

In: Grazer Philosophische Studien 90 (2014), 149–168.

HERLINDE PAUER-STUDER

CONTRACTUALISM AND THE SECOND-PERSON MORAL STANDPOINT*

ABSTRACT

This article explores Darwall's second-personal account of morality, which draws on Fichte's practical philosophy, particularly Fichte's notions of a *summons* and principle of right. Darwall maintains that Fichte offers a philosophically more appealing account of relations of right than Kant. Likewise, he thinks that his second-personal interpretation of morality gives rise to contractualism. I reject Darwall's criticism of Kant's conception of right. Moreover, I try to show that Darwall's second-personal conception of morality relies on a Kantian form of contractualism. Instead of accepting Darwall's claim that contractualism depends upon a second-personal account of morality, I will argue that contractualism provides the foundations not only for second-personal moral relations, but also for first-personal moral authority.

1. Introduction

The basic idea of contractualism is that moral principles are justified by a reasonable agreement between equals entertaining cooperative relations with one another.¹ Accordingly, actions are right or wrong depending upon whether they comply with principles which everyone could reasonably accept, or, rather, which cannot reasonably be rejected. Contractualism is commonly associated with a relational conception of morality. A key element is recognizing the rightful claims others have on us and our accountability to them for our actions and practices.

* Thanks to Fabienne Peter for helpful written comments on an earlier version of the paper. I also thank

¹ Note that I adopt the familiar distinction between contractarianism and contractualism.

Contractarianism considers an agreement on moral principles as the outcome of compromises by rational egoists who are eager to avoid suboptimal outcomes generated by their individual maximizing strategies. Contractualism assumes that agreement on moral principles is based on considerations that are acceptable from the perspective of all; no one can reasonably reject those principles.

In his book *The Second-Person Standpoint* (2006), Stephen Darwall endorses such a form of contractualism. His argument is that a second-personal theory of morality gives rise to a version of contractualism that involves Kant's requirements of universality and of treating others as ends. A striking feature of Darwall's account of morality is its reliance on Fichte's practical philosophy. According to Darwall, Fichte's conception of right, which is based on Fichte's notion of a summons, offers a better starting point for a second-personal, and thus contractualist theory of morality than Kant's practical philosophy (Darwall 2014).

This paper defends Kant's framework. Kant, as I will argue, presents a more compelling justification of a rightful condition than Fichte. Moreover, Kant's account of the normative foundations of the principle of right is, as I try to show, best understood in terms of contractualism. An implicit appeal to contractualism seems also present in Kant's ethical theory. Kant's idea of a moral community as "a realm of ends", that is a "systematic union of various rational beings through common objective laws" (Kant 1996b, 4:433, 83) can be interpreted as giving rise to contractualism. My thesis is that such a Kantian form of contractualism provides a better foundation for a second-personal account of morality than Fichte's notion of a summons and conception of right. Against Darwall's claim that contractualism relies on a second-personal account of morality, I argue that it is contractualism that provides the foundations for a second-personal standpoint in morality. Finally, I try to show that the proposed version of contractualism allows us to spell out the relations between second-personal and first-personal moral authority in the proper way. The account offered thus meets Darwall's requirement that the second-person standpoint includes first-personal considerations.

To avoid misunderstanding: The interpretation I propose amounts to a revisionary argument, suggesting that Kant's conception of morality, particularly his understanding of the constitutive principles of a moral community, aligns with contemporary versions of contractualism. While a full elaboration and defense of Kantian contractualism is beyond the scope of this paper, I try to show that an agreement-based reading of Kant's moral philosophy offers the resources for current attempts to reconstruct morality as a relational enterprise, involving reciprocal claims and obligations.

The paper is structured in the following way: After outlining (section 2) why Darwall thinks that Fichte's but not Kant's account of right supports a second-personal interpretation of morality, I argue (section 3) that Darwall is mistaken in rejecting Kant's conception of right. Section 4 points to problems in Fichte's justification of a rightful condition, and section 5 tries to show that a contractualist reading of the basic principles of Kant's practical philosophy provides the normative basis for Darwall's second-personal account of morality.

2. Darwall's Second-Person Standpoint and Fichte's Concept of a Summons

At the core of Darwall's account of morality are four interrelated notions: claim, accountability, second-personal reason, and second-personal authority. The second-person moral standpoint presupposes that free and rational agents have second-personal authority, second-personal competence, and an obligation of accountability to

others (Darwall 2006, 74-76).² The validity of claims addressed to another person depends upon whether one has the legitimate authority to hold the other accountable. Second-personal relations give rise to second-personal reasons that are agent-relative. A form of reciprocal respect is part and parcel of all second-personal reason-giving. The accountability requirement is met by the “no-reasonable-rejection” test (Darwall 2006, 301).

Darwall thinks that the notion of *summons* (*Aufforderung*) as it occurs in Fichte’s philosophy of right provides a model for explicating second-personal moral interaction. A summons is a second-personal claim that presupposes “a mutual second-personality that addresser and addressee share and that is appropriately recognized reciprocally” (Darwall 2006, 21). A summons, Darwall argues, leads to the recognition of oneself and the other as agents with equal normative standing.³ He then follows Fichte’s suggestion that this requires that agents are to be connected by relations of right.

