

## Kant on the Moral Ontology of Constructivism and Realism

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The dominant English language interpretation of Kant as a moral constructivist has recently been challenged by the defenders of a moral realist interpretation of Kant.<sup>1</sup> So is Kant a moral constructivist or a moral realist?<sup>2</sup> One problem with answering this question is that the conceptual taxonomy is itself in question. For example, constructivism has been read as rejecting realism (Allen Wood),<sup>3</sup> bracketing realism (Onora O'Neill),<sup>4</sup> and as a specific form of realism, namely procedural (Christine Korsgaard)<sup>5</sup> or weak realism (Ronald Milo).<sup>6</sup> There

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<sup>1</sup> Versions of Kantian constructivism are defended by: Barbara Herman, *The Practice of Moral Judgment* (Cambridge, Mass.: Harvard University Press, 1993), Thomas E Hill Jr., "Moral Construction as a Task," *Social Philosophy & Policy* (2008), Christine M Korsgaard, "Realism and Constructivism in Twentieth-Century Moral Philosophy," *The Journal of Philosophical Research* (2003), Onora O'Neill, "Constructivisms in Ethics," *Proceedings of the Aristotelian Society* 89 (1989), John Rawls, "Kantian Constructivism in Moral Theory," in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), and Andrews Reath, *Agency & Autonomy in Kant's Moral Theory* (Oxford: Clarendon, 2006). Versions of Kantian realism are defended by: Karl Ameriks, *Interpreting Kant's Critiques* (Oxford: Clarendon Press, 2003), William J Fitzpatrick, "The Practical Turn in Ethical Theory," *Ethics* 115 (2005), Paul Guyer, *Kant* (New York: Routledge, 2006), Patrick Kain, "Self-Legislation in Kant's Moral Philosophy," *Archiv für Geschichte der Philosophie* 86 (2004), Rae Langton, "Objective and Unconditioned Value," *Philosophical Review* 116, no. 2 (2007), Robert Stern, "The Autonomy of Morality and the Morality of Autonomy," *Journal of Moral Philosophy* 6 (2009), and Allen Wood, *Kantian Ethics* (Cambridge: Cambridge University Press, 2008).

<sup>2</sup> I examine this same question in another paper in which I develop a different set of arguments but come to a similar conclusion. See Paul Formosa, "Is Kant a Moral Constructivist or a Moral Realist?," *European Journal of Philosophy* (in press).

<sup>3</sup> Wood, *Kantian Ethics*, 283.

<sup>4</sup> Onora O'Neill, "Constructivism Vs. Contractualism," *Ratio* XVI, no. 4 (2003): 320-21.

<sup>5</sup> Christine M Korsgaard, *The Sources of Normativity*, (Cambridge: Cambridge University Press, 1996), 35.

is thus disagreement about the nature of the disagreement, if any, between Kantian realists and Kantian constructivists. This is not surprising since the views labelled ‘constructivism’ and ‘realism’ are varied and not always well defined. To deal with this ambiguity we shall begin by examining moral realism in more detail.

Moral realist views are usually understood along the following lines. Begin by assuming that realism in general is true. Therefore the objects of experience, at least sometimes, exist mind-independently. This is an ontological claim. The world really is ‘out there’, so to speak. Granting this assumption we can then ask if there is something problematic about *moral* realism, as opposed to realism *per se*. By setting up the problem in this way it becomes clear that if we reject the initial assumption about the truth of realism *per se*, then moral realism must be a non-starter. As such, one way to approach our question is by asking if Kant endorses global anti-realism or idealism. If he does then he can’t be a moral realist, or so it would seem.

In Kant’s *Critique of Pure Reason* the modern distinction between realism and idealism becomes a more complex distinction between, on the one hand, transcendental idealism combined with empirical realism and, on the other hand, transcendental realism combined with empirical idealism. Kant makes this distinction on the basis of his argument that the transcendental realism of both the empiricist and the rationalist, found in the claim that we can have experience of objects as they are in themselves either through sensibility (e.g. the empiricism of Locke) or through the intellect (e.g. the rationalism of Leibniz),<sup>7</sup> leads inevitably to empirical idealism. Kant takes material or empirical idealism to be the view that it is at least doubtful or indemonstrable, but perhaps even false, that we have experience of objects existing outside of us in space.<sup>8</sup> Kant couples these two views together since he argues that if we understand our experience to be of objects as they are in themselves, independently of the conditions of cognition and sensibility, then we cannot remove doubts about whether or not our experience is *really* of objects external to us in space. And that means that the transcendental realist must end up endorsing empirical idealism, or so Kant argues.

