Revista de
Estudios
Kantianos

Revista de
Estudios
Kantianos

Revista de Estudios Kantianos

Publicación internacional de la Sociedad de Estudios Kantianos en Lengua Española
Internationale Zeitschrift der Gesellschaft für Kant-Studien in Spanischer Sprache
International Journal of the Society of Kantian Studies in the Spanish Language

Número 5.1, año 2020

Entidades colaboradoras
Sociedad de Estudios Kantianos en Lengua Española (SEKLE)
Departament de Filosofia de la Universitat de València
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La actualidad de la *Crítica de la razón pura*: Parte Práctica

‘What Ought We Do?’ And Other Questions

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Abstract
Kant formulates the question “What ought I do?” as an agent’s question. This is not the only way in which practical reasoning can be approached. A great deal of contemporary work in ethics and political philosophy addresses different, often narrower, questions. Much of it focuses primarily on recipients rather than agents, and so on entitlements or rights rather than on requirements or duties to act, including most obviously discussions of human rights. I will consider some of the consequences and the advantages of starting from each of these questions, and some of the ways in which each shapes practical reasoning.

Keywords: Kant, Rawls, Constructivism, Human Rights

‘¿Qué debemos hacer?’ y otras preguntas

Resumen
Kant formula la pregunta “¿Qué debo hacer?” como una cuestión relativa al agente de la acción. Sin embargo, este no es el único modo en el que permite ser enfocado el razonamiento práctico. Una buena parte de los trabajos contemporáneos en ética y filosofía política abordan cuestiones diferentes, a menudos, menos restringidas. Muchos de ellos no se focalizan primariamente en los agentes, sino en los destinatarios de la acción, y, de este modo, en los derechos más que en los deberes, incluyendo obviamente los derechos humanos. Consideraré algunas de las consecuencias y ventajas de empezar desde cada una de estas cuestiones y algunos de los modos en los que estas forman el razonamiento práctico.

Palabras clave: Kant, Rawls, Constructivismo, derechos humanos

Near the end of the *Critique of Pure Reason* (A805/B833) Kant asserts that “All the interests of my reason, speculative as well as practical, combine in the three following questions: 1. what can I know? 2. What ought

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I do? 3. What may I hope?". In this paper, I shall focus not on Kant's systematic reasons for thinking that reasoning must address all three questions, but on his reasons for formulating the second question in a specific way, and on some implications of that formulation.

Kant formulates the second question as an agent's question. This is not the only way in which practical reasoning can be approached. A great deal of contemporary work in ethics and political philosophy addresses different, often narrower, questions. Some of it replaces practical questions with third party or spectator questions, such as 'what are my (or our) 'values''? Some of it prioritizes neither agents nor recipients, and offers a perspective-neutral account of just institutions (e.g., Rawls' theory of justice). Much of it focuses primarily on recipients rather than agents, and so on entitlements or rights rather than on requirements or duties to act, including most obviously discussions of human rights. I will consider some of the consequences and the advantages of starting from each of these questions, and some of the ways in which each shapes practical reasoning.

1. The Agent's Question

The question "What ought I (or we) do?" is ancient, and it can seem obvious that this is the key question that any discussion of ethics and of justice should address. Yet many contemporary discussions of ethics, and in particular of justice, do not start from this question.

Many traditional accounts of justice saw the agent's question as central, and often combined and integrated accounts of justice and of other ethical standards. They aimed to offer accounts of 'requirements' both to act in specific ways and to cultivate specific traits of character, so typically provided accounts both of 'duty' and of 'virtue'. The terms 'duty' and 'virtue' are still familiar but are often seen as old-fashioned, and sometimes as suspect or obsolete. A growing suspicion about duty, going back to Nietzsche but becoming widespread and popular in the wake of the horrors of WWI with its exaggerated emphasis on patriotic duty, may be one reason

why appeals to duty and thereby to the agent's question, were so often set aside during the mid-twentieth century in favor of narrower questions.[2]

A considerable amount of contemporary work in political philosophy takes a 'perspective-neutral' view of the basic question to be addressed. It prioritizes neither agents nor recipients, and seeks to justify the norms or standards that just institutions should meet, while remaining largely silent about standards other than those of justice. John Rawls's work is a leading example of a perspective-neutral account of justice. An even larger range of contemporary discussions of standards of justice—including paradigmatically the vast range of discussions of Human Rights—prioritize the 'recipient's perspective', by focusing in the first place on those aspects of justice that individuals can claim as their rights.