The reason Darwall draws on Fichte’s philosophy of right and not on Fichte’s ethics, the *Sittenlehre*, in order to explicate his second-personal conception of morality is that Darwall interprets the second-person moral standpoint as providing a foundation for contractualism. Principles of right, he argues, are crucial for contractualism: “It is a hallmark of contractualist theories that they hold principles of right to have a distinctive *role*, namely, as mediating relations of mutual respect” (Darwall 2006, 301). And, he

² For Darwall, second-personal address is connected with reactive attitudes like resentment, blame, indignation, and guilt. He considers these reactive attitudes as indicators of what can be rightfully demanded of others. They are the correct response if others do not recognize the legitimacy of certain claims.

³ For Darwall, the perspective of “unsummoned agency” amounts to a mere observer’s perspective.

adds, contractualism “maintains that the *form* of principles of right is mutual accountability to one another as equal persons” (Darwall 2006, 301).

Darwall’s paper in this volume (Darwall 2014) further indicates his reliance on Fichte. He claims that, compared with Kant’s explication of right, Fichte offers “a potentially superior” account since, unlike Kant, Fichte emphasizes the second-personal character of rights and the second-personal authority on which they are based. More specifically, while Fichte associates a right with a summons and thus with a direct way of addressing another person, Kant defines a right as the authorization to use coercion. Thus a right for Kant allows one person to treat another in a way which is according to Darwall entirely different than being involved in a second-personal normative relation *to* the other person. Moreover, he thinks that the relational obligation *to* the holder of the right to non-interference is missing in Kant’s account. The person, addressed by the right holder, must respond directly to the claim of the right holder; she must recognize that she has a duty to the right holder (Darwall 2014, 12).

3. Kant on Rights and Coercion

How should we assess Darwall’s thesis that Fichte offers a more plausible explication of right than Kant?

The similarity between Fichte’s Principle of Right and Kant’s Universal Principle of Right is obvious. Fichte’s principle reads: “*I must in all cases recognize the free being outside me as a free being, i.e. I must limit my freedom through the concept of the possibility of his freedom*” (Fichte 2000, 49, italics in the original). Kant’s Universal Principle of Right

states: “Any action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law” (Kant 1996a, 6:230, 387). Both principles are standards for regulating our relations in the sphere of external freedom, relying on the same idea: equal freedom is constitutive for rightful relations. Equally close are some of Fichte’s and Kant’s explications of the concept of right. While Fichte holds that “the concept of right is the concept of the necessary relation of free beings to one another” (Fichte 2000, 9), Kant describes right as “the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom” (Kant 1996a, 6:230, 387).

These similarities notwithstanding, Darwall dismisses Kant’s notion of a right. As indicated, his objection is that Kant’s definition of a right in terms of authorized coercion legitimizes a certain way of dealing with the other person but does not involve a second-personal relation and “a relational obligation *to* the right-holder that is entailed by and correlative to the claim right he holds” (Darwall 2014, 12).

I think that Darwall’s critique rests on a misunderstanding. It is true that Kant associates the concept of right with “an authorization to use coercion” (Kant 1996a, 6:231, 388). Darwall assumes that this authority plays out directly in the interaction of agents and thus amounts to the right of one agent to coerce another. However, Kant’s definition of a right, as presented in the introduction to the *Doctrine of Right*, is not meant in that sense. Later chapters in the *Doctrine of Right* make clear that Kant attributes the authority to use coercion to the state. The right to hinder a hindrance to freedom is the state’s prerogative.

As his discussion of property shows, Kant distinguishes carefully between a provisional possession of an object and *a right* to the possession of an object. An initial or original acquisition of an object is simply a claim on an external thing as one's own, thus amounting to a "provisional possession" of external objects. Kant notes that we have to leave the state of nature (where we have provisional possession of objects) and consent to "a rightful condition" of public justice that guarantees and protects property rights. Only in a state of "externally lawless freedom" would an individual be "authorized to use coercion against someone who already, by his nature, threatens him with coercion" (Kant 1996a, 6:307, 452). Kant claims that such a condition of "externally lawless freedom" has to be overcome since it is "a condition that is not rightful, that is, in which no one is assured of what is his against violence" (Kant 1996a, 6:307, 452).⁴

According to Kant, the transition to a rightful condition requires a state based upon a constitution all citizens could accept, since it secures their rights: "*Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (constitutio), so that they may enjoy what is laid down as right*" (Kant 1996a, 6:311, 455). Human beings thus need a system of "public coercive laws", since in a rightful condition individuals do not have authority to use coercion themselves. Rather, they require the proper public institutions for executing coercion.

⁴ As Kant writes: "A rightful condition is that relation of human beings among one another that contains the condition under which alone everyone is able to *enjoy* his rights, and the formal condition under which this is possible in accordance with the idea of a will giving laws for everyone' is called public justice" (Kant 1996a, 6:306, 450).

One has to be careful here: Although Kant claims that from the perspective of the normative principle of equality each individual “member of a commonwealth” has “coercive rights against every other” no individual has the right to turn that right into action since it is “the head of state, by whom alone any rightful coercion can be exercised” (Kant 1996c, 8:291, 292)⁵. Kant attributes to citizens the normative status of holding coercive rights, but he does not grant them the right to execute that coercive authority by themselves. This would represent a fall back into the conditions of a state of nature. Thus individuals will consent to transferring their coercive authority to the state. The insight that they would otherwise face a condition of “external lawless freedom” provides them with a reason to do so.

