

Is Kant a Moral Constructivist or a Moral Realist?

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Abstract

The dominant interpretation of Kant as a moral constructivist has recently come under sustained philosophical attack by those defending a moral realist reading of Kant. In light of this, should we read Kant as endorsing moral constructivism or moral realism? In answering this question we encounter disagreement in regard to two key independence claims. First, the independence of the value of persons from the moral law (an independence that is rejected) and second, the independence of the content and authority of the moral law from actual acts of willing on behalf of those bound by that law (an independence that is upheld). The resulting position, which is called not 'all the way down' constructivism, is attributed to Kant.

The interpretation of Kant as a moral constructivist has been dominant in much of the recent secondary literature on Kant in English.¹ However, this interpretation has lately come under sustained philosophical attack by the defenders of a moral realist interpretation of Kant. As such, should we read Kant as a moral constructivist or a moral realist? There are at least three main problems we face in answering this question. First, this debate is posed in terms of a taxonomic structure which is foreign to Kant,² and which presupposes the claim, which Kant would reject, that metaethical questions can and should be bracketed from normative ones (Korsgaard 2003: 121). Second, that taxonomic structure is itself contested and imprecise. For this reason an unqualified assertion that Kant defends either realism or constructivism will not advance the debate. Third, it is not difficult to find either constructivist or realist sounding passages in Kant's work. For this reason duelling by quotation will not resolve the issues. However, despite these difficulties, the question of whether Kant is a realist or constructivist is worth further investigating since there are substantive and important issues at stake here. The literature on this topic is already voluminous and expanding at a rapid rate. In order to focus this investigation we shall concentrate on only some of the recent important work by those defending realist (e.g. Karl Ameriks, Paul Guyer, Patrick Kain, Rae Langton, Robert Stern and Allen Wood) and constructivist (e.g. Jürgen Habermas, Barbara Herman, Christine Korsgaard, Onora O'Neill, John Rawls and Andrews Reath) readings of Kant. While this leaves some important work on this topic unaddressed, it has the virtue of confining the debate to a representative but manageable subset of the relevant literature.

The argument in this paper begins in section one by examining various accounts of moral realism and moral constructivism and by resolving the disputed relationship between these views. In section two I show how we can find provisional support for reading Kant as both a constructivist and a realist, before briefly outlining the structure of the debate between these opposing views. This discussion raises the question of whether the constructivist can account for Kant's commitment to the existence of objective ends. I respond to this question by showing how the constructivist can account for objective ends with absolute worth (in sections three and four) and objective ends with non-absolute worth (in section five). Next, in section six, I examine and reject the various objections which realists typically raise against constructivist

readings of Kant. I conclude by claiming that Kant is both a moral realist (but only in a weak sense) and a moral constructivist (but only in a not 'all the way down' sense). In more detail, Kant is a weak moral realist because he defends a cognitivist success theory which holds that some moral judgments are true. But he is not a strong moral realist because he rejects the view that moral obligations are rationally binding only if they are grounded in an ontologically preceding and independent conception of value. Kant is a moral constructivist in the sense that he is committed to the view that, in Herman's words, practical reason itself 'constitute[s] a conception of value.'³ But Kant is not a moral constructivist 'all the way down' because he does not think that either the content or the authority of the moral law is dependent on an actual act of will on behalf of those bound by that law.

1. Realism and Constructivism

There are obvious problems with debates about taxonomic classification when the conceptual taxonomy is itself in question. This problem is one that plagues recent discussions about the conceptual relationship between realism and constructivism. Kantian realists claim that Kantian constructivists are thoroughgoing anti-realists (Wood 2008: 283). However, while some Kantian constructivists accept this tag (Habermas 1998: 11), not all do. O'Neill (2003b: 320-1) suggests that Kantian constructivism can be read as bracketing the whole question of moral realism. As such, constructivism is agnostic about moral realism. Korsgaard (2003: 118) argues that constructivism is 'compatible' with *both* realism and expressivism. From the practical standpoint realism is true, but true only in a constructivist *procedural* (as opposed to *substantive*) sense (Korsgaard 1996b: 35). From the theoretical standpoint expressivism is true, because from the impartial spectator's view moral utterances look like the mere expression of attitudes. Ronald Milo (1995) argues that constructivism⁴ cannot be a form of *robust* or *radical* realism which treats moral principles as causal hypotheses required to explain our experience of the world. Milo instead conceives of moral truths as truths about an ideal social order and not truths about an actual natural or non-natural order of things. What Milo (1995: 192-3) calls weak forms of moral realism are premised on this understanding of moral principles and this leads him to claim that some versions of constructivism, Kant's explicitly included, 'might be considered

weak [as opposed to *robust*] forms of moral realism.' Constructivism has thus been read as rejecting realism, bracketing realism, and as a specific form of realism, namely procedural or weak realism. The precise nature of the relationship between constructivism and realism clearly needs further clarification.

We shall start this process by examining Geoffrey Sayre-McCord's influential account of moral realism. On this account moral realism endorses just two theses (Sayre-McCord 1988: 5). One, that moral claims 'when literally construed, are literally true or false (cognitivism).' Two, that some moral claims are 'literally true' (success theory). These two theses are denied, says Sayre-McCord, by instrumentalists and error theorists respectively. Instrumentalists (or non-cognitivists) reject the cognitivism of the first thesis. Moral claims, they argue, are mere instruments used either to issue commands or express attitudes. As such, they are not beliefs and not the sort of claims that can be true or false. Error theorists reject only the second thesis. In order for moral claims to be true, they argue, objectively prescriptive entities would have to exist. But we have no reason, given the presence of widespread disagreement about moral matters, to believe that such metaphysically 'strange' entities exist and, consequently, to think that *any* moral claims are literally true (Mackie 1977).

However, Kant is clearly neither a non-cognitivist nor an error theorist. If, as Sayre-McCord argues, the non-cognitivist and the error-theorist are the *only* two opponents of the moral realist, and Kant is neither one of these, then it follows that Kant is a moral realist in this specific sense of the term. But this is only a *weak* sense of moral realism since it amounts to nothing more than a claim about the truth of some moral judgments. In addition, we can also take moral realism (or *strong* moral realism) to involve an ontological claim about *what* makes those judgments true: namely, the existence of an 'independent moral order' to which our true moral judgments correctly correspond. Of course, everything here depends upon the claim about 'independence.' What is independent from what and in what way is it independent? These are difficult and complex questions to answer. Rather than try to offer a general answer to these questions we shall concentrate below on two specific forms of independence, namely that between value and practical reason and that between the content and authority of rational constraints and mental acts of willing.

Let us turn now to moral constructivism which is more difficult to state since there are many different forms of moral constructivism (Timmons 2003). One way to simplistically state the view is to say that moral constructivists take moral judgments to be true in virtue of laws or procedures that we actually construct, or would ideally construct, out of principles of practical reason, agreements, commitments, or intuitions that we actually have or make, or would ideally have or make if we were fully rational. To put this in familiar Kantian terms, constructivists think that there is a rational procedure out of which we can construct valid maxims. Whichever self-given maxims pass this rational procedure are valid and thereby confer value or goodness on the ends contained in those maxims. This implies that the procedure, or in Kant's case practical reason, contains, implies or grounds a conception of value, namely the value of what comes out of or passes the procedure.

Constructivist views can vary in an important way since some versions are relativistic and some are not. If we take it that, for example, the cultural practices implicit in our concrete form of life construct a rationally binding law defining what is right for us, then a moral judgment will be true in virtue of it being the case that it correctly represents what our cultural practices construct as right for us.⁵ Such views will be relativistic since they depend on an actual and therefore contingent (individual or collective) act of will,⁶ unless it can be shown that all persons (perhaps necessarily) already agree with, or are already committed to, the law or procedure in question. Other versions of constructivism aim to defend a non-relativistic view by grounding their position not on *actual* acts of willing but on *hypothetical*, ideal, or if you were fully rational acts of willing. These sorts of views are potentially non-relativistic since they are *independent* of any *actual* act of willing and instead depend only on what, for example, all rational persons *could* in principle agree to or *would* agree to if they were fully rational, regardless of whether or not they actually agree to it.