Each of these approaches addresses practical or normative questions about standards that matter, but many other discussions set aside practical or normative questions and take a 'third party' or 'spectator' view of ethics. Spectator approaches discuss the 'values' (or supposed values) 'actually' held or preferred by certain individuals, social groups, or by entire cultures and communities. This is no doubt appropriate for historical, sociological and cultural studies, but it evades questions about the normative justification of the (supposed) values discussed, sometimes suggesting that there is an element of justification to be found in the mere fact (when it is a fact) that they reflect individual choices or preferences, or culturally entrenched positions. This sleight of hand is often apparent in appeals to 'my values' or 'our values' (or 'my' or 'our' principles or preferences), as if this could constitute justification. Although this trivializing substitute for normative justification was ridiculed a long while ago by Groucho Marx, with the comment "Those are my principles, and if you don't like them… well, I have others", it remains persistently popular. However, I intend today to ignore discussions of (supposed) values that take a spectator perspective and to concentrate on the underlying differences between those approaches that take questions about the justification of practical or normative standards more seriously.

[2] I have discussed some of these tendencies in more detail in "Justice without Ethics: A Twentieth Century Innovation?", forthcoming in John Tasioulas volume *Cambridge Companion to the Philosophy of Law* (forthcoming).

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

Choosing to start from one or another question can lead to systematically different accounts of justice, and in some cases also of other ethical standards. Approaches that start from one question are often silent about normative concerns that are central in approaches that start from another, or even render those questions and concerns invisible. So I begin by considering the broadest and most inclusive approaches, and then turn to positions that take narrower views of the basic questions, and consequently of the range of normative claims.

1.1. Range and Structure

Kant's broad and systematic account of ethics and justice provides a clear illustration of the way in which focus on a specific question addressed can shape the range and structure of normative thinking. Kant was, of course, not the only philosopher to take the agent's question as basic for ethics. A range of Aristotelian and Kantian approaches to ethical writing also addresses the agent's question, and considers a broad range of questions about justice and about ethics.

However, there is a second reason for taking Kant's approach as central among those that address the agent's question. This is that he combines a focus on the agent's question with a stringent view of normative justification. This is a controversial claim, and across two centuries Kant's approach to normative justification has often been criticized as excessively ambitious and demanding, or as downright implausible. There is a good deal at stake here. If Kant's view of justification is rigorous and productive, the wider scope of his conclusions will be an advantage. If it is not rigorous or not productive, there may be a reason to settle for narrower approaches to justice, even if they ignore the rest of ethics.

2. Questions, Scope, and Structure

2.1. Kant: Justice *and* Ethics

Kant's discussions of justice formed part of a broad account of duties that addresses the classical agent's question 'what ought I (or we) do?' He argued for a systematic and differentiated account of human duties, using a range of distinctions that had been widely used by early modern natural law theorists (see Schneewind 1993: 53–74), including those who took

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

perfectionist approaches to justification. He distinguished 'perfect duties' that are owed without exception, (e.g., duties to keep promises; *G*, AA 04: 421ff—one of many passages) from 'imperfect duties' that leave agents discretion on whether to act in a particular situation (e.g., duties of beneficence; *G*, AA 04: 423, again one of many passages). He subdivides perfect duties into duties of justice, that can and should be enforced by public authorities (*MM*, AA 06: 230ff.) from perfect duties that are not duties of justice, so should not be enforced by public authorities. Among enforceable duties of justice he classifies some, 'but not all', as duties whose performance can be claimed as rights by others. For Kant, an account of rights is therefore 'only part' of a theory of justice, which in turn provides 'only part' of an account of perfect duties, which in turn provides 'only part' of an account of duty. As he sees it, claims that prioritize the classical agent's question can support a complex and systematic account of required action that covers imperfect as well as perfect duties, that distinguishes perfect duties of justice from perfect duties that form part of ethics but not of justice, and that subdivides duties of justice into those whose performance others can rightfully claim and those that others cannot claim as their right (see O'Neill 2016:111–125).

