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Kantian Constructivism and Kantian Constitutivism: Some Reflections
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In this paper, I propose that Kant be read as a constructivist about the content of morality and a constitutivist about its authority. As a *constructivist* about the *content* of morality, his view would be that the truth of a substantive moral principle or the correctness of a moral judgment consists in its following from correct practical reasoning – rather than in its conforming to a mind-independent order of moral facts (an order prior to and independent of our (sound) practical reasoning, thought and cognitive activity, evaluative attitudes, self-conceptions, etc.) I'll argue that Kant's constructivism leads to a set of general moral principles to be applied in judgment. As a *constitutivist* about the *authority* of morality, he would hold that the *authority* of morality is grounded in the fact that the Categorical Imperative is the formal principle that is constitutive of free rational volition – the principle that defines and tacitly guides all exercises of the power of free agency. We see such a view in Kant's thesis that the will 'is a law to itself (independently of any property the objects of volition)' and that the Categorical Imperative is that law. (*G* 4:440) I've argued that Kant's thesis is that the Categorical Imperative is the formal principle that specifies and arises from the nature of free rational volition. (Reath 2013, pp. 36-7; Reath 2019 pp. 82f) But if the explanation of the authority of morality is that the Categorical Imperative is grounded in the *nature* of the will, does that open the door to a form of realism farther down (or perhaps up) the road? I'll argue that it does not – or at least that it does not lead to any ordinary form of realism that would ground morality in facts or natures that are mind-independent or independent of our self-consciousness.

I begin in Section 1with some general remarks about constructivism. Since Rawls first introduced the idea of constructivism as a distinctive feature of Kant's moral conception, I discuss his understanding of Kant's constructivism in Section 2. In Section 3, I give a quick overview of Kant's moral conception as both constructivist and constitutivist. Finally, in Section 4, I take up the worry whether certain features of Kant's constitutivism rest his constructivism on a realist foundation, arguing that they do not.

1. Constructivism: general remarks and questions

Let me begin with some general remarks about constructivism, in order to set out some terms and some questions. Moral constructivism can be both a substantive normative conception and a metaethical view. As a *normative conception*, it defends a set of substantive principles or values through a form of 'constructivist' reasoning. The now commonly cited contemporary examples are Rawls's political constructivism, Justice as Fairness, and T. M. Scanlon's Contractualism. Justice as Fairness, of course, justifies the two political principles of justice by arguing that they are the rational choice for free and equal moral persons fairly situated behind a veil of ignorance, who are tasked with selecting principles to govern the basic structure of their society. Scanlon's Contractualism aims to give an account of the subject matter of judgments about right and wrong and the form of reasoning through which we arrive at such judgments, that also explains their reason-giving force or priority. In doing so he sets out a framework that can be used to settle on specific moral principles by seeking principles for the general regulation of behavior that could not reasonably be rejected by individuals moved to find such principles that others could not reasonably reject – all of whom, shall we say, recognize reasons to live with others on terms of mutual justifiability. (Scanlon 1998, pp. 4-5, 153ff.) Many contemporary interpreters (such as O'Neil, Korsgaard, Hill, Herman,[1] Engstrom, and of course Rawls) understand Kant's normative theory to be constructivist in this sense: they take the Categorical Imperative (CI) to set out a form of deliberation that can be used to arrive at specific moral principles to be applied through judgment. It is also part of Kant's substantive normative conception that the ensuing moral requirements and conclusions about duty apply with deliberative priority – they are *categorical* imperatives – and constructivist readings must account for this feature as well. (I'll bring out additional features of Kantian constructivism below in section II.)

As a metaethical view, constructivism holds, in contrast to moral realism, that the truth of a moral principle or the correctness of a moral judgment consists in its following from correct practical reasoning. Different theorists have unpacked this idea in different ways. Rawls (as I discuss in the next section), in both Justice as Fairness and his interpretation of Kant's CI, introduces the idea of a 'procedure of construction' – a form of deliberation that incorporates

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[1] At least this is the case for Herman 1993. Her current view may be different.

many different elements, including the different formal requirements of practical reason and a conception of persons as free and equal, rational, social agents. His 'procedure of construction' aims to be a 'procedural representation of all the requirements of practical reason' (importantly: 'in union with' certain conceptions of the person and society). (Rawls 2000, p. 237, 238-241) On this view what makes a moral judgment correct is that it 'issues from the correct reasonable and rational procedure correctly followed.' (Rawls 2000, p. 242) Sharon Street has argued that what is distinctive of metaethical constructivism is best captured by what she calls the 'practical standpoint characterization', according to which 'the truth of a normative claim consists in that claim's being entailed from within the practical point of view.' (Street 2010, pp. 364, 367)[2]