In Kant’s framework, the move to a civil and rightful condition is justified since each member of the society would, if rational, consent to the normative principles of “lawful freedom”. Kant’s claim that a rightful condition is tied to “the idea of a will giving laws for everyone” indicates that individuals share the normative ground for obtaining a condition of public justice in which “everyone is able to *enjoy* his rights” (Kant 1996a, 6:306, 450). Kant thus seeks to outline the public normative conditions that allow for rightful interpersonal relations. Nothing rules out that those relations cover second-personal ground. Kant himself, as we have seen, points out that human beings need a rightful condition since their actions have an effect on others. Rightful relations require respecting the rights of others and include, hence, the duty of accountability. Darwall’s critique of Kant’s definition of a right is therefore not justified.

⁵ Compare also the following passage: “But *in terms of right* (which, as the expression of the general will, can be only one and which concerns the form of what is laid down as right not the matter or the object in which I have a right), they are nevertheless all equal to one another as subjects; for, no one of them can coerce any other except through public law (and its executor, the head of state), through which every other also resists him in like measure” (Kant 1996c, 8:292, 292).

As a matter of fact, Kant's assumptions are decisive for Darwall's own project. A second-personal account of morality implicitly presupposes a normative framework such as the one Kant has in mind when talking about a 'rightful condition'. The reason is that Darwall takes Fichte's notion of a summons as a model for explicating a second-personal way of addressing another. However, in order for a summons to be constitutive of a second-person moral standpoint, it cannot be an arbitrary kind of demand or command—a point on which Darwall agrees. Recall that he emphasizes that agents must have the *de jure* authority to make claims on another person's conduct. Without such implicit normative assumptions, a 'summons' might represent a morally unacceptable mode of relating to the other individual.

In *The Second-Person Standpoint*, Darwall discusses the case of a slaveholder addressing his slave (Darwall 2006, 267).⁶ He concedes that a slaveholder's demand on his slave might just be abusive talk. While the slaveholder has authority over the slave, we would certainly deny that he has *legitimate* authority to address the slave in a way that reduces him to a mere recipient of orders.⁷ Given the power relations the slave faces, he has reason to comply with the orders of the slaveholder. But this is not the kind of normative second-personal reason Darwall has in mind, indicating that not any mere summons to

⁶ Darwall discusses this case since he is aware that his position might be normatively too strong. He uses the case of the slaveholder to show that his position does not entail that bad actions or involvement in bad practices such as slavery would commit us to some sort of "pragmatic contradiction" (Darwall 2006, 265).

⁷ There is a certain ambiguity in Darwall's way of explaining legitimate or *de jure* authority. He does not distinguish clearly between legitimate or *de jure* authority coming with professional roles and legitimate or *de jure* authority in the moral sense. This is apparent when he talks about the *de jure* authority of a sergeant vis-à-vis her troops. The example is dazzling. Hierarchical professional roles do not generate the kind of second-personal reasons Darwall has in mind. Although we would not deny that the sergeant has legitimate or *de jure* professional authority to address his subordinates through orders, we might have moral reasons for rejecting her specific orders. This indicates that second-personal authority alone is not sufficient to produce second-personal moral reasons.

another person provides a basis for a second-personal account of morality. Only a summons that amounts to a second-personal address to an equal gives rise to second-personal moral relations.

Still, the question remains as to whether Fichte's emphasis on the notion of a summons does not capture more profoundly than Kant's theory what is at stake in second-personal ways of addressing each other as equals. Let us thus take a closer look at Fichte's argument.

4. Fichte's Conception of Right

In *Foundations of Natural Right* (2000), Fichte attempts to derive the concept of right by demonstrating its indispensability to free and self-conscious agency. His idea is that an individual "cannot posit itself as a rational being with self-consciousness without positing itself as an *individual*, as one among several rational beings that it assumes to exist outside itself, just as it takes itself to exist" (Fichte 2000, 9). According to Fichte, self-consciousness involves not only the subject's awareness of herself as unifying representational states, but also the subject's practical perspective on herself as a rational and free being. Thus free and rational agency requires an external domain of freedom that is regulated by the Principle of Right. Hence, for Fichte, rights amount to necessary conditions of self-consciousness.

Fichte's deduction of the conception of right proceeds in three steps based upon three theorems.⁸ The first is that a subject with self-consciousness ascribes to itself free efficacy—i.e., the capacity to form ends and express its will in the world of objects. The second step is that a subject can only see itself as having efficacy if it sees others in the same way. That is to say, a subject becomes aware of its agency via the agency of others, or more specifically, via the summons of another agent which is a call upon the subject “to resolve to exercise its efficacy” (Fichte 2000, 31). “[O]ne is driven,” Fichte claims in the first corollary to this second theorem, “from the thought of an individual human being to the assumption of a second one, in order to be able to explain the first” (Fichte 2000, 38). The final step of the deduction of the concept of right is that assuming the existence of other rational beings involves standing in a particular relation to them, namely “a relation of right (*Rechtsverhältnis*)” (Fichte 2000, 39). This entails, Fichte maintains, that “*I must in all cases recognize the free being outside me as a free being, i.e. I must limit my freedom through the concept of the possibility of his freedom*” (Fichte 2000, 49).

