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## **Hypothetical Justifications**

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### **Abstract:**

A basic conviction in moral non-cognitivism is: only hypothetical norms may be justified. Hartmut Kliemt argues for a moderate variant: there are only hypothetical justifications of norms whether the norms are hypothetical or categorical in kind. In this paper the concept of 'hypothetical justification' is analyzed. It is argued that hypothetical justifications are not of the kind that we should look for in normative ethics.

### **1. Introduction**

This essay is a critical investigation of a metaethical claim that Hartmut Kliemt has most strongly defended and carefully discussed in many papers and books throughout at least the last 23 years. The thesis is: any valid justification of a norm is 'hypothetical' in the sense that it is inevitably relative to some set of aims, values or normative convictions held by the addressee of the justification. I shall argue: if this thesis is true, i.e. if only hypothetical justifications of moral norms are valid, then no justification of any moral norm is possible in the relevant sense. I will first give a short sketch of Hartmut Kliemt's argument, the context in which he usually presents it, and some aspects of its development (2). My argument will then be based on some general considerations about justification of moral norms in general and hypothetical justification in particular (3). The argument then proceeds by pointing out a necessary condition for any justification of a norm: it must provide us with justified claims on other persons. Hypothetical justifications do not meet this condition (4). I will conclude with some tentative remarks on how justifying norms beyond hypothetical justification might be rationally possible. These remarks itself are inspired by some of Hartmut Kliemt's more general reflections on moral theory.

Some may think it unsuitable to criticize a fundamental argument of a person in an essay in honor of that person. I do not think that they are right, and I believe Hartmut Kliemt will agree with me. In general, it seems to me, critique is the most valuable acknowledgment a person in our business can get. Moreover, in this particular case, the criticism is rooted in a philosophical perspective that—as the reader might notice—is Kliemtian at its foundations in different important respects.<sup>1</sup>

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<sup>1</sup> A personal note: Many have learned from Hartmut Kliemt in reading his publications or dis-

## 2. Justificatory Relativism

A central theme in Hartmut Kliemt's philosophy is the relationship between normative economics and ethics. At first sight there seems to be an irreconcilable divide between the two. Following the basic assumptions of neo-classical economics as characterized in Robbins (1935) the science of economics has to remain silent on ultimate ends and values. There simply is no scientific way to bridge the gap between Is and Ought. This is not to say that normative matters are in principle beyond the horizon of neo-classical economics. But from an economic point of view any normative argument has to start from some normative premises, which ultimately cannot be justified by scientific argument. However, no justification for such ultimate normative premises is in fact needed. These premises are actually found as social facts in the form of individual ends or socially accepted values and norms. The economist will typically take these ends, aims or values as a given and then consider, which rule or course of action will be best, given these premises. So, as Hartmut Kliemt expresses it: "The neo-classical economist tends to believe that rational normative argument is confined to pointing out means-end relationships." (Kliemt 2009, 51)

In contrast, most philosophers think that reason can be practical beyond instrumental rationality. One of the most prominent tasks of philosophical ethics, these philosophers believe, is to define, investigate and systematize the fundamental rules of moral conduct. The basic conviction is that these rules are in fact open to rational investigation in general, and that it is in particular—at least in principle—possible to give universally valid rational justification for them. So, if economists are right, these philosophers are trying to do something that is impossible within a rational and scientific approach to the world.

In a paper published in 1986, Kliemt discusses this problem as an indication of a central meta-ethical debate, namely the debate between cognitivism and non-cognitivism.<sup>2</sup> Kliemt defines non-cognitivism as the conviction, that "[...] all justifications of norms have to show that the observance and/or enforcement of the norms can be expected to be instrumental to reaching given individual aims, desires, ideals etc. [...]. All justifications of norms must be based on such means-ends relationships." (Kliemt 1986, 220) In this sense the non-cognitivist claims "[...] that there are only *hypothetical imperatives*" (Kliemt 1986, 219). Non-cognitivism is the position generally held by economists. It holds that "the

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cussing matters with him. I am his disciple in a much more fundamental way. He brought me into philosophy. He has always been a perfect teacher, a patient and most stimulating discussant and a caring friend to me. Whatever I know about philosophy—if I do know anything about it—I know from him. If I have ever written anything interesting or anything even right on philosophical matters it originates in his teaching. This is not to say, of course, that he is responsible for all the shortcomings and mistakes in my thought, they are exclusively mine. His outlook on philosophy is my model and what I learned from him my fundament. But thought, although originating in similar perspectives and based on the same ground may evolve in different directions in different persons. This, I think, makes it even more exciting.