2.2. Rawls: Justice as Fairness, but without Ethics

Rawls's theory of justice has a narrower scope. He does not address the generic agent's question, 'what ought I (or we) do?', but takes a perspective-neutral approach to the 'basic structure of society' and aims to identify the principles that a just society should embody. He claims that this approach "generalises and carries to a higher level of abstraction the traditional conception of the social contract" (*TJ*, AA 03; see 11), but does not provide a basis for an account of ethical duties.

However, while Rawls does not aim for as full an account of required action as the one Kant had proposed, he too offers much more than an account of those duties that are the counterparts of claimable rights. Only the first of Rawls's two principles of justice focuses on standards of justice that have counterpart rights, namely those that would secure "an equal right to the most extensive basic liberty compatible with a similar liberty to others" (*TJ*, AA 03: 60). Rawls's second principle of justice is a distributive requirement, and does not define individual rights. It demands that social and economic inequalities be arranged so that they are reasonably expected

to be to everyone's advantage, and are attached to positions and offices that are open to all (*TJ,* AA 03: 60). 'Justice as fairness', as Rawls articulated it, therefore demands 'both' a range of rights that can be claimed by Individuals 'and' a set of institutions that secure certain structural conditions. Institutions that secure these structural conditions will often give rise to claimable rights: but these will be the 'legal' or 'institutional' rights of some jurisdiction, rather than fundamental rights with universal scope and deep justification. Principles of distributive justice do not generally define individual rights, or show 'who' may claim 'what' from 'whom'.[3]

2.3. Human Rights: Justice as Claimable Rights

Human Rights approaches to justice take a narrower view of its scope than either Kantian or Rawlsian approaches. They address neither the agent's question nor an account of perspective-neutral claims about the basic structures of just societies. Rather they set out specific claims that right-holders have to others' actions and forbearance. Human Rights approaches are intended to answer the claimant's question 'What am I (or we) entitled to claim?', so are silent not only about imperfect duties (e.g. beneficence), but also about those perfect duties that cannot or should not be claimed or enforced by public authorities (for example, many aspects of honesty or promise-keeping), as well as about aspects of justice that are not directed to individual claimants and do not define entitlements, but (for example) prescribe structures or patterns for the distribution of certain goods.

Everyday discussions of Human Rights often purport to offer an account of distributive standards, and of individuals' claims under those standards. However, this is secured only by yoking Human Rights standards to institutional assumptions and interpretations, such as claims about the bodies of law that are labeled Human Rights law and other specific institutional arrangements for protecting and securing rights.

Human Rights norms are highly indeterminate. For example, rights to goods and services, such as a 'right to food' or a 'right to health' (or to health care), do not identify relevant duty-bearers, let alone prescribing 'just' which food or medical intervention is to be provided by 'whom' and

[3] Structural principles that prescribe strict equality of outcomes, define individual entitlements, but other principles of distributive justice are more indeterminate and could be institutionalized in various ways, so will define individual entitlements only when supplemented by specific legal or other institutional assumptions.

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

for 'whom'. Such claims are incomplete or indeterminate without institutional measures that assign the relevant duties to specified (preferably competent) duty-bearers. And distributive standards that range across unidentified (often unidentifiable) persons (e.g., rights of future generations; rights to fair economic arrangements) require institutional supplementation not only to specify the relevant duty-bearers, but also to specify the relevant right-holders, so are 'doubly' indeterminate unless and until supplemented with institutional structures that identify relevant duty-bearers and right-holders. The institutional structures that implement Human Rights requirements define 'positive' duties and 'positive' rights, rather than requirements of justice for which broader moral justification can be claimed.

At one time indeterminate aspects of justice that require supplementation by specific institutional provisions, might have been spoken of as 'provisional right(s)', indicating that their claims were under-defined and could not be secured unless and until institutional provision determined 'who' ought to do 'what' for 'whom', and 'who' could claim 'what' from 'whom'. Recent disagreements about whether Human Rights should be thought of as 'moral' or 'political'[4] shows both that deep uncertainty about the scope and status of claims about Human Rights persists, and that a great deal of 'institutional' ground must be covered to support determinate and effective claims to rights. So while human rights approaches assert pleasingly definite claims, their normative justification and their interpretation both remain contentions. And with that, I turn from questions about scope to questions about justification.

