>11</sup> More clearly than Hume, Rousseau emphasised that principles of justice and the institutions and practices they inform are mandatory for us in conditions of population density which generate mutual interference. Rousseau's insistence that social institutions be such that no one can command the will of another is required for moral freedom, which requires only obeying self-legislated laws.

## Freedom as autonomy and respect for persons

Rousseau's proclamation of and plea for moral autonomy is compelling, but is it justified? Analysing and justifying moral autonomy as the correct account of human freedom is one of Kant's key contributions to moral philosophy. Kant's universalisation tests determine whether performing a proposed act would treat any other persons only as a means, and not at the same time also as a free rational agent. The key point of Kant's method for identifying and justifying moral duties and proscriptions is to show that sufficient justifying grounds for a proscribed act *cannot* be provided to all affected parties. Conversely, sufficient justifying grounds for omitting positive moral obligations cannot be provided to all affected parties. By contrast, morally legitimate kinds of action are ones for which sufficient justifying

<sup>10</sup> Relative scarcity of goods: *T* 3.2.2, ¶¶7, 16, 18; their easy transfer: *T* 3.2.2, ¶¶7, 16; our limited generosity: *T* 3.2.2.16, 3.2.5.8, 3.3.3.24; natural ignorance of possession: *T* 3.2.2.11, 3.4.2.2, 3.2.6.3–4; limited powers and consequent mutual interdependence: *T* 3.2.2–3.

<sup>11</sup> Rousseau (1762), (1976), Book 1, chapters 6 (¶1) and 8 (¶2); see Westphal (2013a).

reasons *can* be given to all affected parties, also on the occasion of one's own act. Onora O'Neill notes that Kant's basic criterion of right action is *modal*:

When we think that others *cannot* adopt, a fortiori *cannot* consent to, some principle we cannot offer them reasons for doing so.<sup>12</sup>

'Adopt' here means, to be able to follow consistently the very same principle (for the very same reasons) in thought or action on the same occasion as one proposes to act on that maxim. This is an issue of capacity and ability, not a psychological claim about what someone can or cannot bring him- or herself to believe or to do. The possibility of adopting a principle thus differs fundamentally from 'accepting' one, in the senses of 'believe', 'endorse' or 'agree to'. Kant's tests rule out any maxim which cannot possibly be adopted by others on the same occasion on which one proposes to act on that maxim. The universality involved in Kant's tests includes the agent's own action, and extends (hypothetically) to all agents acting the same way at that time and over time. What we can or cannot adopt as a maxim is constrained by the form of behaviour or its guiding principle (maxim), by basic facts about our finite form of rational agency, by basic features of our worldly context of action and most centrally by whether the maxim of the proposed action cannot be adopted by others because that action neglects or over-rides their rational agency.

Kant's Contradiction in Conception test directly rules out maxims and acts of coercion, deception, fraud and exploitation. In principle, such maxims *preclude* offering to relevant others—most obviously to victims—reasons sufficient to justify *their* following those maxims, their (putatively) justifying reasons or the courses of action they guide in thought or action, especially as the agent acts on his or her maxim.<sup>13</sup> This is signalled by the lack of the very possibility of consent, which serves as a criterion of illegitimacy. Obviating the very possibility of consent on anyone's part obviates the very possibility of offering sufficient justifying reasons for one's action to all affected parties. Any act which obviates others' possibility of acting upon sufficient justifying reasons cannot itself be justified (see section "[Respect for Persons and Mutual Recognition](#)"), and so is morally proscribed.

Because any maxim's (or any course of action's) passing his universalisation tests requires that sufficient justifying reasons for that maxim or action *can* be given to *all* affected parties for acting on that maxim on that very occasion, such that they too can think, judge and act upon those same grounds, evidence and principles, Kant's universalisation tests embody at their core equal respect for all persons as free rational agents, that is, as agents who can determine what to think or to do by rationally assessing the reasons which justify that act (as obligatory, permissible or

<sup>12</sup> O'Neill (2000a), 200; cf. Westphal (1997), §§4, 5.

<sup>13</sup> O'Neill (1989), 81–125. A maxim such as one by which you and I agree now that 'I shall exploit you at one time and you me at another' may satisfy minimal requirements on the generality of reasons for action (namely, that a reason for one agent can also be a reason for others), but such examples only underscore that such generality does not suffice for Kant's specific universality requirement, which expressly rules out making an exception for oneself from an otherwise universal rule (*GMS* 4:424, 440 note, *MdS* 6:321).

prohibited).<sup>14</sup> Ruling out maxims which fail to pass this universalisation test establishes the minimum necessary conditions for resolving the fundamental problems of conflict and social coordination which generated the central concern of Modern natural law theories with establishing normative standards to govern public life, despite deep disagreements amongst various groups about the substance of a good or pious life. These principles hold both domestically and internationally; they also concern ethnic and other inter-group relations. These principles are neutral regarding theology or secularism; their point is to establish minimum sufficient conditions for just and peaceful relations among groups or peoples who disagree about such often contentious, divisive issues (see O'Neill 2000b, 2003, 2004b).