Commentators have noted that Fichte's deduction of the Principle of Right seems problematic. The worry is that it involves an illegitimate shift from a theoretical notion of self-consciousness (the unification of object representations) to a practical form of self-consciousness, namely the willing of a self-determining agent (Neuhouser 2000, xvi-xvii).

Indeed, the claim that rights are necessary conditions of being conscious of one's own self is hardly tenable. The thesis seems, if at all, only plausible with respect to

⁸ For a helpful and clear exposition of Fichte's argument see Neuhouser (2000), xii-xvii.

autonomous practical agency. In order to be free and rational agents, we need a political order guaranteeing our personal and political rights.

Fichte agrees that individuals, if they want to enjoy their rights, should enter into “a community among free beings”. However, he offers only a hypothetical reason for doing so. Fichte believes it is “not possible to point to an absolute reason why someone should make the formula of right—limit your freedom so that the other alongside you can also be free—into a law of his own will and actions.” He therefore attributes mere “hypothetical validity” to the Principle of Right (Fichte 2000, 82).

Darwall acknowledges that Fichte’s conditional justification of the Principle of Right poses a problem for his argument that Fichte provides a more convincing account of rights than Kant does. He therefore criticizes Fichte’s “voluntarism” by arguing that entering into a community of rightful relations with others should not be something an agent may or may not choose but rather a necessary normative precondition. Darwall points out that Fichte must presuppose that “[u]nless we assume that we each already have the normative standing to obligate ourselves through our reciprocal commitments, no reciprocal willing can yield any obligating law” (Darwall 2014, 18). Thus instead of voluntarism, Fichte should according to Darwall adopt a “presuppositional interpretation” of the connection between a summons and the concept of right. That means that Darwall considers a community of regulating external relations in accordance with rights granted by the principle of equal freedom as indispensable for making claims on others.

In my view, Darwall's concession that Fichte's theory has to presuppose the normative framework of a 'rightful condition' so that a summons represents a legitimate claim on another amounts to endorsing Kant's thesis that a rightful condition of public justice is a precondition for having rights towards others.⁹ The Universal Principle of Right is for Kant constitutive of a normative order in which agents may enjoy their space of external freedom independently from arbitrary interventions by others.

We can interpret Kant's point as the claim that rightful demands on others must come with a normative justification backed by principles of public morality on which free and rational agents would agree since this grants them the normative status of being respected as free agents by others. An essential principle of public morality is the Principle of Universal Right, which is the basis for "a system of laws" guaranteeing equal freedom for all. This reasoning provides the link between Kant's account of a rightful condition and contractualism. Kant uses the idea of rational agreement for making the presupposition of a rightful condition normatively compelling.

In what follows, I aim to show that we can interpret Kant's practical philosophy as involving a form of contractualism, which provides a justification for principles of freedom on the one hand, and ethical principles on the other. My argument is that Darwall's second-personal account of morality relies upon accepting such a Kantian version of contractualism.

⁹ One might object that Kant presupposes a natural right, namely the "innate right" of freedom. True, Kant claims that this "original right" to freedom belongs "to every man by virtue of his humanity." He adds, however, that this right holds only "insofar as it can coexist with the freedom of every other in accordance with a universal law" (Kant 1996a, 6:237, 393). This indicates that one's innate right to freedom presupposes the Universal Principle of Right and thus a rightful condition of public justice.

5. Contractualism as a Basis for a Second-Personal Account of Morality

In the final chapter of *The Second-Person Standpoint*, Darwall argues that his second-personal account of morality provides a foundation for contractualism. Here Darwall relies on Kant, not on Fichte. He offers a reformulation of Kant's central moral principles in terms of contractualism.

While I largely agree with Darwall's interpretation of Kant, I think his order of priority should be reversed: Instead of claiming that contractualism depends upon a second-personal account of morality, I argue that contractualism provides the foundations not only for our second-personal moral relations but also for first-personal moral authority.

The starting point for Darwall's reading of Kant's theory is the dignity of persons as expressed by the Formula of Humanity. This requires treating one another as ends and never merely as means. According to Darwall, the concept of dignity has to be spelled out in second-personal terms, namely those of mutual accountability among equals. Dignity thus commits us to addressing others with second-personal demands that cannot be reasonably rejected and to which free and rational agents hold themselves accountable.

Darwall maintains that the condition of recognizing others' dignity gives rise to the idea of a realm or kingdom of ends—that is, a community of rational beings united by common laws requiring us to treat one another as ends and never merely as means. Kant's Formula of Universal Law (FUL) specifies for Darwall what this idea of a kingdom of ends entails with regard to the particular will and reasoning of the individual person.

That is to say, the equal recognition of others excludes regarding individuals as having special standing— an idea that's fleshed out by asking whether one's maxims could be thought or willed as universal laws.