3. Patterns of Justification

One might expect these marked differences in the scope of differing approaches to justice to be linked to the relative difficulty of the justificatory arguments needed by each approach. More specifically, one might expect that the wider scope of Kant's account of duties would make his claims particularly hard to justify, and that the narrower scope of Human Rights thinking would make its claims particularly easy to justify. However, matters are not so simple, and it is far from obvious that Human Rights

[4] Disagreement whether Human Rights are, or indeed can be, both moral and political has seemingly become more intense in the second decade of the twenty-first century, as the following titles suggest: Moyn 2010; Hopgood 2013; Posner 2014; Malcolm 2018; Etinson 2018.

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

claims are easier to justify than other claims about justice. My sense of the matter is that Kant's approach to justifying required action—including standards of justice—rests on 'less' demanding assumptions than are typically used by those approaches that seek to justify less.

3.1. Kant: Justification as Modal Constructivism

Kant's approach to the justification of practical principles relies on the thought that reasons for action should be fit to reach their intended audiences, hence that reasons intended to be relevant for everyone, whether they bear on justice or on other ethical standards, must have 'the form of law'. This is not a demand for 'agreement' by all. Kant proposes a weaker, modal account of practical reasoning: reasoning fails unless reasoners offer considerations that their audiences could 'in principle' follow in thought, or adopt for action. Anybody who aims to justify principles to 'the world at large'—whether principles of justice or other ethical principles—must therefore, Kant thinks, 'reject' principles that 'could not' (in principle) be followed in thought or adopted for action by all others.

This demand is the key to Kant's constructive method of justification, on which his practical philosophy relies, and which is summarised in the universal law formulation of the Categorical Imperative. At the start of the *Doctrine of Method* of the *Critique of Pure Reason* he set out systematic parallels between reasoning and constructing. As he sees it, building projects need materials, a workforce and a plan. We must make "an estimate of the materials, and have determined for what sort, height, and strength of building they will suffice" (*KrV*, A707/B735, a. trans.), so must rule out over-ambitious constructions. Like the ancient builders of the Tower of Babel, we may find that "although we had in mind a tower that would reach the heavens, yet the stock of materials was only enough for a dwelling house—just roomy enough for our tasks on the plain of experience and just high enough for us to look across the plain" (*KrV*, A707/B735, a. trans.). Like them, we may come up against the reality that some plans are not realizable for other reasons. Building projects may fail not only if materials are lacking but if disagreement undermines cooperation, and a "Babel of tongues [that] unavoidably sets workers against one another" with the result that they are "scattered [them] across the earth, each to build separately following his own plan". Like Kant, we may find ourselves driven to conclude that "Our problem is not just to do with materials, but

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

even more to do with the plan. Since we have been warned not to risk everything on a favorite but senseless project, which could perhaps exceed our whole means, yet cannot well refrain from building a secure home, we have to plan our building with the supplies we have been given and at the same time to suit our needs" (*KrV*, A707/B735, a. trans.).

Yet many of Kant's commentators across two centuries have held that he relied on extravagant rather than on minimal premises and doubted whether his approach to justification is 'economical', or even 'plausible'. There are undoubtedly readings of the relevant texts, that see his approach as metaphysically extravagant or excessive, But these do not seem to me to offer a convincing reading of Kant's views on reasoned justification, nor therefore of his accounts of justice or of (the rest of) ethics.

However, I am unsure whether Kant offers an adequate inventory of available materials. He may overlook some available materials. He may make inaccurate claims about others. But the strategy of looking first for a minimally extravagant approach to justification seems to me to make sense—although it is not universally popular. Some philosophical discussions of the justification of truth claims and of practical claims suggest that we can help ourselves to a far richer inventory of materials, such as cultural or social beliefs and conventions ('social construction'), or metaphysically powerful principles. However, for present purposes I shall leave aside difficult questions about the range of 'materials' available to us, in order to focus on Kant's suggestive comments about the 'workforce' and the 'plan'.

As Kant sees it, speaking of a 'workforce' is a way of acknowledging the fact that reasoning is not solipsistic. We reason in order to reach and engage with others, 'without presupposing agreement'. Where there is agreement, reasoning is redundant. It is needed when we do not (at least initially) share assumptions, outlook, ideology or beliefs with those who offer us reasons. Where reasoning is undertaken, failure to put forward considerations that others could in 'principle' understand and consider as a basis for action will not advance understanding or justification. Kant seeks to identify what can be done 'without' assuming a shared culture, 'without' assuming shared (supposed) values, and 'without' assuming metaphysically demanding premises. He argues that we can aim to communicate and coordinate even where common standards and principles for coordinating

are not actually agreed, provided we reject principles that 'could' not be followed in thought or adopted for action by anybody—and so by everybody.