## Respect for persons and mutual recognition

Kant's justificatory strategy is constructivist because it makes no appeal to any antecedent source or kind of normative authority. Kant's constructivism is entirely neutral about moral realism. Kant's justificatory strategy appeals only to a fundamental principle of rational justification as such, that justifying a principle, policy, belief, institution or action requires that its proponent can provide sufficient justifying reasons to all other affected parties, such that they can consistently adopt or follow the very same proposal in thought or action. Therefore, at its core Kant's constructivist justification of practical principles is fundamentally social, intersubjective, because it addresses *all* affected parties. Our behaviour, both verbal and physical, is not coordinated naturally, nor transcendently nor transcendentally. Consequently, any stable social practices or constructions, whether communicative, intellectual, political or physical, can only be based upon principles which all parties can consistently follow in thought and in action. To identify and to justify such principles requires, Kant contends, that we follow the maxims always to think actively, to think consistently, to think (so far as possible) without prejudice, and 'to think from the standpoint of *everyone* else' (*KdU* 5:294, *GS* 8:145). These maxims are not algorithms, nor are they specific methods, but they are *conditiones sine qua non* for rationally cogent and justifiable thought, judgment and action. As O'Neill (1989, 24–7, 42–8) notes, these maxims are equally ones of communication, required so that we can communicate with everyone, not just our fellow partisans. Hence Kant's justificatory strategy is fundamentally social. The nerve of Kant's constructivist strategy is to show that the modal capacity to provide justifying reasons to all affected parties is a very stringent requirement. One great advantage of Kant's minimalist strategy of justification is that it avoids familiar problems regarding agreement or acceptance, whether implicit, explicit or hypothetical.<sup>15</sup>

<sup>14</sup> Those who think moral justification can dispense with this condition ought carefully to rethink the Pyrrhonian Dilemma of the Criterion; see Westphal (2014a).

<sup>15</sup> This paragraph summarises some thoughts from O'Neill (2000a); cf. O'Neill (1996, 2000b, 2003, 2004a, b), Westphal (2014a). The embeddedness of equal respect for all persons as free rational agents within Kant's universalisation tests shows that the incommensurable worth or 'dignity' of free rational agency (*GMS* 4:434–5) is not required as an independent premiss in Kant's analysis, nor

Kant's constructivist principle addresses neither a particular society with its norms (communitarianism; MacIntyre), nor an 'overlapping consensus' of a pluralistic society (Rawls), nor the multitude of voices aspiring to communicate in accord with the requirements of an 'ideal speech situation' (Habermas), nor a plurality of potential contractors (e.g., Gauthier, Scanlon or Stemmer). These latter considerations are important, but are secondary to the core principles of justice identified and justified by Kant's constructivism, which articulates the most basic rational principles of human thought and action as such. The principles required for legitimate contract cannot themselves be established by contract, as Hume recognised (*T* 3.2.2.10, 3.2.5.1–4), because any contract presupposes rather than identifies or justifies those principles. Conversely, requiring consent to establish basic norms too easily allows for negligence or back-sliding through refusal to consent, including refusal to acknowledge relevant, typically other-regarding considerations and obligations.<sup>16</sup> Kant's constructivism identifies and justifies key norms to which we are committed, whether we recognise it or not, by our rational requirements to act in justified ways, on the one hand, and by the limits of our very finite form of human agency and our worldly context of action, on the other. According to Kant, there is no public use of reason without this constructivist principle, which uniquely avoids presupposing any particular authority, whether ideological, religious, socio-historical or personal.

Because constructivist rational justification is fallibilist, it underscores that to judge rationally is to judge matters thus:

To the best of my present abilities, understanding and information, this conclusion is justified for the following reasons and in the following regards – what do you think?

Because rational judgment is fallible, and because it involves one's own, as it were, 'perspectival' assessment of the relevant evidence, principles and the interrelations among these, rational judgment (in the non-formal domain of morals) is also fundamentally social. The judgments each of us make and the principles we use to make them have implications which far transcend one's present situation and purview. Among these are implications for domains, issues and specific cases one might never attend to, or ever be able to attend to. Hence we each require the critical assessment of others who are engaged in other activities and concerns, both directly and indirectly related to our own, because they can identify implications of our judgments and the justifying grounds of our judgments that we cannot. None of us can sufficiently simulate for ourselves the confrontation of our rational judgments with the loyal opposition by also playing for oneself the role of the loyal opponent. Whilst important, being one's own devil's advocate is inherently limited and, of course, fallible. Each of us can do our best to try to determine what those who disagree with us may say about our own judgments, and we may do rather well at this,

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Footnote 15 continued

specifically as a premiss regarding value. This is not to reject Kant's account of dignity, but it is to dispatch as irrelevant debate about whether there are any incommensurable values.