<sup>2</sup> Much of the general argument can already be found in his *Habilitationsschrift* (Kliemt 1985). See especially parts D and E.

justification of norms is entirely relative to a presupposed 'is' of individual desires, aims, etc. [...]" (Kliemt 1986, 224).

In contrast, "[t]he cognitivist claims that there are some justifications of at least some norms which *in the last resort* entirely stem from knowledge. They are knowledge-based, in that they are *not* moored to some given aims, desires etc. The insights showing that these norms hold true do not reduce to insights into merely instrumental relationships. [...] The justifications are also not merely *relative* to an addressee. The *ultimate justification* of at least *some* norms does not depend on an 'is' or on the fact that some aims, desires etc. as a matter of fact are shared by the addressee(s) of the *justification*." Cognitivists, thus hold, "[...] that there are some categorical norms and some categorical justification of norms" (Kliemt 1986, 221).

This distinction of non-cognitivism and cognitivism is a prominent theme in several later papers, in which Kliemt discusses the fundament of normative theory and the relationship of ethics and normative economics (1990, 1992, 1997). Although the distinction runs parallel to a difference in attitude towards normative theory that divides economists as a matter of fact from the majority of philosophers, Kliemt argues that it, nevertheless, does not justify a principle divide between the two disciplines. For, if non-cognitivism is true then economic methods are "appropriate to analyse all ethical problems that can be subject to rational discussion". Thus ethics should be part of economics. Otherwise, if "[...] there is a legitimate claim of ethical theory to provide knowledge of categorical claims of absolute ethics, then these claims about absolute ethics should be incorporated like other parts of knowledge provided by scientific neighbors into economics" (Kliemt 1990, 13f.). Thus, either way, ethics and normative economics should go along the same route.

From this argument it may seem that the distinction is only a secondary detail in the determination of the relation between ethics and economics. But, although his words are cautiously chosen and he is rarely explicit in this regard<sup>3</sup>, it is very clear from his argument throughout that Kliemt strongly endorses non-cognitivism. In the end, he thinks, normative economics rightly sets the standards of normative theory and ethics should conform to it.

At least four kinds of arguments in favour of non-cognitivism may be found in his writings:

1. He argues that the usual objections against non-cognitivism are either misguided or point to general difficulties, which any meta-ethical theory would face and which in particular cognitivism would face as well,<sup>4</sup>
2. he points to the fact that it is very hard to understand how it could be possible to justify a positive value statement independently of actual evaluations of individuals,<sup>5</sup>

<sup>3</sup> The most explicit statements of his position are to be found in Kliemt 1992 and in the last paragraph of Kliemt 2009.

<sup>4</sup> e.g. Kliemt 1990, 30ff.; 1992, 96ff.; 1997, 161ff.

<sup>5</sup> e.g. Kliemt 2009, 57; 1992, 96.

3. he positively argues that non-cognitivist ethics can give a reasonable account of all actual practical problems of moral conduct;<sup>6</sup> and, finally,
4. he indicates that the metaphysical, epistemological and ontological burdens of non-cognitivist ethics are minimal as compared to cognitivism.<sup>7</sup>

In a recent paper (2009), Hartmut Kliemt gives a new exposition and a reformulation of his theory. This new exposition is characterized by a change in the basic conceptual framework and by some additional remarks clarifying the concept of a hypothetically justified norm.

The conceptual change concerns the concept of cognitivism. Cognitivism is here defined as the epistemological view that it is possible (at least in principle) to gain knowledge about moral values or norms. Kliemt now argues that cognitivism thus defined may well be consistent with the methodological thesis, that a rational justification of a norm is necessarily relative to given aims, ends or values shared by the addressee of the justification. Even though a person “might believe in the existence of values that can in principle be ‘objectively’ ascertained” (Kliemt 2009, 51) his standard of a valid normative argument may, still, demand justification relative to the normative convictions of its addressee on principle. Therefore the position formerly characterized as non-cognitivism is now termed ‘justificatory relativism’ leaving the traditional debate between cognitivism and non-cognitivism aside.<sup>8</sup>

