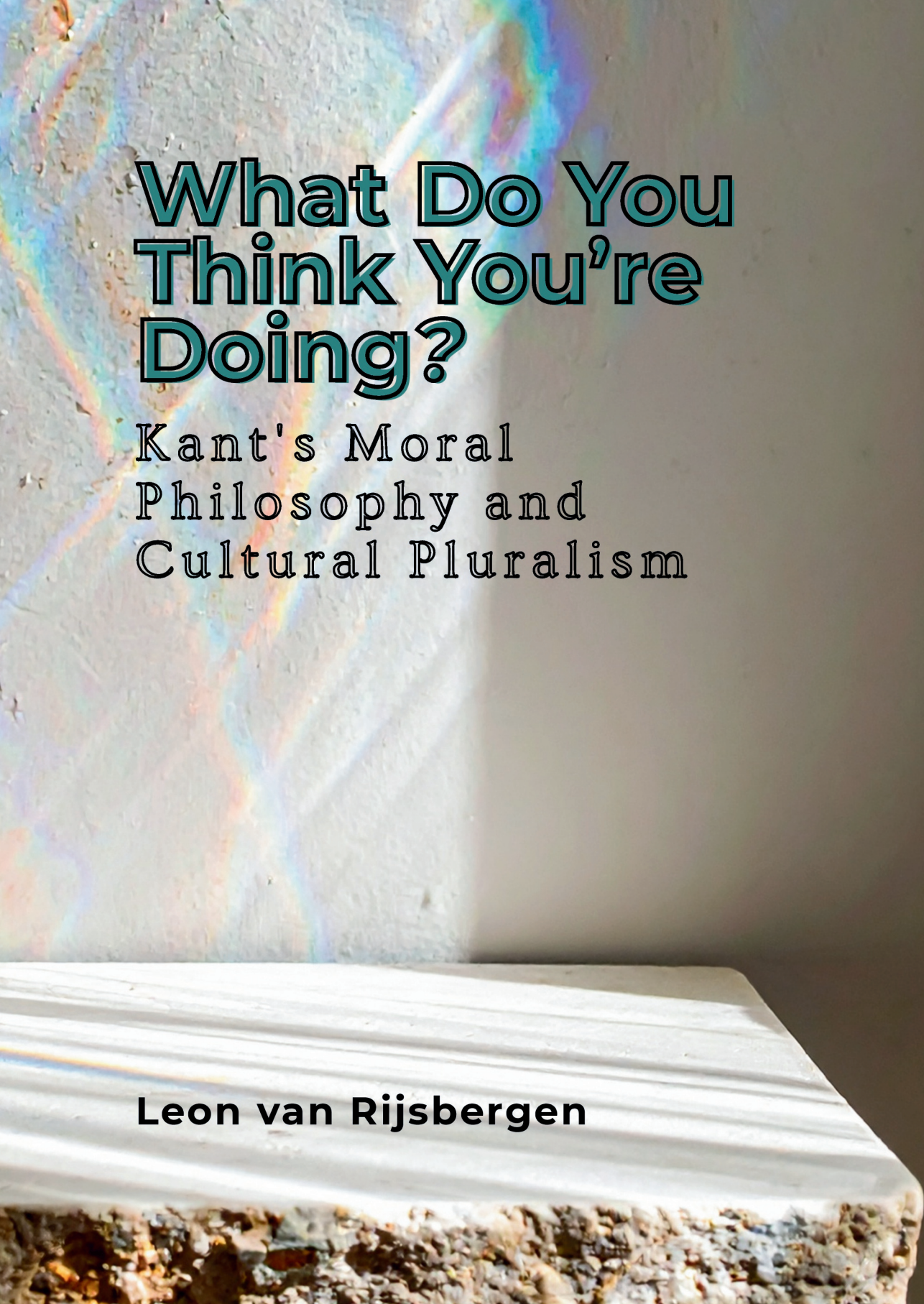


What Do You Think You're Doing?

Kant's Moral Philosophy and Cultural Pluralism

Leon van Rijsbergen

Propositions

1. The substantive universalism in Kant's ethics is indispensable for its normative potency and theoretical consistency (Chapter 1).
2. Cultural context may affect what the Categorical Imperative practically requires of agents and whether certain outward behaviors should be regarded as permissible or impermissible actions under it (Chapter 1).
3. Kant understands autonomy as a *property* of the will rather than a *potential* that agents are committed to realizing (Chapter 2).
4. The cultural anthropological data on opacity of mind cultures does not indicate that the Categorical Imperative may be binding on certain agents, but not others (Chapter 2).
5. Kant's reported statement that Inuit senicide was "to some degree justified" suggests that a practice involving (assisted) self-killing need not count as impermissible insofar as it is necessary to avoid or escape a life under conditions that are unbefitting of a dignified, rational being (Chapter 3).
6. Kant's Universal Principle of Right pertains to maxims as much as it does to the outer manifestation of actions (Chapter 4).
7. Kant's philosophy of right has the theoretical means to give due consideration to cultural context when evaluating whether an action is both materially and formally in accordance with right (Chapter 4).

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This research was financed by the *Nederlandse Organisatie voor Wetenschappelijk Onderzoek* (NWO)

Financial support for the printing of this thesis was provided by the University of Groningen

Printed by: ProefschriftMaken // www.proefschriftmaken.nl

Cover art: Sold Studio (Canva)

university of groningen

What Do You Think You're Doing?

Kant's Moral Philosophy and Cultural Pluralism

PhD thesis

to obtain the degree of PhD at the
University of Groningen
on the authority of the
Rector Magnificus Prof. J.M.A. Scherpen
and in accordance with
the decision by the College of Deans

This thesis will be defended in public on
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Acknowledgments

I would like to express my deepest gratitude to the following people, whose support has been indispensable to the completion of this work.

Pauline, thank you for being my supervisor and for giving me the invaluable opportunity to pursue the work I love as your PhD student. Your guidance, trust, and unwavering support have been instrumental throughout this journey, and I am deeply grateful for everything I have learned under your supervision. Beyond this, I want to thank you for the extraordinary commitment you have shown to my development and success. Your careful engagement with my ideas, your thoughtful feedback, and your constant availability went far beyond what one could normally expect from a PhD supervisor. I feel incredibly fortunate to have had you as my supervisor and am deeply grateful for all the time, energy, and care you have invested in me and this project.

Hanno, thank you for being my second supervisor. I could not have thought of a better person for this role. Not only had I already benefited greatly from your guidance during the writing of my Master's thesis, but I also knew that your perspectives would offer a valuable and much-needed counterbalance to the abstract Kantianism that occupies this work. You have certainly lived up to that expectation, and I am deeply grateful for your thoughtful engagement and guidance.

Joel, I would never have written this dissertation without your encouragement, years ago, to enroll in the Research Master's programme in Philosophy at Utrecht University. Thank you for believing in me before I believed in myself and for setting me on the path that ultimately led here.

Mom and Dad, thank you for always trusting me to find my way in life. You never expected me to follow a predetermined course or become someone other than myself; instead, you gave me the freedom, support, and encouragement to pursue the work I love. I am truly grateful for your unwavering belief in me and for making this journey possible.

The Kant, Kantianism and Morality group at the RUG, which has undergone its fair share of changes in membership over the years, has been indispensable to the development and maturation of my ideas. The conversations, exchanges, and intellectual engagement within this group have continually challenged and enriched my thinking about my own work. Thank you, Mike, Janis, Fiorella, Lu, Vini, Luke, Tyler, Tijn, Martina, Suus, Nicole, Pauline and Marijana, for the many fun, insightful, and intellectually stimulating conversations that

have helped shape my thinking throughout the years.

Pascal, Janis, Suus, and Vini: I am truly grateful for your friendship over the years. Thank you for the countless conversations, the laughter, the beers, and the many memorable moments we have shared. Your friendship has been a constant source of joy throughout this journey. Pascal and Janis, a special thank you for being my reliable outlet for all things heavy metal, and for making our Nights of Steel such a highlight over the years.

My fellow PhDs from the upstairs office: I know I can sometimes retreat into my own little world, but I want you to know that I have very much enjoyed sharing this environment with you. Thank you for the lovely conversations, the laughter, and the outings we have shared over the years. Your presence made the office a much more pleasant and welcoming place to work.

And last, but certainly not least, my wife, Patricia. There are no words that can fully express how grateful I am for your love, patience, and unwavering support. After years of being stuck in a rut, you never stopped believing in me or in my pursuit of a career in academia. I know we are facing similar challenges right now, but I also know that I can always rely on your love, trust, and encouragement to help me move forward. Thank you for standing by me through the highs and lows, for listening to my thoughts and worries, and for giving me the space and encouragement to pursue my dreams. This dissertation would not have been possible without you. You may never know just how proud and grateful I am to call you my wife.

Abbreviations

References to Kant's works follow the *Akademie-Ausgabe* of *Kants gesammelte Schriften*, edited by the Preußische (later Deutsche) Akademie der Wissenschaften (Berlin: Georg Reimer, later Walter de Gruyter, 1900–). Citations include an abbreviated title, followed by the *Akademie* volume and page numbers, except in the case of the *Critique of Pure Reason*, which follows the A/B format. English translations are derived from *The Cambridge Edition of the Works of Immanuel Kant* (Cambridge: Cambridge University Press, 1992–2016). When an English translation is my own, I mention this on the respective page.

CPR:	*Critique of Pure Reason (1781)*
CPracR:	*Critique of Practical Reason (1788)*
G:	*Groundwork of the Metaphysics of Morals (1785)*
L-Eth-C:	*Lectures on Moral Philosophy (Collins, likely 1775)*
L-Eth-H:	*Lectures on Practical Philosophy (Herder, 1763/4)*
L-Eth-Mr2:	*Lectures on Moral Philosophy (Mrongovius 2, 1784/5)*
MM:	*Metaphysics of Morals (1797)*
PhysGeo:	*Physical Geography (1802)*
Rel:	*Religion Within the Boundaries of Mere Reason (1793)*
SRL:	*On a Supposed Right to Lie from Philanthropy (1797)*
TPP:	*Toward Perpetual Peace (1795)*

Publications

I certify that the thesis submitted for examination for the PhD degree at the University of Groningen is wholly my own work. This thesis may not be reproduced without my prior written consent.

Statement of publications

Chapter 1 has been published in Volume 21 of *Con-Textos Kantianos*

Chapter 3 has been published in Volume 31 of *Kantian Review*.

Introduction

Despite its tremendous influence, Immanuel Kant's (mature) moral philosophy has often been criticized as overly abstract. In particular, Kant's contention that moral duties are universal commands of pure practical reason, admitting of no exception, has been taken by many to mean that his moral philosophy is excessively detached from what might be called moral practice.

There are several versions of this worry. Some maintain that unconditional duties are too theoretically rigid and/or overly demanding. Some even suggest that certain unconditional duties would 'make any society impossible' (Constant 2009/1797; cf. *SRL*, 8:425). Critiques that focus on the *universal* and/or *impartial* aspects of Kant's moral system often express dissatisfaction with how it supposedly disregards the personal lives, values and projects of individuals for the sake of morality (e.g. Williams 1981, 1-19; Wolf 1982, 431). With regard to Kant's idea that moral duties are derived from a principle of *pure practical reason* (independent of experience), his moral system has been accused of neglecting the historical and social contexts that are thought to shape moral understanding (e.g. Macintyre 1981, 52-53).

Over the years, Kantian philosophers have responded to many such criticisms. Even so, insufficient attention has been paid to a related category of criticism that problematizes its potential in light of what can be described as *cultural pluralism*. To those who are not familiar with Kant, it may come as a surprise – given the ambitiousness and complexity of his moral system – that he took himself to be grounding and systematizing a moral principle of common human reason. At the heart of his moral philosophy is the claim that the supreme principle of morality – the Categorical Imperative – which tells us to *act only in accordance with that maxim through which you can at the same time will that it become a universal law* (*G,* 4:421), is a principle that common human reason 'always has […] before its eyes' (albeit in a simpler form) in its practical appraisals (*G*, 4:402; cf. *CPracR* 5:105).

This is a rather substantial claim for Kant, who spent his entire life in and around Königsberg – and thus had relatively little direct exposure to people from different cultures.[1] Moreover, as Martin Sticker rightly points out, many of Kant's derogatory remarks on women and "non-Europeans" put into question the idea that he intended his conception of common human reason to extend beyond 'a small and homogeneous group of white men' (Sticker 2021,

[1] Kant was certainly familiar with foreign cultural practices through books, anthropological reports and conversations, however, and he knew that there is great divergence when it comes to which attitudes and practices are considered morally acceptable.

168). These are some of the reasons why a non-negligible number of philosophers have accused Kant (and/or Kantians) of building a purportedly universalist moral system upon a homogeneous, Eurocentric conception of morality and/or the moral agent – one that is not universally shared (cf. Mills 2018, 10; Benhabib 1992, 50; Velleman 2015, 48; Flikschuh 2018, 572-573).

In this dissertation, I explore whether Kant's universalist moral philosophy can accommodate cultural pluralism in a satisfactory way.[2] As Kant scholar Thomas Hill Jr. aptly characterizes this challenge, the goal is to find out whether Kant's moral philosophy can serve as 'an intermediate ground between a dogmatic moralism that would impose all of our values upon everyone and an uncritical relativism that would accept anything, no matter how cruel, in the name of diversity' (Hill 2000, 63). For this to be the case, I take it that the following two conditions must apply. First, on the foundational level, the Categorical Imperative must be able to apply to *everyone* by virtue of their shared rational agency (i.e. what Kant typifies as humanity (*MM*, 6:239) and thus cannot presuppose a conception of agency that is exclusive only to particular groups of people. Second, morality on Kant's conception must in principle allow for substantially different local ways of life in a way that does not jeopardize its principled, universalist character. In four self-standing chapters, I provide several arguments that indicate that both conditions apply.

The title of this dissertation, *What Do You Think You're Doing?*, plays on a question that is typically used to reprimand those who act inappropriately. When taken literally, however, the question captures the central concern of this dissertation. It is Kant's contention that, whatever else we take ourselves to be doing when we are acting, we necessarily do it *under the idea of freedom*, which is to say that we always understand *ourselves* to be the free cause of our actions when acting. When performing an action, we practically conceive of it as being caused by our will. Unlike sneezes, coughing fits or – to take a more complicated example – "acting" under psychosis, which on the Kantian account are bodily occurrences that happen *to* us, actions stem *from* our free selves. We necessarily presuppose that we, rather than some alien force that dominates us, are the author of our actions (*G*, 4:448-449). This is the conception of agency that Kant takes to be universally shared by rational beings.

It has been argued, however, that the anthropological record throws into doubt the idea

[2] This dissertation is primarily concerned with whether – and if so, to what extent – Kant's moral system allows for substantially different, local ways of life. For works on the racist and/or sexist elements of Kant's thinking and the potential implications for his moral philosophy, see Kleingeld 2007, 2019; Varden 2017, 2020; Mills 2018; and Bernasconi 2002.

that human beings universally conceive of themselves as acting under the Kantian conception of agency. This in turn renders questionable the idea that the Categorical Imperative is a principle that everyone can be said to be *aware* of – let alone necessarily committed to. This thesis aims to show that even in light of the cultural anthropological data, the Kantian account has sufficient resources to maintain that agents must universally take themselves to be acting under its conception of agency on pain of not qualifying *as* agents at all.

I will also argue that, within Kant's framework, the agent's understanding of what she takes herself to be doing plays an indispensable role in determining the ethical and juridical status of her action, as *maxims* are central to establishing the *type* of activity one is engaged in. My view goes beyond interpretations of Kant's ethics according to which maxims exclusively determine whether an action has *moral worth*; on my view, maxims are also needed to determine whether an action qualifies as a type that is also (merely) *in accordance with* the Categorical Imperative, regardless of its moral worth.

This dissertation consists of four independent chapters. Across these chapters, I aim to show that, on the Kantian account, both ethical and juridical evaluation must attend to the agent's maxim rather than confining itself to the mere outward manifestation of their action. This insight, I argue, is crucial to understanding how Kant's single, supreme moral principle, as well as his Universal Principle of Right, can positively accommodate substantially different local ways of life.

In chapter 1, I discuss Katrin Flikschuh's "contextualist" interpretation of Kant's ethics, according to which the Categorical Imperative can generate substantively different principles for differently situated persons. On Flikschuh's Kantian contextualism, Kant's supreme moral principle allows for different (even mutually exclusive) local moralities, because the Categorical Imperative test is not meant to provide insight into objective moral truth but to serve as a test for assessing the purity of our maxims. According to Flikschuh, if we truly and sincerely judge that our maxim can be willed as a universal law, then we have done 'all that Kantian morality can reasonably demand of [us]' (Flikschuh 2018, 569). Once we recognize that people navigate life through diverse conceptual frameworks shaped by the particular social circumstances of their locally realized ways of life, we can appreciate that individuals in different social contexts might justifiably regard certain maxims as universalizable, even if we cannot do so from our own local standpoint. Or so Flikschuh argues (Flikschuh 2017, 104-105). In response, I argue that Flikschuh's Kantian contextualism results in normative indeterminacy, misconstrues the purpose of the Categorical Imperative test within Kant's ethics, and places agents in the theoretically incoherent position of having to judge whether their maxims are

universalizable while simultaneously acknowledging that such judgments do not determine whether their maxims can, in fact, also be willed as universal laws. By contrast, I propose that Kant's ethics leaves ample room for cultural pluralism without forfeiting the idea that the Categorical Imperative imposes categorical, universal constraints on action. This is because principles of *imperfect duty* can be acted on only against the background of contextual circumstances, requiring practical judgment from contextually situated agents, and because the object of *perfect duties* – actions – cannot be strictly separate from maxims, and hence from the concrete contextual circumstances in which an action is willed.

In chapter 2, I respond to David Velleman's argument that the Categorical Imperative is unfit as a universal moral principle because it is a principle that only a select number of people can be said to be committed to. According to Velleman, "Kantian agents" necessarily act with the aim of realizing their autonomy, which they do by bringing their actions in accordance with the Categorical Imperative's requirements. He further argues that the anthropological record shows that certain groups of people – such as the Sherpa of Nepal, the Baining and Kaluli of Papua New Guinea, and the Ilongot of the Philippines – 'do not share Kant's psychologized conception of agency' (Velleman 2015, 32), because of which they cannot be said to be committed to its constitutive standard – which he understands to be the Categorical Imperative. I argue against Velleman's thesis by showing that for a person to act under any specific self-conception at all, she must always conceive of herself as a Kantian agent (i.e. as someone who necessarily acts under the idea of freedom). Moreover, I show that Kant's Categorical Imperative should not be understood as a constitutive standard of action. Therefore, Velleman fails to show that the Categorical Imperative cannot be a moral principle that applies to all agents.

In chapter 3, I examine Kant's reported verdict on the historical practice of Inuit senicide (i.e. the killing of the elderly at their request), as I believe it further illustrates the context-sensitivity that is inherent to his moral philosophy. In his *Lectures on Ethics*, Kant is reported to have said that the practice was a 'loving service' (*Liebesdienst*) that was 'to some degree justified', as its aim was to spare the elderly from starvation – a fate he calls a 'more ignominious death' (*Her*, 27:43; *Mrong II*, 29:622). This claim is puzzling in light of Kant's repeated insistence elsewhere that suicide (*Selbstmord*) is unequivocally ruled out by the Categorical Imperative. It raises the question of whether – and if so, how – these assertions can be reconciled. By analyzing what Kant might have meant by a death that is "ignominious", I argue that he may plausibly have held that an act of (assisted) self-killing does not constitute suicide when it is undertaken to avoid dying under conditions unbefitting of a dignified, rational

being, or under conditions that would be more ignominious than the alternative of enduring one's life to its natural conclusion. If my argument succeeds, it shows that Kant's moral philosophy can accommodate the possibility that cultural context influences whether an act or practice that involves (assisted) self-killing counts as a violation of the categorical prohibition on suicide. If this holds in the case of suicide, the same should apply to actions more generally.

In chapter 4, I discuss the dominant view according to which Kant's philosophy of right, as opposed to his ethics, is concerned exclusively with whether an action factually infringes upon the conditions of external freedom, regardless of the maxim on which that action is willed. I argue that this interpretation creates a problem for Kant's theory, as it cannot distinguish between actions that are externally similar but internally dissimilar. This problem is especially pressing in the context of cultural pluralism, as the cultural anthropological record shows that certain culture-specific forms of action, though *outwardly* indistinguishable from wrongful acts such as lying and false promising, do not carry the same connotations of deceptiveness that, in Kant's view, undermine a rightful condition. If Kant's Universal Principle of Right cannot distinguish between outwardly similar but substantially different actions, it is susceptible to evaluating rightful actions as contrary to right. In response, I show that Kant's philosophy of right is concerned with maxims no less than with their outward manifestation. I do so by defending Marie Newhouse's two-standard interpretation of Kant's Universal Principle of Right against the predominant notion that this principle does not apply to maxims. I then show that, on Newhouse's two-standard interpretation, certain external actions qualify as right because they can recognizably be performed on a maxim that accords with right. Culture, I suggest, plays a formative role in shaping the parameters by which the outward features of certain actions can be assessed as compatible with universal freedom under law. This shows that Kant's theory of right has the resources to positively accommodate different local ways of life – not by "relaxing" its universal principle, but by allowing cultural context to be taken into account in the identification of rightful action types.

The chapters collectively establish that, due to its focus on the normative status of *maxims* rather than outward actions as such, Kant's universalist moral system has the means to positively accommodate cultural pluralism. On the Kantian account, the moral and juridical status of an action or cultural practice fundamentally depends on what those who perform it understand themselves to be doing. A cultural practice is morally and juridically permissible so long as it can recognizably be performed on maxims that can simultaneously be willed as universal laws and does not encroach upon the external freedom of others. Whether certain outward actions or practices could be performed on such maxims is culture-dependent. Since

the maxim on which an action or practice is willed can affect whether it qualifies as a certain *type* of ((im)permissible) action or practice, Kant's moral system principally allows that outwardly similar but substantially different cultural practices may differ in moral status. This applies both to practices involving speech acts and to those involving physical actions. Therefore, Kant's moral system should be understood not as a dogmatic or culturally parochial framework that is restricted to – or merely allows for – "European" ways of life, but as a moral theory that can be applied flexibly across diverse cultural contexts.

1. Kantian Universalism in Context

§1.1 Introduction

Kantian universalism is the family of Kant-inspired philosophical views according to which universal, normative action principles can be derived from a supreme principle of morality that is grounded in practical reason: the Categorical Imperative. Proponents of Kantian ethics have paid relatively little attention to the question of whether – and if so, to what extent – the theory is sufficiently context-sensitive to leave room for morally permissible, different cultural ways of life. This is somewhat surprising, given the amount of literature that depicts Kant's ethics as one that is parochial, Eurocentric or in some other capacity incapable of addressing the moral concerns or perspectives of certain (marginalized) groups of people (e.g. Velleman 2015; Allen 2013; Benhabib 1992; Mills 2018).

One of the few Kantian philosophers who has positively engaged with Kant's ethics in the context of cultural pluralism is Katrin Flikschuh. In her 2017 book *What is Orientation in Global Thinking?* and her 2018 article "Kant's Contextualism", she expresses her scepticism about the potential of Kantian universalism to be sufficiently sensitive to different ways of cultural life. According to Flikschuh, '[c]urrent normative Kantianism', by which she means Kantian universalism on my conception of it, 'largely simply tracks the shifting normative concerns of liberal global theorizing' (Flikschuh 2017, 40). That is, according to Flikschuh, Kantian universalism is at fault of taking certain "liberal" values such as moral individualism, freedom and equality between persons as universally valid from the outset, because of which it lacks the flexibility and openness for different ways of thought and life that a global normative theory requires if it is to be action-guiding.

Instead, Flikschuh proposes an interpretation of Kant's ethics that she takes to be 'more context-sensitive' (Flikschuh 2017, 36). She refers to her interpretation as 'Kantian contextualism' (Flikschuh 2018, 557). Like Kantian universalism, Kantian contextualism sees the Categorical Imperative as the universally valid principle (or form) of moral willing and moral judgment, but unlike Kantian universalism, it denies that universal, categorical action principles can be derived from it (Flikschuh 2017, 45). According to Kantian contextualism, the particular way in which the Categorical Imperative binds us 'from where we stand' does not

allow us to infer that others are similarly bound 'from where they stand' (Flikschuh 2017, 68).[1] Instead, it maintains that the Categorical Imperative can give rise to 'contextually different substantive principles', including principles that would be incompatible with those that the Categorical Imperative would give rise to for different persons in different cultural contexts (Flikschuh 2018, 557).

In this chapter, I take issue with Flikschuh's suggestion that "substantive" moral universalism in Kantian ethics would render it insufficiently sensitive to cultural context (Flikschuh 2017, 45). I will argue, *pace* Flikschuh, that Kantian universalism leaves ample room for pluralism with regard to cultural ways of life on the basis that (1) principles of *imperfect duty* can only be acted upon against the background of contextual circumstances, requiring practical judgment from contextually situated agents, and (2) the object of *perfect duties* – actions – cannot be strictly separate from maxims, and hence from the concrete contextual circumstances in which an action is willed. This conclusion can be maintained without having to forfeit the idea that the Categorical Imperative puts categorical, universal constraints on action. If this argument works, Kantian universalism does not come with a commitment to a context-insensitive moral parochialism. However, as will become clear, Kantian universalism does categorically prohibit certain "illiberal" cultural practices, such as those involving female circumcision, that Flikschuh thinks should be permissible in certain contexts. However, I will argue that this should be considered a *virtue* rather than a shortcoming of Kantian universalism.

The chapter is structured as follows. In section 2, I present a reconstruction of Flikschuh's Kantian contextualism. In section 3, I discuss several problems for Kantian contextualism's potential as a coherent and substantial moral theory. In section 4, I suggest that Kantian universalism, unlike Flikschuh's Kantian contextualism, is capable of drawing a clear moral line that may not be crossed by rational beings whilst also preserving an ample amount of contextual flexibility.

§1.2 What is Kantian Contextualism?

According to Flikschuh, many philosophers in the global justice debate ("global theorists") tend to 'conflate global reasoning with globalizing particular, domestically favoured moral and political principles' (Flikschuh 2017, ix-x). By this Flikschuh means that rather than seriously

[1] Flikschuh seems to use the opposition between "we" and "they" in such a way that these terms can pertain to any (cultural) group that is perceived as such from the first-person perspective of an agent. I will follow her in this regard.

engaging with substantively different, foreign points of view on moral issues, global theorists, including those who subscribe to what Flikschuh calls "current normative Kantianism", have a tendency to take certain "commonsense" principles for granted (Flikschuh 2017, 3; 40). These include a strong commitment to moral individualism and the freedom and equality of persons (Flikschuh 2017, 2). The idea of such principles being commonsense, says Flikschuh, testifies to an implicit presumption that the liberal way of thought and life is in a sense furthest advanced in the moral span of time, which gives rise to the concern that global theorists are not taking other, "illiberal" ways of thought and life as seriously as they should (especially when people with other forms of thought and life are the subject of their theorizing). Flikschuh's category of global theorists includes John Rawls, Charles Beitz, Aaron James, Amartya Sen, Martha Nussbaum, Simon Caney and Mathias Risse (cf. Flikschuh 2017, 3-5).

The overarching aim of Flikschuh's project is to provide a Kantian basis for the idea that foreign, illiberal moralities need not be rationally wanting in terms of moral justification, because of which global theorists ought to engage with these moralities on equal terms. On Flikschuh's view, we can recognize that there is a rational basis for a morality that is substantially different from our own without believing that there is reason *for us* to abide by that morality. All that is required is an understanding that the morality in question *could* have provided us with action-guiding principles had we been in the proverbial shoes of those for whom it *does* make sense to regard it as action-guiding (Flikschuh 2017, 118). As Flikschuh puts it: 'we can come to recognize foreign practices as valuable for those whose practices they are insofar as we can come to see them as values which we might have had' (Flikschuh 2017, 118).