<sup>16</sup> Regarding some key shortcomings in consent theories, see O'Neill (2000a), 185–91; Westphal (2014b).



though only if we are sufficiently broad-minded and well-informed to be intimately familiar with opposing analyses of and positions on the matter at hand. However, even this cannot substitute for the actual critical assessment of one's judgments by knowledgeable, skilled interlocutors who actually hold differing or opposed views. Inevitably we have our own reasons for selectively gaining expertise in some domains rather than others, for focussing on some issues rather than others and for favouring some methods, accounts or styles rather than others. However extensive our knowledge and assessment may be, we cannot, so to speak, see around our own corners. Our own fallibility, limited knowledge and finite skills and abilities, together with the complexities inherent in forming judgments about moral matters, require us to seek out and seriously consider the critical assessment of any and all competent others. Failing to do so renders our judgments less than maximally informed, less than maximally reliable and so less than fully rationally justified.

All of these considerations and measures are required, and *understanding* of all them is required, in order rationally to *judge* that 'I judge', in contrast to merely thinking or merely uttering the words 'I judge', thereby merely feigning rationality. Thus the rich philosophical significance of rational justification through rational judgement is this:

For any human being genuinely to judge rationally that she or he rationally judges, requires judging that others are likewise rational judges, and that we are equally capable of and responsible for assessing rationally our own and each other's justificatory judgments.

This rich and philosophically crucial form of rational self-consciousness requires the analogous consciousness of others, that we are all mutually interdependent for our capacity of rational judgment, our abilities to judge rationally and our exercise of rational judgment. This requirement is transcendental, for unless we recognise our critical interdependence as fallible rational judges, we cannot judge fully rationally, because unless we acknowledge and affirm our judgmental interdependence, we will seriously misunderstand, misuse and over-estimate our own individual rational, though fallible and limited powers of judgment. Thus recognising our own fallibility and our mutual interdependence as rational judges is a key constitutive factor in our *being* fully rational, fully autonomous rational judges. Only by recognising our judgmental interdependence can we each link our human fallibility and limited knowledge constructively with our equally human corrigibility, with our ability to learn—especially from constructive criticism. This form of mutual recognition involves mutually achieved recognition of our shared, fallible and fortunately also corrigible rational competence. This recognition involves recognising the crucial roles of charity, tolerance, patience and literal forgiveness in our mutual assessment of our rational judgments and those of others, to acknowledge that oversights, whether our own or others', are endemic to the human condition, and not as such grounds for blame or condemnation of anyone's errors.<sup>17</sup> Therefore, fully rational justification requires us to seek out and actively engage with the critical assessments of others.

<sup>17</sup> This is precisely the point reached by the two, originally starkly individualist moral judges Hegel analyses in 'Evil and Forgiveness' (*PhdG*, chapter VICc), which is expressly the first instance of genuine

The justification of any substantive view in a non-formal domain requires thorough, constructive internal critique of all relevant opposed views so far as we can determine them, whether historical, contemporary or possible.<sup>18</sup> Because the list of relevant alternative views can always be extended, in part by devising new variants on previous accounts, and in part doing so when confronting new kinds of circumstances, rational justification is fallible and inherently provisional. Consequently, rational justification is fundamentally historical, because it is based on the current state of knowledge, because it is fallible and thus provisional and because the list of relevant alternatives and information expands historically.

## The collective assessment of moral principles and practices

The social dimensions of rational justification summarised in the previous section (“[Respect for persons and mutual recognition](#)” section) and the basic points of Natural Law Constructivism summarised earlier (“[Some basics of natural law constructivism](#)” “[Freedom as autonomy and respect for persons](#)” sections) have important implications for the collective assessment of moral principles, practices and institutions. I noted that Kant’s universalisation tests rule out maxims and acts of coercion, deception, fraud and exploitation. These are important implications of Kant’s criteria of right action. However, they are not sufficient: though many forms of such actions may be obvious, and hence obviously wrong, some forms may be more subtle; sociopaths are often charming, otherwise their sociopathy would fail to deceive. For centuries no one worried whether human wastes polluted the environment, and though we now know much better, we still often don’t do sufficiently better. Further such examples will be obvious, at least to the present audience! My general point is this: As O’Neill (1975, 70–1) emphasises, assessing maxims or forms of action by Kant’s universalisation tests requires information about the ‘normal, predictable results of the success’ of that action; this information is part of what is involved in *willing* rationally. In many cases—her example is bank robbing—these results are obvious. In other, more complex cases in which the sociological law of unintended consequences holds, the ultimate results of the behaviours of a group of people may be far from obvious or predictable, for example subtle forms of ethnic, racial, gender or economic discrimination. The social dimensions of rational justification in matters moral entail that we must seek

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Footnote 17 continued

mutual recognition in Hegel’s *Phenomenology of Spirit* (GW 9:359.9–23, 360.31–361.4, .22–25, 362.21–29/¶666, 669, 670, 671), and which constitutes the advent of ‘absolute spirit’ (GW 9:361.22–25/¶670); see Westphal (2009, 2014a). I have not ‘hegelised’ Kant (see below section “[Reason, justification and critique](#)”); to the contrary, Hegel recognised the full scope and significance of Kant’s Transcendental Doctrine of Method and his critique of judgment, in all three *Critiques*, and made it central to his further development of Kant’s moral principles in his own *Philosophical Outlines of Justice*; see Westphal (2016d, e, f).