This constructivist approach to justification may, of course, offer too little. Kant does not assume that human beings are naturally or instinctively coordinated, like some species of animals or that agreement emerges spontaneously. He wrote in his relatively early *Idea of a Universal History* that

> since human beings in their endeavors do not behave merely instinctively, like animals, and yet also not on the whole like rational citizens of the world in accordance with an agreed-upon plan, no history of them in conformity to a plan is possible (as e.g. of bees or of beavers) appears to be possible (*IUH*, AA 08: 17).

If we seek to offer reasons to all others we must reject principles that 'could not' be principles for all. So while Kant does not assume that human agents will reach agreement on a specific plan or blueprint, he thinks that they can converge on rejecting principles or starting points that 'could not' be principles for all. This, he argues, is 'all' can be presupposed in seeking to offer reasons and thereby justification to others.

This is a limited strategy, but it rules out some important principles, such as those of injury or coercion, that 'could not' be adopted by all because their adoption 'even by some others' would undermine agency for some, and thereby the adoption of like principles by those whose agency was undermined. This spare formulation is the key to Kant's modal constructivist approach to justification. Putting the point in more familiar terms, reasoning with others is not a matter of presupposing agreement on the relevant matters, but of relying 'only' on principles that can be thought of as principles for all, that is to say on principles that are fit to be universal laws.

So Kant's constructive approach to justification is at least not empty, but it is distinctive and minimal. It takes a 'modal' rather than a 'hypothetical' approach to answering the question 'what ought we do?' This modal approach demands the 'rejection' of principles of action that 'cannot' be principles for all: but no more. It provides reasons to reject principles

such as those of coercion, deception, injury, or systematic refusal to help others, which 'cannot' be universally adopted. If we try to envisage the universal adoption of such principles, we inevitably fail since anyone who becomes a victim of their adoption by someone else cannot act on those very principles. Slaves cannot enslave others; victims of coercion cannot themselves coerce; victims of murder cannot themselves commit murder; those who suffer systematic lack of help from others do not survive to deny others all help. Anyone who is committed to acting on principles that are fit to be principles for all must reject these and many other principles of action that are not fit to be principles for all. This approach to justification has substantial implications, although it may not offer enough to justify all the standards of justice (or other ethical standards) that we might hope to establish.

3.2. Rawlsian Justifications: Hypothetical Contractualism to Political Liberalism

Rawls takes a very different approach to the justification of standards of justice. Although his political philosophy is in some ways deeply Kantian, both in *A Theory of Justice (*where he characterizes it as 'contractualist') and in *Political Liberalism* and other later work (where he spoke of his work as 'constructivist'), Rawls develops a line of argument that differs fundamentally from Kant's.

He does not favor either the agent's or the recipient's perspective. He wrote at the beginning of *A Theory of Justice*: "My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the Social Contract as found, say, in Locke, Rousseau and Kant" (Rawls 1971: 11).[5] He prioritizes neither agents nor recipients, neither duties nor rights, but 'structural principles', which, he argues, can be justified as setting out the terms of a distinctive form of hypothetical contract. In anchoring justification in 'hypothetical agreement', Rawls relies on more demanding premises than Kant had assumed in appealing to intelligibility and adoptability—both of them modal rather than hypothetical notions.

[5] I have set out some differences of method in the two works in "The Method of *A Theory of Justice*" (1998: 27–43).

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

Of course, appeals to 'hypothetical' agreement rest on weaker assumptions than appeals to 'actual' agreement. But they assume more than the 'possible' agreement set out in Kant's universalisability test. The specific type of hypothetical agreement that Rawls proposes posits individuals who find themselves in a hypothetical 'Original Position' in which they have general knowledge of their society, but none of their own position, advantages and disadvantages. This 'may' rule out agreements that (for example) rely on deception, manipulation, abuse, conspiracy, partisan influence or other forms of wrongful action. However, what would be hypothetically agreed can offer a robust basis for justice only if the standards for hypothetical agreement are a 'sufficient' basis for identifying principles of justice, and it is not clear that they would do so.