In short, Darwall's interpretation of Kant's framework can be expressed thus: take the Formula of Humanity (FH) as fundamental; interpret FH in terms of the Formula of the Realm of Ends (FRE); and finally, interpret the Formula of Universal Law (FUL) in light of the idea of the realm of ends (Darwall 2006, 304-309, esp. 308). The "no-reasonable-rejection" test amounts to a particular way of expressing the universalization procedure of the FUL. In other words, to ask whether my maxim can be thought or willed as a universal law is equivalent to asking whether others cannot reasonably reject actions based on that maxim.

The problem of attributing such a form of contractualism to Kant is that it seems to blur the distinction between individual and public morality. To ask which principles no one could reasonably reject, or to whose universal acceptance everyone could rationally agree, leaves open whether we are referring to ethical principles or principles of justice. Equally, the question which claims of others we cannot reasonably reject does not specify whether we should assess those demands on ethical grounds or grounds of justice. This seems to conflict with the clear line Kant draws between the spheres of internal freedom (ethics) and external freedom (justice, law).

I will now suggest a contractualist interpretation of Kant's guiding principles of practical philosophy that acknowledges the distinction between the sphere of ethics and the sphere of right. The idea is that the conception of a realm of ends, namely a community

of rational agents who recognize one another as free and equal, is fundamental for Kant's ethics and his philosophy of right. Such a community involves that all its members agree on its constitutive normative principles. I then try to show that Kant's framework not only endorses a first-personal moral standpoint but can also make room for a second-personal account of morality.

Kant's clearest appeal to contractualism appears in his political philosophy. In his essay *On the Common Saying*, Kant argues that a rightful or civil condition that establishes a commonwealth preserving "the *right* of human beings under *public coercive laws*" rests on a social contract, namely "the general (united) will of the people" that "is called the *original contract*" (Kant 1996c, 8:289-290; 8:295, 295). The possible consent of citizens constitutes for Kant "the touchstone of any public law's conformity with right" (Kant 1996c, 8:297, 297).

Kant's ethical theory, however, seems far from contractualism. The point of Kant's argument in the *Groundwork* is to reveal the principle of a good will by a conceptual analysis of the notion of duty. This analysis leads, as we know, to the Categorical Imperative. A morally good person makes the Categorical Imperative her principle of action by acting only on maxims that can be thought or willed as universal law.

The incentive¹⁰ of the action is decisive for the morality or immorality of the action. We act morally when we act from the motive of duty. Maxims as subjective principles of

¹⁰ In the *Groundwork* Kant defines an incentive (*Triebfeder*) as a subjective ground of motivation, based on desires and inclinations, while a motive (*Bewegungsgrund*) is an objective ground that motivates a rational will. In his later works, the term 'incentive' has a broader meaning, covering empirical incentives and incentives of pure reason (Wood 1999, 111-113, 360-361, note 1). This paper uses the term 'incentive' in the broader sense.

action are tied to the setting of ends. Directing one's incentives and setting one's ends is for Kant a matter of internal freedom; no person or institution has the right to force anyone else to adopt specific ends. Kant's ethics thus seems restricted to inner self-regulation and self-legislation by the Categorical Imperative. This, one might object, commits us to a first-person moral standpoint incompatible with a contractualist account of morality. The upshot of this line of criticism is that the idea of a mutual agreement on principles does not capture Kant's focus on internal incentives and maxims by assessing their moral quality.

The situation is different in the sphere of external freedom. Here what is crucial for Kant is *that* people follow the Principle of Right that obligates them to respect the equal external freedom of others. Kant considers the motivational reasons *why* persons do so to be irrelevant. Mere compliance is morally sufficient.¹¹ Since the sphere of external freedom does not rely on the inner incentives and motivations of the person, it seems compatible with contractualism.

How should we cope with that dividing line between Kant's ethics and his philosophy of right? Does it entail the two spheres of Kant's practical philosophy to exist side-by-side and track different theories of morality?

There is similarity between Kant's formulation of the Categorical Imperative in the *Groundwork* (namely to act only according to maxims which can be willed as universal

¹¹ Kant famously expressed this distinction between internal and external freedom thus: "All lawgiving can therefore be distinguished with respect to the incentive [...]. That lawgiving which makes an action a duty and also makes this duty the incentive is *ethical*. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is *juridical* (Kant 1996a, 6:219, 383).

law) and the Universal Principle of Right, which requires that actions be compatible with the freedom of others “in accordance with a universal law”. But the exact connection remains unclear.

Actually, there seems no way to proceed directly from the Categorical Imperative in the *Groundwork* to the Universal Principle of Right. The Universal Principle of Right cannot be derived from the Categorical Imperative since the latter is tied to the motives and ends of the person, whereas the Universal Principle of Right completely ignores those internal elements. Some philosophers have thus concluded that Kant’s philosophy of right does not fit into the structure of Kant’s moral philosophy.¹² Kant’s own project notwithstanding, the *Groundwork* does not appear to provide the foundation for Kant’s moral philosophy as a whole.

My suggestion is that Kant’s idea of a realm of ends, as he introduces it in the *Groundwork*, provides the unifying principle for his practical philosophy. It should be seen as the centerpiece of his practical philosophy, covering the basic principles of Kant’s ethics and his philosophy of right.¹³ A consequence of this view is that contractualism is the foundation for Kant’s ethics and his philosophy of right.