Flikschuh is optimistic about our capacity for such recognition. Her optimism stems from her agreement with Kant's contention that as self-reflective, rational beings, we can become aware of the finitude of our cognitive capacities (Flikschuh 2017, 126-127). More precisely, we can become aware of the fact that human beings, in addition to a universally shared human standpoint, need a particular local standpoint to orient themselves in the world (Flikschuh 2017, 104-106). As for the human standpoint, Flikschuh joins Kant in maintaining that human beings equally represent the world to themselves through the categories of the understanding (e.g., quantity, quality, relation, modality, etc., *CPR*, B129-B169). What she adds to this picture is the idea that 'differently situated human persons will respond to their particular contexts by developing context-specific concepts and practices' (Flikschuh 2017, 104). This is what Flikschuh means by the local standpoint. 'Apart from the categories of the understanding', Flikschuh says, 'there is […] nothing fixed or antecedently determined about [the] process of

empirical concept formation' (Flikschuh 2017, 33). Substantively differently situated people orient themselves by different conceptual frameworks, leading to different ways of life. People from cultures that do not have the practice (let alone the concept) of promising or contracting, for instance, will not make sense of their actions through these concepts (cf. Flikschuh 2018, 570-572).[2] Nor is there any a priori necessity about human beings forming the concept of a state, because of which people are not necessitated to structure political life on the basis of such an idea (Flikschuh 2017, 33).

Flikschuh maintains that when we come to understand that, globally, there is great variety among local perspectives, we can come to understand that people with substantively different local perspectives could justifiably adopt action principles that we cannot from our own local perspective (Flikschuh 2017, 104-105). For instance, a Western European person could come to understand that a village elder of the Kenyan Kikuyu clan, as a result of her being part of a certain locally realized way of life, may have reason to practice female genital cutting (e.g., because of a deeply held belief that this is how girls are initiated into womanhood), whereas the Kikuyu elder may come to understand that the Western European person, being part of a locally realized way of life with a long tradition of "Enlightenment thinking", may be justified in regarding this practice as a violation of bodily integrity. Hence, not only can there be deep faultless moral disagreements, but human beings are at the same time capable of realizing that such disagreement is not indicative of the superiority of their own moral beliefs (Flikschuh 2017, 125).

A natural question that arises at this point is how Flikschuh's endorsement of faultless moral disagreement can be squared with Kant's moral philosophy. This is where Flikschuh's contextualist interpretation of Kant's ethics comes in.

According to Flikschuh's Kantian contextualism, the Categorical Imperative is meant to give us the universal form of moral judgment. However, this does not mean that the Categorical Imperative can tell us which substantive moral principles are valid for all people at all times (Flikschuh 2018, 573). To the contrary, Kantian contextualism contends that the universal form of moral judgment only shows that maxims are (im)permissible for the person who makes the judgment:

> [C]urrent readings of Kant's categorical imperative […] typically seek to derive generally valid principles of action from a categorical imperative test that asks each individual agent to reflect on the moral purity of her maxim. However, an agent's judgement of her proposed maxim as one

[2] Flikschuh is not the only one to raise this point (cf. Velleman 2015, 56-74; Rawls 1955, 27-28).

> that any agent can follow does not warrant the inference that therefore the maxim is valid for everyone. To the contrary, its universal form merely shows that it is a morally permissible maxim for her (Flikschuh 2017, 45).

Flikschuh puts this point even more strongly in her 2018 article "Kant's Contextualism": '[t]he point of the universalizability test is not to generate universally valid principles of action but to judge the moral purity of one's maxim' (Flikschuh 2018, 562).[3] What can be concluded from this is that according to Flikschuh, even though a moral judgment is a sincerely held conclusion from the first-person perspective that a proposed maxim could (or could not) be a valid action principle for everyone, the purpose of the Categorical Imperative test is not to arrive at the *truth* about whether this is actually so. Rather, its purpose is to find out whether you would *sincerely judge* that it is so (Flikschuh 2018, 572-573). When a sincere judgment has been reached on this question, the agent has done 'all that Kantian morality can reasonably demand of her' (Flikschuh 2018, 569). That is, if an agent chooses to investigate the purity of her maxim, she can do no more than deliberate on whether she would sincerely judge that her maxim can be willed as a law. This, however, does not allow for the inference that the maxim *actually* could be willed as a law by everyone. It merely shows that the maxim is morally permissible for the person who sincerely arrives at this conclusion. 'So long as the agent sincerely judges her maxim to be universalizable' Flikschuh maintains, 'substantive divergence from others' formally identical […] judgements is *morally* irrelevant' (Flikschuh 2018, 570).

The main difference between Kantian universalism and Kantian contextualism, it seems, is that according to Kantian universalism, the *soundness* of moral judgment is conditional on the *actual* universalizability of one's proposed maxim, whereas on the Kantian contextualist account the soundness of moral judgment depends on nothing but a sincerely held belief that the maxim is universalizable. According to Flikschuh, the relevant kind of universalism in Kant's ethics is a universalism in the *form* of moral judgment rather than a universalism in substantive principles (Flikschuh 2017, 118-122). In what follows, I will refer to Kantian contextualism's conception of moral universalism as *subjective universalism*.

Kantian contextualism's subjective universalism says that our moral judgments, in our judgment, take the shape of imperatives that anyone could follow. Even so, we can become reflectively aware of the fact that the content of our moral judgments is heavily influenced by the beliefs and value schemes that we have inherited from the (cultural) context in which we are brought up. In the same way, we can come to recognize that it is possible for others who are

[3] When Flikschuh speaks of a "pure" maxim, she seems to refer to a maxim that is adopted on the basis of a sincere judgment that it could serve as a universal law (cf. Flikschuh 2018, 562).

situated very differently to arrive at substantively different moral judgments (in the shape of categorical imperatives) from their point of view due to their contextual situatedness (Flikschuh 2017, 118). Flikschuh uses the practice of polygamy as an example to illustrate this point:

> Initially, when you stepped off the plane, you thought that polygamy is where you draw the line. It's just wrong, you thought. But now you find yourself having second thoughts […] [Y]ou come to see that it works, that it has advantages and disadvantages – for males and females alike – that it, too, is part of the normalcy around here. You begin to think that had you not been brought up on a diet of notions of romantic love, but were instead a member of complex clan and extended family relations with rather different patterns of emotional investment and loyalty, polygamy might strike you as a sensible way of going about what truly matters in family life (Flikschuh 2017, 119-120).

On Flikschuh's account, the same mode of reasoning extends to the practice of female genital cutting. Provided that we sufficiently grasp the contextual background and local perspective of pro-female genital cutting members of the Kenyan Kikuyu clan, for example, we should come to understand how it is possible for members of this community to rationally endorse the practice of female genital cutting (Flikschuh 2017, 125).

Flikschuh maintains that it is only when we thoroughly put ourselves in the shoes of foreigners with substantively different moralities that we acquire the conceptual means to orient ourselves in the global justice debate in a way that goes beyond our own moral framework, which we come to regard as one contingent set of moral values among others. This is so even if a particular moral framework remains the only viable reason-giving option *for us* (Flikschuh 2017, 119-120).

What emerges is a highly innovative take on Kantian ethics that differs in important respects from "standard" universalist interpretations. Like Kantian universalism, Kantian contextualism takes the Categorical Imperative to be the supreme principle of morality. According to both, the Categorical Imperative demands that you act only on universalizable maxims. However, where Kantian universalism takes this to imply that human beings are only permitted to act on maxims that *any* rational agent could at the same time will as laws, Kantian contextualism adheres to a subjective universalism that insists that the Categorical Imperative test is only meant to test the purity of the maxims of the one doing the testing.

§1.3 The Problems with Kantian Contextualism

According to Flikschuh, 'those who look for a universalism in moral substance overlook the universalism in the form of willing in Kant's ethics' (Flikschuh 2018, 573). In contrast to this, I will argue that we *should* be looking for a universalism in moral substance in Kant's ethics, in the sense that it derives norms from a supreme moral principle that cannot give rise to contradictory categorical imperatives to different persons. In the next section, I will turn to how Kantian universalism provides a more promising (albeit more stringent) moral framework for accommodating cultural pluralism than Kantian contextualism.

§1.3.1 The Purpose of the Categorical Imperative Test

Insofar as Kantian contextualism is meant as an *interpretation* of Kant's ethics, it rests on a contentious interpretation of the Categorical Imperative test and the purpose of moral judgment. Let us begin with Flikschuh's contention that the Categorical Imperative test is only meant to test the purity of our own maxims (Flikschuh 2018, 562).

A pure maxim, on Flikschuh's account, is a maxim of a good will (Flikschuh 2018, 562). It is true that Kant exclusively considers a good will to have moral worth (*G*, 4:393), but it does not follow that the Categorical Imperative test must therefore be designed to reach a judgment on the *purity* of our maxims. According to Kant, human beings are not transparent to themselves, and we are often inclined to flatter ourselves with a more positive self-image than is actually warranted. We can never truly know, irrespective of how deeply we examine ourselves, whether our maxim is adopted from duty or self-interest:

> [N]o certain example can be cited of the disposition to act from pure duty; that, though much may be done *in conformity with* what *duty* commands, still it is always doubtful whether it is really done *from duty* and therefore has moral worth (*G*, 4:407).

While Kant is clearly pessimistic about our insight into the purity of our maxims, he is rather *optimistic* that we can arrive at moral insights by applying the Categorical Imperative test. Hence, it would be peculiar if these moral insights were to pertain to the purity of our maxims. For his optimism, we only need to look at the examples that Kant discusses in the second section of the *Groundwork*, where the hypothetical men in question ask themselves whether it would not be contrary to duty to commit suicide when tired of life, make a lying promise when in need of money, make no attempt to cultivate their talents when in comfortable circumstances, or never assist others in need (*G*, 4:421-4:423). In all these cases, 'it is seen at once' that these maxims can never also be willed (or even conceived, in the first two examples) as universal

laws because this leads to a *contradiction* in the will (*G*, 4:424).

By stating that the best we can hope for on Kant's account is that we judge and act from purity of will, Flikschuh obscures Kant's contention that when we test whether maxims can at the same time be willed as universal laws, we should arrive at conclusions that we must accept on pain of rational self-contradiction. Her conception of the Categorical Imperative test as a purity test for maxims seems to replace Kant's contradiction criterion with a sincerity criterion. That is, where for Kant the Categorical Imperative is meant to provide rational insight into the categorical (im)permissibility of a proposed maxim by showing that a contradiction in the will does or does not *necessarily* arise upon putting the maxim to the Categorical Imperative-test, in Kantian contextualism this role is fulfilled by a criterion which evaluates the purity of a maxim on the basis of whether, upon genuine deliberation, we would sincerely judge that the maxim could be willed as a law.

In sum, *pace* Flikschuh's interpretation, on Kant's account it actually lies within our ability to find out whether maxims can at the same time be willed as universal laws. The Categorical Imperative test is a meta-principle by which we arrive at such moral insights. It is not designed to test whether our proposed maxims are pure.

§1.3.2 Kantian Contextualism is Too Undemanding

Recall that according to Kantian contextualism, we can come to recognize foreign practices as potentially reason-giving, and hence potentially morally justifiable, if we can imagine ourselves regarding these practices as reason-giving. In what follows, I will refer to this idea as the recognition principle. This criterion, I will argue, is insufficiently demanding for a substantial moral theory.

Suppose I can imagine myself as having good reason to rob banks, without believing that I in fact do. One does not need to be a Kantian to see that it would be a stretch to hold that my capacity to empathetically put myself in the shoes of a bank robber renders bank robbing morally permissible, or potentially morally permissible, from certain perspectives. Yet if we are to follow the recognition principle, it seems that this is exactly the conclusion we should arrive at. After all, on Kantian contextualism's account, we can also come to understand that a person could have legitimate reasons to perform female genital cutting precisely by virtue of our capacity to imagine ourselves, from that person's local standpoint, sincerely judging that they have reason to perform female genital cutting.

This is a problem, especially because it is sometimes quite easy to empathetically put ourselves in the shoes of "bad guys". The best movie villains are those who empathetically

resonate with us on some level. Suppose that I can perfectly imagine myself sincerely believing that banks are little more than the cornerstones of the capitalistic oppression of the working class. It seems that on the basis of this sincerely held belief, there are quite a few Robin Hood-like routes available to me (assuming I care about the working class) to arrive at the sincere judgment that it is permissible, or perhaps even a duty, for all rational beings to rob banks and distribute the wealth among the working class. Sure, I may be capable of recognizing that there are others for whom it is rational to care about the bank's continued existence; it just so turns out that from *my* finite perspective, there is a categorical reason for any rational being to do everything in their power to free the working class from capitalistic oppression, which happens to include robbing (or destroying) banks.

Although Kantian contextualism aspires to justify belief in a supreme principle of morality that has 'reasoned authority' in our moral deliberations (Flikschuh 2018, 558), its conception of the Categorical Imperative seems to be largely grounded not in reason but in our capacity for empathetic imagination. Even though our own moral judgments are supposed to be sincerely held assertions about whether our maxims can possibly serve as action principles for everyone (Flikschuh 2018, 562), any maxim that satisfies the recognition principle should at the same time in principle be deemed justifiable, provided we can come to understand that we ourselves could have been in a position to sincerely judge that maxim to be universalizable. Kantian contextualism offers no method to prevent this from extending to maxims that Kant regards (or arguably should regard) as contrary to duty.

§1.3.3 Kantian Contextualism is Theoretically Incoherent

There is, however, a further problem for Kantian contextualism in addition to its being overly permissive, namely that the combination of its insistence on the Categorical Imperative as the universal form of moral judgment and its commitment to the recognition principle renders Kantian contextualism theoretically incoherent.

Suppose we are concerned about the moral permissibility (or purity) of a maxim we are considering adopting. As good Kantian contextualists, our method of evaluation is to ask ourselves whether 'in [our] judgment [our] proposed maxim is serviceable as a possible principle of action for everyone' (Flikschuh 2018, 562).[4] Only if we sincerely judge that the maxim is universalizable in this way is the maxim morally permissible for us, and hence pure. However, being Kantian contextualists, we are at the same time committed to the idea that when

[4] It should be noted that it remains unclear, on this formulation of the Categorical Imperative-test, where this leaves maxims that Kant deems at the same time *conceivable* as laws but not at the same time *willable* as laws (cf. 4:423).

we arrive at a sincere judgment concerning our maxim's (un-)universalizability, this only means that the maxim is morally (im)permissible *for us* (subjective universalism) due to our recognition of the fact that the Categorical Imperative test could have the opposite result for differently situated agents (recognition principle).[5]

Now, what is it that the Kantian contextualist sincerely believes upon arriving at the sincere judgment that her proposed maxim is (un)universalizable? Put differently, what does the judgment "M is (un-)universalizable" mean when uttered by someone who is committed to the idea that the method by which she establishes this conclusion is unfit for establishing the actual universalizability of maxims? While it eludes me how Flikschuh's Kantian contextualist would respond to this question, it does seem clear to me that it cannot be a judgment that is meant to be taken in earnest. If Kantian contextualism maintains (as it does) both that maxims are permissible for us only if we would sincerely judge them to be universalizable and that the method by which we arrive at our moral judgments cannot establish the actual universalizability of maxims, it should be impossible for a consistent Kantian contextualist to ever sincerely believe their moral judgments.

In short: Kantian contextualism implores us to evaluate the purity of our maxims on the basis of their supposed universalizability (Categorical Imperative) whilst simultaneously imploring us to keep in mind that these maxims need not be truly universalizable (recognition principle). This is theoretically incoherent.

§1.3.4 Disorientation in the Global Justice Debate

Perhaps the issues discussed thus far will turn out to be trivial if Kantian contextualism can still succeed in what it set out to do: to provide us with an inclusive Kantian theoretical method for normatively orienting ourselves in the global justice debate. Suppose that Flikschuh is right in that our own liberal principles are in principle just as justifiable as certain contradictory illiberal moral principles. And let us further suppose that she is right in that we should take substantively different, illiberal moralities as seriously as our own in the global justice debate (Flikschuh 2017, 119-120). How would this provide us with the necessary tools for practical orientation in the global justice debate? Granted, it gives us more perspectives to consider than before, back when we supposedly only had our own domestic liberal moral concepts and commitments to go by and we implicitly mistook thinking about global justice for translating domestic moral

[5] Flikschuh is aware of the 'tension between the ineliminably indexical character of reasons for action and rationality's equally authoritative claim to universal validity' in Kantian contextualism (Flikschuh 2018, 567) but seriously underestimates how deep this problem goes (see also Flikschuh 2017, 120-123).

principles to different contexts. But how does Kantian contextualism, unlike our liberal biases, provide us with a compass with which to orient our thinking about global justice?

There are good reasons to doubt that Kantian contextualism can give us such a compass. Here is why. As is clear by now, Kantian contextualism says that practices and action principles that qualify as violations of the Categorical Imperative for us can still be in conformity with the Categorical Imperative from the perspective of substantively differently situated persons. However, Kantian contextualism does not say that certain practices and action principles must necessarily be judged as morally (im)permissible by those who are situated in a particular context. The most it can do is hope for intracommunal overlap in moral judgments and beliefs. Communities, however, usually consist of people with (sometimes tremendously) different beliefs. It is obviously not the case that everyone always agrees with or even morally condones the status quo of their locally realized way of life. As has often been the case in history, some members of a community may wish for the continuation of female genital cutting, whilst other members may fervently object to this practice. Kantian contextualism would seem to lack the theoretical means to provide a reason-based solution to local, ethical disputes such as this.

The problem for Kantian contextualism, with regard to its potential as a compass in the global justice debate, lies in its insistence that 'there is nothing over and above the act of judgement' that can tell agents whether their actions and action principles are morally justified (Flikschuh 2018, 573; Flikschuh 2017, 45). Provided the empathetic imagination of the global theorist stretches so far as to make it possible for her to understand *both* how somebody within a particular context could sincerely arrive at the judgment that women should not have voting rights *and* how somebody from the same community could sincerely arrive at the opposite judgment, it seems that Kantian contextualism provides the global theorist with no basis whatsoever for orienting herself in moral matters within particular contexts, leaving her morally rudderless. This is a problem for Flikschuh because it entails that Kantian contextualism, contrary to her aspirations, does nothing to prevent global theorists from becoming disorientated when deliberating about the ethical demands of global justice.

§1.4 The Context-Sensitivity of Kantian Universalism

But does Kantian universalism fare any better? If it is to succeed where Kantian contextualism fails *without* falling prey to the problems Flikschuh thinks it faces, Kantian universalism must be able to put universal moral constraints on action in a way that does not turn the theory into a context-insensitive parochialism. In this section, I aim to demonstrate that it has the means to do so. More precisely, I will argue that Kantian universalism allows for an ample amount of

(contextual) latitude in the enactment of duty whilst retaining the idea that the Categorical Imperative prescribes categorical, universal principles for action. Therefore, there is no practical need to get rid of the universalism in Kantian ethics in order to ensure that it can accommodate the idea that different (cultural) contexts may affect what the Categorical Imperative practically requires of agents.

§1.4.1 Imperfect Duty

First of all, it must be emphasized that it is *maxims*, rather than actions, that are of primary moral importance in Kant's ethics. Rather than telling us which actions we ought to perform at all times (as Kant's ethics is sometimes presented), it says that we ought to solely act on *maxims* that accord with the moral law (*MM*, 6:389; 6:392). This bodes well for Kantian universalism's potential as a context-sensitive moral theory, as maxims can be acted upon in many different ways. In fact, there is a prevalent category of duty – *imperfect duty* – 'that leaves a latitude (*latitudo*) for free choice in following […] the law' (*MM*, 6:390). This category of duty derives its name from the fact that, unlike with perfect duty, reason cannot prescribe what specific actions or omissions are required in order to satisfy the duty. Where perfect duties prescribe laws for *actions*, imperfect duties prescribe laws for *maxims* only (*MM*, 6:391-6:392; O'Neill 1975, 118-119). They require the adoption of two general *ends*, namely one's own perfection and the happiness of others (*MM*, 6:385). It is up to the agent's capacity of judgment to determine what these ends practically require of them (cf. Bacin 2016, 259). I contend that it is only against the background of concrete, contextual circumstances that it is possible for an agent to reach a (sufficiently informed) judgment on how she should discharge her imperfect duties.

First of all, it is possible for an agent to reach a judgment about how she should *concretely* go about applying principles of imperfect duty only when it is clear to her which (empirical) options are available to her. For this, it seems that the agent must know several things about herself and her (social) environment. For one thing, this includes some knowledge of her own abilities. This seems clear enough with the duty to perfect oneself, as the agent needs a realistic idea of what she is (or could be) good at in order to reach an informed judgment as to which of her useful talents she ought to cultivate (cf. Timmermann 2005, 249). However, knowledge of one's own abilities is also needed to reach a judgment on how to promote the happiness of others.

Imagine a scenario in which you and I physically encounter a person who is hurt and in dire need of help. The person is within our reach, and there seems to be no one else around. Both of us have individually adopted a general principle of promoting the happiness of others.

However, you are a medical professional, whereas I am not. Given our knowledge about our abilities, it would be rational to judge that the same principle requires different actions of us individually. I may enact this principle to the best of my abilities by calling for an ambulance, whereas you may do so by providing the victim with medical aid.

Secondly, in order for an agent to have an epistemic basis for deciding on a *policy* to enact his imperfect duties, he must take certain considerations about his (social) environment into account. For instance, if an agent is determined to spend his life in an environment where people do not have cars, it can hardly be said that his endeavours to become a car mechanic can reasonably qualify as part of his policy to develop his useful talents (cf. *MM*, 6:392). After all, there is no use for this profession within this particular context. Obviously, things would be different if the aspiring car mechanic had no plans to live in such a place.

The same goes for the duty to promote the happiness of others, as social factors such as culture can greatly affect what may or may not be done to achieve this. To mention one example, in many Western cultures it is not considered distasteful to place elderly family members in nursing homes when they are no longer able to take care of themselves, whereas this practice would be considered outrageous in many Asian, African and Middle-Eastern societies, where children are often expected to take care of their parents until the end of their lives. Since cultural conceptions and norms can impact which actions generally serve to make people happy (in the broadest sense), it can be context/culture-dependent whether an act (such as having one's elderly family members placed in a nursing home) could reasonably be conceived as promoting the happiness of others.[6]

Thus, it can be seen that on a "standard" universalistic reading of Kant's ethics, the same moral principle may favour the performance of different actions in different (cultural) contexts. Hence, Kantian universalism can require different actions and omissions from us when we find ourselves among people with customs, beliefs and traditions that are different from those we are used to. Kantian universalism is context-sensitive by design.

§1.4.2. Perfect Duty

Unlike Kantian contextualism, Kantian universalism is not context-sensitive in the sense that different contexts can give rise to different categorical imperatives. It allows for contextual

[6] Culture is of course not the only relevant consideration when it comes to the ethics of placing the elderly in nursing homes. It is not uncommon for elderly people in Western countries to fervently object to being relocated to a nursing home, and some elderly people in Asia or Africa likely dislike the idea of being taken care of by their children, preferring a nursing home instead. However, these are *also* contextual considerations that should be taken into account by the agent when deliberating on how the principle of promoting other people's happiness should be applied in their particular circumstances.

latitude only with regard to how moral duties can, may and ought to be acted upon.

While Kantian universalism prioritizes maxims, it also forbids certain *actions*, namely those that can *only* be willed on the basis of non-universalizable maxims (cf. Kleingeld 2024, 172-173). According to Kant, these include lying, theft, suicide, (self-)mutilation and murder (*G*, 4:421-423; 6:422-423). Kant maintains that it is a *perfect duty* to refrain from engaging in these actions.[7]

What has been insufficiently appreciated in the Kant literature is that even though contextual considerations never trump the requirements of perfect duty, whether certain actions *qualify* as a violation of perfect duty *is* context-dependent. This is exemplified by a consideration that Flikschuh is right to point out, namely the fact that differently situated people may have different conceptual frameworks, because of which there may be certain action types that are available to "them" but not to "us" (Flikschuh 2017, 105). An example may serve to make this clear. In a discussion on the normativity of culture-specific action types (or "doables"), David Velleman mentions a speech act in Russia that is called *vranyo*, which is said to be a particular form of intentionally telling falsehoods to others that does not exist in Western countries (Velleman 2015, 65-68). In an article in the *Moscow Times*, *vranyo* is described as occurring 'when a person knows he is lying and expects the other person to understand that' (Murray 2012). The practice is thus, interestingly, understood as a form of "lying" without its purpose being the deception of others. It is said that Russian people can sense instances of *vranyo*, which upon recognition commonly does not lead to an attitude of disapproval on the part of the listener. Should *vranyo* be considered a form of lying, on Kant's account?

As mentioned above, Kant deems it a perfect duty to abstain from lying (*G*, 4:402-403, 4:422). In one of his famous casuistical questions in the *Metaphysics of Morals*, however, Kant asks: 'Can an untruth from mere politeness (e.g., the "your obedient servant" at the end of a letter) be considered a lie? No one is deceived by it' (*MM*, 6:431). Or consider a situation in which '[a]n author asks one of his readers, "How do you like my work?"' (ibid.) – a question that, according to Kant, one is likely to ask only if one expects a positive answer. As usual, Kant gives no direct response to these questions. However, on several occasions Kant does make it clear (plausibly, I believe) that the *intention* of deceiving one's interlocutor or oneself is a

[7] The fact that there is a category of duty in Kant that explicitly forbids certain action types is already a strong indication that he puts much more rigidly defined constraints on action than Kantian contextualism seems to be willing to do. Regardless, the idea that the concept of perfect duty should be preserved in Kantian ethics can be maintained even if we disagree with some of Kant's claims about what perfect duty specifically requires of us. After all, some of these may be an expression of Kant's own cultural or personal biases rather than being based on rational principles (such as the supposed categorical prohibition against masturbation).

necessary component of lying (*MM*, 6:429-431; *G*, 4:422). Therefore, if intentionally telling someone something that one believes to be false is not meant to deceive that person (for example, in circumstances where there is a social expectation that one will not be telling the truth), it would be incorrect to consider this a case of lying on Kant's account.[8]

Since *vranyo* is supposedly initiated from the social expectation that others will understand that no attempt is being made to convince them of falsehoods, the practice cannot be described as one that is aimed at the deception of others. Since the aim of deception is inherent to Kant's conception of lying, *vranyo* should not qualify as such. In fact, as far as the matter of permissible untruth-telling is concerned, there can be circumstances in which *vranyo* is not morally different from casually using sarcasm or irony, where we are also not in the business of deceiving our interlocutor (even though our interlocutor may still *believe* she is deceived if she fails to pick up on the sarcasm or irony).[9]

I mention this particular example to underscore the point that even though practices may *appear* to be violations of perfect duty to someone who is unfamiliar with the practice, this need not be the case. While people who are unfamiliar with the practice of *vranyo* (or sarcasm/irony, for that matter) may, on the face of it, be tempted to write it off as lying (especially when, unbeknownst to them, they are confronted with the practice themselves), they would be mistaken due to a failure to sufficiently understand what is going on.

Does this conclusion imply that in Kantian universalism it is possible for one of two *outwardly* identical actions to qualify as a violation of perfect duty and the other not? I believe that it does. The reason for this, I propose, is that actions are not strictly separable from maxims, in Kant's ethics. By this I mean that what an action *is* cannot be determined by outward behaviour alone (i.e. what Kant calls the matter of the action, *G*, 4:416). Instead, this is primarily determined by an action's underlying maxim (cf. *G*, 4:416; O'Neill 1975, 94-110; Herman 1990, 33; 49). If the question whether an action *is* a certain type of action depends on its underlying maxim, then the object of perfect duties – *actions* – also cannot be strictly separate from maxims. This is exemplified by the fact that while it is a perfect duty to abstain from lying, it is not a perfect duty to abstain from *vranyo*-ing. Even though both actions can be outwardly

[8] Martin Sticker has raised a similar point with regard to the ethics of suicide in Kant's ethics. He (tentatively) suggests that '[a]t least to some extent it might depend on […] linguistic customs and societal attitude' whether certain forms of suicide (such as euthanasia when terminally ill) should qualify as impermissible "self-murder" in Kant's ethics (Sticker 2021, 181-182).