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<sup>6</sup> Ronald Milo, "Contractarian Constructivism," *The Journal of Philosophy* 92, no. 4 (1995).

<sup>7</sup> Henry E Allison, *Kant's Transcendental Idealism* (New Haven: Yale University Press, 1983), 19-23.

<sup>8</sup> KrV, B 274-75.

Kant then argues that the only way to defend material or empirical realism, the view that we can be certain that we have *experience* of objects outside of us in space, is by endorsing transcendental idealism. This is the view that we have experience of objects only as they appear to us, not as they are independently of the form of experience that we impose on reality. Without concerning ourselves here with the details or the soundness of these complex arguments, it should at least be clear that Kant understands himself to be a realist about the *material* of experience and an idealist about the *form* of experience. We *impose* form onto the matter of experience to which we are partly *receptive*. This is important to note because Kant defends a structurally similar position in his moral philosophy.

The task of the empirical realist, as Kant sees it, is to undermine the doubt that we merely imagine, dream, or hallucinate objects in space, perhaps under the influence of some Cartesian demon, rather than have genuine *experience* of them in space. If we have experience of things, then at least part of our experience of those things is made up of our receptivity to how those things appear to us. A *foundational* element of *receptivity* to a mind-independent reality is therefore a necessary part of any realist view. But, as we shall see, Kant's normative theory is based on a *foundational* element of *spontaneity* on the part of pure reason through its legislation of a mind-dependent ideality. This alone is sufficient to classify Kant's view as a form of moral constructivism. But to defend this claim we shall need to fill in some details.

On Geoffrey Sayre-McCord's influential account, the moral realist endorses just two theses. First, that moral claims "when literally construed, are literally true or false (cognitivism)" and, second, that some moral claims are "literally true" (success theory).<sup>9</sup> These two theses, argues Sayre-McCord, are denied by instrumentalists and error theorists respectively. Instrumentalists reject the cognitivism of the first thesis. Moral claims are mere instruments used either to change how people act or to express our attitudes. Error theorists reject the second thesis. They argue that in order for moral claims to be true, objectively prescriptive entities would have to exist. But we have no reason to believe that such metaphysically "queer" entities exist and, consequently, no reason to think that any moral claims are literally true.<sup>10</sup>

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<sup>9</sup> Geoffrey Sayre-McCord, "Introduction," in *Essays on Moral Realism*, (Ithaca, N. Y: Cornell University Press, 1988), 5.

<sup>10</sup> J. L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth ; New York: Penguin, 1977).

However, Kant is neither a non-cognitivist instrumentalist nor an error theorist. As such, Kant is clearly a moral realist in the minimal sense in which Sayre-McCord defines it. No Kantian constructivist should deny this because the claim that Kant is neither a non-cognitivist nor an error theorist is not the point of disagreement between Kantian realists and constructivists. But the problem with this minimal account of moral realism is that it leaves out the traditional opponent of realism, namely idealism. Sayre-McCord claims that the issue between realists and idealists is: “whether minds (or their contents) figure explicitly in the truth-conditions for the claims in question. Realists (in this sense) hold that they don’t while *idealists hold that these claims are literally true or false*, but that they have whatever truth-value they do in virtue of someone or other’s mind.”<sup>11</sup> Given, as Sayre-McCord explicitly concedes, that the idealist can claim that some moral claims are literally true, it follows that idealism can count as a form of moral realism. This is a strange result and one that we can avoid by noting that Sayre-McCord is really only offering an account of a cognitivist (thesis one) success theory (thesis two). This is an epistemological claim about the truth of some moral judgments. The extra ontological claim that *only* a moral realist can defend a cognitivist success theory is false because a moral idealist can also defend that view as Sayre-McCord’s own account shows.