¹² One proponent of the so-called independence thesis is Willaschek (1997) and (2009). Guyer (2009) defends the unity of Kant’s practical philosophy. Ripstein (2009, Appendix) tries to explain the connection between Kant’s philosophy of right and the rest of Kant’s philosophy by appealing to Kant’s arguments about concepts and objects in the *Critique of Pure Reason* in order to clarify why and in what respect the Universal Principle of Right has to be different from the Categorical Imperative.

¹³ This interpretation differs somewhat from Kant’s own exposition in the *Groundwork*. But I do not think it incompatible with the spirit of Kant’s ideas. At first glance, the suggestion that the realm of ends is central to Kant’s practical philosophy seems to conflict with Kant’s claim that the Formula of the Realm of Ends is the result of the synthesis of the Formula of Humanity and the Formula of Universal Law. However, to claim that we should relate to one another in a way that respects our being free and rational agents, as the idea of a realm of ends requires, captures the meaning of the Formula of Humanity; the idea of the Universal Law Formula is fleshed out, in my interpretation, by asking which common principles and laws can be universalized—i.e., cannot be reasonably rejected by all free and rational agents.

Kant formulates the idea of a realm of ends thus: “[A]ll rational beings stand under the law that each of them is to treat himself and all others *never merely as means* but always *at the same time as ends in themselves*. But from this there arises a systematic union of rational beings through common objective laws [...] [W]hat these laws have as their purpose is just the relation of these beings to one another as ends and means” (Kant 1996b, 4:433, 83). He then adds: “A rational being belongs as *a member* to the kingdom of ends when he gives universal laws in it but is also himself subject to these laws” (Kant 1996b, 4:433, 83).

What justifies the idea of a realm of ends, that “systematic union of rational beings through common objective laws”? One might claim that those common laws constituting a “systematic union of rational beings” are dictated by pure practical reason. However, one might also interpret them as being based upon an agreement.

We are brought directly to the idea of a realm or kingdom of ends by seeking to answer the question: On what fundamental principles must our relations to each other be based so that all of us, as free and equal agents, have reason to consent to them?¹⁴ We would all give ourselves those common laws and choose to live by them since this guarantees our equal standing and freedom. It seems reasonable, from the standpoint of all, to accept them; we cannot reasonably reject them. This way we are a moral community, entertaining relations of dignity to each other.

¹⁴ Even Christine Korsgaard, who defends a first-personal conception of morality, speaks the language of contractualism when she explains Kant’s conception of a realm of ends in *The Sources of Normativity* in the following way: “The moral law, in the Kantian system, is the law of what Kant calls the Kingdom of Ends, the republic of all rational beings. The moral law tells us to act only on maxims that all rational beings could agree to act on together in a workable cooperative system” (Korsgaard 1996, 99).

The obvious next step is to argue that this general idea of a realm of ends is spelled out in the sphere of internal freedom by the ethical Categorical Imperative and in the sphere of external freedom by the Universal Principle of Right. The Categorical Imperative secures my autonomy in the sphere of inner motivations and convictions; the Universal Principle of Right warrants my independence from the choice of others, thus enabling me to be my own master in external relations to others.

Kant's practical philosophy aims to answer two crucial questions, i.e. with regard to ethics: 'What is the principle of good action?' and, as concerns the sphere of right: 'What justifies coercion?' In answering those questions, Kant offers us two regressive arguments. In the *Groundwork*, the regressive argument leads to the Universal Law formulation of the Categorical Imperative. Kant reasons that a free or autonomous will acts according to its own principle or norm, that is to say, it is guided by a self-given law. The principle of a free will is henceforth a law, and the condition of being a law, namely holding universally, is exactly fulfilled by the Categorical Imperative in the Universal Law formulation.

The regressive argument in the philosophy of right is based upon the assumption that coercion is justified when it prevents an action that would violate the condition of universal freedom. As Kant puts it: "[I]f a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right" (Kant 1996a, 6:231, 388).

Kant's point is that enforceable constraints on behavior should be set by universal external laws consistent with everyone's freedom. This then grants the authority to use coercion. Crucially, this authorization amounts to a general regulation acceptable from all individual standpoints. Kant emphasizes that the use of coercion is not vindicated because of the unlawfulness of a particular act. The right to use coercion is for Kant neither directed at the inner determination of a perpetrator to comply with the external law, nor is it based upon the "unlawful use of freedom" by a perpetrator's particular criminal act. Rather coercion is warranted by universal external laws – and this universality includes the coexistence of one's freedom with the freedom of perpetrators, as Kant's remarks make clear: "Thus when it is said that a creditor has a right to require his debtor to pay his debt, this does not mean that he can remind the debtor that his reason itself puts him under an obligation to perform this; it means, instead, that coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors, in accordance with a universal external law" (Kant 1996a, 6:232, 389).