[9] In other circumstances there *could* be a moral difference between *vranyo* and the casual use of sarcasm or irony, such as when high-ranking military officials use *vranyo* in briefings to knowingly uphold an upstanding self-image that is not grounded in reality (thereby possibly enabling the continuation of war crimes, mistreatment or other forms of injustice). Even in such circumstances, however, *vranyo* would not fall under the umbrella of Kant's conception of lying.

identical, only one can *possibly* be willed, within practical reason, as a means to morally permissible ends.[10] Christine Korsgaard describes a similar case in *The Sources of Normativity* when she compares the maxim "I will refuse to return your weapon, because I want it for myself" to the maxim "I will refuse to return your weapon, because you have gone mad and may hurt someone" (Korsgaard 1996, 108). As with the lying/*vranyo* case, it seems plausible to say that Korsgaard's example depicts yet another scenario with two fundamentally different actions, despite their being outwardly identical. If one were to act on the first maxim, one's action would qualify as *theft* – and hence be prohibited as a matter of perfect duty – whereas if one were to act on the second maxim, one's action would qualify as a form of beneficent *protection*.[11]

§1.4.3 Does Context-Sensitivity Imply Normative Indeterminacy?

A worry that may arise at this point is that the context-sensitivity of perfect duties in Kantian universalism, much like Kantian contextualism, comes at the cost of normative indeterminacy. If perfect duties are supposed to prescribe laws for actions but actions cannot be separated from their underlying principles, there may be cause for concern about perfect duties being incapable of drawing a clear moral line for rational agents after all. Suppose, for instance, that Kant is right in that is a perfect duty to abstain from mutilation. What should Kantian universalism say about female genital cutting rituals, given that proponents of such practices usually do not *conceive* of these as a form of mutilation but rather, for instance, as a culturally significant initiation from childhood to womanhood? Does it have the means to say that female genital cutting categorically qualifies as an act of mutilation, regardless of the fact that proponents do not *think* of such acts as mutilation?[12]

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[10] The idea that outwardly identical actions *could* qualify as fundamentally different action types due to different underlying maxims does not in turn imply that it is impossible for actions with substantively different underlying maxims to qualify as identical action types. For instance, agent *A* and agent *B* can both be said to be performing CPR even if agent *A* goes through the (correct) CPR motions with the sole intent of saving a person's life and agent *B* does the same with the intent of gaining the admiration of bystanders. In this example, agent *A* performs CPR from duty, whereas agent *B* performs CPR from self-interest.

[11] It must be noted that Korsgaard mentions this example in the context of establishing that on Kant's account, all maxims consist of "actions and ends" and that the moral quality of a maxim consists in the "functional arrangement" of both parts, rather than the parts themselves. She does not explicitly argue, as I do, that the moral difference between the first action and the second action can be explained in terms of the first's (but not the second's) qualifying as theft .

[12] This concern seems to tie into what has come to be known as G.E.M. Anscombe's "problem of relevant descriptions" objection to Kant's ethics, according to which '[Kant's] rule about universalizable maxims is useless without stipulations as to what shall count as a relevant description of an action with a view to constructing a maxim about it' (Anscombe 1958, 2). While Kantian philosophers like Onora O'Neill, Barbara Herman and Jens Timmermann have aptly addressed this objection by arguing that the correct/relevant description of an action in Kant's ethics is determined by the actual maxim on which the agent wills the action (O'Neill 1975, 94-110; Herman

Let me start with a caveat. For my current purposes, I do not aim to provide irrefutable evidence that a perfect duty against mutilation would render female genital cutting rituals categorically impermissible. Instead, I aim to illuminate how, in Kantian universalism, such a claim can be intelligible despite the fact that there is no universal agreement on whether female genital cutting qualifies as mutilation. Establishing the possibility that actions may count as instances of a given type despite agents' beliefs to the contrary is sufficient to show that the context-sensitivity of perfect duties does not impede Kantian universalism's ability to set categorical and universal constraints on action. Furthermore, it must be stressed that female genital cutting comes in multiple shapes and forms. The World Health Organization divides different types of female genital cutting into numerical categories based on the relative severity of the procedure and the (possible) physical complications.[13] As mentioned in the previous section, Flikschuh argues that there is a Kantian route towards a justification of female genital cutting as practiced by the Kenyan Kikuyu clan (Flikschuh 2017, 125). Several sources confirm that the Kikuyu female genital cutting ritual falls under either the so-called "type II" or the "type III" category, which means that the procedure could range from a removal of the clitoral glans and the inner folds of the vulva to infibulation (cf. Boddy 2007, 235; 243; 359; Thomas 2000, 132). To remain conceptually aligned with Flikschuh, the reader can assume that when I refer to female genital cutting in this chapter, I am referring to the type II and type III variants.

A temptation that should be avoided is to search for an ideal definition of mutilation and to proceed by arguing that proponents of female genital cutting rituals simply fail to understand that, according to this ideal definition, female genital cutting falls under its umbrella. For one thing, it is not clear that morally loaded concepts such as "mutilation" can be wholly defined in pure terms, uninfluenced by societal attitudes and linguistic customs (cf. Sticker 2021, 181-185). For another, what is important in the example borrowed from Korsgaard has nothing to do with whether the theft maxim is based on the best possible definition of stealing (or property, for that matter). Nor is it important whether the difference between *vranyo* and lying is explained in terms of the best possible definition of lying. What is important in these examples is what *Kant's* conception of lying and stealing *denotes* and why it is a perfect duty to abstain from *these* actions.

1990, 68-69; Timmermann 2005, 251), the current concern cannot be resolved by appealing to this argument. After all, the current challenge for Kantian universalism is to make sense of the idea that it is possible for actions to qualify as action types that perfect duty would forbid precisely *despite* the fact that agents may genuinely *not* conceive of their actions as such action types.

[13] See, for instance: https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation (last access 16-02-2024).

Now in some cases, an agent's maxim may already explicitly contain an action description that would be contrary to duty on Kant's account, such as "I will lie/steal/murder when … to …".[14] In such cases, the maxim is not going to pass the Categorical Imperative test regardless of the circumstances and the end for which the agent adopts the maxim.[15] However, it is clearly not the case that immoral maxims *need* to contain an action description that explicitly refers to an immoral action. It is clearly possible for a maxim to qualify as a lying maxim, for instance, without having lying as its action description, for example when my maxim is "I will tell falsehoods when I am in need of money to get money" (*G*, 4:422). Again, what is important here is not that the maxim corresponds to a universally agreed upon definition of lying but that it corresponds to an action type that is ruled out by the Categorical Imperative: communicating ideas that one believes to be false with the intention of deceiving oneself or others. What matters is that this action type is available to the agent, not whether he or she has a (similar) concept of it.

As with lying maxims, it should be equally possible to adopt mutilation maxims without "mutilation" actually being the maxim's action description from the subjective outlook of the agent. However, to understand what a mutilation maxim would be on Kant's account, we first need to know what Kant means by mutilation.

When discussing perfect duties to the self in the *Doctrine of Virtue*, Kant explains what he means by mutilating *oneself*. According to Kant, this can either be done materially or formally. *Material* self-mutilation would involve maiming oneself, understood as '*depriving* oneself of certain integral, organic *parts*' (*MM*, 6:421). Importantly, one cannot be said to *deprive* oneself of integral, organic parts when one has these removed due to their being 'dead or diseased', thereby endangering one's life (*MM*, 6:423). However, if one were to have oneself castrated in order to pursue a career as a singer, this *would* qualify as a form of maiming oneself (*MM*, 6:423).[16]

Kant describes *formal* self-mutilation as '*depriving* oneself (permanently or temporarily) of one's *capacity* for the natural (and so indirectly for the moral) *use* of one's powers' (*MM*, 6:421). If I choose to blind, deafen or cripple myself, this would qualify as formal self-mutilation on Kant's account. The reason why Kant thinks that such actions indirectly deprive me of the capacity to use my moral powers is because I need my "natural powers" to act, and thus to act from duty. To preserve myself as a moral being, I must preserve myself as

[14] Provided that these concepts refer to the types of action that Kant has in mind.
[15] Assuming, of course, that it is a perfect duty not to lie, steal or murder.
[16] Kant also refers to self-mutilation as partial self-murder (*MM*, 6:421-423).

an animal being.

In a paper from 2009, Michael Cholbi asserts that Kant has a *symmetrical* understanding of moral duty:

> Kant views our duties as subject to a kind of symmetry, according to which if an agent is morally required to treat herself in a particular fashion, then all other things being equal, she is morally required to treat similarly situated others in the same fashion (Cholbi 2009, 20).

For my current purposes, I take this claim for granted. What this entails, with regard to the perfect duty against self-mutilation, is that a perfect duty against mutilating myself at the same time spells out a perfect duty against mutilating others. This can only be true if Kant's idea of what it means to mutilate others fundamentally means the same thing as what it means to mutilate myself (either materially, formally or both).

Now that it is clear what the Kantian perfect duty against mutilation *denotes*, we can determine whether female genital cutting is a violation of this duty. The answer is that female genital cutting morally qualifies as both material and formal mutilation. It is *material* mutilation because the act deprives a girl of her organic parts. The removal/destruction of organic parts qualifies as a form of *deprivation* because the act is not done with the intention of preserving the girl's health. If this were so, the act would not qualify as female genital cutting but as (surgical) amputation (cf. *MM*, 6:423). Female genital cutting qualifies as *formal* mutilation because it comes with a high risk of depriving or diminishing a girl's capacity for sexual pleasure[17] and her capacity to give birth without (sometimes severe) complications.[18]

If it is true that female genital cutting *inherently* qualifies as what Kant means by an act of mutilation, and if it is true that it is a perfect duty to abstain from what he means by mutilation, this means that there cannot possibly be any circumstances in which female genital cutting could be willed for permissible ends.

The main takeaway is as follows. The idea that actions cannot be separated from maxims in Kantian universalism does *not* make it impossible for Kantian universalism to prescribe perfect duties that are uniform in content. I have used the perfect duty against mutilation as a

[17] Some maintain that the deprivation of sexual pleasure as a result of female genital cutting is exaggerated, as such criticism supposedly 'presupposes an excessively mechanical picture of sexuality, omitting the role of the mind as the most important sexual organ' (Wong 2023, 51). This objection is unconvincing for at least two reasons. The first is the bare fact that different people can enjoy sex differently. For some people "the mind" may suffice as a source of sexual pleasure, but others may not be so fortunate. The second reason is that this response does not diminish the fact that female genital cutting comes with the substantial risk that the girl's "mechanical" capacity for sexual pleasure will be destroyed or diminished – a "natural power" of which the girl may not wish to be deprived (either now or later in life).

[18] See, for instance: https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation (last access: 16-02-2024).

leading example. The discussion on female genital cutting illustrates that it is possible to will an act of mutilation without *taking oneself* to will an act of mutilation. To will an act of mutilation, on Kant's account, is to will the removal or destruction of organic parts or natural powers as a means to non-medical ends. Since the maxim that underlies an action can be a mutilation maxim even if the agent does not conceive of that action as a form of mutilation, an agent's action can qualify as mutilation, and thus as a violation of a perfect duty, whether or not the agent takes themselves to be willing an act of mutilation.

In this section, I hope to have made a plausible case for the idea that Kantian universalism is a context-sensitive moral theory that is also capable of prescribing substantive, universal action-principles. With Kantian universalism, it takes a contextually situated rational agent to judge how *imperfect* duties ought to be discharged. Reason alone does not prescribe what actions and omissions (nor how many of them) are required of the agent with regard to such duties, but only which *ends* the agent ought to adopt (*MM*, 6:392). At the same time, Kantian universalism allows for the possibility that outwardly identical actions can qualify as different action types, because of which the question whether an action qualifies as a violation of *perfect* duty can be context-dependent. This conclusion can be sustained without forfeiting the idea that the Categorical Imperative sets categorical, universal constraints on action.

§1.5 Conclusion

Kantian universalism is more potent as a context-sensitive moral theory than Kantian contextualism. The task with regard to evaluating the moral permissibility of less familiar cultural practices is not, as Kantian contextualism would have it, to find out whether we are capable of imagining ourselves sincerely endorsing these practices under particular circumstances. Instead, the task for Kantians is to first get sufficiently clear on the underlying context, conception and purpose of the practices in question *before* evaluating whether they are in conformity with duty. I think that this is exactly what it should mean for Kantian universalism to take "foreign ways of life" seriously.

2. Is Kant's Conception of Agency Culturally Contingent?

§2.1 Introduction

According to Kant, the supreme principle of morality, the Categorical Imperative, is the moral law for all agents (*G*, 4:448). That is to say, all agents are morally obligated to constrain their actions in accordance with the Categorical Imperative's demands. This is what I referred to in the previous chapter as Kantian universalism. An indispensable component of Kantian universalism is the connection between an agent's free, autonomous will, and the universal moral authority of the Categorical Imperative. Interpretations differ, however when it comes to explaining this connection.

According to one interpretation, autonomy is the constitutive principle of action, and agents must act in accordance with the Categorical Imperative in order to live up to this principle (cf., Velleman 2015, 48; Korsgaard 1999, 15-17). On this interpretation, Kant maintains that the categorical norms for action are explained by the very nature of action. I call this the constitutivist interpretation. In his recent work, David Velleman, a proponent of this interpretation, has suggested that Kant's theory of action fails to comprise all agents, because of which it is incapable of generating a moral principle to which all agents are constitutively committed. However, instead of entirely rejecting Kant's theory of action, Velleman maintains that it can be subsumed under his own relativistic variant of constitutivism (Velleman 2015, 32).

On Velleman's account, the constitutive standard of action is 'agency under some particular conception thereof' (Velleman 2015, 32). Accordingly, an action is good or bad relative to the extent to which it renders an agent attuned with her own particular commitment to agency. "Kantian agency", according to Velleman, is just one contingent variant among others. Because not every agent makes action their own in the way that a "Kantian agent" does, and moral norms are derived from one's particular commitment to agency, the Categorical Imperative is a contingent, rather than a necessary and universally valid principle of action. Or so Velleman argues.

In this chapter, I argue that Velleman fails to demonstrate that "Kantian agency" is a culturally contingent, rather than a universal, conception of agency. Therefore, he fails to show that the Categorical Imperative cannot be a moral principle that applies to all agents.

The chapter is structured as follows. In section 2, I provide a reconstruction of Velleman's relativistic constitutivism, and how it aims to establish that Kant's theory of action, and consequently Kant's moral theory, only applies to a *specific category* of agents (viz., Kantian agents).

In section 3, I argue that the constitutivist interpretation on which Velleman relies misconstrues Kant's conception of an agent as a being that is inescapably committed to realizing their autonomy (in the form of abiding by the Categorical Imperative) in action. I suggest an alternative conception of a Kantian agent that is better supported by Kant's texts, namely *a being that necessarily acts under the idea of freedom*.

In section 4, I argue that an agent must conceive of herself as free and autonomous in order to be able to act under any specific self-conception at all. In other words: an agent must conceive of herself as a Kantian agent (viz., the sort of agent that reflects Kant's *actual* conception agency) before she is capable of acting under any specific self-conception.

§2.2 Velleman's Relativistic Constitutivism

Velleman defends a form of constitutivism: the metaethical theory according to which the fundamental norms for action can be derived from its constitutive standard. Just as a knife would be a bad knife if it lacked the property of sharpness, an action would be a bad action if it lacked a property that is integral to action. Or so the idea goes. While it is common for constitutivists to argue that their theory can establish *universal* norms for action, Velleman's constitutivism distinguishes itself in maintaining that the constitutive standard of action is not necessarily the same for all agents.

Velleman subscribes to a position which I refer to as *agency pluralism*: the thesis that there is a variety of self-conceptions under which rational beings could conceive of themselves as the author of their actions. Therefore, if we want to understand how an agent is required to act, we should find out how she conceives of her own particular commitment to agency. In other words, Velleman maintains that the constitutive standard of action is determined by an agent's commitment to agency 'under some particular conception thereof' (Velleman 2015, 32).

Velleman's theory of action is partly inspired by what he takes to be Kant's analysis of action. I quote:

> I […] divided the Kantian analysis of action into two parts, one constant, the other variable. What remains constant is an analysis of action as behavior with the second-order aim of being its agent — or, as I put it, of making it one's own doing. What varies is the operative

> conception of agency, Kantian autonomy being only one such conception (Velleman 2015, 48).

The element that Velleman wants to preserve of Kant's theory of action is that action is *our* doing, whereas mere behavior 'happens in or to us' (Velleman 2015, 31). When a cough is the result of a *reason,* such as a desire to relieve ourselves from a tickle in our throat, the cough qualifies as action. The cough would be mere behavior if it were caused *by* the tickle (ibid., 31). On the other hand, Velleman wants to incorporate the idea that there are multiple operative conceptions of agency under which agents could possibly make behavior their own. Some agents make behavior their own by conditioning it on the principle of autonomy (so-called Kantian agents), whereas others do so by making their behavior line up with their social role (ibid., 33) or through commitments to ceremonial formality (ibid., 47).

If, as Velleman says, the constitutive standard of action is agency under some *particular* conception thereof, and being an agent comes down to "taking ownership" or "being the author" of your behavior, we should expect that the constitutive standard of action is determined by what it means for a particular agent to take ownership of her behavior. This is indeed what Velleman claims (ibid., 36). Now, if someone takes ownership of her behavior by conditioning it on the belief that there is a reason for it, the next question becomes "by virtue of what does something qualify as a reason?".

Velleman follows Bernard Williams in maintaining that something is a reason if and only if it could be the basis on which a person acts (cf., Williams 1982, 101-102). The main implication of this so-called "reason-internalist" view is that someone has a reason for action only if there are considerations available to her that could motivate her to perform the action. Reasons, that is, offer practical guidance. However, exactly which considerations offer an agent practical guidance wholly depends on whether she is capable of regarding these potential reasons *as* reasons. In Velleman's terminology: reasons are essentially *perspectival* (Velleman 2015, 3). One and the same set of circumstances can present a reason from one perspective but not from another (Velleman 2015, 30).

It is easy to see the merit of this view when we consider matters that are not particularly morally pressing. For example, a strawberry cake that is sitting on my table may lead me to take a slice by virtue of me taking my love for strawberry cake as a reason for doing so, whereas the cake would present no such reason for someone who dislikes strawberry cake. However, it is conceivable that one might accept reason internalism whilst also believing that there are at least some reasons, moral reasons, that have potential motivational force/offer practical guidance

from *any* rational agent's perspective: a view that could be ascribed to Kant, for instance (cf., *G*, 4:427).

As a proponent of moral relativism, Velleman denies that there is a universal morality. Since he also thinks that '[moral] demands come in the form of reasons for acting and reacting' (Velleman 2015, 3), his relativism is rooted in the idea that *pace* Kant, there are no universally shared moral perspectives. The same set of circumstances may constitute moral reasons for some, but not for others:

> Relativism would […] imply that being permissible is like being to the north. From a given perspective, some things are to the north — really and truly to the north — but nothing is to the north absolutely. Nor is anything permissible absolutely, according to relativism (Velleman 2015, 29).

Velleman's terminology of "nothing being to the north absolutely" might be a bit misleading, because on Earth some things, such as the North Pole, *are* to the north absolutely, whereas Velleman wants to deny that anything on Earth is permissible absolutely.[1] It would be better to say that being permissible is like being to the left. Some things are really and truly to the left, but never so absolutely.

Why is moral permissibility like "being to the left"? Because in order for moral reasons to attain practical guidingness, they must be consistent with how persons conceive of themselves as agents, for otherwise these supposed reasons would fail to be possible grounds of action (Velleman 2015, 30). However, commitments to different conceptions of agency may generate different moral reasons for action:

> Every agent does things with a commitment to their being his doing under some conception or other, but conceptions differ, and the commitment to agency lends the force of reasons to different considerations accordingly (Velleman 2015, 33).

According to Velleman, conceptions of agency are not purely private, isolated phenomena. Instead, they are deeply intertwined with the need for rendering oneself interpretable to others. For this, people need to know what it means to be ordinary. We learn this by drawing from 'a socially provided repertoire of action concepts' (Velleman 2015, 57). Consequently, conceptions of agency tend to overlap within social groups, which supposedly leads to genuine local normativity:

[1] I am grateful to Hanno Sauer and Pauline Kleingeld for pointing this out to me.

> [D]ifferences of what's permissible or impermissible for different groups are not the result of substituting their disparate circumstances into universal norms; rather, the differences arise from substituting circumstances into disparate conceptions of agency. The results are local norms, which falsify absolutism by being local, and falsify nihilism by being genuinely normative (Velleman 2015, 35).

Now, even if we want to grant to Velleman that genuine local normativity can be derived from particular conceptions of agency, it may still be hard to swallow the idea that conceptions of agency can differ so much as to generate substantively different moral principles. To make his case, Velleman juxtaposes what he calls the Kantian conception of agency against non-Kantian conceptions of agency that are held by people from so-called "opacity of mind cultures".

Let us begin with Kantian agency. According to Velleman, Kant proposes a "psychologized" conception of agency that is based on 'desires and proposals of their [universal] recognizability as reasons' (Velleman 2015, 32):

> According to Kant, mere behavior is motivated solely by a desire whose satisfaction it is believed to promote. Behavior rises to the status of action when it is contingent on our proposing that this desire be a good enough reason for the resulting action. And we can rationally make this proposal only if it is consistent with the fact that a good enough reason must be recognizable as such to any rational agent. So our behavior amounts to an action when it is contingent on a self-consistent proposal that its motivating desire be universally recognizable as a good enough reason for the action — or, as Kant puts it, when it is based on a proposal of universal law (Velleman 2015, 32).

Velleman thus takes Kant to maintain that a desire constitutes a reason for us *if and only if* we believe that any rational agent could recognize the desire as a reason for action. In other words, we must judge that our maxim can be willed as a universal law. Action, on this conception of agency, is behavior that is made conditional on this belief. Why do agents make behavior conditional on this belief? They do so out of respect for autonomy: the very *ideal* of making behavior their own doing (Velleman 2015, 32). Thus, according to Velleman, it is Kant's position that agents are 'moved to follow [the Categorical Imperative] because [they] respect [their] own potential autonomy and therefore aspire to realize it' (Velleman 2015, 48).

At this point, it is no longer a mystery why Velleman thinks that the ideal of autonomy provides Kantian agents with reasons but not non-Kantian agents. If an agent is *not* already committed to rendering herself autonomous through action, considerations aimed at realizing autonomy are not likely to provide her with practical guidance (cf. Velleman 2015, 36). However, clearly more needs to be said about what Velleman takes to be non-Kantian agency,

and what it is that non-Kantian agents strive for in action if not autonomy.

As mentioned before, Velleman deems the Kantian conception of agency a particularly "psychologized" conception, because it conceives of action in terms of desires, intentions and personal ends (Velleman 2015, 33). While Velleman does not specify what people in which regions of the world are committed to the Kantian conception of agency, it is heavily implied that he thinks that this form of agency is at least predominant in the Western world, since he juxtaposes it against the non-Kantian agential conceptions of people from certain non-Western cultures. The question then naturally arises as to what a "non-psychologized" conception of agency would look like.

Throughout his *Foundations for Moral Relativism*, Velleman refers to an impressive list of cultural anthropological records about people from cultures that he takes to observe opacity of mind. Listed among these are the Sherpa from Nepal, the Baining and Kaluli of Papua New Guinea and the Ilongot from the Philippines (Velleman 2015, 23-25). Drawing on this cultural anthropological data, Velleman concludes that the opacity of mind that people from these cultures have in common comes down to a self-conception in terms of stereotyped roles, as well as a rigorous avoidance of referring to mental states when explaining the behavior of themselves and others (Velleman 2015, 24). When asked about their motives for action, they tend to explain themselves in terms of roles and scenarios rather than 'psychological explanation in terms of inner feelings and attitudes' (Velleman 2015, 25):

> Among Ilongots, personality descriptions are extremely rare, as are strategic reckonings of motivation. Accounts of why particular persons acted as they did refer almost exclusively to public and political concerns — surprising actions giving rise to the despairing claim that "one can never know the hidden reaches of another's heart." In general, Ilongots do not discern intentions, trace responsibility, or reckon blame by asking if offenders "knew" that they wronged others through their actions […] The Baining exhibit a pervasive avoidance of modes of discourse about psychology […] They are reluctant to speculate about the personal motivations, actions, and feelings either of themselves or others. They do not offer interpretations of the meanings of the behavior and events around them in these terms. Informants do not readily speak or proclaim personal opinions about either their own actions or those of others (Fajans 1985, 383, in Velleman 2015, 25).

It would be odd, says Velleman, if people whose group observes opacity of mind, 'who are clearly agents', could only make behavior their own by committing to a conception of agency such as the psychologized Kantian variant they are enculturated to suppress (Velleman 2015, 33). That is, it makes little sense to think that people who do not speculate about desires and

intentions underlying behavior could only act under the idea that their motivational desires be recognizable as reasons for all rational beings. Consequently, it makes no sense to think that their constitutive standard of action comes in the form of a Categorical Imperative that holds by virtue of these agents being committed to realizing their autonomy.

According to Velleman, reasons for people observing opacity of mind, present themselves as considerations that befit the role one is enacting within a particular scenario. Accordingly, behavior qualifies as action when it lives up to the standard of rendering them attuned with their social role within a particular scenario. People observing opacity of mind thus allegedly make action their own by making their behavior line up with the way in which their *persona* is meant to act. On this view, considerations of autonomy, unlike with Kantian agents, simply do not enter the picture.

§2.3 Why the Categorical Imperative is Not a Constitutive Standard of Action

What is the challenge that Velleman poses for Kantian universalism? The challenge is to account for the possibility of a Categorical Imperative that is authoritative for all agents whilst taking note of the ethnographic data according to which people can be committed to non-psychologized conceptions of agency, because of which the principle of autonomy (the Categorical Imperative) purportedly could not be their constitutive standard of action.

In the next sections, I aim to establish the following conclusions as a response to Velleman's challenge: (1): Kant's argument for the universal authority of the Categorical Imperative does not rely on the idea that autonomy is the constitutive standard of action; (2): the ethnographic data on which Velleman relies provides insufficient evidence for the idea that people observing opacity of mind have non-psychologized conceptions of agency, and (3): any agent must conceive of herself as a Kantian agent in order to be able to act under any specific self-conception. Therefore, Kantians retain the resources to maintain that there can be no such thing as a "non-Kantian agent".

The idea that according to Kant, the Categorical Imperative gets its moral authority from its status as the constitutive standard of action is a fundamental component of Velleman's challenge to Kantian universalism. He takes the cultural anthropological evidence to indicate that this standard cannot apply to all agents. Hence, if it can be shown that this is *not* Kant's position in the first place, a fundamental part of Velleman's objection turns moot. To establish this, we must take a closer look at how Velleman's constitutivist interpretation of Kant compares

to what Kant himself writes on the subject of action.

Velleman ascribes to Kant the view that the only form of action is behavior that is made conditional on the belief that its underlying maxim could be willed as a universal law, and hence the idea that reasons for action only ever present themselves as considerations that are made conditional on this belief. I will refer to this view as the constitutivist interpretation. While Kant's theory of action has been interpreted like this before (cf. Sidgwick 1907, 511-516), the interpretation has been popularized by Christine Korsgaard (cf. Korsgaard 1999). Since Velleman explicitly says that his version of Kant is 'similar, perhaps identical, to Christine Korsgaard's […] account of action' (Velleman 2015, 32), I will refer to Korsgaard as the main representative of this interpretation.

To make sense of the constitutivist interpretation, it must first be understood how Kant conceptualizes freedom and autonomy. Kant defines freedom negatively as a property of the will that makes it 'efficient independently of alien causes *determining it*', and positively as autonomy: 'the will's property of being a law to itself' (*G*, 4:447). According to Kant, all causality either occurs according to nature or from freedom (*CPR*, A536/B564). Hence, for behavior to be ascribable to an agent (a rational being with a will) and not to nature, it must have a free cause at its origin. Kant proceeds by saying that all agents necessarily act *under the idea of freedom*, which means that '[r]eason must regard *itself* as the author of its principles independently of alien influences' (*G*, 4:448, italics mine).