We can define the former view as constructivist 'all the way down' and the latter view as not constructivist 'all the way down.' The former view is constructivist 'all the way down' because either the *content* or the *authority* of the procedure is constructed through an *actual* (individual or collective) act of sheer willing, agreeing, or intending. However, one can be constructivist 'all the way down' about either the *content and authority* or the *authority alone* of

the procedure. In the first case both the content of the law (what the law says) and the law's authority over you are constructed through an actual act of willing. In the second case the content of the law is simply 'laid out' (to use Rawls' phrase) and only the law's authority over you is constructed through an act of willing to be bound by that law. In contrast, for the not 'all the way down' constructivist neither the content nor the authority of the procedure or law are dependent on an actual act of willing. Both the content and the authority of the law are more or less laid out.

What is the relationship between constructivism and realism? Since both types of constructivists ('all the way down' and not 'all the way down') are committed to the claim that some moral judgments are true (though they give different accounts of this), they both defend a cognitivist success theory. As such, both types of constructivists are moral realists in the weak sense of the term.⁷ Constructivism is thus neither incompatible with nor agnostic about weak moral realism since it *implies* weak moral realism. Constructivism is, however, incompatible with, or at least agnostic about, some versions of strong moral realism. This incompatibility is obvious in the case of the 'all the way down' constructivists since this sort of constructivist claims that the content or authority of the law is *dependent* on an actual act of willing, whereas the strong moral realist claims that the content and authority of the law is *independent* of any such act. This incompatibility is not at all obvious, however, in the case of the not 'all the way down' constructivist since both she and her strong realist counterpart claim that the content of the moral law and its rational bindingness is independent of any actual act of willing on behalf of those bound by the law. But we can draw out a significant difference between these views by focusing on another independence issue.

The not 'all the way down' constructivist starts with an account of the bindingness of a procedure or law and then gives an account of goodness in terms of what passes, arises out of, or is implied by that procedure or law. In Kantian versions the moral law, that is, the categorical imperative, is a procedure for constructing valid maxims and thereby for conferring objective goodness on self-chosen permissible ends. This implies that the procedure, which is another name for practical reason, constitutes a conception of value, namely the value of rational agency and the value of its cultivation and proper exercise. However, the authority of the

procedure is not based on an independent account of that value, that is, an account of the value of rational agency which can be given independently of the procedure. The contrasting strong realist starts with a realist account of the good, that is, an account of the good that is independent of acts of willing, valuing and so on. She then defends the bindingness of any procedures or laws on the grounds that those procedures or laws reliably (or perhaps necessarily) lead to independently good outcomes. In Kantian versions this means that an account of the value of rational agency must be given independently of the procedure and only if this can be done will the categorical imperative be properly grounded.⁸ Note that unless otherwise stated, any subsequent use of the term 'realist' should be taken to refer to this specific Kantian strong moral realist view.

2. Kantian Realism and Kantian Constructivism

It is not hard to see how we might provisionally read Kant as either a realist or a constructivist. We can read Kant as a strong realist by focusing on the second formula of the categorical imperative, the Formula of Humanity. There Kant (1996b: 4:428) seems to argue that in order for there to be a categorical imperative there must be 'something the *existence of which in itself* has an absolute worth,' and that something by elimination must be persons in virtue of their capacity for rational agency. The absolute worth of persons or rational agents comprises an independent order of value which precedes and grounds the moral law. So read, Kant looks like a strong moral realist.

We can read Kant as a moral constructivist by focusing on the first and third main formulas of the categorical imperative, the Formula of Universal Law and the Formula of the Kingdom of Ends. In the first case we can read Kant as saying that there is a decision procedure for testing maxims from which, by running our proposed maxims through this procedure and testing them for universality, we can construct rational maxims. Alternatively we can focus on the third formula and read Kant as saying that the stance of the members of an ideal kingdom of ends defines what is right. On this view '[m]orality consists, then, in the reference of all action to the lawgiving by which alone a kingdom of ends is possible,' and such a kingdom is 'admittedly only an ideal' (Kant 1996b: 4:433-4). The laws that the members of such a merely

ideal realm would construct for themselves are the ones that are binding on us. The ideal legislators do the ideal legislating and we are bound by that. However in neither case does the content of the moral law itself appear to be self-legislated. That is, the moral law which says that we are bound only by self-given universally valid maxims or by the laws that would be legislated in an ideal realm of ends are not the result of anything we *do*. As such, in both cases Kant looks like a moral constructivist, although not a constructivist 'all the way down' about at least the *content* of the procedure or moral law.⁹

From this two points emerge. First, that we can find at least provisional support for reading Kant as either a realist or a constructivist. This helps to explain why Kant has been read in both ways. Second, that in order to interpret what Kant's metaethical position is we shall need to enter the much contested fray of how to interpret Kant's various formulas of the categorical imperative.¹⁰ This is because how we interpret these formulas, including which formula we focus upon and how we understand the relationship between the various formulas influences how we understand Kant's metaethical position. Given the wide array of interpretations of Kant's categorical imperative, and given that this influences how we read Kant's metaethics, it again becomes clear why disagreement about Kant's metaethics has emerged. So where does the debate go from here?

Constructivists tend to argue against realists by claiming that realism is incompatible with Kant's foundational focus on self-legislation and autonomy. We find support for this line of argument in Kant's (1996b: 4:441) claim that if 'the will seeks the law that is to determine it *anywhere else* than in the fitness of its maxims for its own giving of universal law – consequently if, in going beyond itself, it seeks this law in a property of any of its objects – *heteronomy* always results.' Moral realism seems to be committed to the claim that the will should be determined by a property of an object of the will, namely the absolute value of persons. Moral realism is thereby committed to heteronomy as the basis of the moral law and Kant (1996b: 4:440-1) thinks that 'heteronomy of the will' is the source of 'all spurious principles of morality.' Further, constructivists also tend to claim that Kantian realists are committed to an ontology of 'strange' normative entities that somehow bind the will and a

dogmatic or uncritical epistemology which assumes that we can have knowledge of the absolute value of things in themselves.

In response Kantian realists argue that when Kant (1996b: 4:442-3) rules out spurious principles of morality he explicitly rules out *only* principles based on empirical incentives, such as self-interest or sympathy, and those based on the rational grounds of an 'ontological conception of *perfection*' or a theological conception which 'derives morality from a divine, all-perfect will.' This doesn't seem to explicitly rule out *all* forms of moral realism. Further, Kant not only does not rule out moral realism, he seems to premise his argument for the categorical imperative on it. This is because Kant (1996b: 4:427-8) argues that if there are unconditionally binding laws then 'objective ends' must exist since these alone (unlike subjective ends) can ground *formal* (as opposed to *material*) practical principles which are 'valid and necessary for all rational beings.' On Kant's account (1996b: 4:428, 435-6) these objective ends are existent persons whose '*absolute*' or '*incomparable*' worth 'marks them out as an end in itself.' Does this mean that Kant, committed as he is to the existence of unconditionally valuable objective ends, not only can but *must* be a realist? I shall now develop a constructivist response to this question in the next three sections of the paper.

3. Constructivism and Objective Ends

We shall start our investigation of constructivism with Rawls' highly influential account.¹¹ Rawls (1989: 95) illustrates Kant's distinctive method of ethics by contrasting it with rational intuitionism, the 'distinctive thesis' of which is that 'first principles ... are regarded as true or false in virtue of a moral order of value that is prior to and independent of our conceptions of person and society, and of the public social role of moral doctrines.' Rational intuitionism is a form of moral realism which involves an intellectual receptivity to a pre-existing order of value which grounds moral first principles or laws. These intuitively grasped values are substantive external values that our faculty of reason is able to 'see' or 'grasp',¹² not values internal to practical reason itself.