The additional remarks in the new exposition are concerned with a seemingly obvious objection to Kliemt’s theory. This objection points to the fact that many norms, which are almost universally accepted as valid, are categorical in character. A typical example would be the promising norm. The promising norm demands a certain way of conduct just because a promise was given and independently of whatever the aims or values of the addressee of the norm may be. So the promising norm is a categorical norm. Moreover, as David Hume already showed, it is just this categorical form of the norm that makes it the basis of a useful social institution. Just and only because it is absolutely obligatory to keep one’s promises whether one may wish to do so or not, the norm can form the fundament of a mutually advantageous social practice in the exchange of goods or services. The same seems to apply to many other moral norms. They are fundamentally categorical, and it is their very categorical character that renders them useful. Thus, it may be argued, such categorical norms do, as a matter of fact, represent an essential part of morality as an existing social institution. But a theory that claims that norms cannot be justified without reference to existing aims and values seems to be incapable of giving an account of such categorical norms, and, therefore, such a theory seems fundamentally inadequate.

<sup>6</sup> e.g. Kliemt 1990, 29f., 35; 2009, 68f.; 1992, 99, 103.

<sup>7</sup> e.g. Kliemt 1990, 17.

<sup>8</sup> As will become clear from the argument below justificatory relativism in the given sense is in fact a non-cognitivist position. Still, the term ‘justificatory relativism’ seems to suit the essence of Kliemt’s position better than ‘non-cognitivism’.

Kliemt answers this possible criticism by elaborating on two distinctions that he had already pointed to in his earlier writings. First, he argues, one should carefully distinguish the demand that a moral norm be justified from the demand that the norm itself makes on the addressee of the norm. With this distinction of different demands that may be discussed in the context of moral norms goes a distinction between the addressee of the norm and the addressee of a justification of the norm. The addressee of a justification of a norm may also be an addressee of the norm but the two different possible roles—addressee of norm justification and addressee of the norm itself—do not necessarily coincide. Now, the theory proposed is concerned with the justification of norms only. It claims that justification requires reference to the aims and values of the addressee of the justification; there is no corresponding claim with regard to the addressee of the norm. So it maybe—and in fact is—possible to give a hypothetical justification of a norm with a categorical demand on the addressee of the norm. In fact, the Humean argument in favour of the promising norm gives a prominent example of such a justification: the usefulness of a social institution based on the categorical norm is a good reason for most individuals to wish that the norm be generally regarded as valid and be complied with. So in an attempt to justify the norm to such a person one may point to this very wish and, thus, give a hypothetical justification—relative to the interests of the addressee of the justification—of a categorical norm. It is a fallacy—the *justificatory* fallacy—, argues Hartmut Kliemt, to infer from the fact that a norm makes a categorical demand that only a categorical justification, i.e. a justification the validity of which is independent of the normative convictions of the addressee of the justification, for that norm can be given.

This argument illuminates an important aspect of the terms ‘hypothetical’ and ‘categorical’ as used by Kliemt. Clearly, the terms originate in Kant’s moral philosophy. But Kant obviously introduced the distinction to point out the different forms of demand a moral norm or imperative may put on us. In the *Groundwork* he gives the following definition:

“All imperatives command either hypothetically or categorically. Hypothetical imperatives declare a possible action to be practically necessary as a means to the attainment of something else that one wants (or that one may want). A categorical imperative would be one that represented an action as itself objectively necessary, without regard to any further end.” (Kant 2002, 216)

Obviously the relationship between the action commanded by the imperative and the aims and interests of the addressee of the norm makes the difference. Kliemt agrees with this distinction and he also endorses its importance. But he concentrates his argument not on different forms of command as expressed in moral norms but on the validity of different forms of argument in the justification of norms. In this context ‘hypothetical’ is a property of a justification, not, as Kant used the term, a property of a norm. So we actually have two distinct concepts of ‘hypothetical’ (and correspondingly of ‘categorical’), one originating

in Kant's philosophy the other defined and introduced by Kliemt in his argument for justificatory relativism. Whereas in some of his very early writings Kliemt encouraged the confusion between the two distinct concepts by sometimes using the expressions 'hypothetical norms' and 'hypothetically justified norms' interchangeably (e.g. 1986, 221), he finally keeps them well apart. So will I in the following: the term 'hypothetical norm' will exclusively refer to a norm with a demand hypothetical to its aims, values and interests of the addressee of the norm whereas the term 'hypothetically justified norm' without exception refers to a norm justified relative to the ends and values of the addressee of the norm justification.