One thing that the constitutivist interpretation takes away from this is the idea that as an agent, '[y]ou [always] take *yourself* , rather than the incentive on which you choose to act, to be the cause of your action' (Korsgaard 1999, 23), which is certainly correct. To act under the idea of freedom is to act under the idea that your action is determined by your own free will, independent of natural determinism. When our inclinations present themselves to us, they do not dominate us. Instead, we must *decide for ourselves* whether we accept our inclinations/beliefs/desires as grounds for action (cf., *MM*, 6:384-385; *Rel*, 6:23-24). This is also what Kant means when he says that '[h]uman choice […] is a choice that can indeed be *affected* but not *determined* by impulses' (*MM*, 6:213-214). To take our incentives as the cause of our bodily movements would be to "act" under the idea that we have no control over them, and hence as if we were pushed around by nature. That is to say: we would not really act at all.

However, as the constitutivist interpretation goes, the fact that we necessarily act under the idea of freedom does *not* imply that our actions automatically qualify as free actions. Instead, freedom provides us with a *standard* for what it is that we are *trying* to do well in action: making our behavior *qualify* as free, autonomously initiated action. Freedom/autonomy,

on the constitutivist interpretation, is thus an end we are committed to realize in action.

So, what does it mean to succeed at making our behavior qualify as free action on the constitutivist interpretation? According to Korsgaard, Kant maintains that we can either choose to let our behavior be governed by laws of nature, by allowing ourselves to have sensible inclinations at its basis, or by freedom by having the Categorical Imperative at its basis (cf., (Korsgaard 1999, 15-17). Since freedom is opposed to nature, our sensible inclinations come from nature, and the Categorical Imperative is the law of freedom, she takes Kant to maintain that in order for action to qualify as free and autonomous (i.e., for action to live up to its constitutive standard) and thereby fully ascribable to the agent, it must be made conditional on the belief that its underlying maxim could also be a universal law (Korsgaard 1999, 15-17; cf., Velleman 2015, 33-34, 48).

Constitutivists thus take Kant to maintain that acting *conceptually* consists of trying to abide by the Categorical Imperative's demands, because abiding by its demands is what it means to determine an action from freedom. As rational beings who can only *act* under the idea of freedom, we necessarily act on the representation of *our own laws*, and our own laws are categorical imperatives. Any other law comes from nature, and hence *cannot* be the law of a free, autonomous will. Thus, constitutivists maintain that on Kant's account, all immoral "action" turns out to be defective action: behavior that is aimed at qualifying as action (as behavior that is caused by our free, rational selves), but falls short of doing so (Korsgaard 1999, 3, 16). According to the constitutivist interpretation, such behavior is the result of heteronomous influences on our will, making 'a law outside of ourselves' the ultimate cause of our bodily movements (Korsgaard 1999, 11-12, 24-26). This is why Korsgaard, for instance, says that 'you cannot regard yourself as the *cause* of your action […] unless you will universally' (Korsgaard 1999, 23).

In sum, the constitutivist interpretation maintains that since action requires freedom, to act freely is to act on a law which the will gives to itself, and the will's *own* law is the Categorical Imperative, the Categorical Imperative is a principle that *must* underlie action by its very concept. In Korsgaard's words: '[it] doesn't exactly follow that we *ought* to choose actions […] in accordance with the [Categorical Imperative], for in a sense we cannot possibly choose in any other way' (Korsgaard 1999, 29, italics mine)[2]. This is essentially also what Velleman means when he says that Kantian agents are *committed* to realizing their potential autonomy.

In the remainder of this section, I argue that the constitutivist interpretation misconstrues

[2] See Enoch 2006 for an interesting and highly influential critique on the normative potency of this idea.

the connection that Kant sees between freedom, autonomy and action. More precisely, I argue that the constitutivist interpretation rests on the misconception that according to Kant, the will cannot be determined on other principles than those given by *pure* practical reason.

What will follow from this analysis is the conclusion that, *pace* Velleman, Kantian agency does not presuppose or depict autonomy as an inescapable, constitutive standard of action. Therefore, *whatever else a Kantian agent may be*, a Kantian agent is not characterized by having the Categorical Imperative (or autonomy) as his or her constitutive standard of action.

Kant's ambitious project in the *Groundwork* of grounding morality in pure reason is undertaken against the background that it is already obvious to him that sensible desires can by themselves be sufficient for providing us with a strong incentive to act (cf., *G*, 4:427-4:428). It is not a mystery to Kant how agents, having to cognize themselves as members of the world of sense, exposed to all the temptations that nature throws at them, may act solely on maxims of self-interest (*G*, 4:415, 4:452). Certainly, constitutivists are right to say that according to Kant, there is a significant reflective distance between us and our inclinations in the sense that inclinations cannot *determine* our actions. However, as Julian Wuerth adequately puts it: 'reflective distance on a sensible desire does not mean that the sensible desire becomes nothing to us' (Wuerth 2010, 20). Sensible desires, that is, are certainly capable of tempting *us* to adopt maxims solely on their basis.

The interesting (and much more difficult) question for Kant is whether reason has principles *of its own* that can be intrinsically motivating, independent of our sensible desires and subjective ends, as he already establishes in the first section of the *Groundwork* that this is a precondition for morality (*G*, 4:400-4:402).

Strikingly, however, the constitutivist interpretation makes it seem as if the *real* challenge for Kant is to incorporate the possibility of *immoral* action in his moral theory, understood as action on the basis of maxims of self-love that run counter to the Categorical Imperative. Korsgaard even admits that it may seem as if Kant's theory of action, on her reconstruction of it, explains normativity 'rather too well', for 'it seems to imply that only good action really is action, and that there is nothing left for bad action to be' (Korsgaard 1999, 14). After all, on her interpretation of Kant, intentional behavior is either conditioned on a law of nature, thereby failing to fully qualify as action, or initiated from freedom, thereby necessarily based on a lawful maxim.

It is equally striking that Korsgaard bites the bullet on this. Like Henry Sidgwick's famous objection to Kant, she concludes that it is impossible for immoral "actions" to be fully imputed to the agent because he has a free will, and a free will can only choose actions based

on a law which it gives to itself, whereas immoral actions are necessarily the products of heteronomy, and thus not caused by the free agent (Sidgwick 1907, 511-516).

Unlike Sidgwick, however, who sees this impossibility as a serious problem for the possibility of an agent's moral responsibility for bad actions, Korsgaard sees it as a strength of Kant's position, because it provides the agent with normative directions for constituting herself as an agent (Korsgaard 1999, 14).

There is, however, sufficient textual evidence which suggests that this contention is neither a weakness nor a strength of Kant's position, because it is not his contention in the first place. To begin with, Kant distinguishes between action that is *contrary to duty*, action that is merely *in conformity with duty*, and action that is done *from duty* (*G*, 4:397; cf., Kleingeld 2023, 4). According to Kant, only the latter form of action can be called moral. Yet, he does not seem to be troubled by also referring to the other forms of action *as action*:

> I here pass over all actions that are already recognized as contrary to duty […] for in their case the question whether they might have been done *from duty* never arises, since they even conflict with it. (*G*, 4:397).
>
> [I]t is easy to distinguish whether an action in conformity with duty is done *from duty* or from a self-seeking purpose. It is much more difficult to note this distinction when an action conforms with duty and the subject has, besides, an *immediate* inclination to it. (*G*, 4:397).
>
> Thus the action was done neither from duty nor from immediate inclination but merely for purposes of self-interest. (*G*, 4:397).

Furthermore, in the *Groundwork*, Kant draws a clear distinction between *formal* and *material* practical principles. Practical principles are *formal* if they abstract from all subjective ends, whereas they are *material* if they have subjective ends at their basis (*G*, 4:428). He proceeds by saying that '[t]he ends that a rational being proposes at his discretion as effects of his actions (material ends) are all only relative; for only their mere relation to a specially constituted faculty of desire on the part of the subject gives them their worth […] *all these relative ends are only the ground of hypothetical imperatives*' (*G*, 4:428, [italics mine]).

Hence, on Kant's account, it is possible for human beings to set material ends for themselves *at their discretion*, which are *only* the ground of hypothetical imperatives (instrumental principles), and thus not necessary for all rational beings. In other words: according to Kant, it is possible for human beings to act solely on considerations of self-interest, paying no heed to considerations of duty or universality. This is a surprising result if we, as the constitutivist interpretation would have it, suppose that Kant takes *dutiful* action (action

conditioned on the Categorical Imperative) to be the only true form of human action.

There is also a tension between the constitutivist's contention that immoral actions cannot be imputed to the whole agent and Kant's direct insistence to the contrary in the *Critique of Pure Reason*. There he writes that it is 'grounded on the law of reason' to blame someone for his bad behavior, regardless of any empirical conditions that may have had an impact on it, because reason 'could have and ought to have determined [his] conduct […] to be other than it is', because of which the action, and thereby the failure to act morally should be ascribed to the agent's *intelligible character* (*CPR*, A555/B583), which Kant elsewhere calls 'the proper self' (*G*, 4:457-4:458). What this shows is that, unlike what the constitutivist interpretation seems to suggest, a failure to act morally is not the result of less than fully autonomous decision-making, but of an *absolutely free*, intelligible decision on the part of the (noumenal) agent to *allow* immoral incentives to underly his action.

The passages that have been discussed strongly suggest that the constitutivist interpretation misconceives of Kant's proposed relation between freedom, autonomy and the moral law. While it exceeds the boundaries of this chapter to provide a full analysis of how to conceive of this relation, I will say that Pauline Kleingeld has made a convincing case for the idea that Kant's conception of the free will is *analogous* to his republican, political conception of freedom, which opposes freedom to slavery, dependence and domination (Kleingeld 2020, 104; 115-116). Accordingly, the autonomous will, much like the republican citizen, is subject only to *its own* laws, and thus not dominated by external laws.

While on the republican conception of freedom, the free, autonomous will, like the republican citizen, *ought* to follow its own laws, it is by no means guaranteed that it will do so. Indeed, this is the very reason why the moral law comes in the form of an imperative to us. That is, the very reason why we *ought* to determine our will in accordance with the moral law is that it is possible for us (and we are often tempted) to act on maxims which run counter to it (*G*, 4:449, 4:454; O'Neill 1975, 98). Counterfactually, as Kant writes, the moral law would *be* practical reason as such if we existed as pure reason alone, but since we partly cognize ourselves as members of the world of sense, and as such do not always act as pure reason would have us act, it takes effort to overcome our subjective inclinations and act from duty (*G*, 4:449, 4:454).

In sum: to say that an agent necessarily acts under the idea of freedom is to say that an agent necessarily takes *herself* to be the cause of her action, which contains the belief (not knowledge) that her action has a cause that is *independent* of (not necessarily *unaffected* by) influences that do not belong to the self, and the belief that this cause is her own free will. However, *pace* the constitutivist interpretation, this is not to say that it is *impossible* for a free

will to transgress the laws of freedom. At most, it could imply that agents must be cognizant of these laws even while transgressing them (*G*, 4:455). Hence, Velleman's conception of a Kantian agent as someone who can only act out of respect for autonomy is different from Kant's own concept of an agent, which is better described as: *a being that necessarily acts on principles under the idea of freedom.* These principles can either be material or formal.

The analysis of this section brings the anthropological challenge to Kantian universalism better into view. The challenge is not, as Velleman implies, to establish that all agents, including those supposedly observing opacity of mind, have autonomy (and thereby the Categorical Imperative) as their constitutive standard of action, but to establish that agency pluralism, in particular those agential conceptions associated with opacity of mind, does not endanger Kant's contention that agents necessarily act under the idea of freedom, as this is a requirement for autonomy of the will, and thereby for the Categorical Imperative to apply to each agent.[3]

If what has been said thus far is correct, the following has been established:

1. What Velleman refers to as "Kantian agency" is not how Kant himself understands agency.

I have argued that a Kantian agent is better defined as *a being that necessarily acts on principles under the idea of freedom*. For Kant, being an agent does not consist of making your behavior conditional on the Categorical Imperative or rendering yourself autonomous. Autonomy is a *property*, not a potential, of an agent's will: a property that cannot be waived and persists for so long as an agent remains an agent. Hence:

2. On Kant's account, morality does not demand the *realization* of autonomy, but that agents act only on maxims that are compatible with the laws of an autonomous will.

To have an autonomous will is to be subject to your own laws, but this by no means guarantees that the autonomous agent necessarily determines or even attempts to determine his will in accord with these laws. Lastly:

3. Kant explicitly refers to actions contrary to duty and actions merely in conformity with duty *as actions*.

[3] Of course, even if this challenge can be met, it remains highly contested whether Kant is right in stating that a supreme principle of morality is transcendentally intertwined with freedom of the will. However, this is a much more general challenge to Kant's moral theory that does not touch upon the specific threat that comes with the constitutivist challenge that Velleman sets before it.

In fact, several passages in the *Groundwork* make it clear that Kant believes it is possible for rational beings to solely act on *material* ends (based on self-love), paying no heed to considerations of duty or universality. This makes an awkward match with the constitutivist contention that Kant thinks that all action is guided by the Categorical Imperative.

§2.4 On Freedom as a Necessary Precondition for Agency

In this section, I argue that any agent must conceive of herself as a Kantian agent in order to act under any specific self-conception. Therefore, there can be no such thing as a non-Kantian agent.

In the previous section, I argued that Velleman's conception of a Kantian agent should be rejected. Instead of characterizing a Kantian agent as a type of agent whose actions are aimed at realizing autonomy, Kant's position is that an agent *is* an autonomous being whose actions (including immoral actions) are the products of a free and autonomous will.

However, while Velleman's specific objection misses the mark, it seems that the phenomenon of opacity of mind may still be worrisome for Kantian universalism in light of my own interpretation of the Kantian agent. After all, if there truly are groups of agents that do not refer to, or speculate about mental states to make sense of their actions, as Velleman claims, this seems hard to rhyme with Kant's contention that agents necessarily act on maxims, and thereby the idea that moral obligation, for all agents, can be phrased in terms of having to act only on those maxims that a good will sets for itself (those that can contain themselves regarded as universal laws, *G*, 4:446-4:447).

In order to address this concern, it must first be noted that there is a seeming tension between Velleman's theses that (1) agency means making behavior your own, (2) non-Kantian agents are clearly agents, and (3) non-Kantian agents observe opacity of mind (Velleman 2015, 33). It seems that for a non-Kantian agent to act in a way that is in conformity with her social role, thereby supposedly making behavior her own, there must be reasons *she* has for acting this way, for otherwise we seem to lose the part where it is actually *the agent* that makes her behavior conditional on her social role (cf. Flikschuh 2018, 563). However, it is hard to understand *how* this reasons-action relation works for agents that do not conceive of their actions as "manifestations" of mental states, *if* by this Velleman means that for such agents, action comes about without the aim of realizing rationally endorsed ends. This points towards an unclarity in what Velleman precisely means by the opacity of mind that is supposedly observed by non-Kantian agents with a non-psychologized conception of agency.

Velleman's opacity of mind-thesis is thus in need of further clarification. What does he

think it means for a person to observe opacity of mind? First of all, it must be noted that to observe something can mean two things. We can observe an object, say, a table, in the sense that we *perceive* the table, but we observe the rules of etiquette, for instance, by obeying its rules. Is observing opacity of mind like *perceiving* your mind as opaque, or does opacity of mind connote a set of rules, such that its observation comes down to following these rules? Frankly, no conclusive answer to this question can be found in Velleman's work, as he says things that would work for both interpretations.

Sometimes, Velleman writes as if opacity of mind connotes the idea that the content of an agent's mind (e.g., his desires, ends, beliefs, etc.) is opaque *to himself*, or at least not in any way relied upon when acting, such as when he says that 'a scenario may call for [an agent] to pursue an end or express an emotion, *but the end or emotion will not be given by his inner experience*; it will belong to a role that he is playing' [italics mine] (Velleman 2015, 33), or when he says that people observing opacity of mind '*think of themselves, not as manifesting inner mental states*, but rather in terms of stereotyped roles and routines' [italics mine] (Velleman 2015, 48). These remarks seem to suggest that an agent who observes opacity of mind takes himself to act on the ends and emotions that belong to his social role, but not to *himself*.

If this is what Velleman means by opacity of mind, and it is true that there are people who understand themselves accordingly, this surely casts into doubt whether Kant is right to say that 'since no one can have an end without *himself* making the object of his choice into an end, to have any end of action whatsoever is an act of *freedom* on the part of the acting subject, not an effect of nature' (*MM*, 6:384-385). In other words: if it is true that some agents act in ways that do not require a reflective endorsement of *self-determined* ends, as the proposed interpretation of opacity of mind seems to suggest, this throws into doubt the idea that we can really maintain that action necessarily occurs under the idea of freedom.

However, if we look at the anthropological literature on opacity of mind, we find out that it hardly connotes the idea that an agent's mind is opaque to herself. Opacity of mind is often used interchangeably with 'opacity of other minds' (Robbins 2008, 421-429). It usually pertains to an overall reluctance to speculate about the intentions underlying *another* person's behavior, and about what is going on inside of another person's head. To (openly) speculate about another person's mental states is considered a reprehensible intrusion of someone else's private space (Robbins 2008, 426); as something to be avoided, and as something that impossibly leads to actual knowledge (Robbins and Rumsey 2008, 408). Admittedly, in some more extreme variants, as can be found among the Urapmin, people have been said to go to

great lengths not only to avoid speaking about another person's mental states, but also their own (Robbins 2008, 426-427). Most variants, however, seem to be less extreme, such as with the people living on mount Bosavi where it is generally considered okay to speak about your own mental states, if one refrains from speculating about those of someone else (Schieffelin 2008, 431-441).

However, it seems that even in the more extreme cases of opacity of mind, a person's mental states are far from opaque to- or not relied upon by *oneself,* but instead highly privatized phenomena that generally ought to be only assessed or speculated about by oneself. The opacity in question, insofar as it concerns one's own mind, seems to pertain to a duty of sorts to generally keep one's own mind opaque *to others*.

So, if Velleman's opacity of mind-thesis *does* connote the idea that an agent's mind *appears* opaque to himself, this does not line up with the anthropological observations discussed above. However, like I said, Velleman also provides evidence in favor of a second interpretation, according to which observing opacity of mind connotes obeying certain rules. For example, he writes that he does *not* want to claim that people observing opacity of mind are 'unaware of the desires they have' (Velleman 2015, 32). Instead, what matters, he says, is that these people generally conceive of their social roles, rather than their mental states, as reason-giving. Velleman takes this idea to be supported, among other things, by anthropological literature which points out that people from opacity of mind cultures are highly occupied with the cultivation of social, stereotyped behavior and appear largely indifferent to the cultivation of inner attitudes (cf., Fajans 1985, 370; Paul 1995, 18-19).[4]

However, even if this were true, this is entirely different from Velleman's claim that people observing opacity of mind avoid attributing mental states to themselves (Velleman 2015, 48) and his claim that they act on ends that are not given by their inner experiences but belong to their social roles (Velleman 2015, 33). After all, it is one thing to conceive of your social role instead of your desires as reason-giving, and quite another thing to conceive of the reasons for acting in accord with your social role as *belonging* to your social role, rather than yourself. In the first case, an agent makes it her maxim to act in a way that is appropriate to her social role, whereas in the latter case, it is the social role, rather than the agent that authorizes the maxim.

Anthropologists are right to say that the phenomenon of opacity of mind raises several important questions, such as how to understand the (universal) role of empathy in social life

[4] It must be noted that there is no conclusive evidence for this thesis, as anthropologists can only ever observe external behavior, and never what is going on inside of the minds of the agents under observation. This severely limits the conclusions that can be drawn about their actual mindset and self-conception.

and the (universal) role of making one's intentions clear in communication (Robbins and Rumsey 2008, 412, 416-417). Indeed, the data may even do some damage to several doctrines within Kant's philosophy. For one thing, it may lead to second thoughts about Kant's view on the nature of social interaction, according to which 'in human social life, the principal object is to communicate our attitudes' (*L-Eth-C*, 27:444). The data may even vindicate a reconsideration of Kant's influential thesis that common human reason *naturally* judges the moral worth of an action on the basis of the dutifulness of its underlying maxim, rather than 'mere conformity to law as such' (*G*, 4:402).[5]

But does the anthropological data vindicate the idea that people from opacity of mind cultures qualify as non-Kantian agents, as Velleman maintains? To my knowledge, none of the anthropological literature on which Velleman relies raises the suggestion that opacity of mind involves an absence of- or non-reliance on mental states in the determination of the will. That is, nothing indicates that people from opacity of mind cultures would not be *conscious* of *their own judgment* that there are reasons for conforming to their social roles, and thereby (at least in principle) capable of determining their actions otherwise in the presence of different reasons. Consequently, there is nothing in the respective literature which suggests that people from opacity of mind cultures do not act under the idea of freedom, and hence no indication that these people would not qualify as Kantian agents.

This is a positive outcome, I believe, because if we want to preserve the idea that action is different from mere behavior by virtue of action being the sort of behavior that *an agent* makes conditional on reasons (as Velleman agrees we should), we cannot let go of Kant's contention that action necessarily occurs under the idea of freedom, and thereby the idea that being a Kantian agent is a necessary prerequisite for action. Therefore, the Kantian conception of agency does not lead us to the implausible (and degrading) conclusion that people from opacity of mind cultures do not qualify as full-fledged agents.

Why should we accept Kant's freedom-based conception of action? After all, do we not sometimes feel as if we are *not* free to act in the way we do, such as when we reluctantly hand over our wallet to a robber? Could we not say that action is different from mere behavior in that action is goal-directed whereas mere behavior is not, and leave it at that? If so, we might be able to leave freedom out of the picture.

However, this objection relies on a misconception of Kantian freedom. As has been

[5] In a similar vein, Martin Sticker has argued that the fact of cultural pluralism provides reasons for Kantians to be concerned about the possibility that Kant's conception of common human reason may, in fact, not be universally shared (Sticker 2021, 167-168).

established, to conceive of your actions as free in the Kantian sense is to conceive of your actions as caused by your free will, not as options among alternate empirical possibilities (cf., Kleingeld 2020, 105-108).

On the other hand, there are significant theoretical benefits to the idea that action occurs under the idea of freedom. For one thing, it provides us with an intuitive explanation for why intentional, throat-clearing coughs can be classified as actions, whereas coughs that overcome us qualify as bodily reactions (cf., Velleman 2015, 31). To maintain that it is possible to act *without* conceiving of yourself as free would be to subscribe to the view that you can be the agent of your action without *in action* conceiving of yourself as the *author* of your action, which puts a heavy burden of proof to account for the difference between reflexes/impulses and actions on those who want to hold this position.

For another thing, Kant's freedom-based conception of agency also intuitively ties in with a widely shared belief on moral responsibility, namely that a necessary condition for holding a person responsible for his *actions* is that he is sufficiently *in control* of his behavior, meaning that it is the agent *himself* that is capable of exerting influence on his behavior. This is also why many legal systems allow for people to receive no- or diminished punishment when they are deemed unaccountable (or less accountable) for their behavior.

At this point, we may wonder what the implications of universal Kantian agency are for the possibility of agency pluralism: the thesis that there is a variety of self-conceptions under which rational beings could conceive of themselves as the author of their actions. Is Kantian agency the only type of agency, because of which there is no agency pluralism to begin with?

To be clear, on my account, there can be no such thing as a non-Kantian agent, which means that no agent could make behavior her own without conceiving of her action as caused by her own free will. Yet, we might still be hesitant to reject agency pluralism, because it seems clearly true that agents can have different reasons for action precisely in virtue of their *particular* (rather than universal) self-conceptions or practical identities, to use one of Korsgaard's terms (cf., Korsgaard 1996, 101). Hence, the possibility to conceive of myself as the author of *specific* actions is in part contingent on how I specifically understand myself and my place in the world. For example, part of the explanation for why I am writing this dissertation is because I conceive of myself as a philosopher, and writing a dissertation is part of what philosophers are supposed (or at least expected) to do if they want to have a career in academic philosophy.

But does this make me a specific *type* of agent, such that beyond being a Kantian agent, I am the sort of agent that can conceive of himself as the author of *specific* actions such as

dissertation writing? I am inclined to think not. It seems to me that specifying agent types according to the types of action that are intelligible to them yields trivial results. It seems silly to say that I would be a "philosopher-type" of agent because I have reasons for doing philosophy. Rather, what is important, it seems, are the rational capacities that need to be in place in order for an agent to regard herself as the author of *action*, not such- and such *actions*. Consequently, different types of agency would have to be *contenders* (rather than compatible additions) to Kantian agency, much like how Velleman puts forward the non-Kantian type of agency that is intertwined with his opacity of mind-thesis. However, as I have argued, there can be no plausible alternative to Kantian agency, as this would entail that one can be the agent of action without conceiving of oneself as such.

In sum, there may be reasons that could specifically (and perhaps even exclusively) have motivational force from a Kaluli perspective, Sherpa perspective, Western philosopher's perspective, etc. However, these reasons, I contend, can only exist *as reasons* insofar the Sherpa, Kaluli and Western philosopher are capable of interpreting certain considerations as reasons applying *to them.* This requires that they conceive of *themselves* as beings who are susceptible to reasons, which includes the belief that they could *regard* these reasons as grounds of their own actions. None of this is possible without Kantian freedom.

If Kant is correct, morality consists in *unconditional* commands of reason. While it is perfectly possible for agents to diverge in their susceptibility to specific reasons for action in virtue of their specific self-conceptions or practical identities, the unconditionality of morality would imply that the Categorical Imperative provides moral reasons to *all* agents *irrespective* of their subjective ends: including those that are derived from their specific self-conceptions.[6] In other words: while people may have different *prudential* reasons for action in virtue of their specific self-conceptions, there would be some reasons, namely *moral* reasons, that all agents have in common in virtue of being Kantian agents.

[6] Note that this thesis does not exclude the possibility that cultural differences or differences in agential self-conception may affect *what it takes* to abide by the Categorical Imperative, or to respect an agent as an end in itself.

§2.5 Conclusion

Velleman seeks to undermine the possibility of Kantian universalism by showing that not all agents are Kantian agents. I have argued that this challenge can be met. Rather than conceiving of the Kantian agent as a rational being who is inescapably committed to *realizing* her autonomy through the Categorical Imperative, as Velleman does, Kant's actual view is that all human action is a product of the free, autonomous will, and is always executed on principles *under the idea of freedom*. This is so despite the fact that the Kantian agent can volitionally adopt principles that do not belong to the will itself, as on Kant's understanding, autonomy does not connote *obedience* of one's own laws, but *living under*, or *being subject* only to one's own laws.

What this shows is that insofar Velleman intends to disprove Kantian universalism by demonstrating that in some parts of the world, agents cannot be said to have the Categorical Imperative as their constitutive principle of action, this strategy misses the mark as it does not target Kant's actual conception of agency in the first place.

I have argued that Kant's conception of the agent is better understood as *a being that necessarily acts under the idea of freedom*. Contrary to Velleman's claim, the anthropological data on opacity of mind cultures does not jeopardize the notion that the Kantian conception of agency is universally shared. Therefore, Velleman has not shown that Kantian universalism is false.

3. An Analysis of Kant's Verdict on Inuit Senicide

§3.1 Introduction

In the *Lectures on Ethics*, Kant is reported to have described the historical practice of senicide (i.e., killing the elderly) among certain Inuit communities as a 'loving service' (*Liebesdienst*) carried out from 'true filial love' by children to their parents.[1] Moreover, he reportedly claims that the practice was 'to some degree justified', as its aim was to spare the elderly from starvation – a fate he calls a 'more ignominious death' (*L-Eth-H*, 27:43; *L-Eth-Mr2*, 29:622). These remarks are surprising in light of central tenets of his moral philosophy, such as the claim that humanity exists as an end in itself (*G*, 4:429) and the view that persons have an obligation to preserve themselves (*MM*, 6:421-428), from which it also follows that they may not consent to being treated in ways that violate their dignity as rational beings (*MM*, 6:420-437; *MM*, 6:236).[2]

This chapter considers whether Kant's reported evaluation of Inuit senicide is consistent with the core commitments of his mature moral philosophy. His verdict, I argue, sheds new light on a central claim of his mature ethics – namely that persons are obligated to preserve themselves for as long as they remain a subject of duty (*MM*, 6:422). On my reading, Kant regarded Inuit senicide as "to some degree" justified insofar as circumstances beyond their control rendered it impossible for the elderly in question to continue living an honorable and virtuous life. I argue that, on Kant's interpretation of the circumstances, it is consistent with his ethics to hold that such a life fell beneath the dignity of a rational being and that consenting to having one's life ended on that basis may have been morally permissible.