The idea of a realm of ends and the Universal Law formulation of the Categorical Imperative and the Universal Principle of Right are connected in the following way: first, there is the contractual agreement of all subjects to the idea of a realm of ends, which includes the commitment to see oneself as belonging to a community of free and equal cooperative subjects. The regressive arguments show why the principle of ethics, the Categorical Imperative in the Universal Law formulation, and the guiding principle of the philosophy of right (i.e., the Universal Principle of Right) can be considered as implementing the idea of a realm of ends in the spheres of both internal and external freedom. I treat others as ends and not merely as means if I ask myself whether my

maxims for acting can be thought or willed as universal law. As indicated, this means to ask whether others can reasonably consent to my maxim. I also treat others as ends, and not merely as means, if I consent to live in cooperative relations with others regulated by the principle of equal freedom.¹⁵

On this interpretation, the regressive arguments do not simply lead to the ethical Categorical Imperative and the Principle of Universal Law—leaving the connection between ethics and the philosophy of right still open. Indeed, the regressive arguments provide a detailed account for why the ethical Categorical Imperative and the Universal Principle of Right meet the requirements set by the general standard of a community of rational beings based on “common objective laws.”¹⁶

Before proceeding to outline the consequences of this reading of Kant with respect to Darwall’s second-personal account of morality, I want to address a possible objection: Is the step from the idea of the realm of ends to the Universal Law formulation of the Categorical Imperative really plausible? In other words, does it not simply leave us again with the problem that any general principle that seeks to unite ethics and the philosophy of right ultimately fails to capture the crucial point of ethics, namely the decisive role of

¹⁵ One might object that this interpretation is in tension with Kant’s claim that the Universal Principle of Right is “a postulate that is incapable of further proof” (Kant 1996a, 6:231, 388). I think, however, that reconstructing the reasons we have for consenting to the Universal Principle of Right is more in the spirit of Kant’s project. True enough, Kant is often close to rationalism, even a dogmatic form of rationalism. Yet his painstaking efforts in developing a regressive argument in the *Groundwork* show that Kant is not content with relying on mere a priori truth as a justification of the Categorical Imperative.

Guyer (2009, 201-217) argues that Kant’s claim that a postulate is “incapable of further proof” does not mean that a postulate needs no further justification.

¹⁶ A possible criticism is that Kant does not leave room for principles of justice as standards of public morality, functioning as guidelines for the sphere of law and the legal design of the basic institutions of society. But such principles of justice could equally be reconstructed in response to the question: Which form of society would free and rational agents who want to be recognized as free and rational agents choose? Kant’s position can be interpreted to cover such principles of public morality.

the incentive of action and the inner determination of the person? Can the Categorical Imperative in ethics be considered an implementation of the idea of a realm of ends?

The problem is especially relevant given that the Formula of Universal Law is addressed to the individual herself and brings her will to the fore by requiring: “[A]ct *only in accordance with that maxim through which you can at the same time will that it become a universal law*” (Kant, 1996b, 4:421, 73, italics in the original). Some philosophers, including Darwall, have therefore claimed that the Universal Law formulation of the Categorical Imperative makes no appeal to the standpoint of others and what they can reasonably accept or cannot reasonably reject (Darwall 2006, 307). They argue that the contradiction in the case of non-universalizable ethical maxims amounts to mere self-contradiction of the inner self.¹⁷

Such a narrow reading of the Universal Law Formula seems to me untenable. Closer examination reveals that the universalization test only works if one assumes that others act likewise. What the inner determination of one’s will amounts to is the acceptance that one’s will must be governed by a principle that could be thought or willed for others as well. I have to act in a way that my will, expressed in my maxims, be guided by principles to which others could consent. We have to read this “will” as my internal voice, but not as my solipsistic voice. The decisive element in the Formula of Universal Law is universality, and this includes making my inner resolutions with regard to the standpoint of others. Given its structure, the Categorical Imperative test requires me to

¹⁷ Ripstein (2009, 385, 386) defends such an interpretation. For him, the Categorical Imperative test “is a kind of self-contradiction for which the agent must reproach him- or herself in conscience” (Ripstein 2009, 377).

consider the claims of others; its application trivially presupposes something like 'second personal competence'.

The worry about an unbridgeable gap between the idea of a realm of ends and the Formula of Universal Law thus seems unsubstantiated. Coherence in my normative commitments requires that I, who already agreed on the laws constitutive for the community of rational and equal beings, approve that my own will must also be guided by those laws. I address the general principle to myself. The incentive of my action is relevant since it is indispensable to my individual agency. Moreover, when it comes to my own moral action, the incentive must be of a particular kind: I simply cannot determine myself to act morally unless my incentive is tied to the moral principle.

Individual agency in the sphere of external relations likewise requires an incentive. However, here I can, though need not act morally. This is the case since the authority for regulating the sphere of external relations is handed over to the state. And the state may require, even force us to comply with the laws, but it may not require us to do so morally.

Let us return to Darwall's theory of morality. Darwall claims that the second-person standpoint gives rise to contractualism. In outlining the connection between his second-personal conception of morality and contractualism, he focuses exclusively on principles of right. Recall his remark that principles of right constitute a "hallmark" of contractualism. This entails that Darwall's account of morality merely captures our moral obligations in the sphere of external freedom.

But morality also includes norms that guide my moral relations to others in light of the principles to which I consented, given that general recognition of those principles secures my status as a free and rational agent. This is where first-personal moral authority becomes relevant: I consent to live by the principles constituting a community of free and rational beings, given that this grants me the recognition and respect of others as a free and rational subject. But this initial agreement on the norms constituting such a moral community entails that I, deliberating from the first-person standpoint, also assess my actions and obligations to others in light of those principles that speak to their standpoints.¹⁸ Contractualism thus covers not only the second-person standpoint but also shapes my first-personal moral authority.