It is important to bear in mind that most constructivists stress that constructivism is committed to moral truth and objectivity (though critics have occasionally lost sight of this point).[3] Rawls, for example, introduces the idea of constructivism specifically as an account of moral objectivity that contrasts with the moral realism of rational intuitionism. On this point, there is no issue between metaethical constructivists and moral realists; the difference is in how

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[2] Street argues that the proceduralist characterization fails to isolate what is distinctive about constructivism as a metaethical view in contrast to moral realism or expressivism. For example, one could understand the 'procedure of construction' as a method for discovering independently existing moral truths. She notes, rightly, that Rawls's 'procedures' (both the Original Position and the 'CI-Procedure') are heuristic devices for organizing and investigating what follows from specific evaluative standpoints. '…[T]he philosophical heart of …[metaethical constructivism] is the notion of the practical point of view and what does or doesn't follow from within it.' (366) Still, I will occasionally refer to a 'procedure of construction' as a form of practical reasoning that draws out what follows from a practical standpoint.

In addition to Kantian constructivism, there are now proposals for forms of constructivism inspired by many historical figures (Aristotelian, Hobbesian, Humean, Hegelian, etc.), both as normative and as metaethical conceptions. For a good survey see Bagnoli 2022. In this article I limit myself to the Kantian brand. It can be difficult to keep normative and metaethical constructivism apart. Roughly constructivism as a normative conception is concerned either to defend some set of substantive principles or to set out the structure of a specific normative conception (for example, as we will see in Section II, to show how some set of principles give expression to a specific conception of the person), while constructivism as a metaethical view develops a conception of what it is for a moral claim or principle to be true or correct.

[3] See e.g., Korsgaard 2008, p. 302; Schafer 2015 p. 690; Bagnoli 2022. For this reason, even though metaethical constructivism rejects the realist account of truth and objectivity, I have always found it misleading to characterize it as a form of 'anti-realism'.

truth and objectivity are understood. The moral realist holds that a moral principle or judgment is true or correct in virtue of conforming to a mind-independent order of moral facts that is independent of – here a long list – human thought and practical reasoning, normative commitments, evaluative attitudes, self-conceptions, or the activity of our rational faculties, and so on. It is this element of moral realism that metaethical constructivism rejects, holding that moral truth is *constituted* by sound practical reasoning (or cognitive activity, etc.).

Is constructivism a view about the *content* of morality or about its *authority*? Contemporary discussions of normativity do not always note this distinction, but it is important to Kant and is marked out by the two aims of the *Groundwork*. (*G* 4:392) The 'seeking out' [*Aufsuchung*] of the supreme principle, through the end of *Groundwork* II, produces a statement (or several) of the CI, which when applied to the circumstances of human life in the *Metaphysics of Morals* can presumably be used to develop a substantive conception of the content of morality. Kant thought this task to be relatively easy. [4] The more challenging task for him is the 'establishing' [*Festsetzung*] of the supreme principle – establishing its authority. He struggles with this task in *Groundwork* III (with the result that his readers have struggled to follow his argument), and he adopts a different approach in the *Critique* through the fact of reason. If Kant is a constructivist then, it is worth asking whether he is a constructivist about the content of morality, or its authority, or both.

Contemporary writers and interpreters who note the distinction between content and authority generally understand constructivism to be concerned with both,[5] but before exploring that issue, it will help to note Street's distinction between 'restricted constructivism' and 'thorough-going' or 'metaethical constructivism'. Restricted constructivism focuses on a restricted set of normative claims and holds that the truth of a claim within that set consists in 'its being entailed from within the practical point of view, where the practical point of view is given some substantive characterization.' (Street 2010, p. 367. Cf. also Street 2008, p. 209ff.) By that she means that the truth of claims in the restricted set consists in their being entailed from within

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[4] The statements of the CI in both *Groundwork* II and the second *Critique* follow easily from analysis of the concept of a categorical imperative or practical law. And in the Preface to the former Kant notes with some apparent chagrin that he must 'forego the advantage' of applying this principle into system, which task 'would be fundamentally more gratifying than in the general interest…' Perhaps life was simpler then.

[5] Bagnoli 2022. Cf. also Formosa 2011, esp. p. 173.

the practical point of view of someone who accepts a further set of substantive normative ideas that the theory takes for granted. For example, Rawls's political constructivism aims to support his political principles of justice, Justice as Fairness. Its basis is a set of 'fundamental ideas' that are well established in democratic political culture, such as the idea of persons as free and equal citizens with two moral powers and the idea of society as a fair system of cooperation among persons so conceived. These ideas, along with other normative ideas (such as 'considered convictions' about fairness and conditions of fair choice between equals), are simply assumed for purposes of the theory. They are then built into the set-up of the Original Position (OP), which is the 'procedure of construction' used to justify the principles of Justice as Fairness. (Rawls 1993, pp. 15-28, 102ff.) The truth of these principles consists in their being the rational choice in the OP – which is to say, in their being entailed from within the point of view of individuals who accept or identify with the 'fundamental ideas', such as the idea of persons as free and equal citizens.