Drawing on cultural anthropological sources, I begin section 2 by reconstructing the context in which certain Inuit communities are said to have practiced senicide.[3] In section 3, I

[1] According to Raimond Pousset, the Inuit practice of senicide disappeared 'when the Eskimo ethnic groups moved from their camps to permanent settlements and converted to Christianity' (Pousset 2023, 22). The last reported case of Inuit senicide is said to have occurred in 1939.

[2] I am grateful to an anonymous referee for pointing out that Kant has also made surprising claims about killing acts in different contexts, for example his assertion that the killing of a newborn born out of wedlock cannot, strictly speaking, be classified as murder insofar as '[a] child that comes into the world apart from marriage is born outside the law (for the law is marriage) and therefore outside the protection of the law' (*MM*, 6:336). This is certainly an important topic, but for present purposes I will restrict myself to Kant's analysis of Inuit senicide. For one, unlike Kant's assessment of Inuit senicide, much has already been written on Kant's assessment of mothers killing newborns born out of wedlock. Second, Kant's analysis of Inuit senicide is unique in that his verdict centers on preventing an "ignominious death" – a line of argument that, I believe, remains under-researched.

[3] Sadly, despite extensive effort, I have been unable to obtain an emic perspective (Inuit voices or firsthand accounts) on the historical practice of Inuit senicide. As a result, my information is largely based on twentieth-century reports written by Western anthropologists. Further research on this topic would be significantly enriched by access to sources that foreground Inuit perspectives.

turn to Kant's brief reported remarks on Inuit senicide in the *Lectures on Ethics*. In section 4, I argue that Kant's ethics can consistently prescribe obligatory acts of self-killing and allow for merely permissible self-killing acts, provided they do not constitute self-murder (*Selbstmord*), as Kant defines it, and thus do not violate the duty against it. In section 5, I examine what Kant might have meant by "ignominious" in the context of his conclusions regarding Inuit senicide and consider whether this notion might serve as a justification for the permissibility of ending one's life consistent with his mature ethical system. I argue that, *to the extent that* the predicament of the Inuit elderly can be characterized as anticipating an "ignominious death" under Kant's interpretation of their circumstances, the practice is best understood as a *merely permissible* instance of assisted self-killing: while those subject to senicide were no longer bound by a duty of self-preservation, they were likewise under no obligation to surrender their lives.

§3.2 Inuit Senicide Contextualized

The cultural anthropological data seems to paint the following picture of the general, shared rationale for the historical practice of senicide among particular Inuit communities. In times of hunger, scarcity, and forced migration to new hunting grounds, family members who could no longer contribute to the group's survival – particularly the infirm elderly – were commonly perceived as burdens, both by themselves and by their family:[4]

> The Eskimos of Baffin Island have great respect for the aged and treat them well. But when a woman becomes so old that she is a burden, she may calmly resign herself to death, allowing herself to be walled into a snow hut and left to die. She thinks this is better; the tribe agrees. (Weyer 1932, 138)
>
> [T]he usual reasons for giving up one's life were sickness, suffering, and the feeling of uselessness (which may have been in large part a reflection of attitudes from the individual's social environment). (Leighton & Hughes 1955, 329)
>
> Like the Stoic who argues, metaphorically, that if the chimney smokes one should get out of the house, the Eskimo justifies suicide, especially if age or infirmity renders one useless and a burden. (Weyer 1932, 248)

[4] Senicide is reported to have been practiced among Inuit communities living in harsh climatic regions, such as the Chuchki and the Yakut in Siberia, whereas it was not practiced (or very rarely practiced) among communities living in more forgiving climates, such as the Ihalmiut and the Yuit in southwestern Alaska (Pousset 2023, 22). This is no coincidence: the practice was largely a response to the difficulties posed by harsh climatic conditions. For the remainder of this chapter, I will use the word "Inuit" to refer to those Inuit groups that are reported to have practiced senicide in response to climate-related hardships.

These judgments arose in part from the perception that it was impossible for able-bodied family members to distribute energy and resources in such a way as to both sustain themselves and care for the elderly – without jeopardizing the entire family's chances of survival (Rasmussen 1931, 143; Pousset 2023, 22; Leighton & Hughes 1955, 329). To relieve their families of this perceived "burden", it was customary (and culturally encouraged) for the infirm elderly to request that their lives be ended by their kin. Fulfilling such a request was understood as "proof of devotion":

> Often, the old people themselves asked for their death; the *Igloolik* even knew a whole begging ritual for their own death. (Pousset 2023, 22)[5]

> As elsewhere […] when the Labrador Eskimos put an old person out of the way it is generally in accordance with the wishes of the one concerned, and is thought to be proof of devotion. (Weyer 1932, 139)

Participants in the practice reportedly took comfort in the belief that the souls of those who 'met forms of violent death' would travel to the most desirable afterlife (Leighton & Hughes 1955, 328; Weyer 1932, 247-254; Hawkes 1916, 132; Pousset 2023, 22) – a place thought to be free of the suffering of earthly existence.

From what I can tell, the data leaves room for interpretation regarding the *sense* in which the infirm elderly were considered a burden to their families, and thus the sense in which senicide functioned to 'ameliorat[e] the stress which accompanies scarcity of food' (Weyer 1932, 137). Two interpretations seem plausible in light of the anthropological record. The first – which we might call the *dead weight* interpretation – is suggested by several contemporary ethicists, including James Rachels (Rachels 2003, 24).[6] On this view, the infirm elderly were seen as a burden (by themselves and by others) because they consumed precious resources while being unable to contribute to the acquisition of new ones, thereby reducing the chances of survival for others. On this interpretation, senicide had the function of "ameliorating stress" by improving the survival odds of able-bodied family members. However, this raises a question: if the goal was merely to conserve resources, why not keep the infirm elderly alive – provided they could keep up during migrations – but simply refrain from feeding them until food became more abundant? After all, this would seem less taxing than the emotional and moral weight of actively killing one's parents.

While I do not pretend to have a definitive answer to this question, it is worth noting

[5] Cf. Leighton & Hughes 1955, 331.
[6] See also O'Hara et al. 2023, 8; D'Amico 2019, 82; Battin 1987, 318.

that several anthropological sources report a widespread fear among historical Inuit communities of vengeful spirits of deceased kin, believed to interfere with the living by affecting both their health and their success (Weyer 1932, 245-247; Hawkes 1916, 119; Jennes 1922, 171, 178). This may have provided a strong incentive for families not to "anger" the spirits of the infirm elderly – for instance by taking care of them for as long as they chose to remain alive. The act of *requesting* to be killed may thus have functioned as a way for the elderly to prevent the emergence of such resentment.

Alternatively, on what we might call the *emotional burden* interpretation, the sense in which the infirm elderly were considered a "burden" to their families was primarily emotional rather than physical. On this view, the Inuit aimed to increase the community's chances of survival by rationing food strictly among able-bodied family members, depriving the infirm elderly of nourishment while scarcity persisted. In such a context, the emotional toll of watching loved ones starve – particularly when those loved ones requested death, and when honoring such a request was culturally understood as "proof of devotion" – may have been heavier than the grief of actively hastening their death. This interpretation also finds support in an account by anthropologist Knud Rasmussen, who describes the case of an Inuit woman who survived being 'left out in the snow' for several days without food. Although she survived, she was still regarded as a burden by her kin group, even though her relatives had ceased to care for her (Rasmussen 1931, 143-144).[7] On the emotional burden interpretation, then, senicide functioned to reduce the kin group's emotional stress by allowing the elderly to die in a way that was considered more merciful than the likely alternative of starving to death.

§3.3 Kant's Remarks on Inuit Senicide in the *Lectures on Ethics*

From what is documented of Kant's (reported) position on Inuit senicide, it is clear that he had a somewhat different understanding of the practice's underlying purpose and motivation than is suggested by the cultural anthropological data discussed above. In the *Lectures on Ethics* delivered between 1763 and 1764, Kant's student, Johann Gottfried Herder, reports him as

[7] Rasmussen writes that, when he asked 'whether it was not thought wicked' that an old woman named Kigtaq was often left out in the snow 'clad only in a thin inner jacket and no thick, warm outer coat' during a mid-winter migration, he received the following response: '[t]his is how it is, and we see no wickedness in it. [Kigtaq's son-in-law] has the choice between helping one who is at death's door anyhow, and allowing his wife and children to starve. Perhaps it is more remarkable that old Kigtaq, now that she is no longer able to fend for herself, still hangs on as a burden to her children and grandchildren. For our custom up here is that all old people who can do no more, and whom death will not take, help death to take them. And they do this not merely to be rid of a life that is no longer a pleasure, but also to relieve their nearest relations of the trouble they give them' (Rasmussen 1931, 143-144).

saying that 'the Eskimoes, who murder[8] [*ermorden*] their parents as a loving service [*Liebesdienst*] to them, are to some degree justified [*haben in gewißermassen Grund*], since they foresee a more ignominious [*schmälichern*] death for them in the hunting that is *necessary* for survival' (*L-Eth-H,* 27:43). A similar statement – albeit without explicit reference to moral justification – appears in the Mrongovius lectures, where Kant is reported to have said the following:

> The Esquimaux, when their parents are decrepit, and no longer capable of working, strangle them; and the old also make preparation for this. But the children do it from *true filial love*, because in winter they are absent for many weeks out hunting, and during that time the old might starve. (*L-Eth-Mr2,* 29:622, emphasis mine)

Much like the cultural anthropologists cited earlier, Kant understands the practice as taking place within a context of hunger and scarcity. However, the idea that the elderly were perceived as a "burden" to their families is entirely absent from his remarks. Nor is there any indication that he understood senicide as a means of increasing the community's chances of survival, controlling the population, or sparing children the agony of watching their parents starve to death. As such, his account does not neatly align with either the *dead weight* interpretation or the *emotional burden* interpretation.[9] Instead, Kant characterizes Inuit senicide as an "act of love" from children to their parents and as "to some degree justified" – with the sole intention of granting them a death that is "less ignominious" than the alternative of dying from starvation. I will refer to this interpretation as the *less ignominious death* interpretation.

These passages from the *Lectures on Ethics* may strike us as a milder take on Inuit senicide than one might expect from Kant during this period. Elsewhere, Kant is reported to have followed 'the French' in describing 'Eskimoes' as 'very repulsive in appearance [*sehr abscheulich von Gesicht*]' and savage and spiteful in their customs [*wild und boshaft an Sitten*]' (*PhysGeo* 9:432). He does not, however, appear to consider senicide among the Inuit to be a practice rooted merely in savagery or spite.

Nevertheless, these remarks yield more questions than answers with regard to where and how senicide fits within Kant's moral philosophy. For one, the very idea that an action

[8] While *Ermorden* is translated as "kill" in Peter Heath's translation of the *Lectures on Ethics*, "murder" is a more accurate rendering.

[9] Kant's interpretation aligns with the *emotional burden* interpretation only insofar as they both seem to understand the practice as a *loving service*, albeit for different reasons. According to the former interpretation, the Inuit committed senicide (mostly) to spare *themselves* the agony of witnessing their beloved relatives starve to death. On Kant's interpretation, senicide was a loving service for the Inuit because it was done to spare *their relatives* from a "more ignominious death".

could be *to some degree justified* is puzzling, since Kant is not known for having a gradual conception of justifiability. Moreover, in light of his strong objections to the idea that rational nature may dispose of itself as a mere means to a discretionary end (*MM*, 6:423; *G*, 4:421-422), one might well question whether, on Kant's account, the prospect of facing a "more ignominious" death could ever constitute a morally legitimate reason to end one's life.

Nowhere does Kant elaborate on what he means by an "ignominious death", nor does he explain why voluntarily dying by senicide would be – or be considered – "less ignominious" than dying from starvation.[10] "Ignominious" (*schmählich*) generally denotes something along the lines of "shameful" or "disgraceful". Typically, when Kant discusses shame and self-contempt, he frames them as emotional responses appropriate to the recognition of one's own moral failure (cf. *G*, 4:426; *MM*, 6:420; *MM*, 6:429; *MM*, 6:482-483). Making oneself "contemptible in one's own eyes" is usually associated with violating the dignity of humanity in oneself as a person (*MM*, 6:429). This raises the question whether Kant meant to suggest that shame or self-contempt would have been appropriate for the Inuit elderly if they were to die of starvation – and that the less shameful and more honorable alternative would be to choose to be killed. If so, it would follow that dying of starvation in this context would amount to a moral failure. On that reading, the Inuit elderly would have had a *duty* to request their own death.

This seems implausible. Since human beings are subject to the duty of self-preservation (*MM*, 6:420, 422), it seems to follow that a person who chooses to die of starvation despite having access to food and water would indeed be in violation of this duty and ought to be *ashamed.* But this is clearly not analogous to the case of someone who dies of starvation due to resource scarcity – which Kant recognizes as the predicament faced by the Inuit elderly. In the *Critique of Pure Reason*, Kant affirms that an action can be a duty only if it is physically possible (*CPR*, A547-8/B575-6). In other words: ought implies can. Thus, if Kant's characterization of the Inuit elderly's death by starvation as "ignominious" is to be interpreted as suggesting that it is shameful, this does not align with his mature view of when shame or self-contempt is appropriate. Given that the Inuit elderly were physically unable to preserve

[10] The term "ignominious death" appears on three other occasions – each time without elaboration – in Kant's *Religion Within the Bounds of Bare Reason* (*Rel*, 6:62, 64, 81). Most notable is the following passage, where Kant writes that 'the ideal of humanity pleasing to God' is thought under the idea of a human being who 'although tempted by the greatest enticements, would nonetheless be willing to take upon himself all sufferings, *even to the most ignominious death*, for the sake of the world's greatest good, and even for his enemies.—For, the human being can frame no concept of the degree and the strength of a power, like that of a moral attitude, unless he presents it as wrestling with obstacles and, under the greatest possible challenges, as nonetheless prevailing' (*Rel*, 6:62, italics mine). Hence, in the *Religion*, Kant no longer seems to hold that the anticipation of an "ignominious death" (if this concept signifies the same meaning as in his reported verdict on Inuit senicide) can "to some degree justify" an (assisted) self-killing act.

themselves, they cannot be said to have violated a duty to the self.

This – along with the sheer implausibility of suggesting that those dying from starvation due to deprivation and infirmity should be ashamed rather than seen as victims of a grave misfortune – casts serious doubt on the idea that this is what Kant intended. Moreover, this interpretation finds little support in the cultural context. As noted in the previous section, several anthropological sources report that, at the time under discussion, the Inuit believed that the souls of those who died in conditions of great suffering would enter the most desirable afterlife. In other words, dying from starvation or hardship was not culturally understood as "taboo", nor is there any plausible indication that Kant believed otherwise. It is thus worth considering whether Kant may have meant to express something more in line with his established ethical framework.

In the next section, I discuss considerations that point toward a more plausible interpretation of what Kant may have meant by "ignominious" in the context of his verdict on Inuit senicide and how this concept might support the justification of a self-killing act. In section 5, I develop this interpretation further and argue that it might serve as a possible justification of Inuit senicide within the terms of Kant's *less ignominious death* interpretation.

§3.4 Kant's Position on Suicide

Since, according to the anthropological data, it was customary for senicide to be *requested* by those Inuit elders to whom the practice applied, I understand these cases as a form of assisted self-killing. Kant reportedly remarks that 'the old make preparations' for being strangled to death (*L-Eth-Mr2*, 29:622), which suggests that he believed that the elderly took part in carrying out their own deaths. It therefore seems likely that Kant also conceived of Inuit senicide as a form of assisted self-killing.

My method for analyzing whether Kant's ethics allows for the moral permissibility of senicide is to examine whether it allows for the justifiability of requesting that another end one's life on the basis of reasons connected to old age. I take for granted the following assumption: if it is morally permissible for an elderly member of the community to make such a request, then it must also be permissible for another member of the community to carry it out – provided the act is, as a matter of moral principle, conditional upon the actual consent of the elderly community member in question (cf. Kleingeld 2020, 400-401).

As is well known, Kant deems suicide a violation of a perfect duty to oneself (*MM*, 6:422-424). Moreover, while he holds that we have a duty to assist others in realizing their ends when they are unable to do so themselves, his ethics forbids us from helping others to pursue ends that are themselves impermissible (*MM*, 6:450). How, then, could the prospect of living

an inevitably "ignominious" life until death ever serve as a justification for ending one's own life – or for consenting to have it ended by another?

It is important to note that, in arguing for the impermissibility of suicide, Kant uses the German term *Selbstmord* (or *Selbstmorde*), which literally translates as "self-murder" (cf. *G*, 4:429; *MM*, 6:421-424). "Murder" is clearly a morally loaded concept, whereas "killing" is not (cf. Sticker 2021, 181). As will become clear in the next section, there is sufficient textual evidence to suggest that the circumstances and motivations underlying an act of self-killing play a significant role in determining whether that act should be classified as an impermissible instance of self-murder on Kant's account.[11] Hence, in order to assess whether Inuit senicide qualifies as self-murder, we must first clarify what, in Kant's view, distinguishes a permissible act of self-killing from one that is morally impermissible.

§3.4.1 Suicide as a Duty

Martin Sticker has proposed that Kant's moral theory allows for the possibility that Inuit senicide was permissible *for the Inuit*, though not for others. While Kant's account categorically and universally prohibits acts of (self-)murder, Sticker suggests that whether particular cases of killing should qualify as instances of (self-)murder may depend, to some extent, on 'linguistic customs and societal attitudes' (Sticker 2021, 181-182). If the Inuit collectively and sincerely believed that senicide was at times justified, then – according to Sticker – it may have been a permissible, non-murderous practice *for them* (ibid., 181-182).

However, if we assume that one and the same practice can be morally impermissible in one community yet permissible in another on Kant's account, we undermine the principled, universalist character of his ethics. If a case of self-killing is not to be classified as an instance of self-murder, then – on Kant's account – this must be due to the underlying *principle* on which the act is willed, not to prevailing cultural norms or linguistic conventions. If, for example, medically induced euthanasia for terminally ill patients is not in principle a form of (assisted) self-murder, then this must hold regardless of whether a given society approves or disapproves of it. The same applies to senicide: if there are conditions under which senicide does not qualify as an instance of (assisted) self-murder, then these must be grounded in principle, not social consensus. To determine whether Inuit senicide can be justified on Kantian grounds, we must identify the principle on which a self-killing act could justifiably be willed – provided such a principle exists – and examine whether the Inuit practice aligns with it.

[11] However, as is evident in several quotations cited in this chapter, Kant does not seem to semantically distinguish between self-murder and self-killing in the Collins lectures on moral philosophy.

After arguing in the *Metaphysics of Morals* that suicide always violates a duty to the self, Kant follows with a series of "casuistical questions". He asks, for example: 'Is it murdering oneself to hurl oneself to certain death (like Curtius) in order to save one's country? Or is deliberate martyrdom, sacrificing oneself for the good of all mankind, also to be considered an act of heroism?' (*MM*, 6:423). He goes on to pose related questions: Is it self-murder for a king to poison himself fatally in order to avoid being coerced into agreeing 'to conditions of ransom harmful to his state'? For a person to kill himself to escape an unjust death sentence? Or for someone to kill himself to avoid harming others while suffering from the onset of hydrophobia (i.e., rabies)?

As is typical with Kant's casuistical sections, he does not provide definitive answers to these questions. Nevertheless, there are moments where he appears to express admiration for those who choose death under certain morally charged circumstances. For instance, he writes that when a convict is offered the choice between death and forced labor, 'the man of honor would choose death, and the scoundrel convict labor' (ibid.). The 'man of honor', Kant continues, values honor more highly than life, 'while the scoundrel considers it better to live in shame than not to live at all' (*MM*, 6:334). This closely resembles one of his reported statements during the Collins lectures on moral philosophy, likely held around 1775 (Kuehn 2015, 51):

> So if certain persons, in all innocence, were to be accused of treason, though among them there were really a few men of honour, along with others of the baser sort, having no inner worth, and if all these people were together condemned to die, or to undergo a life-sentence of penal servitude, and each had to choose which of these punishments he preferred, it is perfectly certain that the honourable ones would choose death, and the worthless ones the penal service. (*L-Eth-H*, 27:376)

In the *Critique of Practical Reason*, Kant approvingly cites a passage from Juvenal's *Satires*:

> If summoned to bear witness in some dubious and uncertain cause, though Phalaris himself should dictate that you perjure yourself and bring his bull to move you, count it the greatest of all iniquities to prefer life to honor and to lose, for the sake of living, all that makes life worth living. (*CPracR*, 5:159, translated from Latin)

The bull of Phalaris is said to have been an ancient bull-shaped torture and execution device in which victims were roasted alive. According to Kant, this classical example 'lets the reader vividly feel the force of the incentive hidden in the pure law of duty as duty' (*CPracR*, 5:159). The duty in question appears to be the duty not to deceive, even under the threat of gruesome death. A similar message is conveyed in Kant's famous so-called "gallows example", where a

person is threatened with hanging unless they give false testimony against an honorable man. Kant insists that it is possible for the man at the gallows to 'overcome his love of life' and refuse to lie, because he knows he *ought* not to give false testimony – even if doing so would cost him his life (*CPracR*, 5:30).

What these examples seemingly have in common is the idea that one is morally required to give up one's own life if preserving it would require violating one's moral integrity. If the price of staying alive is the corruption of one's moral character, then that price, according to Kant, *must not* be paid. As Michael Cholbi rightly notes, '[m]orality and living honorably are necessary' for Kant, 'while life itself is not' (Cholbi 2000, 169; cf. *L-Eth-C,* 27:373, 376-77).

It should be noted that these examples do not, strictly speaking, describe instances of self-killing – at least not in the conventional sense. None of the men in the examples *wills* his own death, either as a means or as an end. Rather, death is a foreseeable *consequence* that they are morally obliged to accept on pain of violating their moral integrity. It may therefore seem that these cases are not directly relevant to Kant's position on suicide and self-killing in general.

However, there is textual evidence to suggest that, for Kant, the same principle applies to certain instances of self-killing. In the Collins lectures on moral philosophy, Kant is reported to have acknowledged the possibility of cases wherein a man *must* put an end to his life, namely those in which he 'can no longer live in accordance with virtue and prudence':

> Suicide [*Selbstmord*] can also come to have a plausible aspect, whenever, that is, the continuance of life rests upon such circumstances as may deprive that life of its value; when a man can no longer live in accordance with virtue and prudence, and must therefore put an end to his life from honourable motives. (*L-Eth-C*, 27:371)

As in his mature works, Kant here recognizes that the prospective loss of one's moral integrity may oblige a person to forfeit their life. In this instance, however, he explicitly speaks in terms of *ending one's own life* and choosing *suicide* (*Selbstmord*) from "honourable motives", rather than treating death as an acceptable consequence of a moral decision.

It is admittedly puzzling that Kant also reportedly insists in the Collins lectures that suicide is impermissible under *any* conditions:

> There are many conditions under which life has to be sacrificed; if I cannot preserve it other than by violating the duties to myself, then I am bound to sacrifice it, rather than violate those duties; yet on the other hand, *suicide* [*Selbstmord*] *is not permitted under any condition.* (*L-Eth-C*, 27:372, italics mine)

On closer inspection, however, Kant appears to be using the word "suicide" (*Selbstmord*) in two distinct senses. When he refers to "suicide from honourable motives", he has in mind the deliberate sacrificing of one's own life to preserve one's moral integrity. When he speaks of suicide as *never* being permitted, he seems to mean acts of self-killing motivated by inclination – to escape suffering, despair, or unhappiness, for example (*L-Eth-C*, 27:373). The way in which Kant reportedly speaks of suicide "from inclination" in the *Lectures* is consistent with his mature works. Happiness, Kant reportedly says, is unfit as a ground for suicide, as 'there is no necessity that, so long as I live, I should live happily' (*L-Eth-C*, 27:373). Moreover, by choosing "suicide" I dispose of myself as a thing, which is impermissible as I am not a thing but a being endowed with humanity (*L-Eth-C*, 27:372-373).[12] In the case of "honourable suicide", then, it makes sense to say that one is not disposing of oneself as a thing; rather, one is affirming the supreme value of morality by sacrificing one's life to *uphold* morality. By contrast, suicide "from inclination" treats life and personhood as disposable in the service of happiness.

One might object that Kant's early position, as expressed in the Collins lectures, should not be taken as representative of his mature view. It is possible that he later changed his mind, or that the lectures reflect not his own views but rather those of his predecessors (e.g., Baumgarten). However, a passage from the *Critique of Practical Reason* strongly suggests that Kant retained this position in his mature philosophy:

> The action by which someone tries with extreme danger to his life to rescue people from a shipwreck, finally losing his own life in the attempt, will indeed be reckoned, on one side, as duty but on the other and even for the most part as a meritorious action; but our esteem for it will be greatly weakened by the concept of duty to himself, which seems in this case to suffer some infringement. More decisive is someone's magnanimous sacrifice of his life for the preservation of his country; and yet there still remains some scruple as to whether it is so perfect a duty to devote oneself to this purpose of one's own accord and unbidden, and the action has not in itself the full force of a model and impulse to imitation. (*CPracR*, 5:158)

Kant offers this passage against viewing morality in terms of heroic or "magnanimous" gestures. Even when acting beneficently, we must not lose sight of our duties to ourselves (*CPracR*, 5:158). He admits to having reservations about the idea that meritorious actions that can be expected to lead to one's own death could contain "the full force of a model and impulse for imitation", as they may involve an "infringement" of a duty to the self. This makes sense:

[12] This closely parallels Kant's later claim that by committing suicide, I degrade myself to a mere "plaything of the inclinations" (*MM*, 6:420) by disposing of myself as a mere means to some discretionary end (*MM*, 6:423; cf. *G*, 4:429).

if we are obliged to take our duties to preserve and perfect ourselves seriously, we cannot at the same time be obliged to endanger our lives whenever others are in need.

What is important to note here is not Kant's reluctance to endorse these acts as moral exemplars – as "containing the full force of a model for imitation" – but rather his comparative judgment that the actions of the man who "magnanimously" *sacrifices* himself (i.e., *directly* wills his own death) to preserve his country are "more decisively" creditable to duty than the actions of the man who attempts to rescue people from a shipwreck "at the greatest danger to his life". This suggests that what matters morally is whether my choice *not* to sacrifice my life, be it by my own hand or that of others, somehow comes at the cost of violating a duty.[13] If not, then self-killing, risking one's life, or allowing oneself to be killed (provided it is within one's power to resist) are generally forbidden.[14] This logic applies to most cases, on Kant's account (cf. Cholbi 2015, 610), including the examples described in *CPracR*, 5:158. In those rare cases where life can be preserved only by doing wrong, it must be relinquished.

Hence, some of the earlier-mentioned casuistical questions concerning self-killing – such as the self-poisoning king and the man suffering from hydrophobia – should be assessed in the same way Kant assesses the examples of the man at the gallows and the bull of Phalaris. If continued life is conditional on the commission of an immoral act, then one is morally obliged to forfeit that life, even if doing so requires killing oneself. On Kant's account, such cases do not qualify as instances of self-murder.

In sum, for Kant, killing oneself is obligatory only if it is a necessary means of preserving one's moral integrity. When performed on this basis, and as a matter of moral principle, the act does not qualify as an instance of self-murder. In section 3 of this chapter, I argued that it is implausible to claim that Inuit elders had a duty to opt for senicide on Kant's account, given that involuntary starvation does not amount to a violation of duty. This conclusion now rests on firmer ground. The question that remains, however, is whether Inuit senicide might nevertheless have been merely *permissible* on Kant's account.

[13] I do not mean to suggest that, on Kant's account, every case in which it would be a duty to accept being killed by another can justifiably be replaced by an act of suicide. For instance, if the man at the gallows were told to choose between delivering false testimony against an honest man and shooting himself, and if he were to choose to shoot himself rather than "valiantly" accepting the consequences of choosing neither option, his action might reflect insufficient "resolve" compared to valiantly accepting the consequences of refusing both options.

[14] I say "generally forbidden" to allow for the possibility that some acts of self-killing may be neither obligatory nor forbidden but merely permissible on Kant's account.

§3.4.2 Suicide as Merely Permissible

According to Kant, it is a *contradiction* to suppose that self-murder is permissible for rational beings. He maintains that '[m]an cannot renounce his personality as long as he is a subject of duty' and that 'it is a contradiction that he should be authorized to withdraw from all obligation, that is, freely to act as if no authorization were needed for this action' (*MM*, 6:422).