Kantian constructivism as a method of ethics, as Rawls understands it, starts with conceptions of persons as free and equal and the social role of justice as allowing a community

of such persons to justify their shared institutions and basic structures to each other in ways that are acceptable to all. These conceptions are essential elements in 'a reasonable procedure of construction, the outcome of which determines the content of the first principles of justice' (Rawls 1980: 516).¹³ However, while Rawls (1989: 98) argues that the first principles of justice are constructed out of this reasonable procedure, the reasonable procedure itself is *not* constructed. The procedure is 'simply *laid out*' (Rawls 1989: 98). This means that Rawls (in this text) is *not* a constructivist 'all the way down' about the *content* of the procedure. Though the procedure is simply laid out, it does have a more fundamental '*basis*'; and this basis is the conception of free and equal persons as reasonable and rational, a conception that is *mirrored* in the process' (Rawls 1989: 99). This along with 'the conception of a society of such persons ... constitutes the basis of Kant's constructivism' (Rawls 1989: 99). But where do these conceptions come from and why are they binding on us? These conceptions are not simply laid out but are rather '*elicited* from our moral experience' (Rawls 1989: 99). They are 'animated' in us (Rawls 1989: 100). Rawls, by the time of *Political Liberalism* (1993), comes to understand these conceptions as based in a hermeneutic identity claim (Vergés-Gifra 2006). The basis of the procedure is *our* conception of persons as free and equal, a conception that is rooted and animated in the political and ethical life of *our* community, where 'our' means: we citizens of modern pluralistic democratic states. The procedure is binding on us because our actual but contingent commitment to being able to justify our shared institutions to one another commits us to this procedure. Rawls is thus (in this text) a constructivist 'all the way down' about the *authority* of the procedure.

But Rawls' approach of grounding the constructivist procedure in contingent ethical traditions means that the threat of relativism inevitably looms large. Such a contingent foundation cannot underwrite morality's claim, as Kant understands it, to be able to command categorically.¹⁴ But what could possibly ground a universal procedure? This illustrates the general worry that a constructivist theory can either be grounded in a thick form of life or arbitrary choice, and therefore be relativistic, or universal, but therefore seemingly be ungrounded. Habermas tries to avoid the problem of relativism by not basing his moral claims on contingent ethical conceptions of persons. Instead, Habermas (1998: 40) appeals to the

'form and perspectival structure of unimpaired, intersubjective socialisation' implicit in the 'shared presuppositions ... [of] communicative forms of life.' Habermas then argues that we can construct, in a non-circular manner, moral duties and rights out of the '*argumentative* duties and rights' implicit in all communicative forms of life. Socialisation into a communicative form of life thereby grounds a universalistic dialogical procedure ('universal' in that it applies to all communicative beings whatever their contingent ethical orientations), which is open to all and free of any coercion and deception whatsoever (Habermas 1998: 44-5), from which we can construct concrete moral rights and duties.

There are two obvious concerns we might have with this sort of approach. First, it looks as if moral realist assumptions about the worth of persons are simply smuggled into the procedural setup, since why else must the procedure be open to all persons and be free from all coercion and deception? Second, the procedure looks ungrounded in the sense of not being based on any substantive grounding value. Both Wood (2008: 110) and Phillip Pettit (2000: 160) state this challenge (though not directed at Habermas) in terms of the Euthyphro problem. Is a norm valid because it passes the procedure or does it pass the procedure because it is valid? The former constructivist-looking option makes the procedure look unmotivated and ungrounded. In contrast, the latter realist-looking option makes the procedure look redundant since some prior value, such as civility (Pettit) or rational nature (Wood), is doing the foundational normative work (Pettit 2000: 164). To dispel the worry that their view is either ungrounded or grounded in unacknowledged realist underpinnings, constructivists need to account for Kant's commitment to the existence of objective ends in constructivist terms.

On Kant's account (1996b: 4:428), merely subjective ends have 'a worth [only] *for us*' as an 'effect of our action.' These ends are merely subjective because it is 'only their mere relation to a specifically constituted faculty of desire [i.e. our own, which] gives them their worth' (Kant 1996b: 4:428). A subjective end is an end *only* of value *to me* (or at least, it is not necessarily of value for all rational beings) as a result of my desire for that end. This desire is the empirical determining ground of my will. An objective end, in contrast, is an end that is valuable for *all* rational agents. Since inclinations are variable across persons at any point in time and variable for a single person through time, an objective end must give us a reason to

do something independently of our inclinations. An objective end must therefore have a rational (rather than empirical) determining ground which is able to ground a motive which is valid for all rational persons irrespective of their inclinations.

Although Kant is not particularly clear on this point he must be committed to the existence of two classes of objective ends: those with unconditional and absolute worth and those with conditional and non-absolute worth. The objective ends which Kant thinks have conditional and non-absolute worth are our own self-perfection, the happiness of others and the self-given permissible ends of rational agents. These are objective ends because they are valuable for all rational agents independently of their inclinations. These are not, however, unconditionally or absolutely valuable ends because we may sometimes act against or be indifferent to these ends. However, objective ends with conditional and non-absolute worth cannot ground a categorical imperative because such an imperative is one that commands unconditionally. This means that to ground a categorical imperative Kant (1996b: 4:428) requires an existent objective end that also has absolute and unconditional worth as an end in itself. This worth is unconditional because there is no condition under which it does not have its value and it is absolute because no other considerations can override it. And Kant thinks that only persons have this sort of value. This requires that we *always* act in accordance with this value by making the worth of persons the limiting condition of the worth of any other end and by acting in ways that the worth of persons positively demands of us.

Persons have this normative status or value in virtue of being the sort of beings that they are, that is, beings who possess the rational capacities which make them capable of autonomy (Kant 1996b: 4:428, 440). But why think that possessing certain rational capacities entitles you to the normative status associated with being an end in itself with absolute worth? Realists and constructivists tend to pursue two different argumentative tracks in response to this question. Strong realists tend to claim that this value is simply a 'jewel' in the metaphysical landscape of the universe (Langton 2007: 185), a 'fundamental moral norm' which we find 'compelling' but of which no conclusive deduction can be given (Guyer 2006),¹⁵ or a foundational value commitment which cannot itself be conclusively justified (Wood 1999: 125, 132). In contrast, constructivists tend to focus on autonomy, self-legislation, value conferral,

and rationality. The realist worry with the constructivist approach is that it cannot really defend Kant's clear commitment to the existence of objective ends with unconditional worth. The constructivist worry with the realist approach is that its grounding commitment to objective ends is dogmatic, rationally unfounded, and incompatible with Kant's account of autonomy.

Perhaps Kant's own argument for the value of humanity in *Groundwork* 4:427-29 can resolve these issues. There Kant argues that what he calls '*material*' or '*subjective*' ends can only have a relative worth. Such ends can only be the '*ground of hypothetical imperatives*' (1996b: 4:427-8). Kant then asks us to suppose that '*there was something the existence of which in itself has an absolute worth*', and that something '*as an end in itself could be a ground of determinate laws*.' Kant (1996b: 4:428) then claims that '*in it, and in it alone, would lie the ground of a possible categorical imperative, that is, of a practical law*.' This looks like it commits Kant to the claim that *only if* we can give an account of the absolute worth of some end in itself *independently* of our account of a categorical imperative or practical law can we ground the rational bindingness or authority of that imperative or law. Call the reading of Kant in which he is committed to this claim the '*standard*' reading (Sensen 2010: 102). This standard reading is endorsed by both self-avowed '*all the way down*' constructivists, such as Korsgaard, and self-avowed strong realists, such as Wood.

There is a strong and a weak response to the standard reading of Kant. The strong response says that this is a misreading of Kant. The weak response says that even if this is not a misreading of this passage, the arguments used to defend this view do not succeed and, fortunately, such arguments are not required by Kant. Oliver Sensen defends the strong response against the standard view. He argues (2010: 103) that '*Kant does not ground the requirement to respect others on any value at all. Rather, one should respect others because it is commanded by the categorical imperative [i.e. the Formula of Universal Law]*.' However, rather than engage here in detailed textual exegesis to defend the strong claim, since this has already been done by Sensen and others,¹⁶ I shall instead focus here on the weaker claim. I will defend this weaker claim by arguing in the next section that treating persons as the bearers of absolute worth is an obligation implied by the rational requirement that our maxims be such that we could will them as universal laws.