Rawls's political constructivism is 'restricted'. It uses the device of the OP to 'construct' the principles of Justice as Fairness, but it takes for granted and does not try to establish (or 'construct') the normative ideas that go into the OP. In contrast, 'thorough-going' or 'metaethical' constructivism holds that the truth of a normative claim consists in its 'being entailed from within the practical point of view, where the practical point of view is given a formal characterization.' (Street 2010 p. 369.) That is, the metaethical constructivist holds that normative truth is constituted by what follows from the practical point of view *per se*, 'the standpoint of valuing or normative judgment as such', where no substantive normative material is presupposed or built into the practical point of view, as in restricted constructivism. Metaethical constructivism 'goes all the way down,' so to speak. A prime example is Korsgaard's reading of Kant's Formula of Humanity (FH) and her own view in *The Sources of Normativity*, which argue (simplifying) that a commitment to valuing humanity as an end in itself is built into the standpoint of rational choice or valuing *per se*. (Korsgaard 1996a, Ch. 4 and Korsgaard 1996b.)

Since Korsgaard's constructivist interpretation of FH (in this article) and her own constructivism (in *Sources*) go all the way down to *necessary* features of the practical point of view, they give accounts of the authority of morality. That is her main concern in these works. But since what is given authority is a version of Kant's FH, they also lead to a conception of the

content of morality.[6] Thus her constructivism includes both the content and the authority of morality.

I'll close this section with a further comment about the structure of Rawls's political constructivism. Rawls's political conception is most concerned with a 'content problem'. Specifically, he believes that the practical task of political philosophy is to achieve agreement on the most adequate conception of justice for the basic structure in a modern democratic society.[7] His political constructivism is 'restricted' because he takes for granted without arguing for the fundamental ideas of person and society that are the basis of the OP. The OP is, roughly, a device for working out which conception of justice (content) follows from the normative commitments that we have in virtue of our self-conception as free and equal moral persons engaged in social cooperation with others on fair terms – that is, which principles of justice follow from the point of view of democratic citizens. Of course the fundamental ideas that are the basis of the OP are not arbitrary or simply stipulated, but rather are accepted as adequate for the practical task of the theory (to find agreement on the most adequate conception of justice for the basic structure of a modern democratic society). Does that mean that Rawls is not concerned with the question of the 'authority' of his political conception? His theory certainly will not have normative force for individuals who don't think of themselves in terms of these conceptions of the person and society, and Rawls does not try to show that we are rationally committed to these conceptions. His view, I take it, is that the relevant 'fundamental ideas' have developed in democratic traditions and been tested by historical experience, and that they are conducive to various forms of human good (including the good of mutual respect). Furthermore modern citizens *do* indeed think of themselves in these ways insofar as they have been formed and educated to these conceptions by their political institutions. It is in fact part of the self-

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[6] To clarify this point, Korsgaard is mainly concerned with normative theory, which includes both claims about the authority of morality and its substantive content (specific moral principles). But since the truth of both kinds of claims consists in their following from the practical point of view per se, she has a metaethical conception as well. As I understand her thinking, she does not acknowledge a sharp distinction between normative ethics and metaethics; you can't meaningfully do the latter without also doing the former.

[7] Rawls 1993, p. 3: the fundamental question of political justice in a democratic society is 'what is the most appropriate conception of justice for specifying the fair terms of cooperation between citizens regarded as free and equal, and as full cooperating members of society…?'

conception of citizens who are shaped by democratic institutions and culture that they are free and equal moral persons engaged in social cooperation – even if it might take political philosophy to bring that self-conception to awareness. If that is the case, these fundamental ideas are adequate for Rawls's purposes, and there are no further issues about the authority of his principles to address.