While Kant's arguments against suicide (*Selbstmord*) are often regarded as puzzling or unconvincing (cf. Brassington 2006), the argument under consideration appears plausible. There does indeed seem to be a contradiction in the idea that I could be under an obligation to perfect myself, preserve myself, and promote the happiness of others while simultaneously being permitted to end my life at will (thereby "withdrawing from all obligation"). This would seem to imply that I was never genuinely bound by those obligations in the first place.[15]

What is particularly important for our purposes, however, is not the argument's plausibility but the fact that it reveals a sufficient condition that Kant deems necessary for the applicability of the duty not to "dispose" of oneself at one's discretion: namely, that one remain a subject of duty *in general*.

A self-killing act that is *merely* permissible, on Kant's account, would thus have to be an act that is neither morally forbidden nor a duty. At first glance, the criterion just outlined may appear to rule out *any* form of merely permissible (assisted) self-killing. However, this is not necessarily the case.[16] Michael Cholbi, for instance, has argued compellingly that Kant's ethics permits those anticipating severe dementia to request euthanasia once the condition has fully developed. On Cholbi's reading, '[t]he death of rational agency coincides with the death of the person and the termination of moral status' (Cholbi 2015, 609). Since such individuals are no longer persons in the morally relevant sense, they are no longer subjects – or *direct* objects – of moral obligation. Accordingly, once dementia has taken its course, they are no longer under a duty to preserve their lives (ibid., 609).[17]

Since, from the absence of an obligation to preserve one's life, it does not follow that one is under an obligation to *end* one's life (ibid., 609), Cholbi takes himself to have identified a case in which (assisted) self-killing is morally permissible (or "optional", as he calls it) (ibid., 610). In the next section, I argue that a similar consideration may be at play in Kant's verdict on Inuit senicide.

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[15] See Cholbi 2000 for a thorough analysis of how this argument aligns with some of Kant's other arguments against suicide.
[16] I do not mean to suggest that Kant necessarily agrees with this as well.
[17] This is a controversial view that I will take for granted for present purposes.

§3.5 What Should Kant's Ethics Make of Inuit Senicide?

We are now in a position to draw preliminary conclusions about how we should understand Kant's verdict on Inuit senicide. In light of Kant's views on honor and virtue in relation to duties concerning giving up one's life, I propose that his use of the term "ignominious" in the present context should be understood as expressing the idea that a life deprived of honor and virtue is a life not worth living – one the preservation of which cannot be a moral duty. On this interpretation, Kant used the word "ignominious" to signify the "disgracefulness" of living such a life, as a life deprived of (opportunities for) honor and virtue does not befit the *dignity* of a rational being.

If this is correct, then anticipating one's own "ignominious death" should be understood as *approximating the end of one's own life under circumstances in which honor and virtue are unattainable*. As Kant sees it, virtue signifies moral strength of will: the disposition to do what duty requires from the motive of duty (*MM*, 6:405). An honorable person is one who acts virtuously. Thus, to say that the prospect of dying "ignominiously" provides legitimate grounds for ending one's life is to say that one may take one's own life – or permit others to do so – if, within the confines of one's continued life, it would be impossible to live as a virtuous agent.

This interpretation has the merit of *not* tying Kant's use of "ignominious" to the ludicrous notion that one ought to be *ashamed* of dying from starvation. Instead, "ignominious" signifies the disgracefulness of a dignified, rational person's being condemned to a life the preservation of which is not morally necessary. In most of the textual examples discussed above, Kant writes of people who are presented with a tempting opportunity to *disgrace themselves* by violating their moral integrity. I suggest, however, that his remarks on Inuit senicide indicate that he regarded the practice as justified insofar as the elderly in question were condemned to live (and die) under "disgraceful" conditions (i.e., conditions unbefitting of a dignified being) *through no fault of their own*.

§3.5.1 On the "Dead Weight" and "Emotional Burden" Interpretations

Contrary to Kant's *less ignominious death* interpretation, on both the *dead weight* and the *emotional burden* interpretation the Inuit practiced senicide in order to relieve the community of a burden during periods of hunger and scarcity. But would Kant's ethics permit this?

In the *Metaphysics of Morals*, Kant clearly states that because humanity exists as an end in itself, a person's worth cannot be measured by his usefulness as a means to his own ends or

the ends of others (*MM*, 6:434-435). It is important to emphasize this point, as it rules out the possibility that, on Kant's view, those who are no longer able to care for themselves or others thereby lose their moral standing as ends in themselves. Hence, the moral status of infirm Inuit elders is not compromised by their inability to "make themselves useful". Accordingly, on Kant's account, no person may consent to being killed on the basis of being perceived – either by themselves or by others – as a (physical) burden on others, as the *dead weight* interpretation has it. This conclusion is reinforced by Kant's critique of the Stoic who chose to die 'because he could be of no more use in this life':

> The Stoic thought it a prerogative of his (the sage's) personality to depart from life at his discretion (as from a smoke-filled room) with peace of soul, free from the pressure of present or anticipated ills, because he could be of no more use in life. But there should have been in this very courage, this strength of soul not to fear death and to know of something that man can value even more highly than his life, a still stronger motive for him not to destroy himself, a being with such powerful authority over the strongest sensible incentives, and so not to deprive himself of life. (*MM*, 6:422)

At the same time, there is a recognizable parallel between the Inuit elder who turns to senicide to increase her family's chances of survival and Kant's account of the mythological Marcus Curtius, who 'hurled himself to certain death' to save his country (*MM*, 6:423). Curtius, like the Inuit elder, sacrifices his own life in order to save others. Is such a sacrifice morally permitted?

I suspect that Kant's position on Curtius's deed resembles his ambivalent stance in the *Critique of Practical Reason*, where he describes acts of self-sacrifice – such as risking one's life to save others – as "creditable to duty", and even for the most part "meritorious", while also raising concerns about possible infringements of a duty to the self (*CPracR*, 5:158). As previously argued, self-sacrifice is only a *duty*, on Kant's account, if it is a necessary means of fulfilling an end that is also a duty. Since only the concept of duty can justify sacrificing one's own life for others, Kant is, I suspect, ultimately – though perhaps reluctantly – committed to the view that Curtius's self-sacrifice was impermissible. The same verdict should apply to the Inuit elder who sacrifices herself "for the greater good".

In any case, on Kant's account it does not befit the dignity of a rational being to be degraded (by oneself or others) to the status of a mere "burden" to others, no matter the circumstances – let alone to consent to being killed on such a basis. The same conclusion applies to the *emotional burden* interpretation. Kant insists that rational nature, which possesses a dignity beyond all price, must never be sacrificed as a means to one's own happiness (or the

reduction of discomfort), which merely has a "market price" (*G*, 4:421; *G*, 4:435; cf. *MM*, 6:422-423). Indeed, Kant does not appear to recognize suffering *as such* as a sufficient reason for ending one's life (let alone the indirect suffering of children who pity their parents' predicament). This is underscored by the earlier example of the Stoic: one may not take one's own life merely to free oneself 'from the pressure of present or anticipated ills' (*MM*, 6:422; cf. *G*, 4:398). This idea can also be found in the Collins lectures on moral philosophy, where Kant is reported to have said: 'I must not let myself be deterred from living by any fate or misfortune, but should go on living so long as I am a man and can live honourably' (*L-Eth-C*, 27:375). On my interpretation of what Kant means by "ignominious" and how this concept may be used to justify (assisted) self-killing, it is only when one's suffering impedes one's capacity to participate in moral life (i.e., live honorably) that suffering *indirectly* becomes a morally relevant consideration in this regard.

§3.5.2 On Kant's "Less Ignominious Death" Interpretation

In the previous section, I argued that Cholbi's claim – that self-killing may be morally permissible (though not obligatory) for individuals anticipating severe dementia – bears a significant resemblance to how Kant's ethics might evaluate Inuit senicide in light of his *less ignominious death* interpretation. At first glance, this comparison may seem puzzling. In Cholbi's case, the individuals in question suffer from advanced dementia and, as a result, are no longer persons in the Kantian sense. By contrast, there is no indication in the anthropological literature – or in Kant's reported commentary – that those Inuit elders singled out for senicide were no longer in possession of the rational capacities that, for Kant, constitute personality. Requesting senicide thus cannot have been morally "optional" for the Inuit elderly on the grounds that they were no longer persons. On the surface, then, the two cases may appear fundamentally disanalogous.

This dissimilarity is less significant than it first appears, however. On Kant's mature account, the dignity of human beings lies in their status as 'subject[s] of a morally practical reason' (*MM*, 6:434; cf. *CPracR*, 5:87). What distinguishes human beings as ends in themselves is that which sets them apart from other animals, namely their rational nature: their capacity to set ends independently of inclination and in accordance with rational principles (Kleingeld 2020, 391; *G*, 4:428-31; *G*, 434-435; *CPracR*, 5:87). In other words, persons possess dignity, a worth beyond all price, by virtue of their autonomy and their capacity to participate in moral life – in short, by virtue of their *humanity*.

When we unpack Kant's thesis that '[m]an cannot renounce his personality as long as

he is a subject of duty' (*MM*, 6:422) against the background of this context, we can see that what is *actually* doing the work of grounding the duty against "optional" self-killing is not the human being's *status as a person* as such but his standing as *a subject of duty*. Cholbi's argument establishes that those suffering from severe dementia cease to be subjects of duty because they are no longer persons. But this does not imply that the absence of personhood is a *necessary* condition for no longer being a subject of duty (although it is certainly a *sufficient* condition).

As I see it, Kant's verdict on Inuit senicide implies that his ethical system is open to the possibility that a person may retain full rational capacities and yet no longer be a subject of duty in general. The notion of being confined to an "ignominious" life until death is a prime example of such a case. As I have argued, Kant uses the term "ignominious" to describe a life in which *honor and virtue are unattainable*. Those condemned to such a life are effectively barred from acting from duty – not because they lack reason or personhood, but because external, bodily, or environmental constraints render their good will practically impotent.

If external circumstances make it impossible for me to govern myself by self-authorized ends, and thus for me to *use* my good will, then I am no longer able to participate in moral life. If participation in moral life becomes a *permanent* impossibility,[18] then there is no plausible sense in which I can still be said to be *under moral obligation*, let alone subject to the duty of self-preservation.

To be clear, it is *only* when agents are evidently (i.e., with a sufficient degree of certainty) condemned to live under undignified conditions for the rest of their lives that they are no longer subject to the duty of self-preservation. In other words, they must be 'beyond help' with regard to their inability to escape their undignified predicament. Since one's dignity as a human being grounds a *claim* to be treated with respect (i.e., as an end in itself) by others and a *duty* to respect (and thus preserve) oneself, one is obligated, *if possible*, to seek help from others if necessary to escape one's undignified predicament. Others are morally obliged to help if they can do so without excessively sacrificing their own well-being (*MM*, 6:393). Importantly, it should not matter, on Kant's understanding of the good will, whether one *succeeds* in acquiring the necessary help:

> If with its greatest efforts [the will] should yet achieve nothing and only the good will were left (not, of course, as a mere wish but as the summoning of all means insofar as they are in our

[18] I underscore the word "permanent" here, as Kant would clearly deny that those who are *temporarily* unable to exercise their power of autonomy (such as those who are restrained, asleep or under anesthesia) cease to be free, autonomous persons.

control) – then, like a jewel, it would still shine by itself, as something that has its full worth in itself. (*G*, 4:394)

What matters is that the *capacity* to use one's good will (i.e., the 'summoning of all means insofar as they are in [one's] control') – in this case, by seeking help – remains intact.

If my argument is successful, then the anticipation of an "ignominious" life until death may, on Kantian grounds, constitute a legitimate basis for ending one's life in a manner consistent with Kant's mature ethics. The remaining question, then, is whether, on Kant's interpretation of the circumstances, it is accurate to characterize the lives of the elderly under consideration as "ignominious".

According to Kant's reported interpretation, if senicide were not practiced by the Inuit, the infirm elderly would be forced to remain behind, alone and without food, while the rest of the group went out hunting for weeks at a time.[19] They would, in effect, be condemned to starve (and presumably freeze) to death. The question, then, is whether it was still possible for the elderly to live honorably and virtuously under these circumstances – that is, to *will* (not wish for) moral ends.

The parallel between Cholbi's example of those suffering from dementia and Kant's reported interpretation of the Inuit case is that both examples describe a situation in which human beings *physically* endure but are, to a significant extent, condemned to do so as mere "playthings" of nature rather than persons. In the *Groundwork*, Kant writes that '[*a*]*utonomy*', the will's property of being a law to itself, 'is the ground of the dignity of human nature and of every rational nature' (*G*, 4:436). Autonomy requires independence of the will from natural causes (*G*, 4:446; cf. *MM*, 6:213-214). In the case of dementia, this independence is (arguably) lost because the human being no longer *exists as a rational agent*, whereas the Inuit elderly retain the rational capacities that constitute personality but, for all morally relevant intents and purposes, nevertheless remain "at the mercy" of external, natural forces beyond their control. To the extent that their good will is permanently deprived of control over "summonable means" (*G*, 4:394), they are thereby rendered unable to *live* as – and thus, in a morally relevant sense *be* – free, autonomous persons. Hence, it can be argued that, just as Kant's ethics can permit (assisted) self-killing in the dementia case Cholbi describes, so too can it permit it in the Inuit

[19] One might object that Kant's ethics entails that the Inuit were morally required to abandon their nomadic lifestyle if it led to circumstances in which elders needed to be left behind (or even killed). However, the anthropological record suggests that abandoning this way of life would have made survival impossible. Given the climatic conditions, agriculture was not a viable option, and opportunities for trade were severely limited. As a result, Inuit communities were continually dependent on rapidly depleting sources of food and were thus compelled to remain mobile, even during the harshest of winters (cf. Rachels 2003, 23).

starvation case. Crucially, however, this act would be permissible at most, not *obligatory*. Unlike the man at the gallows, who must choose between committing a grave moral wrong to preserve his life and dying to preserve his moral integrity, the Inuit elder must choose between expediting the end of a life that is unbefitting of a dignified, rational being – the preservation of which is no longer morally necessary – and enduring that life to its natural conclusion.

While Kant is reported to have said that a person 'must put an end to his life from honourable motives' when it becomes impossible to live in accordance with virtue and prudence (*L-Eth-C*, 27:371, italics mine), this conclusion appears excessively strong in the present context – as Kant himself seems to acknowledge in his reported statement that Inuit senicide is *to some degree justified*, a stance far removed from regarding it as obligatory. After all, there is no dishonor in continuing to live a life the prolongation of which is no longer morally obligatory. As Cholbi observes, it is a mistake to infer that the absence of a duty to preserve life entails a duty to disrespect or destroy it (Cholbi 2015, 609). In all other cases, Kant deems it a *duty* to sacrifice one's life only when doing so is necessary to avoid moral corruption (cf. ibid., 610). But the Inuit elder who chooses *not* to expedite death does not thereby become a bad person, even when there is no prospect of his life's suddenly becoming worth living, as far as morality is concerned. Moreover, Kant's reported idea that some Inuit communities practiced senicide to spare their elders a more ignominious death suggests that he regarded the elders' actual deaths – though comparatively less ignominious – as still marked by indignity.[20] This stands in stark contrast to his moral praise for those who choose death to escape moral corruption, whose acceptance of their own death "from honorable motives" appears not to be ignominious *at all*.

For the Inuit elders in question, then, the choice was not between living as a bad person and not living at all – as it was for the man at the gallows – but between not *living as* a person (through no fault of one's own) and not living at all. While the man at the gallows preserves his moral integrity by dutifully choosing death over committing injustice, the same cannot be said of those subject to senicide, as in their case virtue and honor have supposedly been rendered unattainable in both life and death. Kant's verdict on Inuit senicide, I argue, points to a possible Kantian line of reasoning: while such a life is deprived of the moral agency necessary to ground a duty of self-preservation, the choice to end it may be permissible, though not morally required.

This line of reasoning is not decisive, however, as Kant's reported claim that Inuit senicide was justified *to some degree* suggests that he harbored reservations about the practice's

[20] According to my interpretation, Kant regarded senicide as offering a less ignominious death to the elderly than starvation, insofar as it shortened the duration of their ignominious predicament.

permissibility.[21] There may be several reasons for Kant's hesitation, or at least his apparent refusal to endorse the practice unequivocally. For instance, he may have judged it insufficiently certain that the group would not encounter food sources shortly after abandoning the elderly to their fate. This suggests that Kant did not consider it sufficiently certain that the elderly would have been condemned to an "ignominious death" had they not opted for senicide. Indeed, this reservation seems to have some basis in fact: the anthropological record includes instances in which Inuit groups returned to elders they had previously left behind, taking them in after unexpectedly securing food (cf. Pousset 2023, 22). Additionally, Kant may have questioned whether, even given the extreme nature of the circumstances, the Inuit elderly were fully incapacitated as moral agents (cf. *Rel* 6:62). Given their alleged abandonment, bodily infirmity, and lack of a source of nutrition, they were evidently no longer capable of fulfilling duties to others or discharging positive duties to themselves – such as the duty to cultivate their natural talents (*MM*, 6:444-45) or actively preserve their own lives (ibid., 6:421). Their *negative* duties to themselves, however, appear to have remained perfectly intact. If we accept that virtue, as 'the moral strength of a human being's will in fulfilling his duty' (*MM*, 6:405), can also be exercised by *not* willing immoral ends from the motive of duty – not just by *positively* willing moral ends – then it would appear that the Inuit elderly were not fully incapacitated as moral agents, even given their predicament.[22]

Nonetheless, Kant's assessment of Inuit senicide suggests that he saw in it something redeeming – something absent from cases of (assisted) suicide motivated by self-love. Throughout his works, Kant consistently condemns the latter as instances in which one "throws away" one's humanity for the sake of happiness. Notably, such language is entirely absent from his reported remarks on Inuit senicide, prompting the question of why this might be. The most plausible explanation, I suggest, is that Kant regarded the Inuit case as involving a more fundamental moral consideration than that which underlies (assisted) self-killing motivated by considerations pertaining to happiness. Whereas the Stoic who believes he is "of no more use" and the "unhappy person" contemplating suicide lack the desire – but not the means – to treat

[21] The question whether Kant's moral philosophy allows for the possibility of an action's being justified "to some degree" in the first place lies beyond the scope of this thesis, and I shall not attempt to solve it here (cf. Timmermann 2005, 242-243).

[22] I leave it open whether, on Kant's account, dutifully refraining from willing immoral ends should count as a fulfillment of duty (and by extension, as a virtuous deed). Kant's insistence in the *Groundwork* that a person who preserves his life from the motive of duty has a maxim with moral content (*G*, 4:398) can certainly be read as supporting this thesis. On the other hand, if refraining from acting immorally in the face of temptation qualifies as a virtuous deed, this may suggest that a person who dutifully resists frequent violent inclinations is a better exemplar of honor and virtue than one who, through the cultivation of "compassionate natural feelings" (cf. *MM*, 6:457), no longer experiences such inclinations, which seems implausible.

themselves with the respect due to a rational being, Kant seems far less certain that the same can be said of the Inuit elderly, whom he describes as nearly immobile, abandoned without food, and awaiting imminent death beyond the reach of help.

§3.6 Conclusion

Kant's reported view on Inuit senicide represents a rare – perhaps even unique – instance in which he considers the permissibility of a non-obligatory (assisted) self-killing act in terms other than his characteristic portrayal of an agent coldly calculating whether continued life will yield the happiness he desires.

Kant's verdict, I propose, suggests the outlines of a possible Kantian argument: namely, that a person may consent to ending her life when it has become – and is expected to remain – impossible to realize virtuous ends, such that continued existence no longer embodies the dignity that grounds the duty of self-preservation. If such consent is morally possible, it should be possible for others to permissibly act upon it.

Even with the relevant moral consideration identified, however, Kant's reported assessment of Inuit senicide remains ambiguous. Hence, it falls to contemporary Kantian ethicists to assess whether his framework ultimately permits ending one's life in anticipation of an "ignominious" death and, if so, to delineate the conditions under which a person might be said to confront such a prospect. If my argument holds, it invites further exploration of the relationship between Kant's notion of dignity and the duty of self-preservation, particularly in the broader context of end-of-life decision-making.

4. On the Legality of Maxims and Its Significance for Cultural Pluralism

§4.1 Introduction

In Immanuel Kant's doctrine of right (*Rechtslehre*), the Universal Principle of Right (UPR) functions as the fundamental criterion for determining whether an action is juridically right or wrong (*MM*, 6:230–31). Unlike Kant's ethics, which tells us to act on maxims that can simultaneously be willed as laws, the UPR is concerned solely with whether an action could possibly coexist with the external freedom of others within a rightful condition – that is, a state governed by juridical laws that secure the freedom of choice of all citizens.

Kant's insistence that 'anyone can be free so long as I do not impair his freedom by my *external action*' (*MM*, 6:384) has led most interpreters to ascribe to him the idea that the UPR 'abstracts from the maxim on which a person acts' (Ripstein 2009, 374),[1] focusing instead wholly on whether an action does or does not infringe upon the conditions of free choice (i.e. external freedom) of others. If it does, the action is wrong (*unrechtmässig*). If it does not, it is right (*rechtmässig*).

A problem that has gone unnoticed by proponents of this interpretation is that if the UPR wholly abstracts from maxims, then Kant's theory of right is left without the resources to distinguish – and thereby to properly assess – action types that are outwardly similar but substantively different. The anthropological record shows that certain culture-specific forms of action, though *outwardly* indistinguishable from wrongful acts such as lying or false promising, do not carry the same connotations of deceptiveness that, in Kant's view, undermine a rightful condition (*SRL*, 8:426-427; Weinrib 2008, 148). If Kant's UPR cannot distinguish between such actions, it is susceptible to evaluating rightful actions as contrary to right. This threatens its claim to being a *universalist* principle of right. For this to be avoided, the UPR must not be restricted to the outward manifestation of actions. It must also take their underlying maxim into account.

An increasing number of Kant scholars now dispute the claim that the UPR abstracts from maxims.[2] Especially notable is Marie Newhouse's novel "two-standard interpretation" of

[1] Cf. Flikschuh 2002, 191; Wood 2007, 215; Pogge 2002, 156; Guyer 2002: 25–26.
[2] Cf. Newhouse 2016; Weinrib 2008, 153–154; Tomassini forthcoming; O'Neill 2016, 117; Bader 2025, 2–3. For earlier remarks of this sort, see Gregor 1963, 41.

the UPR, according to which this principle articulates both a legal standard that pertains to the *outer form* of actions (i.e. actions qua physical manifestations) and a legal standard for acting on *maxims*.

After establishing that Newhouse's two-standard interpretation finds stronger support in Kant's texts than the dominant single-standard view – which maintains that the UPR applies only to the outer form of actions – I will argue that, unlike the single-standard interpretation, the two-standard interpretation equips Kant's theory of right with the resources to identify and properly assess culture-specific action types that may *seem* contrary to right but, within their cultural contexts, should not be regarded as such.

§4.2 The Single-Standard Interpretation

§4.2.1 Why Discuss Right in the Context of Cultural Pluralism?

Kant's practical philosophy, famous for its universalist aspirations, is often accused of "Eurocentrism" and cultural insensitivity. Seyla Benhabib, for instance, criticizes Kant and Kantians for 'ignoring or rather […] abstracting away from the embedded, contingent and finite aspects of human beings' (Benhabib 1992, 50) and for being committed to the 'metaphysical illusion' of 'having found an Archimedean standpoint, situated beyond historical and cultural contingency' (ibid., 4).

A number of Kant scholars have likewise questioned the "scope" of (common readings of) Kant's practical philosophy. Charles Mills, for one, has claimed that 'putatively universalist Kantian egalitarian proclamations really need to be translated as restricted in their scope to the white male minority', due to the hierarchical racist and sexist structures presupposed at the foundational level of Kant's (purported) moral universalism (Mills 2018, 10). David Velleman has argued that Kant's Categorical Imperative is not a universally valid principle of action, as not everyone around the world 'understand[s] themselves in the psychological terms in which the Categorical Imperative is framed' (Velleman 2015, 48). In a similar vein, Katrin Flikschuh has claimed that while the Kantian duty of state entrance applies to 'those of us who do raise property claims against each other', the same cannot be said of those who do not (Flikschuh 2017, 68).

With the exception of critiques – such as Mills's – according to which Kant *consciously* defended an exclusionary, non-universalist moral theory, I take the general complaint to be that Kant (and/or Kantians) overestimated the scope of his practical philosophy. Allegedly, Kant (and/or Kantians) illegitimately took his ideas to have timeless,

universal validity due to a failure to recognize how the historical and cultural contingencies of his time and place shaped his ideas. An alleged undesirable consequence of this is that Kant (and/or Kantians) illegitimately took his practical philosophy to be applicable to "different" or "differently situated" persons whose lives and self-understandings are structured by sociocultural factors and conceptual frameworks that differ substantially from his own.

A possible critique in this regard concerns the scope of Kant's notion of rightful action. Since Kant's UPR is commonly understood as determining the juridical status of an action based solely on its outward features, abstracting from the maxim (i.e. the subjective principle) on which it is willed, one might argue that Kant's theory of right implicitly presupposes – and thus confines itself to – a "Eurocentric" model of what right and wrong actions *look like*. The anthropological data includes numerous reports of culture-specific forms of action that, although outwardly indistinguishable from wrongful action types to "outsiders", differ substantially from them in both content and normative status, as they in fact constitute permissible acts of a different kind. In Kantian terms, they are different actions by virtue of the maxims on which they are willed. If we take "lying-adjacent" actions as a case in point, examples include (but are not limited to) *étok-étok* (Java), *non-commissive "promising"* (Ilongot, Philippines), *vranyo* (Russia), *tatemae* (Japan), *kalām* (regional Egypt) and *psemata* (regional Greece).[3] What unites these otherwise disparate actions is that they all consist of saying something one does not believe, without intending to mislead one's interlocutor.

Kant's ethics – as I have argued in chapter 1 – can accommodate the idea that such action types are in conformity with duty, despite their outward similarities to lying. Because Kant's ethics requires only that *maxims* also be fit to serve as universal laws, these actions, in virtue of being *performable* on such maxims, do not constitute breaches of ethical duty. It is far from clear, however, that a similar story can be given for Kant's theory of *right*.

Kant describes the UPR as follows:

> 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. (*MM*, 6:230)[4]

[3] I gratefully borrow most of these examples from David Velleman's *Foundations for Moral Relativism*. See Velleman 2015, especially pp. 55–74, for an elaboration of most of these action types (among others).
[4] Eine jede Handlung ist recht, die oder nach deren Maxime die Freiheit der Willkür eines jeden mit jedermanns Freiheit nach einem allgemeinen Gesetze zusammen bestehen kann.

As mentioned above, the dominant view in the literature is that the UPR expresses a *single* juridical standard for action, namely that an action is right if and only if it could *outwardly* coexist with the freedom of everyone in a rightful condition.[5] On this interpretation, the UPR's second clause, which refers to an action's *maxim*, is usually treated as dispensable.

If the UPR is merely concerned with the possible coexistence of universal freedom and an action's *outer form*, not its underlying maxim, then it would seem that Kant's theory of right lacks the resources to adequately assess outwardly similar but substantially different action types, as it would be unable to distinguish, for instance, between a lie and *étok-étok*.

Here, I argue that on Newhouse's two-standard interpretation, Kant's UPR has the means to sufficiently accommodate cultural pluralism – thereby avoiding the shortcomings associated with single-standard interpretations. Since this is only an interesting conclusion if this interpretation proves defensible, I will first discuss its theoretical merits compared to those of the dominant single-standard interpretation.

§4.2.2 The Appeal of the Single-Standard Interpretation

In Mary Gregor's English translation, the UPR naturally appears to articulate *two* separate standards on the basis of which the rightfulness of an action can be determined. After all, it says that an action is right (1) if it can coexist with everyone's freedom in accordance with a universal law, *or* (2) if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law (Newhouse 2016, 61; *MM*, 6:230).