To see why the arguments used in favour of the standard reading fail we shall briefly consider Korsgaard's (1996a: 106-32 and 1996b: 122-3) well-known reconstruction of Kant's argument for the value of humanity. This argument starts with the uncontroversial claim that we must take our own ends to be good or worth choosing and tries to show that this commits us to the controversial claim that all rational agents have unconditional worth. To this end Korsgaard argues from the conditional worth of our own ends, to our rational choice as the source and condition of the worth of those ends, to our own unconditional worth as rational agents, to the unconditional worth of all rational agents. This account is constructivist 'all the way down' about at least the authority of the absolute worth of humanity since this worth results from something we *do*, namely confer value on ourselves and our ends through rational choosing. This argument has been strongly and widely criticised in an extensive literature. It is not my intention to review that literature here in detail, although I shall make two brief points which together make a strong presumptive case against the plausibility of this type of regress argument.

First, as Rae Langton (2007: 180-5) argues, even if Korsgaard's argument works, it follows on her account that persons have absolute worth because they confer that value upon themselves. But that means, contra Korsgaard's claim, that worth cannot be an *unconditional* worth. It cannot be because it has a *condition* on its goodness. A person must *do* something to have that value. But as Kant (1996b: 4:428) notes, 'the worth of any object *to be acquired* by our action is always conditional.' Korsgaard can respond that persons *necessarily* confer value on themselves since they necessarily value their own ends. I am not sure that this response does the work it needs to do, since even a condition that is always met would only seem to ground a conditional worth, that is, not a worth that has its value without condition. But in any case it looks as if this condition is not always met. Consider the case of a very depressed person who has given up valuing herself and her ends (Langton 2007: 175). Such a person does not confer unconditional value on herself. This implies that, on Korsgaard's account, she no longer *has* unconditional value. And that means that we no longer have *reason* to respect her. Since Kant would surely want to reject this conclusion we should be wary of attributing such an argument to him.

A second and more important worry is that Korsgaard's inferences from the conditional worth of our ends to our own unconditional worth and from there to the unconditional worth of all rational agents do not hold. This is because, as William Fitzpatrick (2005) argues, there is nothing in the commitment to taking our ends as good which *necessarily* commits us to taking ourselves to be the source and condition of that goodness. This is because there are many other ways to account for the fact that we must take our ends to be good other than to assume that we take ourselves to be unconditionally valuable (Fitzpatrick 2005).¹⁷ For example, a realist account of value can do the same job of accounting for the goodness of our ends without committing us to thinking of ourselves as absolutely valuable. Further, even if we take *our* rational choice to be the source of, and the condition for, the goodness of our *own* ends, it does not follow that this commits us to taking *other* rational agents to be unconditionally valuable *for us* since *their* rational choice is not the source of the goodness of *our* ends.¹⁸ An egoist might grant that his ends are valuable because he chooses them and that he himself is unconditionally valuable. But this does not commit him to holding that everyone else must think as highly of him as he thinks of himself and that he must think as highly of everyone else as they think of themselves.

These worries give us good reasons to think that the sorts of regress arguments which aim to provide a direct defence of the value of humanity are unlikely to be successful. This in turn gives us good reasons to give up on the standard reading, or at least to investigate the weak response to this reading. If we take up this alternative approach then we can read Kant's discussion in 4:427-29 not as a self-standing argument which is required to ground the categorical imperative but rather as part of a progressive argument about practical reason and autonomy which runs throughout the *Groundwork*.¹⁹ This alternative approach also better coheres than the standard reading with Kant's claim that the three formulas are 'at bottom' (*im Grunde*) the same law such that 'any one of them of itself unites the other two in it' (Kant 1996b: 4:436). This is because if the Formula of Humanity is supposed to ground the first and third otherwise ungrounded formulas then the Formula of Humanity cannot be directly derived from these other formulas. If it could then it could not provide an independent ground for these formulas. But how could Kant think that the three formulas are at bottom the same when one

formula is supposed to ground the other two? This alternative approach also better coheres with Kant's analysis in *Groundwork III*. There Kant appeals not to the value of freedom but to the categorical imperative as the constitutive law of a free will in order to ground the categorical imperative. Finally, this alternative approach better coheres with Kant's (1996: 4:436) account of autonomy as the 'ground of the dignity of human nature and of every rational nature.' Autonomy cannot be a preceding value which grounds the otherwise ungrounded categorical imperative. This is because to be autonomous in Kant's sense is, among other things, to be bound by the categorical imperative when setting oneself maxims. And to appeal to autonomy, which cannot be stated independently of the moral law, in order to ground the moral law is viciously circular.

4. Rationality and the Absolute Worth of Persons

How can we ground the categorical imperative without appealing to an independent account of the absolute worth of persons? We can answer this question by turning to a distinct line of constructivist argument which focuses on the requirements of practical rationality. This line of argument follows the progress of Kant's own argument, namely *from* the universality requirement of practical rationality *to* the value of humanity *to* the formula of autonomy and the kingdom of ends. In order to illustrate this approach we shall draw on another aspect of Korsgaard's work. Korsgaard (2008: 55-6) claims that on realist accounts we start with reasons based on a preceding order of value and define rationality as nothing more than being responsive to reasons. On constructivist accounts we instead start with a conception of practical rationality which states the standards or conditions that must be met for something to count as a reason. As O'Neill (2004: 191) argues, we need standards of practical rationality, of what is to *count* as reason-giving, in order for the process of giving and receiving *reasons* to get going in the first place. This thought is implicit in Kant's (1996a: 5:63) claim that: 'the concept of good and evil [of what we have *reason* to do or refrain from doing] must not be determined before the moral law [which defines *rational* requirements for considerations to count as a reason] (of which, as it would seem, this concept would have to be made the basis) but only (as we have

done here) after it and by means of it.' Here Kant can be read as saying that his approach is to start with the rational and develop an account of the good after and by means of it.

What are the requirements of practical rationality? Practical rationality is a faculty of laws or principles (Kant 1996b: 4:412). A rational law or principle is one that 'hold[s] for every rational being as such,' and so must be based on 'grounds that are valid for every rational being as such' (Kant 1996b: 4:412). If any rational person *could* not regard some law or principle as valid because it is incompatible with his being a rational person then that law or principle could not be rational. As such, a rational law or principle is one that all rational persons *could* will for themselves, in the sense that it is not impossible for them as rational persons to will it. Such rational laws would be universally valid for all rational persons. But a law that involved using any rational agent as a *mere* means, rather than as an equal co-giver of laws, is a law that all rational agents *could not* will for themselves *as* rational agents who act only on universally valid laws.

Why can't a *rational* agent *will* to be used as a mere means? A rational agent is an agent who freely acts intentionally on the basis of reasons. To use a person as a *mere* means is to use her as a thing by bypassing her free intentional rational agency. Cases of coercion are obvious examples. Here you force me to do something, go somewhere with you for example, in a way that bypasses my rational agency. You do not seek my free agreement to engage in a shared cooperative activity (Bratman 1992: 333-41),²⁰ but rather use me like a thing, a box for example, that you can push around at will. And a rational agent cannot *will* to be forced or coerced in this way since a rational agent is an agent who acts freely and intentionally on the basis of the reasons available to her.²¹ Something similar occurs in cases of deliberate deception or false promising. What I intend to do, for example, is to lend you money, but you have no intention or ability of ever paying the money back and so you make a false promise that you will repay me. In this case I am actually *giving* money away and not *lending* money. You don't ask me to give you money, which would be to use me as a means but not as a *mere* means. Instead you trick me into thinking that I am *lending* you money when I am really doing no such thing. In such cases you use me as a mere means by bypassing or circumventing my free intentional rational agency since I intend to lend money and not give it away. You are thereby

treating me like a thing that dispenses money and not like a person whose free agreement must be sought. And a rational agent cannot *will* to be treated in this way, since a rational agent cannot will not to be treated like a rational agent, that is, like someone who acts freely and intentionally on the basis of reasons.