### 3. Hypothetically Justifying Norms

A norm is justified if there is a valid argument to justify the norm. Before delving into a closer examination of the justification of norms it seems appropriate to distinguish justifying norms from justifying acts or justifying deontic judgments in a particular case (maxims). An act or a maxim to do a certain act in a particular situation is justified by giving good reasons for the act or maxim. As a rule among these reasons are norms. Kant, in fact, thought that any genuine justification of a maxim must refer to some practical rule or norm. I think he was right in this respect (see Lahno 2007). Whatever the case may be, if among the reasons for an action is a norm, this reason is a good reason and can in fact justify the act only if the norm itself is justified. Thus, in this regard, justifying a norm has priority over justifying acts.

Kliemt's argument is roughly the following: any justification of a norm is necessarily addressed to a person. Someone justifies the norm to the addressee of his justification. The only way to do this is by taking up and starting from the aims, values and normative convictions of the addressee. Therefore any valid justification of a norm must be relative to the preferences and normative convictions of some addressee, and, thus, only hypothetical justifications may be valid justifications of a norm.

Two ways of justifying a norm by reference to the aims and values of a person may be extracted from Hartmut Kliemt's argument:

- (J1) An act of the addressee in compliance with the norm results in his aims and values being optimally realized: the norm is a hypothetical imperative (in the classical Kantian sense) based on a valid means-end relation. The norm is justified relative to the aims of the addressee (and in this case the addressee of the justification is identical with the addressee of the justification).
- (J2) The general acceptance of and compliance with the norm by the addressees of the norm results in an optimal realization of the ends and values of the addressee of the justification of the norm: the norm is an imperative (possibly categorical), the general acceptance of which is a suitable

means to realizing the ends and values of the addressee of the justification.

The two ways of justifying norms relative to aims and values may seem very similar but they can and should be carefully distinguished. Notice, first, that the addressee of the norm necessarily coincides with the addressee of the justification in (J1) whereas in (J2) the addressee of the justification maybe a person that is not directly addressed by the norm. However, at first it may seem that the two ways of justification embody basically the same fundamental principle of justification applied on different levels of argument only. One may even suspect that (J2) is simply an application or an implication of (J1). But neither of these suppositions is true.

Before discussing the point in more detail let me make some more general remarks about the concept of justification. What is a valid justification of a norm? There is no ultimate and generally acknowledged answer to this question. But there is no ultimate and generally acknowledged answer to the question what a valid justification of a descriptive statement or belief is either. However, in both cases there is at least some agreement on some necessary and some sufficient conditions of a justification being valid.

One way of justifying a norm is by deriving it according to the rules of deontic logic from correct descriptive statements and valid (other) norms. This, I believe, is in fact the most common way to justify a norm. Most cases of the actual social practice of norm justification may, at least, be understood in such a way. (And a similar case may be made for the justification of descriptive statements.)

However, there is a crucial vagueness in the characterization of this way to justify a norm. What, one may ask, is the meaning of 'valid' here in 'a valid norm'? The answer to this question will decisively depend on the context of the question. If the context is jurisdiction any positive legal norm and only positive legal norms will probably be regarded as valid. In Ethics we seem to be looking for a different, more fundamental foundation of norms.

In any way, it seems clear that 'valid' cannot only mean 'justified in the described way' i.e. justified by reference to correct descriptive statements and valid norms. This would inevitably lead us into an endless regress or into circular argument as the analogous sceptic argument shows in traditional epistemology. If it is possible at all to give ultimate justifications of norms then either there must be some other way to justify a norm or there must be at least some norms that are valid without requiring further justification.<sup>9</sup>

These few general remarks signify the task set if we want to argue that a norm is ultimately justified. We have to show that the norm can be derived from other norms (and true factual statements), which either do not require justification themselves, or which may be justified in different ways, i.e. not by deduction

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<sup>9</sup> The situation is very much the same in epistemology. In epistemology the view that there are some descriptive statements that represent knowledge without requiring any further justification is called fundamentalism. Fundamentalism is not very popular in our days. Most modern epistemologists are convinced that it is wrong and that there are in fact other ways to justify a belief, especially ways that draw in some way or other on the concept of coherence.

from valid norms and true factual statements. In the first case some convincing or at least plausible argument is necessary that no further justification is in fact needed. In the second case, we would have to provide some argument to show the plausibility of the alternative principle of justification. The kind of argument that suggests itself here is given by Rawls' concept of reflective equilibrium.<sup>10</sup>

Having said this, we may now take a closer look at the two different ways of hypothetical justification.