Darwall cannot—and in fact does not—dispel a first-person standpoint. An essential element in his moral theory is responsibility and accountability to others. However, Darwall himself emphasizes that this second-personal aspect must have a first-person counterpart. What he calls *Pufendorf's point* is relevant here: If we, as members of the moral community, hold another person responsible for complying with a moral obligation, we take it that the person likewise holds herself responsible. In Darwall's words:

To intelligibly hold someone responsible, we must assume that she can hold herself responsible in her own reasoning and thought. And to do that, she must be able to take up a second-person standpoint on herself and make and acknowledge demands of herself from that point of view (Darwall 2006, 23).

¹⁸ For Darwall, the first-person perspective of “unsummoned agency” amounts to a mere observer's perspective on objects and alternative actions (Darwall 2014, 14).

This entails that the person must rely on her *own reasoning and judgment* and not simply be driven by fear of sanctions from others. Just as Pufendorf claimed that moral obligations derive not merely from the external authority of God threatening us with sanctions (in case we violate moral obligations) but from our understanding of God's demands, so too our commitment to moral obligations emerges from our understanding of the demands, which we, as rational agents, address to ourselves. To take up a second-person standpoint on oneself means to define one's first-personal moral authority in light of the principles constituting the moral community of free and rational agents. By confirming the importance of "free self-determination" (Darwall 2006, 23), Darwall presupposes a kind of internalism on the part of the individual subject: the agent herself acknowledges the force of obligations.

Contractualism does not rule out such first-personal considerations. Even if the normative force of the basic moral laws rests on a contractualist agreement with others, there must be corresponding first-person recognition of that source of normativity.

To conclude: I argued that contractualism offers a direct route to the normative idea of a community of equals constituted by principles that cannot be reasonably rejected. However, contractualism also allows us to specify that general idea in order to make room for the crucial distinction between a theory of justice and rights, on the one hand, and ethics, on the other. Such a form of contractualism grounds Darwall's second-personal account of ethics but also covers the first-personal standpoint.

Literature

Darwall, Stephen 2006: *The Second-Person Standpoint. Morality, Respect, and Accountability*, Cambridge, MA and London: Harvard University Press.

Darwall, Stephen 2013: *Morality, Authority, and Law. Essays in Second-Personal Ethics I*, Oxford: Oxford University Press.

Darwall, Stephen 2014: "Why Fichte's Second-Personal Foundations Can Provide a More Adequate Account of the Relation of Right than Kant's", *Grazer Philosophische Studien* 90, 2014, 5-20.

Fichte, Johann Gottlieb 2000: *Foundations of Natural Right. According to the Principles of the Wissenschaftslehre*. Cambridge: Cambridge University Press. Translation by Michael Baur. References to this work are to page numbers.

Guyer, Paul 2009: "Kant's Deductions of the Principles of Right". In: Paul Guyer, *Kant's System of Nature and Freedom*, Oxford: Oxford University Press, 198-242.

Kant, Immanuel 1996a: "The Metaphysics of Morals. Part I: Metaphysical First Principles of the Doctrine of Right". In: *Kant, Practical Philosophy*. Cambridge MA: Cambridge University Press, 363-506. Translation by Mary Gregor. References are to the Preussische Akademie edition and, second, to the page numbers of the Cambridge volume.

Kant, Immanuel 1996b: "Groundwork of the Metaphysics of Morals". In: *Kant, Practical Philosophy*. Cambridge: Cambridge University Press, 41-108. Translation by Mary Gregor. References are to the Preussische Akademie edition and, second, to the page numbers of the Cambridge volume.

Kant, Immanuel 1996c: "On the Common Saying: That May Be Correct in Theory, But It Is of No Use in Practice". In: *Kant, Practical Philosophy*. Cambridge MA: Cambridge University Press, 273-309. Translation by Mary Gregor. References are to the

Preussische Akademie edition and, second, to the page numbers of the Cambridge volume.

Korsgaard, Christine M. 1996, *The Sources of Normativity*, Cambridge: Cambridge University Press.

Neuhouser, Frederick 2000: Introduction to Fichte's *Foundations of Natural Right*. In Johann Gottlieb Fichte, *Foundations of Natural Right. According to the Principles of the Wissenschaftslehre*. Cambridge: Cambridge University Press, vii-xxviii.

Pauer-Studer, Herlinde 2010: "The Moral Standpoint: First-Personal or Second-Personal" *European Journal of Philosophy* 18, 2, 296-310.

Ripstein, Arthur 2009: *Force and Freedom. Kant's Legal and Political Philosophy*. Cambridge and London: Harvard University Press.

Willaschek, Marcus 1997: "Why the Doctrine of Right does not Belong in the *Metaphysics of Morals*: On Some Basic Distinctions in Kant's Moral Philosophy". *Jahrbuch für Recht und Ethik* 5, 205-227.

Willaschek, Marcus 2009: "Right and Coercion: Can Kant's Conception of Right be Derived from his Moral Theory?" *International Journal of Philosophical Studies* 17, 1, 49-70.

Wood, Allen W. 1999: *Kant's Ethical Thought*, Cambridge: Cambridge University.