<sup>18</sup> This is built into Hegel’s concept of ‘determinate negation’ (*PhdG*, GW 9:57.1–12/¶79); see Westphal (1989), 125–6, 135–6, 163. By ‘possible’ alternatives here I do not mean mere logical possibilities, but cogent alternatives which heretofore lacked proponents. In non-formal domains, mere logical possibilities have no justificatory status; this they only gain through relevant evidence; see Westphal (2010/11).

to understand the implications of our behaviour towards any individuals and any groups who are treated differently—who we treat differently—than ourselves, no matter who ‘we’ are. This is required to establish, to assess and to promote or to improve the principles and practices of justice within any community, in part by identifying and rectifying illicit benefits which accrue selectively to some persons or groups due to differential treatment of others. In our interactions and the social practices they use or abuse, we must be vigilant about what we accomplish due to the sociological law of unintended consequences.

## Reason, justification and critique

The present analysis stresses the centrality of reason and reasoning to the formulation, assessment and justification of basic (and not only basic) moral principles and practices—both in ethics and in justice—in ways many today find inadequate or naive; such suspicions are not limited to devotés of post-modern critique. Decades of scrutinising the problems confronting critical assessment and rational justification posed by the Pyrrhonian Dilemma of the Criterion have convinced me—as they did Hegel—that Kant’s Critical philosophy contributes enormously to philosophical methodology, altogether independently of Kant’s Transcendental Idealism, in ways which remain ill-understood even today.<sup>19</sup> No brief summary can recount Kant’s methodology here. It is, however, enlightening to consider Kant’s own reply to contemporaneous attempts by Hamann (1784–8), Herder (1799), Jacobi (1785, 1786) and Wizenmann (1786) at a sceptical ‘meta-critique’ of reason;<sup>20</sup> their attempts pre-figure to a great extent contemporary neo-pragmatist and post-modern criticism of reason and rational justification.

Above (“[Respect for persons and mutual recognition](#)” section) I noted—following O’Neill—that our verbal and physical behaviour is not coordinated naturally, transcendently, nor transcendentally, so that any stable social practices or constructions, whether communicative, intellectual, political, or physical, can only be based upon principles which all parties can consistently follow (in the indicated sense) in thought and in action. To identify and to justify such principles, Kant contends, requires us to follow these maxims:

always to think actively,  
to think consistently,  
to think (so far as possible) without prejudice, and  
‘to think from the standpoint of *everyone* else’. (*KdU* 5:294, *GS* 8:145)

These maxims are not algorithms, nor are they specific methods, but they are *conditiones sine qua non* for rationally cogent and justifiable thought, judgment and action. O’Neill (1989, 24–7, 42–8) notes that these maxims are equally ones of communication, required so that we can communicate with everyone, not just our own faction.

<sup>19</sup> Watson (1881) remains instructive.

<sup>20</sup> For discussion, see Beiser (1987), 16–164.

Consider in this context Kant's development of this important point at the end of 'What does it Mean to Orient oneself in Thinking? (1786).<sup>21</sup> Responding to sceptical attacks upon reason, Kant admonishes:

Men of intellectual ability and broad-minded disposition! I honour your talents and love your feeling for humanity. But have you thought about what you are doing, and where your attacks on reason will lead? Without doubt you want to preserve inviolate the *freedom to think*; for without that even your own free flights of genius would soon come to an end. Let us see what would naturally become of this freedom of thought if a procedure such as you initiate should get the upper hand. (GS 8:144)

Kant then contrasts freedom of thought to compulsory censorship and comments:

Of course it is said that the freedom to *speak* or to *write* could be taken from us by a superior power, though the freedom to *think* cannot. Yet how much and how correctly would we *think* if we did not think as it were in community with others to whom we *communicate* our thoughts, and who communicate theirs with us! Thus one can very well say that this external power which wrenches away people's freedom publicly to *communicate* their thoughts also takes from them the freedom to *think*.... (GS 8:144)

The close interdependence of thinking and public communication Kant here highlights may not be self-evident, but consider that whatever cognitive capacities are innately ours, we only develop and learn to use through education—both formal and informal—by others who provide information, skills, methods, practice and critical assessment. To 'communication' belong all publications and social sources of information. Kant further stresses that thinking cogently (*mit welcher Richtigkeit*; 'correctly') requires more than just thinking: for us fallible, limited human cognisers, distinguishing between genuinely cogent and merely apparently cogent thinking is vital, and requires communicating with others. Communicating with others is vital for assessing whether our thoughts, as we happen to have formulated and integrated them into judgments which we affirm, deny or withhold, are formulated and integrated as they *ought* to form a proper, accurate, rationally justifiable judgment (*KdrV* B219, A261–3/B317–9).<sup>22</sup>