A reason must meet rational standards of universality. These standards of rationality are not themselves constructed but are rather *constitutive* of what it is for anything to count as a reason. This commits Kant to thinking of reasons for action as public or shareable (see Korsgaard 1996a, 1996b, 2008 and O'Neill 2001, 2004). A shareable public reason is a consideration that would count as reason-giving in the realm of ends.²² A 'reason' that involves using rational persons as mere means *could not* be shared in this sense. On this view 'reasons' which cannot be shared public reasons are not reasons at all since they are ruled out by the requirements of practical rationality which tell us what can count as a reason.²³ For example, your incentive to use me as a slave to enrich yourself is not a reason that I *could* share as a rational agent since it involves using me as a mere means. In that case your incentive does not, no matter what you think, actually provide you with a reason to use me as a slave. You have an incentive or a desire to use me, but not a reason.

To make sense of this view we need to differentiate between permissible ends and obligatory ends and duties. A permissible end is one which *could* be shared *in principle* since it does not involve disrespectfully using any person as a mere means to my end and for this reason is compatible with taking the worth of each person to be the condition of the worth of any end. This does not mean that *all* agents *must* take themselves to have a reason to undertake that permissible end, but rather that all agents *could* in principle agree, since it does not use them as a mere means, that such considerations count as reason-giving or rational. In the case of permissible ends it is a universal law *for us* that *I do* as I will, not that everyone do as I will. For example, if climbing mountains is permissible because in so doing I use no one as a mere means, it is a universal law for us that I may climb mountains because that is what I will to do. It is not, of course, a universal law for us that everyone must climb mountains.

As well as the permissible ends that anyone *could* adopt, there are also the laws and ends which everyone *must* adopt since it is incompatible with the worth of rational beings *not* to

adopt them. In the case of the obligatory it is a universal law *for us* that *everyone* do (or not do) that thing. For example, if telling lies for financial gain is wrong because it uses some persons as mere means, then it is a universal law for us that no one may tell lies for financial gain. This category also includes the obligatory ends, my own self-perfection and the happiness of rational beings, as well as the duties of love and respect which Kant outlines in *The Metaphysics of Morals*.

It is not my intention here to defend this well-known Kantian line of reasoning from the objections that have been raised against it or to fill out all the details required to make it work. This is because my aim here is to show the sense in which Kant is a constructivist, not to offer a complete defence of Kant's ethics. What I need to show here is how to get from *this* line of constructivist reasoning to the claim that persons are objective ends with absolute worth. We can do this by showing that there is a conception of value built into these requirements for rationality. This is why Kant thinks that we can draw out a priori the three main formulas of the supreme principle of morality from practical reason itself.

It is a rational requirement that my maxim be one that all rational agents *could* will as a universal law. This implies that all beings who by nature possess the rational capacities to be lawgiving acquire a normative status. They acquire the normative status of having an in-principle power of veto over what counts as a public or shareable reason. This is because the 'verdict' of reason 'is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objections or even his veto' (Kant 1982: A738-39/B766-67). Of course we don't have a right to veto *anything*, but only those proposals which use us as a mere means rather than treat us as an equal member of the cooperative enterprise that is the realm of ends. In this way it is a rational requirement that we take all beings with the right sort of rational capacities to be equal co-authorities over what can count as a reason. After all, the definition of the rational is what *all* rational persons could will for him or herself, and that implies that *all* rational persons have a normative status in virtue of *being* rational agents. Persons thus have a normative status in virtue of their rational capacities. Since all persons have this status we are led to the formula of autonomy and 'the idea of the will of every rational being as a will giving universal law' (Kant 1996: 4:431).

That means that there is a limit on which actions can count as good, provided that we assume that to say that an action is good is to say that there is a *reason* to do it. But if a reason must be able to meet the requirements of rationality if it is to count as a reason at all, it follows that the limit under which I can rationally consider myself to have a reason to act is if my proposed action (or maxim) is one that *all persons could* will as a law. This implies that all rational beings have the normative status of determining the limiting conditions under which an action can count as good. But that which 'may not be used merely as a means' and hence which 'limits all choice' is 'an object of respect' (Kant 1996b: 4:428) and an object of respect is the bearer of dignity. And to have *that* normative status *is* to be an existent end in itself with unconditional and absolute worth. It is an absolute worth because it absolutely limits the worth of all other goods and therefore ought never to be acted against or be indifferently ignored. It is an unconditional worth because there is no condition under which that worth is not present. You don't have to *do* anything to have that status or worth, such as confer value on yourself. Rather you simply have to *be* something, namely a being with the capacity for morality, that is, a *person*. This account is thus not constructivist 'all the way down' about either the content or the authority of the moral law. The categorical imperative is a rational imperative that is binding on us insofar as we are beings capable of acting on the basis of reasons and not insofar as we actually will the content of that law for ourselves or actually will to be bound by that law.

On Kant's account human dignity is not an independently preceding value that grounds the categorical imperative but is rather a value that is contained in the rational demand that we act only on universally valid laws. This is what it means to say that the value of humanity is bound up with the moral law and that practical reason constitutes a conception of value, namely the value of rational agency and its proper exercise. This is why Kant (1996b: 4:437-8) says that:

The principle, so act with reference to every rational being (yourself and others) that in your maxim it holds at the same time as an end in itself, is thus at bottom the same as the basic principle, act on a maxim that at the same time contains in itself its own universal validity for every rational being.

The Formula of Humanity is at bottom the same as the rational demand that all rational agents have the normative status of being able, in principle, to veto laws which use them as a mere means.²⁴ This implies that the:

principle of humanity ... *as an end in itself* ... is not borrowed from experience; first because of its universality ... ; second because in it humanity is represented ... as an objective end that, whatever ends we may have, ought as law to constitute the supreme limiting condition of all subjective ends, so *that the principle must arise from pure reason* [my italics] (Kant 1996b: 4:431).

It is not that we first discover, completely independently of the moral law, that humanity has an absolute value and *then* base our self-legislating on that. Rather, to *be* rational is to act only on the basis of maxims which can be universal laws for all rational beings, and in legislating such laws we must take each person to have the absolute value that goes with being an equal normative co-authority, that is, that goes with being a person. This is a principle which arises from pure reason, from the norms of practical rationality. In terms we shall define later, this is the same as saying that the categorical imperative is the constitutive law of our rational will (*Wille*) through which we will (*Willkür*) law-like maxims. Insofar as we are in fact rational beings (and this is a synthetic claim which Kant tries to establish in *Groundwork III* and the second *Critique*),²⁵ that is, beings capable of acting simply on the basis of what we have reason to do independently of our incentives, we are bound by the constitution of such a being. This is why Kant says that the three formulas of the categorical imperative are at bottom the same law. That same law is the law of autonomy which says: self-legislate by governing yourself on the basis of *reasons*. And to autonomously govern yourself on the basis of reasons is to take all persons (oneself included) to be ends in themselves with an absolute worth.

We can now give the Kantian constructivist's answer to the Euthyphro problem. Are persons objective ends because of something we *do* or not? The not 'all the way down' constructivist answer is that persons are not objective ends because of anything we *do*. Rather, practical reason demands of us that we take existent persons to have a particular normative status, namely that of being ends in themselves with unconditional worth or dignity. As such, the good outcome which following the categorical imperative brings about is the treating of all rational agents with the respect that is their due as the bearers of absolute worth. This follows

from Kant's view that the absolute worth of persons is a requirement of practical rationality. This account is constructivist because we do not start with the objective worth of persons and define the rational simply as being responsive to the reasons that arise from such worth. Rather we start with a conception of practical rationality, show that a conception of the absolute worth of persons is built into these rational requirements, and then derive reasons (in the case of the obligatory) and test whether other considerations can count as reasons (in the case of the permissible) by drawing on this standard of rationality.