(J1) can be understood as saying that any norm is justified (relative to the aims and values of the addressee) if it can be derived from a correct means-end relation and the following basic norm:

- (N1) Always choose the act which can be rationally expected to bring about the best results as judged according to your aims and values.

Notice that the basic norm (N1) itself cannot be justified in the same way; that would be circular. Moreover, (N1) is not a hypothetical norm. It does not only address those individuals who generally want to do what serves their interests best but also those, who believe that there are moral constraints that hinder them now and then to act in such a way, and those who are insecure in this respect. So if this is the basic idea of hypothetically justifying norms there is at least one categorical norm and there is, thus, at least one categorical norm without a hypothetical justification.

One can avoid this problem by—instead of trying to reduce every moral norm to one basic norm—formulating a meta-ethical principle:

- (P1) Every moral norm prescribing that a person *P* with aims and values *Z* in a situation of form *S* should choose an act (of the kind) *H* is justified relative to *P* and *Z*, if according to a correct means-end relation act *H* assures optimal realization of *Z* for *P* in *S*.

It seems to me that Hartmut Kliemt—if he is willing to endorse (J1) at all—is thinking of such a meta-ethical principle of justification. But, then, some argument that (P1) is a correct or valid principle is needed. The fact that *P* will normally appreciate following the norm (because, as a matter of fact, *P* is presumed to be instrumentally rational in the classical sense) does not provide a good argument. For 'to want something' is fundamentally (and categorically) different from 'to be obliged to do something'. It is the very question, whether one should always and only do what one wishes to do as an instrumentally rational individual. This is what is to be justified! Therefore, it is by no means clear that—as Kliemt notes—"the justification of imperatives expressing means-ends relations [...] need not be more arbitrary than the derivation of some statement of fact" (Kliemt 2009, 58). The only thing that is not more arbitrary than the derivation of some fact is the justification of the means-end relation, but certainly not the respective imperative that adds the crucial 'ought'.

<sup>10</sup> Rawls 1951; 1971; for a critical discussion see Hahn 2004.



There are two ways to justify principle (P1) that suggest themselves. Either (P1) can be shown to be intuitively clear and therefore does not need any further justification. Or it can be shown that (P1) induces a plausible, fruitful and coherent reconstruction of our actual practice of moral judgement in the sense of reflective equilibrium. But any attempt in one of these directions must fail. It seems utterly implausible that it is morally justified for some person to torment another person if he just likes to see that other person suffer. This just does not accord with our mutual understanding of morality. Therefore, it is impossible to find a reflective equilibrium that reconciles a theory accepting (P1) and our considered moral judgements in cases like the one given.

If, by the way, the principle was correct, that would already imply that at least one categorical norm is hypothetically justified: the basic norm (N1) is implied by (P1)—and in this sense hypothetically justified—but—as argued above—its demand is categorical.

If we turn to (J2) now, we can also try to reduce any justification according to (J2) to a basic norm (N2):

- (N2) In choosing your actions always follow some rule which a person *P* (the addressee of the justification) in view of his aims and values wishes to be or remain generally accepted (and, in this sense, “valid”).

This does not seem to be an acceptable candidate for a general basic norm, unless the addressee of the norm (N2) and the addressee of the justification coincide:

- (N2\*) In choosing your actions always follow a rule, which you wish to be or remain generally accepted.

(N2\*) now very much sounds like the Kantian categorical imperative itself, and, in fact, by arguments similar to those in the case of (N1) (N2\*) would be a categorical imperative that is categorically (not hypothetically) justified.

Alternatively to formulating a basic norm, (R2) may be based again on a meta-ethical principle:

- (P2) Every moral norm *N* is justified relative to Person *P* with aims and values *Z* if general acceptance of and compliance with *N* result in an optimal realization of *Z* for *P*.

This is a relativistic version of the basic principle of rule-consequentialism. As (N2\*) compared to (N1), (P2) seems much more plausible to me than (P1). Still, as with (P1) I doubt that it can be justified either as being intuitively clear or by arguing that it is part of an acceptable reflective equilibrium. (P2) would imply the obviously unacceptable Norm (N2). Moreover, if (P2) was valid, someone would, for instance, be morally justified relative to his own preferences to kill other people just as he likes, if he wishes to do so and is able to protect his own life sufficiently without the protection of a social norm against killing. Or, to give another example, a person who, for some reason, lost his interest in cooperative relations would be (relative to his own preferences) justified in breaking his promises that he gave in order to receive the support of others.