Kant's third point about freedom of thought is that

... freedom in thinking signifies the subjection of reason to no laws except *those which it gives itself*; and its opposite is the maxim of a lawless use of reason (in order, as genius supposes, to see further than one can under the limitation of laws). (GS 8:145)

This lawless use of reason naturally leads, Kant contends, to this situation:

<sup>21</sup> Cinzia Ferrini reminded me of Kant's essay and its relevance. Allen Wood's translation (Kant 1998, 3–14) is very good, and is used here with only minor revisions.

<sup>22</sup> Wood (2014, 65–9) neglects these fundamentally intersubjective, social aspects of Kant's constructivist account of rational justification in non-formal domains.

... if reason will not subject itself to the laws it gives itself, it must bow beneath the yoke of laws given by another; for without any law, nothing – not even nonsense – can play its game for long. Thus the unavoidable consequence of *declared* lawlessness in thinking (of a liberation from the limitations of reason) is that the freedom to think will ultimately be forfeited, and because not misfortune but arrogance is to blame, it will properly speaking be foolishly *trifled away*. (GS 8:145)

Lawful, that is: *regular*, rule-governed use of reason is required simply to make sense; to make statements, claims, or judgments; to refer intelligibly and intelligently to any subject matter under discussion; to make any justified or justifiable claims or judgments; and to assess their accuracy and justification. These points likewise hold for innovations, their identifiability (recognisability), their rational assessment and, in favourable cases, their justification.

Lawlessness in reasoning generates instead:

... an *unbelief of reason*, a precarious state of the human mind, which first takes from moral laws all their force as incentives to the heart, and over time all their authority, and occasions the way of thinking one calls libertinism, *i.e.* the principle of recognising no duty at all. At this point the authorities intervene, so that even civil arrangements shall not fall into the greatest disorder; and since they regard the most efficient and emphatic means as the best, this does away with even the freedom to think, and subjects thinking, like other trades, to the country's rules and regulations. And so freedom in thinking finally destroys itself if it tries to proceed in independence of the laws of reason. (GS 8:146)

The authorities Kant has in mind are civil and religious authorities, at a time and in a place in which religious authorities were civil authorities, but today those authorities may belong not only to government or to a church, but also to academic administrations or 'business leadership', such has become the demand for economic 'impact' within the academy, to the ever increasing neglect and detriment of moral, political and social competence and concern. Kant's emphatic conclusion is as important today as it was in 1786:

Friends of the human race and of what is most sacred to it! Accept what appears to you most worthy of belief after careful and sincere examination, whether of facts or rational grounds; only do not dispute that prerogative of reason which makes it the highest good on earth, the prerogative of being the ultimate touchstone of truth.\* Otherwise you shall become unworthy of this freedom, and you will surely forfeit it too; and besides that you will bring the same misfortune down upon the heads of other, innocent parties who would otherwise have been well disposed and would have used their freedom lawfully and hence in a way which is conducive to what is best for the world! (GS 8:146–7)

Now why, exactly, should reason be the ultimate touchstone of truth? Kant answers in his footnote to his conclusion:

\**Thinking for oneself* means seeking the supreme touchstone of truth in oneself (*i.e.* in one's own reason); and the maxim of always thinking for oneself is enlightenment.... To make use of one's own reason means no more than to ask oneself, whenever one is supposed to assume something, whether one could find it feasible to make the ground or the rule on which one assumes it into a universal principle for the use of reason. This test is one that everyone can apply to himself; and with this examination he will see superstition and enthusiasm disappear, even if he falls far short of having the information to refute them on objective grounds. (*GS* 8:146–7n)<sup>23</sup>

The 'enthusiasm' Kant here censures is the view that reason's legislation is invalid, whereas 'superstition' is 'is the complete subjection of reason to facts', whether real or alleged (*GS* 8:145). A 'universal principle for the use of reason' is a principle any and everyone can use to judge some subject matter. This reflects Kant's observation in the Canon of Pure Reason, that 'all knowledge (if it pertains to an object of pure reason) can be communicated' (*KdrV* A829/B857). This communicability of knowledge does not merely consist in publicising one's opinions to others; it consists in publicising one's analysis, justificatory grounds and concluding judgment to others so that they too can consider one's analysis, grounds and judgment, such that they too can find it cogent and sufficiently justified (*KdrV* A822–3/B850–1). This possibility of communicating one's knowledge is a necessary condition constitutive of knowledge of any and every public object, event, structure, phenomenon, principle or practice. The Critical question Kant poses for any and everyone's use of reason in this footnote is a clear and important step forward from Kant's Transcendental Doctrine of Method to the universalisability tests first presented in the *Groundwork of the Metaphysics of Morals*. The key to Kant's universalisability tests is that universal communicability is a necessary condition for rational justification in all non-formal domains. Consequently, any claim or principle—together with its purportedly sufficient justifying reasons—which cannot be universally communicated cannot, accordingly, be rationally justified. This holds independently of the character, content or erstwhile cogency of the claims, principles or reasons at issue. Kant's insight into the moral assessment or justification of actions is this: No omission of strict moral duties, and no commission of morally prohibited actions, can be justified to all others by communicating the principles and purported justifying reasons for so acting (or omitting to act).