We should be careful, however, not to treat this as proof that single-standard interpretations contradict the UPR from the outset, as the German word for "or" (*oder*) in Kant's original formulation of the UPR can also be read in the sense of "in other words", which would suggest that both clauses of the UPR are different formulations of one and the same standard.[6] This appears to be how Kant's UPR is usually read, as proponents of the dominant single-standard interpretation are often comfortable with omitting the second clause altogether when explaining the UPR:[7]

> The universal principle of right characterizes an action as right 'if it can coexist with everyone's freedom in accordance with a universal law.' (Ripstein 2015, 8)

[5] Cf. Ripstein 2009, 374; Flikschuh 2002, 191; Pogge 2002, 156; Wood 2002, 6; Guyer 2002, 25–26.
[6] I am grateful to Hanno Sauer for pointing this out to me.
[7] Ralf Bader is a notable exception in this regard, as he seems to hold that the UPR's *first* clause can be omitted without compromising its integrity: '[the UPR] states that actions are right only if their maxims are such that "the freedom of choice of each can coexist with everyone's freedom according to a universal law"' (Bader 2025, 2–3).

> The principle of right is: 'Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law.' (Wood 2007, 215)

Some authors even go as far as to claim outright that the UPR does not pertain to maxims:

> The Universal Principle of Right abstracts from the maxim on which a person acts, focusing instead on the purely external relation between agents. (Ripstein 2009, 374)
>
> The principle of right concerns only the compatibility of our actions with the freedom of others, and does not concern our maxims at all, a fortiori their universality. (Guyer 2002, 25)
>
> The concept of Right thus abstracts from the content of an agent's choices and from the maxims of their actions: agent's action intentions are of no consequence in judging the rightfulness of their external relations with one another. (Flikschuh 2002, 191)

These authors write about right (*Recht*) as if the UPR's reference to maxims could be omitted without compromising the principle's integrity. This suggests that on their understanding, the UPR's second clause must be Kant's way of *rephrasing* the first clause, rather than articulating an independent standard altogether, which can be left out for the sake of clarity (cf. Newhouse 2016, 61).

In a brief discussion of the UPR's second clause, Arthur Ripstein – a prominent proponent of the single-standard interpretation – remarks that its second clause, with its emphasis on the maxim of action, seems 'surprising, even more so when treated as equivalent to the first' (Ripstein 2009, 384). This seems surprising, Ripstein writes, because Kant cautions that right cannot require that duty be itself the *maxim* of my action, since anyone can be free so long as my *external action* does not interfere with their freedom (ibid., 384):

> It cannot be required that this principle of all maxims be itself in turn my maxim, that is, it cannot be required that *I make it the maxim* of my action; for anyone can be free so long as I do not impair his freedom by my *external action*, even though I am quite indifferent to his freedom or would like in my heart to infringe upon it. (*MM*, 6:231)

What this indicates, according to Ripstein, is that maxims play a different role in right than in ethics. He maintains that the difference is that in ethics, 'the Formula of Universal Law tests maxims in terms of the fit between the end set and the means used to achieve it', whereas the UPR focuses 'exclusively on the means a person uses, quite apart from any question about their suitability to a given end' (ibid., 384). Hence, Ripstein's position appears to be that right is concerned with maxims *only* insofar as they are practically necessary for the willing of certain means to a given end, whatever that end might be. In other words, right is only

indirectly concerned with maxims in the sense that on Kant's conception of action, maxims are necessary for the willing of any means at all. Katrin Flikschuh also seems to subscribe to this interpretation when she writes that all that the UPR requires is that the conditions of the external freedom of others are not harmed in the enactment of a maxim:

> The [UPR's] reference to [a] subject's maxims should not mislead one into thinking that internal intentions matter after all. All the universal principle of Right requires is that the *execution in action* of an agent's maxim not violate the external conditions of choice of another. (Flikschuh 2002, 192)

Remarks like Ripstein's and Flikschuh's[8] largely explain why so many Kant scholars are inclined towards a single-standard interpretation of the UPR, namely Kant's repeated emphasis that right is distinct from ethics *because* the former domain of morals prescribes laws for *external actions* (i.e. laws that govern "external freedom"), whereas the latter prescribes laws for *maxims* (i.e. laws that govern "inner freedom"):

> Duties in accordance with rightful lawgiving can be only external duties, since this lawgiving does not require that the idea of this duty, which is internal, itself be the determining ground of the agent's choice; and since it still needs an incentive suited to the law, it can connect only external incentives with it. (*MM*, 6:219)

> The concept of right, insofar as it is related to an obligation corresponding to it (i.e., the moral concept of right), has to do […] only with the external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other. (*MM*, 6:230)

Proponents of the single-standard interpretation generally seem to be under the impression that because right prescribes laws for external actions, maxims *cannot* be the focus of the UPR. But is this really the case?

[8] On the basis of reasoning that is similar to Ripstein's and Flikschuh's, Allen Wood concludes that '[t]o say that an act is "right" (i.e., externally just) is only to say that, by juridical standards, [the act] may not be coercively prevented' (Wood 1999, 322). By equating right with *external* justice, Wood rules out the possibility of right's also concerning *inner* justice (i.e. the possible conformity of *maxims* with right). Thomas Pogge similarly states that '[w]hat is necessary for *Recht* is only persons' outward conformity to law – the legality of their conduct – and not inner conformity', as laws that govern the agent's inner choice of maxims 'fall outside *Recht* as Kant defines it' (Pogge 2002, 156). Marcus Willaschek similarly takes Kant's view that unconditional juridical law is restricted to "external" actions to preclude its bearing on "internal" motivation (Willaschek 2002, 66).

§4.3 The Two-Standard Interpretation

§4.3.1 The External Action Problem

Proponents of the single-standard interpretation are right to stress that juridical law, unlike ethical law, does not require that duty be the maxim of my actions. Kant makes it very clear that this is what fundamentally distinguishes juridical duties from ethical duties:

> 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*. (*MM*, 6:218)

Of primary importance in understanding the difference between right and ethics are the following two distinctions: (1) right gives laws for being a good *citizen*, whereas ethics prescribes laws for being a good *person*; (2) the state may *coerce* me to become the former, but not the latter (and cannot do so anyhow).

It is not the business of the state (and hence juridical law) to ensure that people perform morally worthy actions. Right is concerned only with securing the conditions under which all citizens can reciprocally enjoy their use of free choice (*freie Willkür*), not with enforcing the *ethical* use of freedom. As Ripstein puts it: 'Kant's concern is not with how people should interact, as a matter of ethics, but with how they can be forced to interact, as a matter of right' (Ripstein 2009, 14). This is why Kant can maintain that the establishment of a civil order 'must be soluble even for a nation of devils (if only they have understanding)' (*TPP* 8:366). The fact that Kant is not concerned about moral motivation in the context of right also has to do with his understanding of the nature of morality. An action with moral worth is an exercise of a good will, which only aims at that which is unconditionally good. It is impossible for any person or institution that is "external" to myself to coerce (let alone *permissibly* coerce) me to do anything for the right (that is, moral) reasons (*MM*, 6:381). It *is* within the power of the state to coerce me to comply with juridical law (e.g. through the use of force/punishment). However, I can only coerce *myself* to act on moral maxims, which is a demand that *ethics* makes on me (*MM*, 6:231, 219, 394). This is why Kant distinguishes between duties of right and of virtue as follows:

> What essentially distinguishes a duty of virtue from a duty of right is that external constraint to the latter kind of duty is morally possible, whereas the former is based only on free self-constraint. (*MM*, 6:383)

It would be a mistake, however, to infer from the fact that right does not require me to adopt specific maxims *from duty* – i.e. that juridical lawgiving 'does not require that *the idea of this duty*, which is internal, itself be the determining ground of the agent's choice' (*MM*, 6:219, italics mine) – that right does not directly pertain to maxims *at all*. That right does not require me to make specific maxims my principle leaves open the possibility of my being coerced *not* to act on maxims that would be contrary to right. Mary Gregor, for instance, has suggested that this is precisely how we should understand Kant's conception of right:

> [Juridical laws] do not require that we adopt the formal maxim of lawfulness but only that the material maxims which we have be such that we can act upon them without violating the freedom of others. (Gregor 1963, 41)

This is to say that Kant's conception of right permits coercing others to act only on those maxims that would allow each person's freedom of choice to coexist with everyone else's, in accordance with a universal law – as articulated in the second clause of the UPR (*MM*, 6:230).[9] However, the state must leave it up to me which *specific* maxims I choose to make my principle (including permissible maxims based on self-love/egoism, etc.).[10] As Newhouse explains it: 'while a juridical law cannot require us to adopt any particular maxim, it can prospectively constrain our actions only by constraining the set of maxims on which we may act' (Newhouse 2016, 72). The idea that maxims fall outside the scope of right on Kant's account insofar as right, unlike ethics, does not require that I make certain maxims my principle (from duty) is thus ill-founded.

But where does this leave Kant's notion that '[d]uties in accordance with rightful lawgiving can be only *external duties*' (*MM*, 6:219, italics mine)? As mentioned above, many proponents of the single-standard reading share Ripstein's view that the UPR "abstracts from the maxim on which a person acts" *because* it focuses on the "external relation between agents" (Ripstein 2009, 374; Wood 1999, 322; Pogge 2002, 156; Guyer 2002: 25–26). If, as Kant maintains, external duties are obligations to perform *external actions* (*MM*, 6:220), should this not already rule out the possibility of right's being concerned with maxims?

It would, if the claim "duties of right are obligations pertaining to external actions" were equivalent to the claim "duties of right are obligations pertaining only to the *outer form* of actions". Maxims, after all, are not themselves objects of experience. As such, they are not

[9] Importantly, this does not imply that the state could possibly have a foolproof way of *ensuring* that citizens will always be brought to justice when they act on unrightful maxims. However, the same goes for actions that *outwardly* violate the UPR (e.g. because of a lack of evidence).
[10] See Tomassini (forthcoming) and Newhouse 2016, 72, for similar remarks.

part of the makeup of actions *as they appear* to us.

But these claims are not equivalent. Kant's notion of a duty of right does not conceptually preclude the possibility that such duties could also pertain to maxims. To see this, we need only appreciate the fact that an external action requires an underlying maxim in order to qualify *as an action* at all. There is wide consensus, for good reason, that on Kant's account an action is *typified* (i.e. becomes a certain type of action) by the maxim on which it is willed:[11]

> What I *do* is individuated by my maxim. (Ripstein 2009, 381)
>
> [Ripstein's] point that maxims enable us to individuate actions is correct. (Newhouse 2016, 61)
>
> The relevant intentional description [of an action] is the description of the action under which the *agent* intended it. That is what Kant meant by characterizing the 'maxim' as a subjective principle. (Kitcher 2003, 218)

That this is Kant's position can be seen, for instance, from the fact that he deems suicide to be categorically prohibited, while he deems it an *obligation* to forfeit one's life if continuing to live is conditional on the performance of an immoral act (*CPracR*, 5:30, 159; *L-Eth-C*, 27:372). Whether an action that will surely lead to one's own death should qualify as an (external) instance of suicide (*Selbstmord*) fundamentally depends on the maxim on which it is done. The same principle applies to legal cases. Whether I have externally committed tax fraud, for instance, depends on whether I acted on a fraudulent maxim, not on whether I made a mistake in filling out the paperwork (which is perfectly compatible with the idea that right does not require of me that I do my taxes honestly *from the incentive of duty*).[12] In fact, as will become clear in the next subsection, Kant explicitly divides intentional and unintentional types of wrongdoing into separate legal categories.

Because external actions must be performed on maxims in order to qualify *as actions* at all, it does not follow from the very *concept* of external duty that such duties exclusively

[11] See Nyholm 2017 for a notable challenge to this view.

[12] I take Barbara Herman to make a similar point when she describes the case of a racist landlord whose "otherwise not-impermissible" refusal to rent to a prospective tenant is rendered impermissible by his racist motive, thus transforming the nature of the action into something different than it would have been had his intentions been innocent (Herman 2019, 27-28). She is right to conclude that 'motive in such cases is a proper part of action description' (ibid., 28). Similarly, a person who intentionally commits tax fraud through an action that is outwardly identical to a person who makes a mistake in filling out their paperwork engages in a different action.

pertain to the outer form of actions. Such a claim would need to be independently established, which puts the burden of proof on proponents of the single-standard interpretation.

§4.3.2 Why the UPR Has Two Standards

Thus far, my argument was *negative*. It establishes that it does not follow from Kant's very *concept* of right and external duty that the dominant single-standard interpretation of the UPR must be true. From this, it obviously does not follow that Newhouse's two-standard interpretation is correct. This requires an independent argument.

Explanations for Kant's *motivation* for rephrasing the UPR's first clause in terms of maxims remain strikingly absent on the part of single-standard proponents. One might assume that if the second clause of the UPR were merely a rephrasing of the first, Kant's intention must have been to *clarify* the meaning of the first clause. Yet, insofar as proponents of the single-standard reading address the second clause at all, they do not, to my knowledge, employ it as a resource for elucidating the first. Instead, their efforts go towards explaining the second clause *away*, by arguing that – contrary to first appearances – the second clause ultimately expresses the same standard as the first. This may be justified. It is certainly possible that in his attempt to clarify the UPR's first clause by rephrasing it in terms of maxims, Kant unintentionally created more confusion rather than clarity. However, it is reasonable to consider the possibility that the second clause of the UPR does not succeed in clarifying the first precisely because it was never intended to do so, but rather because Kant's purpose was to articulate a distinct standard. I believe that Newhouse convincingly demonstrates that this is the more plausible explanation.

As she points out, Kant explicitly categorizes *unintentional* transgressions of duty as *faults* (*MM*, 6:224). I commit a fault, for instance, if I unknowingly use your land without your authorization, or if I harm you in a traffic accident due to "ordinary negligence" (e.g., by being distracted) (Newhouse 2016, 65–67). As Kant himself puts it: 'committing an injustice to someone […] does not always presuppose in the subject a principle of doing so' (*SRL*, 8:429).

Hence, Kant's theory of right perfectly allows for the possibility that I could wrong someone on the basis of an entirely innocent maxim (Newhouse 2016, 62, 65; cf. Ripstein 2009, 381–382). Therefore, saying that my action's maxim is in accordance with right is not equivalent to saying that my action *as such* is in accordance with right. This throws into doubt the idea that both clauses of the UPR are different formulations of one and the same standard.

Newhouse maintains that it is *only* the first clause of the UPR, not the second, that

captures the wrongness of actions that *factually* infringe upon the freedom of others, regardless of intentionality (ibid., 65). That is, it is only the UPR's first clause that identifies an action as right or wrong on the basis of its *outer form*. On Kant's account, mere faults, when they qualify as juridical violations, are to be settled by a *civil* court, not a *criminal* court (*MM*, 6:331). They are rectified (when possible and applicable) by restoring the external means of which a victim has been wrongfully deprived (cf. *MM*, 6:271). Newhouse's example is that of removing a treehouse that I unknowingly built on your land (Newhouse 2016, 65). With the traffic accident, I may have to compensate you financially for (some of) the damages you have suffered (depending on the specifics of the situation). Because a mere fault is an instance of *unintentional* wrongdoing, Kant's principle of retribution – which states that the punishment should always be proportionate to "whatever undeserved evil" has been inflicted upon the victim – does not require that the wrongdoer be punished for his "inner wickedness" (*MM*, 6:332-333), as no such wickedness underlies any wrong that is merely a fault.

On most single-standard interpretations of the UPR, the question whether an action does or does not factually infringe upon (the conditions of) someone else's external freedom is *all* that the principle is concerned with. Newhouse convincingly demonstrates that this view runs into problems in light of the UPR's second clause. She points out that 'Kant's second clause does not merely ask whether my action, uniquely picked out by my maxim, can itself coexist with everyone's freedom in accordance with a universal law'. Instead, '[i]t asks whether "*on* [the action's] maxim *the freedom of choice of each* can coexist with everyone's freedom in accordance with a universal law"' (Newhouse 2016, 62). That is, instead of asking whether my outward action could coexist with universal freedom, as the UPR's first clause does, its second clause effectively asks whether everyone could make use of their freedom of choice if acting on my *maxim* were legal (cf. *MM*, 6:382).[13] This is clearly different: first, because one and the same maxim can be acted upon in a multitude of externally different ways (cf. ibid., 6:390); and second – a point that Newhouse leans into heavily – because acting on a wrong maxim does not guarantee the infringement of another's freedom of choice.

Where the first clause of the UPR illustrates that I can wrong someone on the basis of a permissible maxim, its second clause illustrates that I can act wrongly by acting on a wrong

[13] While Newhouse does not make this point, it is worth noting how exactly the UPR's second standard, as she understands it, is different from Kant's Formula of Universal Law. The latter tells us that a maxim is contrary to duty if it cannot at the same time be (willed as) a universal law. It thus tells us to imagine a world where *everyone* acts on our considered maxim and to ask whether it is at the same time possible to will (our maxim in) such a world. The UPR's second standard, on the other hand, asks us to consider whether it could be legal to act on our maxim in a *rightful condition* (i.e. within a state that is already governed by juridical laws that protect everyone's freedom of choice).

maxim *without* wronging anyone. This is also what Kant is referring to in his *On a Supposed Right to Lie* essay, when he explicitly states that lying constitutes a violation of the UPR, even if no one is factually wronged by it:

> Though by a certain lie I in fact wrong no one, I nevertheless violate the principle of right with respect to all unavoidable necessary statements *in general* (I do wrong formally though not materially). (*SRL*, 8:429)

Newhouse also provides the example of a "nearsighted anarchist" who, when attempting to shoot responding police officers, mistakenly picks up his child's toy gun instead, discharging bubbles rather than bullets on them (Newhouse 2016, 66). She plausibly contends that it is the second clause of the UPR, not the first, that explains why the anarchist's action is wrong. While the police officers are not wronged by the anarchist's action (their freedom is not infringed upon), his action can still be described as a criminal offence due to the wrongfulness of his *maxim* (e.g. "I will kill police officers in order to escape punishment"). His action is wrong because the legality of acting on its maxim cannot coexist with universal freedom in a rightful condition. Newhouse provides the further examples of acting on the maxim "I will drive through town blindfolded in order to gain admission to a fraternity" (ibid., 68) and attempting to sabotage my neighbour's car by stealing its sparkplugs, only to mistakenly remove the sparkplugs from my own (identical) car (ibid., 66). By acting on the "blindfolded driving maxim", I am engaging in a criminal act of reckless endangerment, regardless of whether anyone happens to get hurt as a result (ibid., 68). By attempting but failing to steal my neighbour's sparkplugs, I fail to rob (and thus wrong) my neighbour "only by accident" (ibid., 66).[14] As Newhouse argues, an action whose wrong-making property is its *maxim* is to be counted as a *crime*, according to Kant, which is defined as an *intentional* transgression (i.e., one accompanied by consciousness of its being a transgression) of duty (ibid., 64; *MM*, 6:224).

Some might be reluctant to accept that Newhouse's sparkplug and water gun scenarios would qualify as crimes on Kant's account. After all, a society in which it is illegal to shoot a bubble gun or alter one's own car as one sees fit would surely be incompatible with the idea

[14] The sparkplug example especially illustrates that on Newhouse's interpretation of Kant's conception of crime (i.e. an intentional transgression of duty), the question of whether an action *is* a crime abstracts from whether the action is *recognizable* (and hence can be ascertained) as a crime by third parties (e.g. the state), and hence whether the action is *punishable* in accordance with right. Ralf Bader seems to suggest that this is a shortcoming of Newhouse's interpretation, because it implies that 'compliance with the requirements of right could not be coerced via sanctions, since epistemic problems, unlike compliance problems, cannot be resolved by providing incentives, which renders the state unable to provide assurance by guaranteeing that rights are respected' (Bader 2025, 3).

of universal freedom under law. This argument misses the point, however. It is not the squirting of bubbles or the removal of one's own sparkplugs that constitute the crimes in these scenarios, but rather the *attempted homicide* and *theft*.

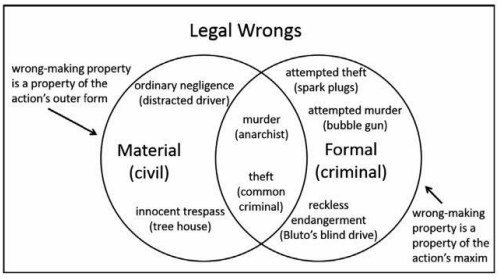
By consciously willing a transgression of duty in an established state, one 'endangers the commonwealth and not just an individual citizen' (Newhouse 2016, 64; *SRL*, 8:426-427). A crime is a *formal wrong*, in the sense that its legality is *conceptually* incompatible with the idea of everyone's freedom in accordance with a universal law (Newhouse 2016, 65; cf. *SRL*, 8:429). Justice requires the state to respond differently to crimes than it does to faults (i.e. mere material wrongs). Unlike with faults, justice is not served if the state were merely to order a criminal to restore or compensate for the external means they have denied their victim. When it comes to crime, Kant deems it just, in many cases, for the state to reestablish its authority by locking up criminals or putting them to death (provided such punishment is proportionate to the "inner wickedness" of the criminal), which does not at all stand in the service of restoring external means to victims (Newhouse 2016, 69; *MM*, 6:333).

It is important to note, however, that Kant's conception of crime does not *necessarily* bear the connotation of being punishable by law. In *On a Supposed Right to Lie*, Kant clearly states that 'what escapes being punishable merely by accident can be condemned as wrong even in accordance with external laws' (*SRL*, 8:426–427). With Newhouse's attempted murderer and thief, the accident in question might be insufficient evidence that the respective agents were (formally) attempting to commit a material wrong. When it comes to *lying* – in cases where this would *only* be a formal crime – the liar is legally responsible for "all the consequences" that arise *as an effect* of his lie, but not for the lie itself (*SRL*, 8:427). Lying escapes being punishable "by accident" if no such consequences arise. By telling a lie, Kant maintains, I commit a wrong to humanity *in general*, which is 'much worse than committing an injustice to someone or other' (*SRL*, 8:429). By telling a lie, Kant writes, 'I bring it about, as far as I can, that statements (declarations) in general are not believed, and so too that all rights which are based on contracts come to nothing and lose their force' (*SRL*, 8:426). As Jacob Weinrib explains it, lying corrupts the *source* of right and violates the unconditional duty of truthfulness 'that is the juridical condition for the unifying of wills' (Weinrib 2008, 156).

The notion that lying is a crime to humanity that might nevertheless be unpunishable may seem conceptually puzzling at first. This makes perfect sense, however, when we consider that the state's use of coercion is *itself* limited by right. That is, the state may only use coercion in response to actions that (aim to) infringe upon the rights of others. However,

Kant maintains that in the doctrine of right, unlike the doctrine of virtue, 'an intentional untruth is called a lie only if it violates another's right' (*MM*, 6:429), by which he means that an intentional untruth is punishable by law *only* if it infringes on what legally belongs to someone else. If no such infringement occurs *as an effect* of telling a lie (i.e. if my person or property remains unharmed by it), then the lie "escapes" being punishable by law. After all, a lie *as such* does not infringe on anyone's rights or external freedom to the extent that the other is free to choose to believe what they are told (cf. Weinrib 2008, 147).[15]

In summary, on Newhouse's two-standard interpretation of the UPR, the first standard deems an action right if and only if it does not infringe upon anyone's freedom of choice. Its second standard deems an action right if and only if the legality of acting on its underlying maxim could coexist with everyone's freedom of choice in a rightful condition. This aligns well with the textual evidence in support of the idea that actions can be *material wrongs* on Kant's account (constituted by the *factual* infringement of someone's freedom of choice) without being *formal wrongs* (constituted by the *principle* of acting in a way that undermines the conditions of right), and vice versa. According to Newhouse, Kant uses these notions to distinguish between *civil* wrongs and *criminal* wrongs.[16] She presents the following figure as an overview of what distinguishes these types of wrongs (Newhouse 2016, 70):



[15] Weinrib rightly suggests that the idea that a lie would be permissible in the absence of a wrong to a specific person 'contravenes Kant's theory of *public right* […] under which juridical wrongs are not confined to the violation of a particular person's rights and include wrongs in general' (Weinrib 2008, 147).

[16] Newhouse takes Kant to *explicitly* distinguish between formal and material wrongs on the basis of a footnote in the *Metaphysics of Morals*, where he writes: 'This distinction between what is merely formally wrong and what is also materially wrong has many applications in the doctrine of right' (*MM*, 6:308, in Newhouse 2016, 60). Closer inspection, however, reveals that Kant here only distinguishes between action that is *merely* formally wrong and action that is *also* materially wrong. It does not follow from this that Kant allows for the possibility of actions that are *merely* materially wrong. Nor does he seem to explicitly acknowledge this type of wrongdoing anywhere else. I am grateful to Fiorella Tomassini for pointing this out to me. However, I deem it unnecessary to challenge Newhouse's thesis that Kant distinguishes between material and formal wrongs, as I think she is right to argue that Kant's conceptual distinction between faults and crimes reveals that, on his account, the wrong-making property of an action can be its outer form, its maxim or both.

Since it is *only* the second clause of the UPR that evaluates an action by reference to its maxim, and criminal wrongs are identified on the basis of their maxim (not their effect), the UPR needs its second clause to identify actions as criminally wrong. If only the *first* clause of the UPR were relevant, it would be unable to identify actions as criminal wrongs. On the other hand, Kant also explicitly allows for the possibility that I can wrong someone while acting on an innocent maxim (*MM*, 6:224; *SRL*, 8:429). If only the UPR's *second* clause were relevant, Kant's theory of right would be unable to hold people liable for accidental torts, as it would lack the means to classify accidental infringements on freedom *as* instances of wrongdoing.

Hence, Kant's UPR articulates two independent standards on the basis of which the rightness of an action can be determined, the violation of which would constitute two distinct types of wrongs. Therefore, Newhouse's two-standard interpretation of the UPR is correct.

§4.4 Can Kant's Theory of Right Accommodate Culture-Specific Action Types?

§4.4.1 Legality Through Recognizability

In this section, I argue that Newhouse's two-standard interpretation enables Kant's UPR to adequately identify and properly assess culture-specific action types, thereby avoiding the shortcomings of single-standard interpretations in this regard.

At first glance, it may seem as if Newhouse's two-standard interpretation of the UPR *creates* (rather than dissolving) obstacles to right's amenability to cultural pluralism. Contrary to single-standard interpretations, it articulates an additional *second* standard on the basis of which an action can be deemed wrong. Hence, it may seem as if the range of wrongful actions is only *widened* on the two-standard interpretation. How could this lead to a more culturally sensitive (rather than exclusive) notion of right?[17]

The answer lies in the fact that Newhouse's two-standard interpretation allows that certain external actions should qualify as right because they can *recognizably* be performed on a maxim that is in accordance with right. Culture, I suggest, plays a formative role in shaping

[17] Kant explicitly distinguishes between "what is laid down as right" (i.e. 'what the laws in a certain place and at a certain time say or have said', *MM*, 6:229) and 'what the universal criterion is by which one could recognize right as well as wrong' (*MM*, 6:229). If Kant's universalist notion of right is "culturally sensitive", I contend, its principle can take culture-specific action types for what they *are*, not for what they may look like from a different cultural perspective.

the parameters that determine whether the outward features of certain actions can recognizably coexist with the conditions for each citizen's freedom under universal law.

Consider the examples of *étok-étok* and non-commissive "promising" mentioned in section 2 of this chapter. *Étok-étok* loosely translates to "dissimulation" (Edwards Jr., 2023, 15) or "proper lying" (Geertz 1960, 245–246). Upon asking an informant from the local population of Java to define *étok-étok*, anthropologist Clifford Geertz received the following answer:

> He said: 'Suppose I go off south and you see me go. Later my son asks you: "Do you know where my father went?" And you say no, étok-étok you don't know.' I asked him why should I étok-étok, as there seemed to be no reason for lying, and he said, 'Oh, you just étok-étok. You don't have to have a reason.' (Geertz 1960, 246)

For the Javanese, Geertz writes, the burden of proof 'seems to be in the direction of justifying telling the truth' rather than justifying *étok-étok* (ibid, 246):

> [O]ne tells the truth in small matters only when there is some reason to do so. Thus, if a Javanese is going to the movies and people ask him where he is going, he will probably tell them 'to the store' unless he wants them to join him or wants to ask them if the picture is worth seeing. (ibid. 246)

Anthropologist Michelle Rosaldo, who conducted research on Speech Act Theory among the Ilongot in the Philippines, writes of the frequent frustration she experienced whenever her friends among the local population seemingly "broke commitments" to her:

> Repeatedly, I was outraged to find that friends who had arranged to meet and work with me did not appear at the decided time – especially as they would then speak not of commitments broken, or of excuses and regrets, but of devices (such as gifts) that might assuage the generally unexpected and disturbing anger in my heart. To them, it mattered that I was annoyed (a dangerous and explosive state), but not that someone else, in carelessness, had hurt and angered me by failing to fulfill commitments I had understood as tantamount to promises. (Rosaldo 1982, 218)

On Rosaldo's account, she learned that what *seemed* like "commissive acts" of promising *to her* did not have any such commissive force among the Ilongot (ibid, 218). "Promise-like" statements, she writes, function more like declarative statements among the Ilongot, 'wherein what matters is the act itself and not the personal statement it purportedly involves' (ibid, 218).