5. More Objective Ends

In order to further fill out this constructivist view and dispel some common confusions it will be helpful to further examine the difference between objective ends which have absolute worth, namely persons, and objective ends which do not, namely self-perfection, the happiness of others, and the permissible ends of rational agents. This is worth examining since it will help to clarify the question of whether Kant is, to use Langton's (2007: 172) terms, a 'projectivist' or a 'detectivist' about value. On Langton's (2007: 172) account the 'projectivist' about value 'endorses the biconditional "something is good just in case it is an object of rational choice," [by] giving "priority" (however we spell that out) to the right-hand side of the biconditional,' that is, to it being good because it is the object of rational choice. A 'detectivist' gives 'priority' to the left-hand side, that is, to it being rational to choose it because it is good.

In an earlier section we examined Korsgaard's argument for the value of humanity. That argument ran *from* the conditional value of our ends *to* the unconditional worth of our rational capacities. And as we saw, this is a problematic inference. But elsewhere Kant makes an argument that runs in the opposite direction: *from* the unconditional worth of our rational capacities *to* the conditional value of our ends. And this is a far more plausible inference. On this view the ends of rational persons are important because rational persons are important. This is the sort of argument which Kant makes when he derives the obligatory ends of self-perfection and the happiness of others. If, as the *Groundwork* shows, rational agents have an objective absolute worth in virtue of their capacities for rational agency, then it follows that ends which promote, respect and cultivate those rational capacities, or ends which result from

the proper exercise of those rational capacities, are also objectively (but not absolutely) valuable.²⁶ Promoting your own self-perfection and the happiness of others promotes and cultivates these rational capacities and because of this these ends are objective ends. The rational ends of rational agents are the result of the proper exercise of these rational capacities and because of this these ends are objective ends. For this reason our rational ends are part of the kingdom of ends and thereby valuable for us independently of our inclinations because they are *our* ends and we are lawgiving members of that realm.

Making your own self-perfection your end aids your rational capacities both directly, by improving your powers of reasoning and cultivating your moral feelings of self-respect and love for others, and indirectly, by making you capable of achieving the means to a greater number of ends which thereby expands the range of ends which you can rationally set for yourself (Kant 1996c: 6:392-403). Making the happiness of others your end is not a matter of doing what *you* think will make others happy, since this is often paternalistic. Rather it is a matter of caring about the capacity of other persons for rational agency by aiding and promoting that capacity through helping them to achieve the rational ends that they have set for themselves. Being able to count on the help and support of others expands the sorts of ends that you can rationally set for yourself. For this reason caring about the happiness of others promotes others' rational capacities.

The way that you ought to help others to achieve their permissible ends is by making their ends your own (Kant 1996c: 6:387-8). For example, if your end is to climb a high mountain and I care about your happiness (as I ought to, independently of my inclinations), then I should make it my end that *you* climb a high mountain (not that *I* climb a high mountain). In this way it becomes my end to help and support you to achieve your end because you have set that end for yourself. Your choice of that rational end makes that end valuable by conferring a normative status on it that gives your future self and others a defeasible reason to help you to achieve this end, and an indefeasible reason for others not to hinder you in this end. Had you chosen some other end, such as sailing a boat around the world, then that end, and not the end of climbing a high mountain, would have that normative status and have it because it is *your* self-given end. Such ends have the normative status of being part of the

realm of ends because they are chosen by a member of that realm. These ends are objectively good because they are the object of rational choice.²⁷ This makes Kant a projectivist about the normative status, or objective but non-absolute goodness, of self-given permissible ends.

Of course, these duties of helping others achieve their ends and perfecting ourselves are wide duties. The point is simply that we always have a reason, independently of our inclinations, to help all persons to achieve their permissible ends and to perfect ourselves, which is why these are objective ends, not that we must always be helping others or perfecting ourselves,²⁸ which is why these are not unconditionally or absolutely valuable ends. In contrast we must *always* express respect for the absolute worth of rational persons when choosing how to act by limiting our choice of ends to those compatible with that worth and by undertaking the obligations that this value imposes upon us. This is a worth that should guide our acts of rational choosing and not a worth that results from our acts of rational choosing. This makes Kant a detectivist about the absolute worth of persons. As such, Kant is a projectivist about the worth of ends that result from the *exercise* of rational agency through the free adopting of ends, and a detectivist about the worth *of* rational agency itself (including both the absolute worth of persons and the non-absolute worth of self-perfection and the happiness of rational beings).

6. Constructivist Responses to Realist Objections

Having thus far defended a not 'all the way down' constructivist reading of Kant we shall consider in this section whether the objections that Kantian realists typically raise against constructivist views apply to this reading. We shall focus initially on Allen Wood's (1999: 129, 157-8 and 2008) prominent defence of a moral realist interpretation of Kant. Wood's core claim is that constructivism amounts to a form of moral voluntarism.²⁹ But since Kant rejects moral voluntarism he cannot be a moral constructivist. Wood argues that the 'content of the [moral] law is not a creation of my will, or the outcome of any constructive procedures on my part. The law of autonomy is objectively valid for rational volition because it is based on an objective end – the dignity of rational nature as an end in itself.' This leads Wood (2008: 108) to claim that 'any principle that gets its validity from a subjective act of ours – no matter what 'procedure' is

followed in performing this act – is still only *subjectively* valid. It is only a *maxim*, never a practical law.'

First, is Wood correct to claim that the constructivist confuses maxims and practical laws? As Henry Allison points out (1990: 86-90), there is some confusion in Kant's account (1996a: 5:19, 1996b: 4:400, 421, and 1996c: 6:225-26) about the relationship between maxims, practical laws, and the moral law (or the categorical imperative). There are two obvious readings we might take of this relationship. On the first reading Kant says that there are mere maxims, maxims which also qualify as practical laws, and the moral law itself which lays down that qualifying procedure. A maxim is the 'rule that the agent himself makes his principle on subjective grounds' which can *also* be a practical law if it holds 'objectively' by qualifying for 'a giving of universal law' (Kant 1996c: 6:225). On the second reading (favoured by Allison) maxims are inherently subjective principles in that they stipulate the terms on which an agent actually acts in a given situation *given* her subjective conditions (i.e. her ignorance, inclinations, interests, attachments and so on). In contrast practical laws are the laws which any rational agent, abstracting from these subjective conditions, would act upon in that same situation. Maxims are then, as Allison (1990: 87) puts it, of 'the wrong logical type' to be practical laws. And then there is the moral law itself from which presumably we derive these practical laws.

But neither reading is decisive for ruling out a constructivist account. On the first view maxims *can*, if they qualify or pass the procedure, also *be* practical laws. So there is no confusion between maxims and practical laws since valid maxims are practical laws. On the second reading maxims cannot also be practical laws. But this causes no problems for the constructivist. The not 'all the way down' constructivist conceives of the moral law as the constitution of a self-legislating being, something that provides the basis for acts of self-legislation, but not something that we legislate for ourselves. Now, given this, certain implications follow. Any maxim, for example, which involves disrespecting other persons will be forbidden. This in turn implies, as Kant (1996c: 6:465) argues in *The Metaphysics of Morals*, that being arrogant as well as defaming and ridiculing others is wrong because such acts involve disrespecting other persons. This allows us to say that, independently of any maxim

that we happen to adopt or even contemplate, it is a practical law that we ought not to be arrogant and ought not to defame or ridicule others. This follows from our own constitution, from the moral law, whether we recognise it or not and regardless of what we happen to will. We can use such practical laws to guide our choice of maxims as a shortcut to going straight to the moral law itself from which these practical laws are ultimately derived.

Further, the moral law not only limits our choice of maxims, it also offers positive guidance. It does so by grounding the objective ends which we examined in previous sections. These objective ends should guide our choice of maxims independently of our incentives, even though it remains up to us which maxims we adopt, in the sense of, which acts in particular situations we choose to undertake as rational means to promoting these objective ends. Unfortunately, many constructivists tend to ignore this aspect of Kant's theory (although there is no reason why they should ignore it), as if limiting our maxims to the condition of qualifying as universal laws is *all* there is to Kant's moral theory.³⁰ As such it is not *only* incentives, as Korsgaard (2009: 197) claims, but also the moral law itself independently of our incentives via the objective ends which it grounds which can be a source of reasons for action. But none of this is incompatible with the constructivist view defended here.