Because universal communicability of principles and their (purported) justifying grounds is a *conditio sine qua non* for the rational justification of those principles, together with any thought or action based upon or guided by them, Kant's Natural Law Constructivism circumvents or at least circumscribes debates about 'values', especially when used as premises in moral assessments or justificatory moral

<sup>23</sup> Kant's note concludes by remarking: 'Thus it is quite easy to ground enlightenment in *individual subjects* through their education; one must only begin early to accustom young minds to this reflection. But to enlighten an *age* is very slow and arduous; for there are external obstacles which in part forbid this manner of education and in part make it more difficult'. Indeed so! Our commercially driven media-marketing societies are obstructing ever more forcefully and thoroughly the aims, means and provisions of enlightened education and responsible, informed social participation.

reasoning. Of course there are important issues to be settled jointly—whether locally, domestically or internationally—about values, aspirations, policies, legislation and their often competing recommendations, but those debates can only occur, can only be effective and can only be re-solved for cogent reasons, *within* the scope of the strict duties of justice identified by Kant's universalisation tests, independently of such contingent and diverse material premises. Consequently, moral or political debates about 'values', aims and aspirations can only pertain to elective, in principle justifiable policies, procedures, laws, customs or conventions. Debate about 'values', aims and aspirations as material premises in moral reasoning does not pertain to the most fundamental principles of justice, which are the most fundamental principles of morals, identified and justified by Kant's Natural Law Constructivism.

In this regard Kant's constructivism solves a problem found in 'Moral Point of View' theories, which seek to identify, characterise and differentiate sound from inadequate moral reasons and reasoning within moral practice, and which affirm the centrality of equal moral regard for all others.<sup>24</sup> By affirming the centrality of equal moral regard for all other persons, these theories provide, not analyses of moral reasoning of whatever kind, but specifically of liberal moral reasoning (Nielsen 1999). This same constellation recurs in Rawls' theory of justice (1971), as was confirmed by Rawls' (1985) later article, 'Justice as Fairness: Political, not Metaphysical'. Rawls (2005, 32) holds that Kant's innate right to freedom (*RL*, Einl., 6:237–8) is a 'self-originating and self-authenticating' claim of reason; likewise moral freedom consists in regarding oneself and others as 'self-originating and self-authenticating sources of valid [moral] claims'. Bohmann (2009) rightly notes that the moral and legal standing of persons must be more fundamental than republican legal standing. However, Rawls' and Bohmann's positions share the instability noted by Nielsen with Moral Point of View theories. Their points may well be 'Fundamental Ideas' of 'The Political Conception of the Person'—to use Rawls' chapter and section titles—but Kant's Critical philosophy does not appeal to the alleged self-evidence of such synthetic propositions. Why should or does regarding oneself as a 'self-originating and self-authenticating' source 'of valid [moral] claims' involve or require regarding anyone else as such a source?<sup>25</sup> Neither Bohmann nor Rawls recognise how Kant justifies these fundamental moral claims by reason on behalf of rational persons by showing that they are required as *conditiones sine qua non* for the rational justifiability of our claims, judgments or actions within all non-formal domains. These bold theses are central to Kant's Critical method and strategies of rational justification.<sup>26</sup>

Saying that Kant's constructivism does not appeal to moral facts may invite a misunderstanding. Unlike most contemporary 'constructivist' programmes, Kant's constructivism is not committed to generating or 'constructing' the entire moral

<sup>24</sup> E.g., Toulmin (1953), Baier (1958), Singer (1961), Nielsen (1989).

<sup>25</sup> This is a version of the basic question posed by Gauthier's radical contractarianism; I examine it in Westphal (2016a), §§29–34.