It is instructive to examine the logical relationship between (P1) and (P2) more thoroughly. (P2) does not follow from (P1): (P1) implies only that a norm  $N^*$ , which prescribes to choose suitable actions to install a norm  $N$  as a socially effective norm, is justified relative to some Person  $P$  with aims or values  $Z$ , if the general acceptance of and compliance with  $N$  is optimal for  $P$  according to  $Z$ . It does not imply that  $N$  itself is justified, as (P2) would establish. (P2) would follow from (P1) if an additional premise was true: The compliance with  $N$  (in each individual case) is the best means to install  $N$  as a socially effective norm. But, as is well known, establishing an effective social norm is a typical problem of collective action with all the typical difficulties. So the premise will in general not be true.

Moreover, (P1) and (P2) are inconsistent in the following sense:

It is not true that: For any Person  $P$  and any set of values and aims  $Z(P)$   $P$  may consistently have there is a System  $M$  of moral norms that simultaneously meets the following conditions:

- (1) If a norm  $N$  is justified relative to  $P$  and  $Z(P)$  according to (P1) then  $N$  is justified in  $M$ .
- (2) If a norm  $N$  is justified relative to  $P$  and  $Z(P)$  according to (P2) then  $N$  is justified in  $M$ .
- (3) There is no situation  $S$  and (kind of) act  $H$  such that a norm  $N1$ , which is justified in  $M$ , demands doing  $H$  in  $S$ , whereas another norm  $N2$ , equally justified in  $M$ , demands doing not- $H$ .

The reason that not all conditions may simultaneously apply is obvious: one can always construe a situation  $S$  in which person  $P$  has a constitutional interest in the realization of a social norm that prescribes to do  $H$  in  $S$  (e.g. to keep promises in  $S$ ) whereas  $P$  actually has in  $S$  an action interest not to do  $H$  (to break his promises).

Whoever wants to stick to (P1) as a general principle of moral justification cannot at the same time hold that (P2) is a valid principle of justification. By the threat of inconsistency he is forced either to restrict the validity of (P1) or of (P2) or of both, e.g. by some priority rule.

#### 4. Ethics at Large

Does that mean that the normative enterprise of neoclassical ‘Robbinsian’ economics is inconsistent? Not necessarily. According to Robbins economics is the attempt to find the best allocation of scarce resources that have alternative uses as evaluated according to some given ends. Thus, economics can propose ‘means to given ends’ but on ‘ends it must remain silent’. Following this kind of thought, economics is primarily concerned not with the justification of norms but with the proposal and—in this sense—justification of acts. It identifies the optimal action relative to given ends by pointing out a suitable means-end relation. The principle of such a ‘justification’ is the principle of instrumental rationality which is

closely related to the basic norm (N1): choose the act which can be rationally expected to bring about the best results as judged according to your aims and values.

Economics is not concerned with the justification of (N1) or the related principle of justification of acts. Its aim is to point out what instrumental rationality would demand in certain situations. The principle of instrumental rationality is taken as given in just the same way as the ends and values are taken as given. Norms are justified in this framework because economics is, as any science, concerned with general statements, and, thus, with generic acts. A generic act *H* by a person *P* in situation *S* is instrumentally rational according to aims *Z* and thus justified. Therefore—and in this sense—the norm: ‘Any person should do *H* in a situation like *S* if his aims are *Z*’ is justified. But such a norm has no independent role in prescribing or justifying an act *H*. It just represents in a short and handy way what acts are warranted by instrumental rationality.

Institutional economics is, in fact, more directly concerned with norms. However, the institutional economist is concerned with norms as social institutions, as a social fact. He analyzes these facts and gives advice how to set up moral institutions and preserve the corresponding social practices. He is not concerned with justifying norms. In pointing out how to reach given aims by fostering certain social norms he merely justifies certain acts (of fostering) as instrumentally rational. The economist is not entitled and does, as a matter of fact, not aspire to answer the question ‘do I have to keep my promises?’ by some statement like: ‘yes, because promise-keeping is a justified norm, justified (for you) because promise keeping is a useful social practice (for you)’. All he can do to answer such a question is refer to the individual promise and say: ‘it depends on what you want. Instrumental rationality tells you that you should keep your promise if and only if this is conducive to your aims.’