But perhaps we are still missing the realist challenge? Patrick Kain (2004: 290), Robert Stern (2009: 405), and Wood (2008: 112-3) all think that Kant's legislator/author distinction is decisive in favour of the realist and against the constructivist.³¹ On this Kant (1996c: 6:227) writes: 'One who commands (*imperans*) through a law is the *lawgiver* (*legislator*). He is the author (*autor*) of the obligation in accordance with the law, but not always the author of the law. In the latter case the law would be a positive (contingent) and chosen (*willkürlich*) law.' The legislator is the author of the obligation to act in accordance with the law, whereas the author is the author of the law itself. A law which has an author is a positive law. But, thinks Kain, constructivists turn the moral law itself into a positive law since they conceive of its basis as a particular act of willing (*Willkür*) on the part of particular agents. This leads Kain (2004: 290) to argue that 'the moral law cannot be a positive law, cannot be something we, or anyone else, including God, could make, since it can have no author (in the strict sense) but, rather,

must be grounded “in the nature of things”, specifically in the nature of practical reason or the rational will.’

The central assumption of this line of critique is that constructivism bases its fundamental account of normativity on contingent choice (*Willkür*) and not on practical reason itself (*Wille*).³² This critique does not, however, apply to the not ‘all the way down’ constructivism defended here.³³ The adoption of law-like maxims and permissible ends is indeed the adoption of a positive law since its basis is a contingent act of willing (*Willkür*). But the constitution itself of a self-legislating being, that is, the categorical imperative, along with the practical laws and the objective ends which it grounds are *not* positive laws. Their basis is in practical reason (*Wille*) and not a contingent act of willing (*Willkür*).³⁴ What we self-legislate is maxims, not the rational law of self-legislation itself. We can only ‘regard’ (Kant 1996b: 4:431)³⁵ ourselves as the legislator of the moral law since the moral law is *our* constitution as self-legislating beings.³⁶ But none of this decisively favours either the realist or the not ‘all the way down’ constructivist. This is because we can talk about it being either the *nature* or the *constitution* of rational beings as self-legislating beings which marks them out as ends in themselves. This shows us that realist-sounding talk about the moral law being grounded in the ‘nature of practical reason’ or ‘rational nature’ means more or less the same thing as constructivist-sounding talk about the ‘constitution’ or rational ‘construction procedure’ of a self-legislating being.

Karl Ameriks pursues a similar line of thought and argues that since Kant thinks that the moral law holds for *all rational beings*, it cannot be anything that we *humans* contingently will that makes the moral law binding. This is because it is very hard to see why what we humans happen to will should be binding on *all* rational beings, including a being with a divine will (Ameriks 2003: 274). This pushes Ameriks in the direction of moral realism, but nothing in accepting this point commits us to rejecting not ‘all the way down’ constructivism. This is because such a constructivist has no difficulties in accounting for Kant’s claim that the moral law holds for *all* rational beings. Kant makes this claim because a practically rational being is a self-legislating being, and a self-legislating being is bound by the constitution of such a being, namely the moral law.

7. Conclusion

So is Kant a moral realist or moral constructivist? If we accept the common usage, according to which a moral realist is committed to nothing more than the truth of some moral judgments, that is, to a cognitivist success theory, then Kant is a moral realist in this *weak* sense. Constructivists of all stripes should be not only agnostic but committed to *weak* moral realism in this sense. Hence there is no room for disagreement on this point. But disagreement emerges in relation to two issues. First, how do we account for Kant's commitment to the absolute value of rational agents? Second, is this value supposed to precede and ground the other formulas of the categorical imperative? If we answer this second question, as on the standard reading, by saying that an independent account of an ontologically prior conception of the absolute value of humanity (or some end in itself) is required to ground the otherwise ungrounded categorical imperative, then we face some daunting problems. And I have defended here strong (but perhaps not conclusive) reasons to think that the sorts of regress arguments (or sheer foundational value claims) employed to solve these daunting problems cannot be successful. However, if we instead answer the second question by saying that an independent account of the absolute value of humanity is not required to ground the categorical imperative then we can better deal with the first question.

We can do this by defending the not 'all the way down' constructivist view that practical reason itself constitutes a conception of the value of rational agency and the value of its cultivation and proper exercise. We can very briefly recapitulate that argument as follows. Practical reason is faculty of laws or principles. A rational law or principle is one that is valid for all rational agents. Validity means here what all *rational* agents *could* will as a law for themselves. Rational agents *could not* will a law for themselves which uses them as a mere means. This implies a normative ideal of a community of lawgivers, giving common laws, who are committed to perfecting themselves, pursuing their self-given permissible ends under a conception of happiness, and helping others to achieve their own self-given ends. On this view the categorical imperative forms the constitution of an autonomous or self-legislating being and

it is rationally binding on us, not because of anything we actually will (*Willkür*), but because it is a requirement of practical rationality and so lies in the nature of our rational will (*Wille*).

This view is not constructivist 'all the way down' about either the content or the authority of the moral law. This is because neither the content of the moral law (as opposed to the content of our maxims and permissible ends) nor the authority of the moral law depends on an actual act of willing on our behalf. For the law to be binding on us we don't have to *do* something. We simply have to *be* something, namely beings capable of acting autonomously on the basis of reasons, and we are bound by the categorical imperative because it is constitutive of practical rationality. This is a constructivist view and not a strong realist view because it is not based on an independent conception of value which precedes and grounds the law. Rather it is based on the constructivist claim that practical reason constitutes a conception of objective value, namely of the absolute worth of rational agents and the conditional worth of their rational ends.³⁷

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Notes

¹ The work of John Rawls has been central to this trend. See, for example, Rawls 1971: 221-7 and Rawls 1980.

² Kant obviously never discusses moral realism in its modern sense and only discusses 'constructivism' in the context of his account of the method of mathematical constructivism. This method involves the construction of concepts out of 'non-empirical intuition[s]' (e.g. of a perfectly straight line). See Kant 1982: A713/B741.

³ Herman (1993: 215) asks: 'Can formal rational constraints be or constitute a conception of *value*?' In a footnote to this question she states that the 'positive answer to this question is what Rawls calls Kantian constructivism.'

⁴ Or at least what he calls 'Contractarian Constructivism' in Milo (1995).

⁵ Pippin (2005: 219-20) defends a more sophisticated view along these lines by first defending a constructivist reading of Kant and then adding a Hegelian twist: it is not the (supposedly) isolated and abstract Kantian 'I' doing the self-legislation but the concrete and collective Hegelian 'we.'

⁶ In the collective case moral norms would then be constructed in more or less the same way that other social norms, such as those surrounding the use of money, are constructed through acts of collective intentionality. For a discussion of social norms see Searle 1995.

⁷ From this it follows that, depending on how we analyse moral claims, moral relativism can be a form of weak moral realism. This is a somewhat controversial claim (Smith 2004: 204-5). In any case nothing much rests on this claim, and for those who find it problematic it can be weakened to the claim that only non-relativistic brands of constructivism count as a form of weak moral realism.

⁸ As will become clear below some 'all the way down' constructivists also endorse this claim, but they offer not a realist but a constructivist 'all the way down' account of this value, that is, an account of the good that depends on actual acts of willing or valuing.

⁹ Indeed it is implausible to think that Kant endorses constructivism 'all the way down' about the *content* of the law. If he did accept this view then he would either have to accept that there could be as many different valid moral laws as there are persons, a view that he clearly rejects, or be able to explain why there is some miraculous coincidence such that everyone just happens to give themselves the very same moral law.

¹⁰ As Guyer (2006: 191) notes, '[c]ommentators have argued for every conceivable relationship among these formulations [of the categorical imperative].'

¹¹ We shall focus on two of Rawls' most Kantian papers, Rawls 1980 and Rawls 1989. For an account of how Rawls rejects his original Kantian interpretation of justice as fairness for a form of political (as opposed to Kantian) constructivism, see Freeman 2007: 284-315, 351-64. For an account of the way that Rawls weakens Kant's views, see O'Neill 2003a.

¹² For a defence of such a view see Larmore 2008: 84.