On Kant's account, the deception that is inherent to lying (and, by extension, lying

promises) is an assault on the preconditions of a rightful condition. However, by taking seriously the cultural anthropological notion that the globe contains different local "ontologies of action" that facilitate mutual understanding and cooperation (Schutz 1964, 237), we can see that actions that fall under the category of *étok-étok* and non-commissive "promising" are of a different type than what Kant means by lying and promising, despite their outward similarities. When a Javanese person *étok-étoks*, they neither attempt nor expect to be believed by their interlocutor (Geertz 1960, 245–246; Wierzbicka 2003, 100–104; Edwards Jr. 2023, 15) and as such do not engage in deception. When an Ilongot person makes a non-commissive "promise", they are not attempting to reach an agreement with their interlocutor, and as such do not put their powers "at the disposal", as Ripstein puts it, of the "promisee" as specified by the terms of some agreement (Ripstein 2009, 20). We may compare such actions to the examples of using sarcasm or irony when communicating with others. Those who use sarcasm or irony expect their words not to be taken literally by their interlocutor. The same goes for those making non-commissive "promises".

If the UPR is sensitive to cultural context, it can evaluate *étok-étok* and lying as distinct actions. The same goes for non-commissive "promising" and actual promising. However, if the dominant single-standard interpretation of the UPR were correct, this would be impossible. After all, it operates under the assumption that (un)rightful action types can be identified wholly on the basis of their external features, regardless of the cultural context in which they occur, thus presupposing a culturally limited model of what such actions might look like. If this were true, the UPR would be insensitive to the cultural nuances that allow outwardly identical but substantially distinct actions to differ in how they bear on another person's external freedom or the conditions of right in general. If the outward features of lying actions in certain "European" contexts (or, if you will, the context of eighteenth-century Königsberg) were taken as a complete, universal model of lying, the UPR would be susceptible to generating false negatives when assessing cases of *étok-étok* in Java or non-commissive "promising" in parts of the Philippines.

Culture-specific ontologies of action, I contend, make certain outward actions *locally recognizable* as resting on material maxims that can coexist with the external freedom of all. If an outward action is recognizable as being performed on a rightful maxim it may, in certain cases, for that reason be identifiable as one that does not infringe on the external conditions of another's free choice and/or the rights of humanity in general. In Java, for instance, where *étok-étok* exists as a recognizable action type (reportedly more the norm than the exception), an outward act of *étok-étok* does not qualify as a wrong *because* it is widely understood that

people engage in *étok-étok* for reasons of etiquette – a factor that, one might argue, contributes to the mutual intelligibility necessary for rightful interaction in the first place.

If it is true that certain external actions can be *locally* in accordance with right in virtue of being locally recognizable as performable on rightful maxims, this carries implications for local matters of legal accountability. If, while on vacation in Java, some harm were to befall me as a result of my mistakenly taking a local's *étok-étok* literally, the local (unlike the liar in Kant's *On a Supposed Right to Lie*) is not accountable for what happened to me, as they did not lie to me. If, like anthropologist Michelle Rosaldo, I were a foreigner among the Ilongot and a local "promised" to do something for me in a manner that would be perceived as a contractual commitment in certain European – or in Rosaldo's case, American – contexts, then "breaking" that "promise" would not count as a breach of contract precisely because, in the local context, agreement is not reached through the external act of non-commissive "promising" (Rosaldo 1982, 218).

§4.4.2 Where Does This Leave the First Standard of the UPR?

While the *dominant* single-standard interpretation renders the UPR incapable of distinguishing between outwardly identical but culturally different actions because it *abstracts* from their maxims, a different problem arises for interpretations that only acknowledge the UPR's *second* standard. If rightness depends solely on whether one has acted on a juridically permissible maxim, the UPR cannot identify actions as faults – for on this reading, the UPR abstracts from whether an action *factually* infringes upon the freedom of others, attending only to whether the agent *intended* to act contrary to right.

If actions cannot be ascertained as faults (unintentional infringements upon someone else's freedom of choice), then the state cannot rightfully hold its citizens liable for unintentionally infringing on the freedom of others. Not only would this contradict Kant's explicit recognition of wrongdoing on the basis of innocent maxims, but it would deprive the state of the capacity to rightfully coerce citizens to compensate their victims when their actions have unintentionally caused compensable harm to the latter's person or property. In other words, if, under the UPR, a person who unintentionally infringes upon another's freedom cannot legally be considered a wrongdoer (e.g. Newhouse's treehouse builder), then the state may not coerce them to "do right" by their "victim". This would severely damage the state's capacity to secure a condition in which all inhabitants can enjoy their external freedom independently of others.

Hence, the UPR must retain its capacity to ascertain the juridical status of actions

independently of their underlying maxims if it is to be a principle by which universal external freedom can be protected. The question now is whether it can do so in a way that does not contradict my thesis that the UPR can identify certain outward actions as right in virtue of their being recognizably performable on permissible maxims.

My argument for the compatibility of the *local* legality of certain external actions with Kant's theory of right rests on the anthropological data according to which ontologies of action types can be specific to local communities. *Étok-étok*, for instance, can be said to be in accordance with right *in the context of Java* insofar as it is a cultural, linguistic corollary of a historical, locally realized way of life that facilitates mutual intelligibility *for those who practise it*. The same conclusion, I contend, would not hold if someone were to *étok-étok*, or make a non-commissive (or sarcastic) "promise", in a culture where these are not recognized as *doable* types of action, as Velleman puts it (Velleman 2015, 25).

If, as I argue, the UPR can identify certain external actions as right within a given cultural context because they are recognizable as action types that are formally compatible with universal freedom, then it should likewise be able to identify external actions as wrong when, within a certain cultural context, they are *not* locally recognizable as such action types. For example, if a Javanese person were to practice *étok-étok* with locals in a culture where mutual understanding in ordinary interactions depends on adherence to (or at least recognition of) a norm of direct communication,[18] that action would be wrong. Why? Because in a culture where direct communication functions as a precondition for mutual understanding, a non-joking instance of intentionally saying what one believes to be false is intelligible only as a lie, and thus cannot be *regarded* as an action that does not "corrupt the source of right". (An exception would be if one's interlocutor were a peer with a shared cultural background who can reasonably be assumed to be familiar with this action type, for example one's spouse.) Similarly, in a culture that relies on directness for mutual intelligibility, non-commissive "promising" would not be intelligible as a non-commissive act. Thus, under the UPR's first standard, the "breaking" of a non-commissive "promise" would indeed *materially* qualify as breaking a promise within this cultural context. Similarly, in a culture that is unfamiliar with sarcasm, sarcastically communicating something outwardly alike to a promise might count as acting wrongfully. In a way, this is comparable to accidentally causing harm to someone by mistakenly driving on the right side of the road after forgetting that one has entered a country

[18] Velleman plausibly argues that even if one is trying to be unordinary, one must do so in an ordinary way if one is to be intelligible to others (Velleman 2015, 71). For one person to be able to lie effectively to another in an ordinary interaction, both must treat being truthful as normal in such circumstances.

where one ought to drive on the left.

Importantly, however, a foreigner who commits a punishable wrong *merely* through lack of awareness of the relevant cultural or linguistic norms ought not to be punished for any "inner wickedness", for there is none to speak of.[19] A rightful state is obligated to treat such a tort as a *civil* wrong, not a *criminal* wrong. Newhouse is right to suggest that it follows from Kant's claim that civil wrongs ought to be punished differently from criminal wrongs that 'Kantians may be constrained to conclude that the incarceration of unintentional wrongdoers is always unjustified' (Newhouse 2016, 75).

The argument developed here should not be mistaken for a defence of the compatibility of Kant's UPR with juridical cultural relativism. It only suggests that we *can* and *should* take into account the fact of culture-specific ontologies of action in order to apply the UPR for its intended purpose: to determine actions as juridically right or wrong on the basis of whether they can materially *and* formally coexist with everyone's freedom under universal law. The argument does *not* imply that the UPR itself can take on culturally specific forms, but only that its application may yield culture-specific evaluations of external actions. While actions such as lying, mutilating and stealing are contrary to right *regardless of context*, whether an external action *formally* qualifies as such depends on its underlying maxim. One does not lie by telling an untruth as a joke, nor mutilate when amputating a diseased organ to save a life (cf. *MM*, 6:423), nor steal by taking away someone's weapon to prevent them from harming others (cf. Korsgaard 1996, 108). The same principle extends to permissible culture-specific actions that may be unintelligible as such to "outsiders". All of this, however, leaves open the possibility of actions' (locally) qualifying as wrongs despite being performed on permissible maxims.

It must also be stressed that this argument does not suggest that all that is needed for an external action to be *formally* in accordance with right is that it be performed on a material maxim one *believes* to be permissible. History and anthropology provide us with numerous examples of cultural practices that are formally (and materially) contrary to right, despite being or having been performed for reasons (and thus presumably maxims) that their practitioners deemed good – or at least unproblematic. In Europe and the United States, these include the practice of slavery and the exclusion of women from civil participation, both predicated on the presupposition of the moral and intellectual supremacy of white men. In

[19] The word "merely" is crucial here. If I am abroad and use someone's property or person solely for my own purposes, mistakenly assuming that my outward action is considered acceptable there, I have not *merely* committed a wrong through ignorance of prevailing cultural norms. I have also committed a *formal* wrong.

Africa and the Middle East, they include the practice of female genital cutting to "initiate" girls into womanhood and/or prevent infidelity (see chapter 1). In Nepal, the Hindu practice of *Chhaupadi* involves physically isolating women during their menstrual cycles to protect the community from their alleged impurity.

The UPR assigns these practices a different juridical status from that of non-commissive "promising" or *étok-étok* because, although they may be carried out on maxims that are subjectively regarded as good or unobjectionable, endorsing them entails endorsing the violation of others' freedom for supposedly justifiable reasons. By contrast, one can subjectively approve of non-commissive "promising" or *étok-étok* without thereby endorsing the infringement of anyone's freedom. An external action is not formally in accordance with right simply because it is deemed permissible subjectively or within a given culture. Rather, this depends on whether it is carried out without, for any reason, aiming to infringe upon the (preconditions of) anyone's external freedom. The argument in question establishes only that, in certain cases, cultural context must be considered in order to determine whether an external action can plausibly be regarded as formally in accordance with right.

§4.5 Conclusion

While Kant himself may not have considered the possibility of culture-specific action types, his adherence to the idea that maxims individuate what we do logically commits him to the position that outwardly identical actions can differ from each other substantially when performed on different, culture-specific maxims. By demonstrating that the UPR pertains to maxims as much as it does to the outer form of actions, Newhouse has cleared the way for a textually supported interpretation of the UPR that shows how the juridical status of outwardly similar but substantially different actions can vary across cultures.

This is good news for Kantians in light of the alleged Eurocentrism and cultural insensitivity of Kant's practical philosophy. Since the UPR has the resources to distinguish between outwardly similar but substantively different types of action, Kant's theory of right is not bound to the problematic implication that members of certain cultures violate the UPR by performing external actions that would have carried different social connotations back in eighteenth-century Königsberg, and vice versa. Instead, it has the means to take cultural context on board when evaluating whether an action is both materially and formally in accordance with right.

Concluding Remarks

The aim of this dissertation has been to determine whether Kant's moral system has the means to accommodate cultural pluralism in a satisfactory manner. I started from the assumptions that in order for this to be the case: (1) Kant's moral system must allow for substantially different, local ways of life while preserving its principled universalism; and (2) the (universal) validity of the Categorical Imperative must rest on a conception of rational agency that is genuinely universally shared. Taken together, the chapters of this dissertation show that Kant's moral system can satisfy these conditions.

Taken together, the results of chapters 1, 3, and 4 are strong indications that the first condition is satisfied. In chapter 1, I examined Katrin Flikschuh's "contextualist" interpretation of Kant's ethics, which I understand as an effort to secure a prominent role for Kantian ethics within the global justice debate, albeit at the cost of its substantive universalism. I argued that Kantian universalism is more theoretically consistent and culturally sensitive than Flikschuh's Kantian contextualism. According to Kantian universalism, it takes a culturally situated agent to judge what morality practically requires as a matter of *imperfect duty*. That is, it is only against the background of concrete contextual and cultural circumstances that an agent can reach a sufficiently informed judgment on how she should discharge her duties to promote the happiness of others and to perfect herself. Furthermore, although contextual and cultural considerations never trump the requirements of *perfect duty* on Kant's account, they can affect whether an outward action *qualifies* as a type that Kant's ethics would categorically and universally forbid. For Kant, the maxim underlying an outward action is essential to identifying what kind of action it is. Anthropological evidence shows that some culture-specific permissible actions are outwardly indistinguishable from actions that would count as violations of perfect duty from another cultural perspective. For example, if a culture engages in a practice that involves communicating deliberate untruths without any intention of deceiving one's interlocutor (such as the practice of *vranyo* in Russia or *étok-étok* in Java), then the Kantian prohibition against lying has no bearing on it, even if those unfamiliar with the practice would be unable to tell the difference. The upshot is that Kant's focus on maxims rather than external behavior makes his moral universalism context- and culture-sensitive by design. While Flikschuh is right to note that Kantian ethics must not impose a "one-size-fits-all" model of moral action if it is to take different ways of life seriously, this does not entail that it must forfeit its commitment to substantive moral

universalism.

Chapters 3 and 4 reinforce the context-sensitivity of Kant's moral system by showing, first, that Kant's reported claim that Inuit senicide was "justified to some degree" can be explained by the idea that killing oneself to avert a more "ignominious death" does not fully qualify as self-murder (*Selbstmord*), which Kant regards as categorically impermissible (chapter 3), and, second, that the Universal Principle of Right permits cultural and contextual flexibility in determining which actions are *juridically* permissible due to its explicit focus on maxims (chapter 4). All of this underscores the core Kantian notion that assessing the moral status of an action or practice necessarily involves attending to what agents understand themselves to be doing.

Chapter 2 shows that the second condition is satisfied by arguing that an agent must implicitly conceive of herself as free and autonomous in order to be able to act under any specific self-conception at all. Rather than understanding the "Kantian agent" as a being who is inescapably committed to *realizing* her autonomy by following the Categorical Imperative, as David Velleman sees it, Kant has a much less demanding (and much more plausible) conception of the agent as *a being who necessarily acts under the idea of freedom*, where autonomy is understood as a *property* of the agent's will rather than a potential to be realized. I argued that Kant's conception of agency is fully compatible with the anthropological data on "opacity-of-mind cultures", as there is no contradiction between an agent's necessarily acting under the idea of freedom and that agent's acting in accordance with a social role, or with regarding mental attitudes as highly private phenomena that ought not to be scrutinized by others or made public. Therefore, *pace* Velleman, Kantians have sufficient resources to maintain that the Kantian conception of agency applies to all rational agents rather than being confined to agents from particular cultures.

This dissertation also raises many questions that remain to be explored. For instance, while chapter 2 establishes that all agents necessarily act under the Kantian conception of agency, it leaves open whether Kant is right to say that all agents always implicitly have the Categorical Imperative before their eyes in their moral deliberations. Moreover, questions remain concerning the role of maxims in the typification of actions. It seems implausible that the question of whether individuals who perform female genital cutting are guilty of mutilation can be settled solely by attending to their (culturally shaped) conceptions of mutilation, and thus to whether they take themselves, as a matter of subjective principle, to be engaging in mutilation. While chapter 1 sketches the contours of a remedy to this problem by showing that practices involving female genital cutting *inherently* involve acting on an

impermissible maxim – even when practitioners do not understand themselves to be doing so – further work is needed to clarify in detail how, within the Kantian framework I propose, the relation between maxims and action-types should be understood.

These avenues of future research noted, this dissertation has shown that Kant's ethical theory and philosophy of right contain the conceptual resources needed to address, and ultimately defuse, worries about Eurocentric moral dogmatism.[1] This makes Kant's moral system an attractive alternative to increasingly popular relativistic approaches to morality – accounts whose openness to different ways of life and resistance to privileging "Western" moral frameworks typically come at the cost of a robust account of moral normativity.

[1] It remains important, however, to acknowledge that Kant held appalling, dogmatic views on race (at least until the 1790s), gender, and sexuality.

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Nederlandse Samenvatting

Ondanks zijn enorme invloed is Immanuel Kants morele filosofie op grote schaal bekritiseerd als “overmatig abstract”. Met name Kants centrale stelling dat morele plichten universele geboden van de zuivere praktische rede zijn, die geen enkele uitzondering toelaten, is door velen opgevat als een indicatie dat zijn morele filosofie in excessieve mate losstaat van wat men de “morele praktijk” zou kunnen noemen. Door de jaren heen hebben Kantiaanse filosofen op veel van dergelijke kritieken gereageerd. Er is echter onvoldoende aandacht besteed aan een verwante categorie van kritiek, die het potentieel van Kants morele filosofie problematiseert in het licht van wat kan worden omschreven als cultureel pluralisme. Een substantieel aantal filosofen beschuldigt Kant (en/of Kantianen) ervan een universalistisch moreel systeem te hebben opgebouwd op basis van een homogene, “Eurocentrische” conceptie van moraal en/of van de morele actor (vgl. Mills 2018, 10; Benhabib 1992, 50; Velleman 2015, 48; Flikschuh 2018, 572–573).

In dit proefschrift onderzoek ik of Kants universalistische morele filosofie cultureel pluralisme op bevredigende wijze kan onderbrengen. In vier zelfstandige hoofdstukken beoog ik te laten zien dat, binnen Kants morele systeem, zowel ethische als juridische beoordeling van een handeling aandacht moet hebben voor de maxime van de actor, en zich niet behoort te beperken tot louter de “uiterlijke manifestatie” van diens handeling. Ik betoog dat dit inzicht cruciaal is voor het begrijpen van de wijze waarop zowel Kants hoogste morele principe als zijn universele rechtsprincipe substantieel verschillende lokale levenswijzen – en daarmee cultureel pluralisme positief kan onderbrengen.

In hoofdstuk 1 bespreek ik Katrin Flikschuhs “contextualistische” interpretatie van Kants ethiek. Volgens Flikschuhs Kantiaanse contextualisme laat Kants hoogste morele principe verschillende (zelfs onderling uitsluitende) lokale moraliteiten toe, omdat de categorische imperatief niet bedoeld zou zijn om inzicht te verschaffen in objectieve morele waarheid, maar als een toets waarmee wij de zuiverheid van onze maximen evalueren. Volgens Flikschuh geldt dat, wanneer wij oprecht en welgemeend oordelen dat onze maxime als algemene wet kan worden gewild, wij daarmee alles hebben gedaan wat de Kantiaanse moraal redelijkerwijs van ons kan verlangen (Flikschuh 2018, 569). Zodra wij erkennen dat mensen hun leven navigeren middels diverse conceptuele kaders die gevormd zijn door de specifieke sociale omstandigheden van hun lokaal gerealiseerde levenswijzen, kunnen wij inzien dat individuen in verschillende sociale contexten bepaalde maximen op rechtvaardige wijze als universaliseerbaar kunnen beschouwen, zelfs wanneer wij dat vanuit ons eigen lokale standpunt

niet kunnen. Althans, zo betoogt Flikschuh (Flikschuh 2017, 104–105). In reactie hierop betoog ik dat Flikschuhs Kantiaanse contextualisme resulteert in normatieve onbepaaldheid, de rol van de categorische-imperatieftoets binnen Kants ethiek miskent en actoren in een theoretisch incoherente positie plaatst waarin zij moeten beoordelen of hun maximen universaliseerbaar zijn, terwijl zij tegelijkertijd moeten erkennen dat dergelijke oordelen niet bepalen of hun maximen *feitelijk* als algemene wetten kunnen worden gewild. Daartegenover stel ik dat Kants ethiek ruime mogelijkheden biedt voor cultureel pluralisme zonder afstand te hoeven doen van het idee dat de categorische imperatief onvoorwaardelijke, universele beperkingen aan handelen oplegt, aangezien *onvolmaakte* plichten slechts tegen de achtergrond van contextuele omstandigheden kunnen worden toegepast en praktisch oordeelsvermogen vereisen van contextueel gesitueerde actoren voor hun invulling. Daarbij kan het object van *volmaakte* plichten – handelingen – niet strikt worden losgekoppeld van maximen, en daarmee van de concrete contextuele omstandigheden waarin een handeling wordt gewild.

In hoofdstuk 2 reageer ik op David Vellemans argument dat Kants categorische imperatief ongeschikt is als universeel moreel principe, omdat het een principe zou zijn waartoe slechts een selecte (dus niet universele) groep mensen aan gecommitteerd is. Volgens Velleman handelen "Kantiaanse actoren" noodzakelijkerwijs met het doel hun autonomie te realiseren, wat zij doen door hun handelingen in overeenstemming te brengen met de vereisten van de categorische imperatief. Hij betoogt verder dat antropologische data laat zien dat bepaalde groepen mensen – zoals de Sherpa's van Nepal, de Baining en de Kaluli van Papoea-Nieuw-Guinea en de Ilongot van de Filipijnen – Kants "gepsychologiseerde" typering van actorschap niet delen (Velleman 2015, 32), waardoor niet kan worden gezegd dat diens constitutieve standaard op hen van toepassing is, die Kant zou opvatten als de categorische imperatief. Ik verwerp Vellemans stelling door te laten zien dat iemand, om überhaupt onder enige specifieke zelfconceptie te handelen, zichzelf altijd impliciet moet begrijpen als een "Kantiaanse actor" (d.w.z. als iemand die noodzakelijk handelt onder het idee van vrijheid). Bovendien betoog ik dat Kants categorische imperatief niet moet worden opgevat als een constitutieve handelingsstandaard. Velleman slaagt er derhalve niet in aan te tonen dat de categorische imperatief geen moreel principe kan zijn dat universeel op rationele actoren van toepassing is.

In hoofdstuk 3 onderzoek ik Kants vermeende oordeel over de historische praktijk van senicide onder de Inuit (d.w.z. het doden van ouderen op hun verzoek), omdat ik meen dat dit de contextgevoeligheid illustreert die inherent is aan zijn morele filosofie. In zijn colleges over ethiek zou Kant hebben gezegd dat deze praktijk een "liefdedienst" (*Liebesdienst*) van kinderen aan hun ouders was die tot op zekere hoogte gerechtvaardigd is, aangezien het doel ervan was

de ouderen te behoeden voor verhongering – een lot dat hij aanduidt als een "schandelijkere dood" (Her, 27:43; Mrong II, 29:622). Deze uitspraak is raadselachtig omdat Kant meermaals verkondigt dat zelfmoord (*Selbstmord*) onvoorwaardelijk is uitgesloten door de categorische imperatief. Dit roept de vraag op of – en zo ja, hoe – deze beweringen met elkaar te verzoenen zijn. Door te analyseren wat Kant mogelijk bedoelde met een "schandelijke dood", concludeer ik dat hij plausibel kan hebben gemeend dat een (geassisteerde) daad van zelfdoding niet geldt als een geval van zelfmoord wanneer deze noodzakelijk is om te voorkomen dat men sterft onder omstandigheden die onverenigbaar zijn met de waardigheid van een rationeel wezen, of die "schandelijker" zijn dan het alternatief om diens leven tot zijn natuurlijke einde te verduren. Als mijn argument klopt, laat ik zien dat Kants morele filosofie ruimte laat voor de mogelijkheid dat (culturele) context van invloed is op de vraag of een handeling of praktijk die (geassisteerde) zelfdoding omvat, geldt als een schending van het categorische verbod op zelfmoord. Als dit geldt voor zelfmoord, dan zou hetzelfde moeten gelden voor handelingen in het algemeen.

In hoofdstuk 4 bespreek ik de dominante opvatting volgens welke Kants rechtsfilosofie, in tegenstelling tot zijn ethiek, zich uitsluitend bezighoudt met de vraag of een handeling feitelijk inbreuk maakt op iemands voorwaarden van externe vrijheid, *ongeacht* de maxime waarop de handeling wordt gewild. Ik betoog dat deze interpretatie een probleem vormt voor Kants theorie, aangezien zij geen onderscheid kan maken tussen handelingen die uiterlijk gelijk maar innerlijk verschillend zijn. Dit probleem is bijzonder prangend in de context van cultureel pluralisme, aangezien cultureel-antropologische data laat zien dat bepaalde cultuurspecifieke handelingsvormen, hoewel zij uiterlijk niet te onderscheiden zijn van onrechtmatige handelingen zoals liegen of valse beloftes afleggen, niet dezelfde connotaties van misleiding dragen die volgens Kant een rechtsstaat ondermijnen. Als Kants universele rechtsprincipe geen onderscheid kan maken tussen uiterlijk gelijke maar inhoudelijk verschillende handelingen, is het vatbaar voor het beoordelen van rechtmatige handelingen als strijdig met recht. In reactie hierop laat ik zien dat Kants rechtsfilosofie zich evenzeer bezighoudt met maximen als met de "uiterlijke manifestatie" van handelingen. Dit doe ik door Marie Newhouses tweestandaardeninterpretatie van Kants universele rechtsprincipe te verdedigen tegen de heersende opvatting dat dit principe niet op maximen van toepassing is. Vervolgens laat ik zien dat Newhouses tweestandaardeninterpretatie toelaat dat bepaalde externe handelingen als rechtmatig gelden, precies omdat zij op *herkenbare* wijze kunnen worden verricht op een maxime die met het recht in overeenstemming is. Cultuur, zo betoog ik, speelt een vormende rol bij het bepalen van de maatstaven aan de hand waarvan de uiterlijke kenmerken van bepaalde handelingen kunnen worden beoordeeld als verenigbaar met Kants notie van

universele vrijheid onder wetten. Dit toont aan dat Kants rechtstheorie over de middelen beschikt om verschillende lokale levenswijzen positief onder te brengen – niet door haar universele principe te verzwakken, maar door toe te staan dat culturele context wordt meegenomen bij de identificatie van rechtmatige handelingstypen.

Gezamenlijk tonen de hoofdstukken aan dat Kants universalistische morele systeem, vanwege zijn focus op de normatieve status van maximen in plaats van uiterlijke handelingen als zodanig, over de middelen beschikt om cultureel pluralisme positief onder te brengen. Volgens de Kantiaanse opvatting hangt de morele en juridische status van een handeling onlosmakelijk samen met wat de persoon zichzelf begrijpt te doen bij het verrichten ervan. Een culturele praktijk is moreel en juridisch toelaatbaar zolang zij herkenbaar kan worden verricht op maximen die tegelijkertijd als algemene wetten kunnen worden gewild en geen inbreuk maken op de externe vrijheid van anderen. Of bepaalde uiterlijke handelingen of praktijken herkenbaar op dergelijke maximen kunnen worden verricht, is cultuurafhankelijk. Aangezien de maxime waarop een handeling of praktijk wordt gewild van invloed kan zijn op de vraag of zij kwalificeert als een bepaald type (on)toelaatbare handeling of praktijk, staat Kants morele systeem toe dat uiterlijk gelijke maar inhoudelijk verschillende culturele praktijken in morele status kunnen verschillen. Dit geldt zowel voor praktijken die taalhandelingen betreffen als voor praktijken die fysieke handelingen omvatten. Daarom moet Kants morele systeem niet worden begrepen als een dogmatisch of cultureel parochiaal kader dat beperkt is tot – of slechts ruimte laat voor – “Europese” levenswijzen, maar veeleer als een morele theorie die flexibel kan worden toegepast in uiteenlopende culturele contexten.