In *A Theory of Justice* Rawls claimed that those whose self-interest is obscured by a (hypothetical) 'veil of ignorance', would agree on two specific principles of justice. But this may not be 'enough' to ensure that whatever is agreed is just and indeed Rawls did not claim that appeals to agreement under conditions of hypothetical ignorance offered 'sufficient' justification. In *Theory of Justice* he underpinned this appeal to agreement in an Original Position with a claim that that the principles hypothetically agreed to would also have a deeper, coherentist justification. The two principles of justice could be brought into *reflective equilibrium*—into agreement—with "our considered moral judgments" by an iterative process of mutual adjustment. However, he later came to think that this coherentist approach to the justification of principles of justice did not work. Considered moral judgments vary hugely, so it is less than clear what has to be brought into reflective equilibrium with the two principles of justice. Agreement on considered moral judgments may indeed be found 'within' homogenous social groups and cultures, but appeal to such agreement could provide only limited, communitarian justification. Social constructivism cannot offer an adequate basis for justice in pluralistic societies.

In his late writings, Rawls reconfigured his approach to the justification of principles of justice. He replaced the appeal to reflective equilibrium with 'our considered moral judgments' with an appeal to agreement reached in a specifically 'political' view of the context of justice. This revised justificatory strategy offered a 'political' rather than a 'moral' justification. Principles of justice are seen as norms that would be agreed

among 'fellow-citizens in a bounded, liberal, democratic society'. In effect, Rawls's later work 'assumes' a liberal and democratic political order, where citizens may not share "considered moral jdugements", and argues that members of those political societies will converge on the two principles of justice (which he notably did not alter when he revised his account of their justification).

This revised, political starting point could not establish conclusions about wider ethical issues (as Kant had done, and as Rawls himself had earlier thought possible) but 'only' about justice, and that 'only' for certain sorts of societies. *Political liberalism* is a theory of justice for liberal societies. It is silent about the rest of ethics, and has little to say about justice beyond bounded, liberal, democratic societies, including global justice.[6]

3.3. The Justification of Human Rights: Moral or Political?

Contemporary discussions of Human Rights also offer a broadly liberal account of justice, but take neither Kantian nor Rawlsian approaches to justification. Although many assume that (all or some) Human Rights standards can be justified, and although this may be the case, most discussions of Human Rights take limited views of justification. While some philosophical approaches to Human Rights seek to ground them in conceptions of 'human dignity' or of 'human interests', most everyday and institutional discussion of Human Rights appeals to the 'authority' of specific international instruments, and so indirectly to the authority of states that are party to those instruments.

This reliance on 'positive' justifications of Human Rights standards had particular cogency during and after WWII, when the leading Human Rights Declarations and Conventions were drafted. Securing standards of justice that had been widely and disastrously breached, was of paramount importance, and questions about justification may have seemed less important—or perhaps all too easy to answer. Today there is still widespread ambivalence about the feasibility of deeper, non-positivist justifications for Human Rights standards (see note 4). Human rights thought and practice still converges on a specific list of rights 'not' because there is agreement or

[6] In his late *The Law of Peoples* Rawls argued for a conception of international justice, largely covering aspects of international (i.e., interstatal) justice that had been agreed in the post-WWII settlement, and focusing on states that meet certain standards.

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

clarity about justificatory arguments for those rights, but because certain Declarations and Conventions are taken as authoritative.

A curious result is that Human Rights claims are often asserted without showing or knowing who holds the relevant counterpart duties, and sometimes without showing or knowing who holds the asserted rights. The first problem has sometimes been said to show that Human Rights standards are 'merely aspirational', since they do not show 'who' should do 'what' for 'whom'. This has often been seen as unproblematic for the case of liberty rights, where counterpart duties must be held by 'all' persons and institutions. Yet, while rights not to be tortured or not to be enslaved indeed require 'all' others to respect the counterpart 'negative' duties not to torture or not to enslave, they also make further demands that need allocation. Duties to 'support', to 'enforce' and to 'protect' liberty rights must be assigned to 'specified' agents and cannot be left unallocated. And duties to 'realize' social, economic and cultural rights must be allocated to specified (preferably competent) agents if it is to be clear 'who' ought to do 'what' for 'whom' to secure these rights.[7] In short, proclaiming rights without clarity about who holds the counterpart duties, and (where relevant) allocating them to competent duty-bearers, leaves it unclear what action Human Rights require of whom.