In the light of this we can see (some versions of) moral realism and moral idealism as providing competing ontological stories in support of a cognitivist success theory. Moral realism implies a *world to mind* or at least a *world and mind* relationship as the *foundation* of moral normativity. Moral judgments are made literally true by the existence of mind-independent moral objects, namely moral values, to which we are (at least partly) receptive. Moral idealism in contrast implies a purely *mind to world* relationship as the *foundational* basis of moral normativity. Moral judgments are made literally true by the existence of mind-dependent moral values or norms. Further, from this it follows that we should understand moral constructivism to be a form of moral idealism, since constructivism holds that the basis of moral normativity is to be found in the existence of mind-dependent moral values or norms.

Obviously what we take ‘mind-independence’ to mean here is crucial for making sense of this claim. There are many different ways that we might make this distinction. I will focus here on only one specific way of making this distinction. The strong realist view that I will be focusing on here takes the foundation of moral normativity to be located in some

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<sup>11</sup> Sayre-McCord, "Introduction," 7. The above emphasis is mine.

value (or norm) which is ‘out there’ *independently of the nature of our rational faculties* and the rational constraints that these impose on us. On this view the value comes first and any rational constraints come afterwards as a response to that preceding value.<sup>12</sup> This is the specific *strong* realist view which I shall be rejecting here. I shall contrast this with the view that the foundation of moral normativity is *dependent on the nature of our rational faculties* and the rational constraints that these impose on us. On this view the rational norms come first and these norms, to use Herman’s words, “constitute a conception of value”,<sup>13</sup> namely the absolute value of persons and the non-absolute value of the self-perfection and happiness of rational persons. This is the specific constructivist view which I shall defend here.

However, some Kantian constructivists support a stronger or ‘all the way down’ constructivism according to which the *authority* or *content* of the moral law is itself *dependent on an actual act of willing* or choosing by those bound by that law. I make it clear below why Kant does not endorse this stronger view. For this reason the version of constructivism that I defend here might be called ‘not all the way down’ constructivism. Since it is usually *only* the stronger constructivist view which is the target of the critiques made by so-called Kantian realists, some (but not all) Kantian realists might prefer to support the specific constructivist view that I defend here over the *strong* realist view.

We can best understand Kant’s moral philosophy as the defence of a moral idealist or constructivist ontology as the basis of a cognitivist success theory. This is because for Kant the basis of moral normativity is not even partial receptivity to an empirical or supersensible reality, but an *a priori* spontaneity in the form of an act of self-legislation by pure reason. On this point Kant writes:

Should it be granted that we may in due course discover, not in experience but in certain laws of the pure employment of reason [...] ground for regarding ourselves as legislating completely a priori in regard to our own existence, and as determining this existence, there would thereby be revealed a *spontaneity* through which our reality would be determinable, independently of the conditions of empirical intuition ... consciousness of the moral law first reveals [this] to me.<sup>14</sup>

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<sup>12</sup> Christine M Korsgaard, *The Sources of Normativity*, (Oxford: Oxford University Press, 2008), 55-56.

<sup>13</sup> Herman, *The Practice of Moral Judgment*, 215.

<sup>14</sup> KrV, B 430-41. This and all translations of this text are from Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (London: MacMillan, 1982). The above emphasis is mine.

For Kant morality involves *formal* principles which,<sup>15</sup> in line with his overall *formal* idealism,<sup>16</sup> we *impose* upon the world. Morality is not something the world imposes on us. For Kant the source of moral normativity is the *spontaneity* of pure reason to which we, as rational agents, are subject. Morality is something our own reason imposes on us.