It is unclear whether Hartmut Kliemt would want to go beyond this. The way he talks about the justification of norms may suggest that he does. But he is, of course, well aware of the difference between constitutional interests and action interests, and the possible conflicts between the two (see, in particular, Kliemt 1990, 27ff.). He, in fact, endorses the possibility that a person may wish a certain norm to become socially effective and at the same time realize that in the particular case it best serves his aims not to act in accordance with the norm. So the norm is justified (for him) according to (P2) while at the same time according to (P1) a norm with a claim to the opposite would also be justified (for him). Referring to a Hobbesian<sup>11</sup> distinction, Kliemt argues that such opposing claims do not lead into inconsistency because the two normative claims refer to different spheres of obligation. The norm justified according to (P2) refers to our constitutional interests and commits us ‘in foro interno’ to the wish, that the appropriate moral institution be realized, and to acts conducive to this aim. In contrast, a norm justified according to (P1) directly refers to our operational or action interests, and, thus, directly commits us ‘in foro externo’ to the acts

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<sup>11</sup> Hobbes 1985, 215.

prescribed by the norm. Now, my particular act in some situation will usually be insignificant for the realization of a norm.<sup>12</sup> So I can consistently do both: wish the norm be realized and do the best I can to achieve this aim and not comply with the norm in the particular case.

“Ethics at large”, as Kliemt calls it, is concerned with justifying moral norms according to (P2). It is a “theory of moral and legal institutions, focusing primarily on our reason (in foro interno), not on our behavior (in foro externo)”.<sup>13</sup> So, moral theory is about what moral order we should prefer. It affects our beliefs in the legitimacy of moral institutions, but it has no direct behavioral consequences. Norms can be justified according to (P2) without committing us to the corresponding behavior. These norms, that are justified in foro interno, are committing in foro externo only if and to the extent that following the norm in the particular case is instrumentally rational. It may be instrumentally rational to follow the norm for two sorts of reasons: either the norm is backed by effective social sanctions or the individual is somehow motivated (e.g. by corresponding ‘values’) to act as the norm prescribes. But both conditions may not apply to a person although that person wishes the norm to be socially effective and, thus, the norm is justified for that person according to (P2).

But this has fatal consequences. A norm may be justified for—or relative to—a person *P* without any normative demand on his following the norm. Thus, I may be able to validly justify the promising norm to a person *P* without thereby having a valid and justified claim on him that he should keep his promises to me. I am justified in wishing, that he will act according to the norm; I can also force him to keep his promises—if I can—; but the sole fact that the norm is justified (for him!) is no reason for him to act accordingly and does not justify my demand for compliance.

One can, of course, define ‘justification of a moral norm’ according to a principle (P2) without any normative implication for the kind of acts the norm demands. In fact, I would not deny that there is justification in the sense of being able to say ‘the norm is justified’ after showing that making the norm socially effective is instrumentally rational relative to given ends. But it seems clear to me that this is not the kind of justification that we are looking for in moral theory. A justification of a norm (whether relative to given aims or not) that does not justify a demand to act according to the norm, is just no justification in the relevant sense of moral theory.

By supporting and propagating a moral norm I put a claim on every single addressee of the norm. Any sufficient justification of the norm must justify my claim. If a norm cannot be justified to a person *A* then nobody whatsoever has a right to demand compliance to the norm from *A*. But this is exactly what moral justification should do: it should authorize us to demand compliance with

<sup>12</sup> Compare Kliemt’s discussion of the ‘veil of insignificance’ in Kliemt 1986b.

<sup>13</sup> “Ethics at large’ ist eine Theorie moralischer und rechtlicher Institutionen, die zunächst auf unsere Einsicht (in foro interno) und nicht auf unsere Verhaltensweisen (in foro externo) abzielt.” (Kliemt 1988, 155; see also 1992, 96ff.)

the norm. It is only because of this aspect of moral norm justification that the concept of a moral right is intelligible at all.

Notice that, according to Kliemt's argument, a categorical norm may be justified by a hypothetical justification, i.e. by reference to (P2), without the categorical claim expressed by the norm being justified too. In fact, it seems that no categorical claim expressed by an ordinary<sup>14</sup> moral norm at all can be justified according to Kliemt's argument, as any claim on what the addressee of the norm is to do, any obligation can only be justified conditional on his action interests.

It is instructive to take a second look at the so-called justificatory fallacy on this background. The incriminated derivation was:

(JF) If  $N$  is a categorical norm then there is no hypothetical justification of  $N$ .