4. Justification and Indeterminacy

Kantian, Rawlsian and Human Rights approaches to justice all take it that just societies must meet a plurality of standards and tailor action to take account of situations, The indeterminacy of standards of justice is indispensable, because is needed for action to meet a plurality of standards (conflicts of obligations may sometimes arise, but for the present I leave that well-recognized problem aside). Equally, indeterminacy raises questions about finding acceptable, or indeed optimal, ways of meeting a plurality of standards in actual cases, and about the roles of practical judgment, interpretation and institutionalization. These issues must be addressed by any theory of justice. This is why human rights are understood as 'qualified' rather than 'unconditional'.

[7] The point has been emphasized for many years. For one of the earlier discussion see Henry Shue (1980 [1996]).

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

However, there is unending controversy about the correct way of interpreting indeterminate norms and standards. Discussions of human rights dispute how they should be adjusted to one another. Rawls's principles of justice demand ways of resolving the tension between equal liberties and just distribution. Kant sees the implementation of justice as authorizing coercion[8] and argues that

> […] coercion is a hindrance or resistance to freedom. Therefore, if 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 *hindering a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes it (*MM*, AA 06: 231).

So Kantian, Rawlsian and Human Rights accounts of justice all acknowledge the need to shape the enactment of standards of justice in order to meet a plurality of standards. However, beyond these parallels there are very different views about permissible ways of adjusting requirements of justice in order to allow for other demands. In particular, there are deep disagreements about the role of appeals to institutional authority in interpreting principle of justice.

Whichever way we look, matters can seem problematic. One of the classical objections to systematic thinking about justice and about ethics, has been that principles are 'too abstract' and do not provide enough guidance to shape action. Yet resolving this problem by treating institutional demands as authoritative will not merely permit but require action that breaches standards of justice.

We understand well enough what it is to satisfy the demands of plurality standards. Practical judgment has not only to respect a range of standards of justice, but to take realistic view of action that is 'feasible' for agents, that is 'compatible' with other aims and demands, and that is 'affordable'. The everyday demands of practical judgment are often difficult, and are not always best adopting the interpretations articulated in the legislation or in the courts of a given state, or in international courts. The

[8] "Right (i.e. justice) is Connected with an Authorization to use Coercion" (*MM*, title of §D, AA 06: 231).

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

interpretation of human rights standards too cannot be settled by further arguments from authority.

These realities suggest to me that the task of justification is more open-ended than appeals to authorized interpretations suggest, and that disputes and uncertainties cannot be handed over to arguments from authority at some well-defined frontier. Legal and institutional systems are porous, and among other things porous to considerations about justification, about evidence and indeed about wider ethical considerations. Current debates about reliance on appeals to proportionality by judges in the UK and the EU and longstanding debates about the strict construction of the constitution in the US illustrate the point. The malign pressure that corrupt or destructive cultures can exert on the interpretation of certain rights and on other standards of justice provides darker illustrations. Standards of interpretation cannot be fixed merely by designating the interpretations reached by specified institutional processes as authoritative.

Not everyone will welcome this conclusion, which is that the demand for justification cannot be restricted to principles of duty or to human rights in the abstract, and that questions of justification also arise for the ways in which principles and standards are interpreted. Some will not welcome this conclusion because justification is demanding, whereas authorization often comes cheap. That, however, rubs the point in: authorization comes cheap because some authorities are corrupt or deceptive, and even decent authorities may fail on occasion and be lacking in many ways. Justification may be strenuous, but it is not optional if we are to take universal standards of any sort (including human rights standards) seriously. But is it even available?

I will not at this stage in a lecture getting long say much about standards of interpretation, but in order to cut through some thickets I will again stress a methodological point that I think important. The interpretation, like the justification, of principles should rely on 'minimal and uncontroversial assumptions': if we pack too much into the starting point, then justification will be hostage to too much—that after all is the problem of appealing to authority. So it seems to me that we need to start with and to maintain Leibnizian restraint in the way we approach the justification both of principles and of their interpretation.

ISSN-e: 2445-0669
DOI 10.7203/REK.5.1.13785

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