Part of the problem with the approach of moral realism is that it tries to think of morality in the same terms that we think of natural objects, such as mountains and molecules. On the strong moral realist approach we start with our receptivity to the existence of a mind-independent object in the world, in the case of morality a norm or value. But constructivism instead thinks of morality in terms more akin to the way that we think of social objects, such as money and marriages. This is a promising approach because moral norms are clearly closely related to merely social norms, and so we would expect them to have a similar ontology. Following John Searle's account,<sup>17</sup> social objects, such as money, are constructed through the imposition, via an act of collective intentionality, of a status function. Money exists because we impose that status upon certain pieces of paper and round bits of metal. To know that a piece of paper counts as money, it is not enough to be receptive to the natural properties of the paper. You also need to know something about the collective status functions imposed on that piece of paper. Of course, though money is constructed, this does not mean that money is not real. Money is just as real as mountains and molecules. The point is that in the case of social objects we need to tell a different ontological story about those objects. Part of this story must involve the construction or imposition of a status function upon that object. Take away the mind-dependent collective intentionality and all you have left is pieces of paper and round bits of metal, not money. In contrast, with natural objects you can take away all the mind-dependent collective intentionality you want and you still have mountains and molecules, although not the English words 'mountain' or 'molecule'.

But moral norms are different to other social norms, at least on Kant's account, because they don't have an *actual* act of collective intentionality or will as their basis. If they did, then we could not defend the objectivity of moral judgments. To make this point clear we need to follow Searle in differentiating between the objectivity and subjectivity of judgements in an *epistemic* sense and the objectivity and subjectivity of the mode of

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<sup>15</sup> GMS, AA 04: 428.

<sup>16</sup> KrV, A 491, B 519.

<sup>17</sup> John R Searle, *The Construction of Social Reality* (London: Penguin, 1995).

existence of entities in an *ontological* sense.<sup>18</sup> Roughly, a judgment is subjective if its truth depends on someone's particular attitude, stance or feelings, and is objective if this is not the case. Corresponding to these latter judgements are objective facts. For example, the judgement that Rembrandt is a better painter than Rubens is a subjective judgment on Searle's account, whereas the judgment that Rembrandt was born before Picasso is an objective judgement. Roughly, an entity has an objective ontology when the existence of the entity in question can be cashed out in terms independent of the intentionality and rationality of agents who may represent or use that object, and an entity has a subjective ontology if this is not the case. For example, the existence of snow near the top of Mount Everest has an objective ontology whereas the existence of money has a subjective ontology. Crucial to Searle's account is a distinction between the *fact itself*, in this case the existence of snow near the top of Mount Everest, which has an objective ontology, and the *statement* of that fact, which requires language and thus intentionality and which must therefore have a subjective ontology.<sup>19</sup> In general social objects, such as money and marriages, have a subjective ontology whereas natural objects, such as mountains and molecules, have an objective ontology, although both *can* ground epistemologically objective claims. To see why, consider the judgment that this piece of paper in my hand counts as money. This judgement is objective in an epistemic sense, since it is not up to me alone to say what counts as money for us. But money has a subjective ontology since what counts as money is dependent on human intentionality.

We need to add an extra distinction to get at the difference that the Kantian sees between moral and social norms. The sort of objectivity in an epistemic sense that Searle thinks judgments about social objects such as money can have should be analysed as 'we-level subjectivity' and 'I-level objectivity'. In the case of money, if tomorrow *we* all decided to treat only pebbles or cigarettes as money, then those objects would *be* money. This is because in order for an object to be money for us it simply has to be the object that we impose the status function of 'money' on. *I* can be wrong about what counts as money. I can think that it is pebbles when it is really cigarettes. This is why there is I-level epistemological objectivity to claims about what counts as money. In contrast, *we* cannot be wrong about what counts as money *for us*. Whatever we say is money for us *is* money for us. We may have reasons for choosing some objects, such as those with portability and durability, rather

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<sup>18</sup> Ibid. 7-13.

<sup>19</sup> Ibid. 2.

than other objects to impose the status function of ‘money’ on. But in the end, whatever we choose, we cannot be wrong about what counts as money for us, which is why there is we-level subjectivity in an epistemic sense to such claims.

Now here is the important move for Kant. Unlike social objects such as money, which are brought into existence by an *actual* act of collective intentionality, moral norms and values, or at least the categorical imperative and the associated absolute value of humanity, are not brought into existence in this way. If they were then this would rule out the sort of we-level objectivity in an epistemic sense which Kant thinks that moral judgments must have. This is because in the case of moral norms, unlike money or other purely social norms, it must be possible that though *we* say that, for example, slavery is right, we can be wrong about this. In the moral case, unlike in the money case, our saying so doesn’t make it so. But how can we get we-level objectivity in an epistemic sense without a strong moral realism based on the ontological objectivity of moral values? Kant’s answer is to appeal to rationality, universality and autonomy. If collective intentionality is at the basis of the construction of social norms, then what we might call ‘universal intentionality’ is at the basis of the construction of moral norms. Social norms are built out of what we, with all our prejudices, actually collectively intend. Moral norms are built out of what all rational agents *could* collectively intend or will.