As we have seen, (JF) is wrong if hypothetical justification is conceptualized according to principle (P1): (N1) is a categorical norm justified by (P1). Moreover, if hypothetical justification is conceptualized according to principle (P2), then (JF) is also certainly wrong: almost any norm—hypothetical or categorical—can be justified according to (P2) if suitable ends and values are presupposed.

So (JF) is obviously false. However, it seems very unlikely that anyone would seriously advocate (JF). It is too obvious that people may wish that a categorical norm becomes or stays socially effective and, thus, that the norm is justified for them in this sense. Criticizing (JF) seems to miss the point. The real point of disagreement is not about whether the kind of justification of a norm derives from its kind of demand, it is rather what kind of justification is needed in moral theory. Consider the following statement:

(T) A categorical norm cannot be morally justified by a hypothetical justification (alone).

(T) does not contain any inference. It can be wrong, but it cannot be a fallacy. Moreover, (T) is consistent with the premise that there are hypothetical justifications of categorical norms: some hypothetical justifications just may

not qualify as moral justifications. Now, suppose that there is the following necessary condition for a norm being morally justified:

(NC) If a norm is morally justified, then it expresses a justified demand on all its addressees.

As I have argued (NC) is a sensible condition on the kind of justification needed in moral theory (and practice). If it is accepted the following statement implies (T):

(T') A categorical demand cannot be justified by a hypothetical justification of the norm expressing the demand (alone).

By arguing for the distinction of the different spheres of obligation Kliemt obviously endorses (T'). But he rejects (T). So he must also reject (NC). And there, I think, he errs.

<sup>14</sup>The statement is not correct for norms like (N2).

## 5. Conclusion

According to Hartmut Kliemt only hypothetical justifications may be valid justifications of moral norms. I argued: if he is right, then no moral norm may be justified sufficiently as required by moral theory and practice. So, in the end, Kliemt's view is non-cognitivist. There are no justifications of moral judgements in the relevant sense, hence moral knowledge is impossible.

I did not argue that there are non-hypothetical or categorical justifications of (some) moral norms. In fact, I do believe that this claim is true. But I must admit that I do not have a conclusive argument to this effect. Quite surprisingly Hartmut Kliemt himself indicates a promising route to such an argument. In his recent paper (2009, 69) he concludes with some tentative remarks about moral deliberation:

“[...] I believe that rational argument concerning practical matters is possible. The differences between critical practical and critical theoretical dispute should not be overemphasized. A reflective equilibrium may be thought after in comparable ways in the practical as well as in the theoretical realm.”

So there is hope that the reflective equilibrium method may allow for a justification of practical claims that is comparable to justifications given for theoretical beliefs and generally acknowledged as sufficient to ground theoretical knowledge. Justifications of moral claims along this route would still be ‘relativist’ in two respects:

1. There is no ‘objective’ value independent of actual evaluations. The search for reflective equilibrium necessarily starts from our considered judgments and evaluations as given in actual moral thought and practice. Without such a foundation reflective equilibrium loses its anchor and all its justifying force. Therefore the relativist contention that “[...] there is no value unless there is an entity that *as a matter of fact* does value things” (Kliemt 2009, 59) is endorsed. But the relativist may very well be wrong in concluding that values are necessarily values for somebody and entirely dependent on his individual evaluations.
2. The acceptance of any justification based on the reflective equilibrium method is conditional on taking a specific stance. First, to fully understand and employ moral claims it is necessary for a person to adopt an internal point of view (Hart 1961) towards the claim; second, being a moral person—acting and arguing as a moral person—presupposes that the person takes a participant point of view (Strawson 1972) towards the people he is interacting with.<sup>15</sup> From an objective point of view and with an ob-

<sup>15</sup> For the role of an internal point of view in moral discourse, see Kliemt 1978, 100. In *On Economics and Ethics* (1990, 24) Kliemt indicates that a participant stance may provide a basis for a universalistic moral theory.

jective stance towards others moral deliberation may easily seem meaningless and the search for reflective equilibrium may lose its point.

There is some truth in moral relativism: there does not seem to be objective moral truths, independent of our actual evaluations and our ways of encountering each other as moral agents. But even then, morality is open to rational deliberation. And the conviction that there are only hypothetical justifications of moral norms, which presents morality basically as a matter of personal (and possibly conflicting) interests, tastes and power, may very well be false.

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