<sup>26</sup> I have presented only the necessary minimum of Kant's Critical methodology, to keep my discussion as exoteric as possible. For more complete analysis and defence, see Westphal (2014a), (2016b).

domain by appeal solely to empirical facts and non-moral principles. Facts about human finitude, such as our liability to injury, coercion or deceit, are empirical facts. They are partially constitutive of our finite form of rational agency. They are *morally relevant* facts because as agents there is so much we can, and either should or should not do, to produce, avoid, exploit, avert or minister to them. The point of departure of Kant's constructivism is not the alleged rights of others, but rather our own *obligations* towards others (and ourselves), given that each of us is a free, rational, yet very finite agent. Ab initio this version of constructivism moves within the moral domain because it begins with the problems of social coordination (if not conflict; above "[Some basics of natural law constructivism](#)" section) and because restricting ourselves to those principles for which we can provide all persons sufficient justifying reasons is as much a principle of morals as it is a principle of rational justification per se (in non-formal domains). It is a (broadly) moral principle because it requires us to act only on those principles that can be rationally justified, and because it requires us to respect ourselves and all other persons as rational agents, as agents who can understand, develop, assess and act upon rationally justified principles *because* we can recognise and understand their justificatory grounds.<sup>27</sup>

## Constitutional law and community commitment

Principles of justice exist or hold only insofar as people abide by, uphold and honour them in deed as well as in thought. This holds, too, of the core principles of justice identified and justified by Natural Law Constructivism. Because Natural Law Constructivism requires respecting all persons as rational agents, it requires a republican constitution, and a system of education which enables children to mature into responsible holders of the office of citizen.<sup>28</sup>

<sup>27</sup> Kant primarily formulates 'respect' as respect for the moral law (*GMS* 4:400, 401n, 403, 424, 426, 436, 440, *KdpV* 5:73, 74–6, 78–86, 128, 132, 151, 157). Respect for the moral law is constituted by recognising the Categorical Imperative as the fundamental moral principle and to follow what the Categorical Imperative requires *because* it is the fundamental principle of morals. Kant's Categorical Imperative is the fundamental principle of morals because it provides the fundamental criterial procedure for distinguishing legitimate from illegitimate types of action by distinguishing between prohibited, permissible, and obligatory types of action. To use Kant's Categorical Imperative and to follow it dictates thus requires using the constructivist method explicated here for identifying and justifying legitimate maxims. Kant is emphatic that only insofar as we use the Categorical Imperative and follow its dictates can and do we treat each and every person as an end in him- or herself, and not merely as a means. Doing this requires that we think and act only on the basis of justifiable, and indeed rationally justified principles. A necessary and sufficient criterion of rationally justifiable or justified principles is that only for such principles can we offer all concerned parties sufficient justifying reasons to think or act as we do or propose to do.

Kant also speaks of respect for persons, not just for the moral law; this is central to his formulation of the Humanity Imperative (*GMS* 4:429). Hence on Kant's view it is proper to speak of respect for persons, although human beings merit respect as persons only due to their 'personality' (*KdpV* 5:87), which is their capacity to perform their duties by using and following the dictates of the Categorical Imperative: 'All respect for a person is actually only respect for the [moral] law (of moral integrity, etc.), of which the person provides us the example' (*GMS* 4:401 note, cf. 4:428, 435, 436, 439, 440, *KdpV* 5:87, 93).

<sup>28</sup> On pertinent philosophy of education, see Green (1999), Curren (2000), (2010), Westphal (2012).



A political constitution is a set of fundamental laws, usually codified in a document, and also a living institution, insofar as those laws are institutionalised within a society which lives and conducts its affairs on their basis. The principles of justice formulated in a political constitution structure the legal and political life of a nation. Most fundamentally, law is a set of enabling conditions, which make possible the various forms of action they institute. As a nation changes through history, the implications of constitutional law for newly developed social conditions must be worked out through legal and political processes. Constitutional law is a set of determinable provisions. Like empirical concepts, they have an 'open texture', acquiring new determinacy in new contexts of use. Like all norms, they have latent constitutive aspects, which become manifest as new developments, uses and disagreements arise (Will 1988, 1997; cp. Patterson 1988). Consequently, there can be no 'social contract' in the sense of an explicit and complete set of specific legal stipulations to which one could agree in advance. Republican citizenship involves commitment to one's constitution, which is fundamentally a commitment to one's national community, including the commitment to on-going assessment of the appropriateness and effectiveness of the legal system, the nation's system of justice, to amend or augment it when and as necessary to preserve or improve its compliance with the principles of justice expressed in the constitution, and with the core principles of justice identified by Natural Law Constructivism. This is why Montesquieu (1748) stressed the spirit of the laws: laws are justified only insofar as they function within society to protect and promote legitimate, justifiable and justified free actions.<sup>29</sup> We cherish our principles of justice by cherishing each other as equal, honourable and honoured members of our republic, and we cherish each other, in fundamental part, by cherishing our principles of justice. These principles hold, not only domestically, but globally, in cosmopolitan perspective. We are all of us obligated to bring our practices—individually and collectively—into accord with these minimum principles of justice.

## Justice, virtue and friendship

Friendship is widely valued and enjoyed, so much so that Hume held it to reflect a common, stable feature of human nature.<sup>30</sup> However valued and valuable friendship may be, not all friendships are created morally equal: friendships among racists, bigots or sexists are themselves racist, bigoted or sexist because they strongly tend to facilitate and to reinforce the racism, bigotry or sexism of the friends. Conversely, morally healthy friendships tend to facilitate and reinforce the morally better tendencies of the friends. A significant body of literature in recent Anglophone ethics contends that universalist moral principles fail to account for the special

<sup>29</sup> Cf. Hegel, *Rph* §3 Remark; for discussion, see Westphal (2010, 2013b).