The mind dependence of Kantian constructivism, dependent as it is on the ideal practical stance that our own reason imposes on us as rational agents,<sup>20</sup> is squared with the objectivity of moral laws by basing morality not on the contingency of choice (*Willkür*) but on the necessity of reason (*Wille*). Kant uses two terms for will, *Wille* (will) and *Willkür* (power of choice), and equates *Wille* with practical reason and *Willkür* with the act of willing or choosing.<sup>21</sup> Kant’s understanding of autonomy in terms of self-legislation does not imply that we are subject only to norms that we have freely chosen (*Willkür*) to accept or agreed to, but rather that we are unconditionally subject only to norms of reason (*Wille*), norms that our own reason legislates. And the categorical imperative *is* that norm; it is *the* constitutive norm of practical rationality. For this reason Kantian constructivism does not hold that the moral law has rational authority over us only after an *actual* act of self-legislation on our behalf.

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<sup>20</sup> Milo claims that stance dependence should be understood as a form of “moral idealism rather than realism” - Milo, "Contractarian Constructivism," 192.

<sup>21</sup> Henry E Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), 129-45.

This allows the constructivist to account for the we-level objectivity in an epistemic sense that moral judgments have on Kant's view. We can *imagine* the free citizens of the kingdom of ends, or God, as authors of the moral law, even though, strictly speaking, they are not the authors, since for Kant there is no author of the law.<sup>22</sup> Therefore the constructivist, at least according to the version defended here, does not think of the moral law as a positive law, as moral realists often allege in their criticisms of constructivism.<sup>23</sup> This realist criticism does, however, apply to 'all the way down' constructivist views which make the content or authority of the moral law dependent on an actual act of willing (*Willkür*) or choosing.

The categorical imperative applies to us categorically and independently of *all* our empirical inclinations and interests, since reason would command only hypothetically if it depended on the existence of these. Pure reason must therefore take the form of *formal* principles which abstract "from all subjective ends" and not *material* principles which have particular empirical "incentives" or interests as "their basis".<sup>24</sup> The form of morality is ideal, that is, imposed by our own faculties, in this case by pure reason. However, a formal principle is not one without any basis or which aims at no end, but rather one that has no empirical interest or incentive as its basis. Its basis must therefore be a rational end. Kant explains:

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 a means but as the supreme limiting condition in the use of all means, that is, always at the same time as an end.<sup>25</sup>

In other words, the rational requirement that intentions or maxims must have universal validity implies that each rational agent is to be treated as an end in itself.

Kant claims that the "verdict" of reason is "always simply the agreement of free citizens", where each citizen can voice their "objections" and enjoys a power of "veto".<sup>26</sup> What is rational is that which has "universal validity for every rational being",<sup>27</sup> namely, that which every agent *could* freely agree to and *would* freely agree to in the kingdom of ends. For

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<sup>22</sup> MS, AA 06: 277.

<sup>23</sup> Kain, "Self-Legislation in Kant's Moral Philosophy," 290.

<sup>24</sup> GMS, AA 04: 428. This and all translations of this text are from Immanuel Kant, *Practical Philosophy*, trans. Mary J Gregor (Cambridge: Cambridge University Press, 1996).

<sup>25</sup> GMS, AA 04: 437-38.

<sup>26</sup> KrV, A 738-39, B 766-67.

<sup>27</sup> GMS, AA 04: 428.

this reason a rational choice is justifiable to all agents, and thus has universal validity, since all agents could will it for themselves. If to choose rationally is to restrict our choices to those that any rational agent could will for herself, it follows that the ends in themselves status of rational agents is implicit in every rational choice. This is because to treat an agent as an end in herself is to treat her in ways that she could freely agree to. And a rational choice is one that treats all agents in this way, since it is a choice that all agents could freely agree to. Hence the ends in themselves status of persons is implicit in every rational choice. The imperative to respect the dignity of all persons, that is, to treat all agents as ends in themselves, is thus an *a priori* categorical command of pure reason. It is a rational requirement in the same way that the command to will the means to one's ends is a rational requirement.