¹³ Although Rawls notes that this is only a Kantian theory, not Kant's theory, he maintains that it accurately captures Kant's distinctive *method of ethics*. However, the restriction of this procedure to the construction of the first principles of justice, rather than to all of morality, is a restriction that Kant would reject (Hill 1989).

¹⁴ Rawls (or the latter Rawls) is, however, only trying to ground principles of justice in modern democratic societies, so this need not be understood as a criticism of Rawls.

¹⁵ Guyer (2006: 191) writes: 'We simply have to find what is presented as the most fundamental moral norm compelling, and certainly many people do find Kant's second formulation of the fundamental principle of morality immediately compelling.'

¹⁶ Richard Dean (2006) also defends a view which is broadly in line with this approach. He argues (2006: 62) that "all value claims [for Kant] are a shorthand for capturing the conceptually prior idea of what rational agents would choose."

¹⁷ See also Watkins and Fitzpatrick 2002. A similar worry can also be found in Guyer 2006: 189.

¹⁸ A related worry is raised in Cohen 1996: 186.

¹⁹ In 4:428-29 Korsgaard reads Kant as going from a *subjective* principle, that we represent ourselves as an end in itself, to the *objective* principle that we are each an end in itself because we all think of ourselves in this way. But we can instead read this passage as saying that we have this subjective principle because of our awareness of the 'rational ground' for doing so; that is, that practical reason demands it of us. And practical reason demands that each rational agent thinks of all rational agents in this way. Therefore it is an objective principle.

²⁰ But cooperation need not go all the way down. For example, in a game of chess we need to cooperate at the level of the rules and practices of chess-playing, but we can also play the game itself competitively. I intend for me to win and you intend for you to win, but we both intend to play chess together (where that includes playing according to agreed upon rules and so on). What Kant minimally requires is that we be cooperative at the level of the rules or norms of *interaction*. Korsgaard (2009: 192-204) links this idea of interaction (including interaction with ourselves) with respect.

²¹ 'I will shoot you if you don't come with me, but it is your choice, do what you want,' I say. I have not, in some sense, *bypassed* your agency, in the way that I do when I *pick* you up and drag you along with me. But I do *force* or *coerce* you to choose one option. Of course, I still need to give an account of what counts as *forcing* or *coercing* another's choice, as opposed to providing strong incentives in favour of one choice rather than another. The difference is, presumably, that in one case the offer is one that you 'cannot refuse' (O'Neill 2000: 81-95).

²² This is a very weak sense of shareable. What we share is both of us being able to count such a consideration as a *reason*. But we need not share *the reason* itself, that is, both take ourselves (given who we are and what we want) to have a reason to do that thing.

²³ Korsgaard (1996a: 133-5, 1996b: 301) also argues that *all* reasons are public reasons, or what is the same, 'the only reasons that are possible are the reasons we can share.' But Korsgaard's way of making this point is misleading since it seems to rule out *all* agent-relative reasons. This is because Korsgaard initially presents her account of public or shareable reasons as an attack on the very distinction between agent-relative and agent-neutral reasons and, later, as 'roughly' equivalent (Korsgaard 2009: 191), so that the claim that there are only public reasons seems to imply that there are only agent-neutral reasons. Although I cannot defend the claim here this is misleading since many reasons which we would normally think of as agent-relative reasons, such as those based, for example, on *my* incentive to climb a high mountain, can count as shareable or public on this account. See the climbing example in Korsgaard 2009: 198.

²⁴ Kant (1996b: 4:438) makes a similar point elsewhere when he writes: 'For, to say that in the use of means to any end I am to limit my maxim to the condition of its universal validity as a law for every subject is tantamount to saying that the subject of ends, that is, the rational being itself, must be made the basis of all maxims of actions, never merely as means but as the supreme limiting condition in the use of all means, that is, always at the same time as an end.'

²⁵ Kant needs to move beyond analytic claims about what the constitution of a self-legislating being must necessarily look like to the synthetic claim that the norms of pure reason, so understood, are in fact binding on us. Kant's (1996a: 5:31) claim that it is a 'fact of reason' that pure reason can be practical is supposed to provide this part of the argument. It does so by showing that we can act for the sake of pure reason alone, and that means that we *are*

positively free or autonomous beings, and that means that we are bound by the constitution of such a being, and the categorical imperative *is* that constitution.

²⁶ Kant (1996c: 6:395) writes: 'In accordance with this principle a human being is an end for himself as well as for others, and it is not enough that he is not authorised to use either himself or others merely as means (since he could then still be indifferent to them); it is in itself his duty to make the human being as such his end.'

²⁷ This does not commit Kant to the view that choice is unguided and arbitrary, a criticism made by Regan (2002). On Kant's view it is our incentives, inclinations, predispositions, propensities, passions, and practical identities, including our conception of happiness or a good life, which guides our choice of permissible ends and maxims – see Formosa 2007, 2009 and 2010. Further, our choice of ends is rationally required to make sense to us in terms of our overall conception of a good life and rationally required to be able to coexist with the obligatory requirements imposed on us by the moral law. For a critical discussion of Regan's paper, see Sussman 2003.

²⁸ There may, however, be occasions when we *must* help, such as to save a drowning child.

²⁹ Wood does not differentiate between 'all the way down' constructivism and not 'all the way down' constructivism. This is unfortunate since, as will become clear, his criticisms, insofar as they apply at all, apply only to 'all the way down' constructivists.

³⁰ Andrews Reath (2006: 147) understands the moral law as simply placing limits on which maxims can serve as laws, leaving agents with complete 'discretion over which maxims to consider as laws.' Such an approach leaves out the positive sense in which we are obliged, whatever our incentives, to have certain ends (our own perfection and the happiness of others) and to adopt maxims towards those ends.

³¹ However, Stern, Kain and later Ameriks seem to be using 'realism' to mean non-relativistic *weak* moral realism, and not explicitly the *strong* realism which is my target here and which I have associated with Wood, Guyer and Langton. The former view is not my target here because, as I make clear in my conclusion, Kant's not 'all the way down' constructivism is a particular form of non-relativistic *weak* moral realism.

³² For a detailed study of Kant's crucial distinction between *Wille*, which he equates with practical reason, and *Willkür* or power of choice, see Allison 1990: 129-45.

³³ This line of realist critique does, however, apply to at least some 'all the way down' constructivists.

³⁴ Kant (116c: 6:226) writes: 'Laws proceed from the will, *maxims* from choice. [*Von dem Willen gehen die Gesetze aus; von der Willkür die Maximen.*] In man the latter is free choice; the will, which is directed at nothing beyond the law itself, cannot be called either free or unfree, since it is not directed to actions but immediately to giving laws for the maxims of actions (and is, therefore, practical reason itself).' We can think of *Willkür* as covering *acts of willing or choosing*. In this sense willing or choosing is *doing* something, namely committing yourself to the worth of your chosen action and the means needed to achieve to it. In contrast *Wille* is practical reason itself and it provides the basis or laws for acts of willing (*Willkür*). But *Wille* itself doesn't *act*; it is neither free nor unfree. Rather it is practical reason itself, and we don't think of practical reasoning itself as *acting* or *doing* something, but as providing the basis for rational action.

³⁵ For a discussion of this point see Wood 2008: 112-13.

³⁶ Where does this leave the idea of self-legislation? Kant (1996b: 4:432-3) says that an agent is 'subject *only to laws given by himself but still universal*.' But this does not mean that each agent gives himself the *meta-law* that he is subject only to laws given by himself but still universal in the same way that he gives himself laws (i.e. law-like maxims). Valid maxims derive from acts of *Willkür* that are universal in the requisite sense, but the law that maxims must be universal arises from one's will (*Wille*). However, since the important *Wille-Willkür* distinction postdates Kant's *Groundwork* it is somewhat anachronistic to make sense of Kant's view in the *Groundwork* by means of this distinction. Even so, while this should make us cautious, it remains the case that this distinction can help us in understanding the *Groundwork*.

³⁷ I would like to thank this journal's anonymous referees for their very helpful comments on earlier versions of this paper, my colleagues at Macquarie University who read and commented on this paper, and audiences at conferences in Sydney and Pisa where earlier versions of this paper were presented.

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