<sup>30</sup> *Enquiry Concerning Human Understanding*, §§8.1.7, 11.20; *Enquiry Concerning the Principles of Morals*, §§2.1.5, 3.2.27, 5.2.28 (both in: Hume 1975).

values and obligations involved in friendship, or are incompatible with them.<sup>31</sup> This contention rests on the supposition that universalist moral principles require impartiality, and treating others only in regard to some of their general, indeed generic characteristics, rather than as the individual people they each are.

This supposition is doubly faulty. First, it neglects the entire domain of *acquired* rights and obligations, the principles of which are Kant's central concern in both parts of his *Metaphysics of Morals*, both of which are based upon the sole innate right to freedom and the strict obligation freedom involves: always to act honourably by treating oneself and others as free, rational, responsible moral agents. None of us are merely generic agents, nor are our duties and obligations merely generic, in the ways mistakenly emphasized by 'moral point of view' theories.<sup>32</sup>

Second, we must not mistake impartiality for indifference! 'Partial', as it pertains to moral judgment, is an illegitimate favouring of oneself, or of those close to oneself, to the detriment of others. So doing is a vice proscribed by the principles of Natural Law Constructivism. Our friends—and more broadly, our communities—are rightly first in our personal order of priorities, but their priority does not justify violating moral obligations by performing 'special' favours on their behalf; favours are one thing, illegitimate 'special favours' quite another. Friends should not expect impermissible favours, nor should we expect to provide them. Indeed, if such a favour is unwittingly requested, it is a duty to our friend to explain why that favour is impermissible, and were the friend to persist, then it is a duty of friendship to him or her to remonstrate and so far as possible to facilitate our friend's moral improvement in this regard.

The core principles of Natural Law Constructivism require us to respect persons as rational agents who can determine how to think and to act on the basis of sufficient justifying reasons. However, nothing in Natural Law Constructivism prohibits or inhibits our coupling this kind of respect for our friends with intimate concern for their character, well-being and felicity, including centrally their moral virtue; quite the contrary! Like justice, virtue too only exists insofar as we embody it in our lives and actions. In view of our finite capacities, we are each only able to be intimately involved with a small number of friends, though of course many kinds and degrees of less intimate, though nevertheless important and morally significant friendships and filiations exist—provided we create, maintain and improve them. In each case, to whatever extent we are able, we are responsible to our friends and associates to facilitate, encourage and improve their character and their virtue, though especially so towards our intimate friends. Central among the virtues is our concern for justice and virtue. Central to discerning what justice and virtue require are the core principles of Natural Law Constructivism. Though Kant was right that our affects, including our sympathies or aversions, are fallible moral guides, we have also seen that the institutionalisation, implementation, maintenance, revision *and* the improvement of our system of justice is likewise a fallible enterprise of

<sup>31</sup> E.g., Blum (1980), (1993), Friedman (1989), (1993), Stocker (1976), (1981); for a résumé, see Helm (2009), §3. The problems they identify regarding impartiality pertain to 'Moral Point of View' theories or to classical utilitarianism, though not to Kant's moral philosophy.

<sup>32</sup> See Westphal (2016a), §41, (2016c).

reasoning, in which we must engage with one another as reasonably and as sympathetically, yet also as critically and acutely as we can. Kant's 'metaphysical' principles of morals are not merely consistent with the character and value of community and of friendship, they require robust communities and friendships to be anything more than empty formulae. Conversely, communities and friendships require the core principles of Natural Law Constructivism to identify, to remedy and to avoid corruption (cf. O'Neill 2002). Only by integrating these principles into our practices can we develop, preserve and promote genuine justice, virtue, community and friendship—locally and globally! As our societies and our interdependencies become increasingly complex, we have no alternative to facilitating and augmenting our rational capacities to inquire, discover, assess, communicate, revise and justify as thoroughly and insightfully as we can; we can and ought to do much more, and much better at this than we currently do. I am under no illusions about how and how much some parties benefit at the expense of others through information glut, misinformation and obfuscation. Nevertheless, enlightenment only ends if and wherever we let it: *Sapere aude!*<sup>33</sup>

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<sup>33</sup> Drafts of this paper were presented to the Institute of Philosophy, Jagiellonian University (Kraków, April 2015), to the Department of Philosophy, Orta Doğu Teknik Üniversitesi (Ankara, March 2016) and to the conference, 'Kant's Conception of Moral Evil', Keele University (March 2016). I am grateful to each of the organisers—Justyna Miklaszewska, Aziz F. Zambak and Sorin Baiasu, respectively—for their kind invitations, and to the audiences for their very fruitful discussion. I am honoured and very happy to dedicate this essay to Nelly Motroshilova, *außerordentliche Aufklärerin!*

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