This rational requirement, as well as imposing side constraints on the pursuit of happiness, also requires that we develop a virtuous character through undertaking moral duties out of respect for persons, including ourselves, and pursuing the two ends that it is a duty to have. These two ends are the self-perfection of all our faculties and capacities and the happiness of other persons according to their own conception of happiness.<sup>28</sup> The obligation to pursue these ends is based on responding in a morally appropriate way, that is, with respect (non-interference) and love (care and promotion), to the unconditional worth of rational nature in both others and ourselves.<sup>29</sup> This also gives rise to further duties, such as the duty to avoid arrogance and to be sympathetic toward others; in sum, to be a friend of human beings as such.<sup>30</sup> But we have these obligations *irrespective* of and *prior* to whatever maxims we test for rational validity. These obligations and ends should help to shape and direct our choice of specific maxims, and are not the result of these choices.

From this basis Kant, in the *Metaphysics of Morals*, constructs or derives a set of mid-level act-type obligations which hold generally, although not universally, such as 'do not lie!'<sup>31</sup> Further, as well as such mid-level norms, Kant argues that morality, or at least the

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<sup>28</sup> MS, AA 06: 385.

<sup>29</sup> MS, AA 06: 448-50.

<sup>30</sup> Paul Formosa, "Kant on the Highest Moral-Physical Good: The Social Aspect of Kant's Moral Philosophy," *Kantian Review* 15, no. 1 (2010).

<sup>31</sup> Paul Formosa, "All Politics Must Bend Its Knee before Right," *Social Theory and Practice* 34, no. 2 (2008).

doctrine of virtue, is in need of a moral casuistry.<sup>32</sup> This involves the development of, in a fragmentary manner, case-specific moral judgments by reasoning from the basis of the supreme law of morality.<sup>33</sup> This process must be fragmentary since we cannot systematically consider all possible cases. We can understand Kant's casuistical questions as an invitation to his readers to engage in actual reasoning about how the requirements of morality apply in complex cases. However, such actual moral reasoning is not to be thought of as a process that leads to the positive legislation of new laws where there were none before. It is essential here to differentiate between our *actual* moral deliberations and the *idea* of the free citizens of the kingdom of ends legislating laws for themselves which express respect and practical love for all rational agents. This is the ideal process which we should aim to recreate in our actual deliberative practices. But in our case the content of morality is already set by this ideal case. Our actual process of moral reasoning is therefore to be thought of as *reconstructing* the rational obligations that we, as rational agents, are already subject to. We are not subject, for example, to the moral norm 'do not lie to further your self-interest' because of something we actually do or will, but because that maxim is not one that could be rationally willed by any rational agent.

This view counts as constructivist as it is not even partial receptivity to an order of pre-given values, but rather the self-legislation by reason of the ends in themselves status or unconditional value of persons, that is the idealistic normative basis of morality. But while moral norms are constructed, they are constructed by reason (*Wille*) and not by our own arbitrary choice (*Willkür*). Hence moral norms are not positive laws. Thus in practice we must be *receptive* to the requirements of practical rationality in our deliberations as we seek to reconstruct our duties, but it is not *our receptivity* that is doing the fundamental normative work, but the *spontaneity* of *our reason* in its self-legislation of these rational requirements on agency. Our moral judgments thus have a subjective ontology, or what we might call a formal idealism, as well as we-level objectivity in an epistemic sense. Kant is a moral constructivist because the normative basis of his account lies in the subjective ontology of the spontaneity of reason, and the rational requirements on action that our reason imposes on us, and not in our receptivity to the objective ontology of a mind-independent world, as required by strong moral realist accounts. The foundation of moral normativity is, for Kant, dependent

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<sup>32</sup> MS, AA 06: 411.

<sup>33</sup> Hill Jr., "Moral Construction as a Task: Sources and Limits," 224.

on the nature of our rational faculties and the rational constraints that these directly impose on us as rational agents.