2. Rawls's constructivist Kant

In this section I'll discuss Rawls's Kant, which I regard as a pretty good Kant, and whose moral conception has the same overall structure (not surprisingly) as Rawls's own political constructivism. Let's begin with some key passages from Rawls's presentation of Kant's constructivism:

a) An essential feature of Kant's moral constructivism is that the particular categorical imperatives that give the content of the duties of justice and virtue are viewed as specified by a procedure of construction (the CI-procedure), the form and structure of which mirror both of our two powers of practical reason as well as our status as free and equal moral persons. As we shall see, this conception of the person…Kant regards as implicit in our everyday moral consciousness, the fact of reason

b) … the form and structure of the constructivist procedure are seen as a procedural representation of all the requirements of practical reason, both pure and empirical…

c) It is characteristic of Kant's doctrine that a relatively complex conception of the person plays a central role in specifying the content of his moral view.

d) …in moral constructivism, what is it that is constructed? The answer is: the content of the moral doctrine.

e) It is the union of the principles of practical reason with those conceptions [of the person and of the public role of moral precepts in a realm of ends] that

shapes the procedure's form and structure… [It] is complete and independent. For moral purposes, this union needs no grounding, and the principles of practical reason rely on nothing prior to it.[8]

Such passages show that Rawls's Kant is a constructivist about the *content* of morality; the *authority* of morality is not specifically at issue in his discussions of moral constructivism. Moreover, Rawls's Kant is a restricted constructivist.

Let me give my understanding of Rawls's constructivist Kant.[9] The procedure of construction (the so-called 'CI procedure') is 'simply laid out.' Its 'basis' includes both formal requirements of practical reason and more substantive conceptions of the person and society (passages a) and b)) – though it would be a mistake to look for a sharp separation between these elements, since the requirements of practical reason are linked to persons' 'reasonable and rational' capacities. The principles of practical reason are the familiar principles of instrumental rationality (empirical practical reason) and the formal condition of universal validity that comes from pure practical reason. The conception of the person is of persons as free and equal reasonable and rational agents – agents with the rational capacities associated with pure and empirical practical reason. These capacities include the capacity to act from what one regards as good reasons, to set ends regarded as having value, to recognize moral standing in others and oneself, etc., all of which are aspects of autonomy in a broad sense. This list could go on since the conception of the person is 'complex'. Since reasonable persons have a conception of 'the public role of moral precepts…' (as principles through which we can justify our choices to each other on terms of equality), this conception of the person also leads to the ideal of social interaction and moral community that characterizes the realm of ends. These elements are the 'materials' incorporated into the procedure of construction, or the 'basis of Kant's constructivism.' Since they are simply drawn from ordinary experience (neither constructed nor

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[8] Rawls 2000, pp. 237, 239, 251. In passage d), the intended contrast is with the 'procedure of construction,' which incorporates both the formal requirements of practical reason and the conceptions of person and society. That is, what is constructed is the *content* of the moral conception, and not the *procedure* of construction (it is just 'laid out') or the *'basis'* of the procedure – the conceptions of person and society (it is 'unclear what that could mean'). (240) However Rawls's clearly thinks that the CI is intended to give us a start on generating the content of morality.

[9] Taken from Rawls 2000, p. 237-247. I also discuss these passages in Reath 2006, pp. 198-201.

laid out) without any further grounding, this is a restricted constructivism. (On Rawls's view, the grounding of these ideas comes from the fact of reason.)

Several comments: first, assembling these materials together points to the practical task that the procedure is to address – roughly, to find principles to serve as universal law for free and equal agents with the specified rational capacities and interests, that can serve the social role of moral principles in a (possible) realm of ends. Put somewhat differently, it is to determine which moral principles follow from the point of view of free and equal agents with the specified rational capacities. Second, Rawls stresses (not without some unclarity) 'the union of the principles of practical reason' with the conceptions of person and society. (Passage e)) I believe that the reason for this is as follows: while many of the materials that are part of the basis of the procedure are recognizably moral in nature (the formal condition of universal validity, the conception of persons as 'reasonable'), none of them alone has determinate normative implications, or leads to any substantive moral principle. Substantive moral principles follow only by working through the deliberative procedure that incorporates all of these different materials. That is why a rich conception of the person 'plays a central role in specifying the content' of the moral conception (passage (c)). That principles must satisfy a condition of universal validity (say, are such that all can reasonably accept them as principles on which all may act) by itself is too thin to support much in the way of moral substance, without bringing in a conception of the persons for whom they are to serve as principles and the associated idea of society.[10] Third, that is why this procedure is a method of construction, rather than a heuristic for discovering independently existing moral facts or principles. Part of the idea of there being a 'construction' is that these materials are combined together into a process of reasoning. Moral content that goes beyond any of the individual materials issues from the way in which this reasoning incorporates the formal requirement of universal validity stemming from pure practical reason with the conceptions of person and society (and a priori commitments that they involve), and perhaps with further general facts about human life and action. Moreover since the materials include our self-conception as agents of a certain kind, and any normative commitments that we

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[10] Compare Rawls 1993, p. 107 on political constructivism: 'Constructivism does not proceed from practical reason alone, but requires a procedure that models conceptions of person and society.'

have in virtue of this self-conception, this process of reasoning is a way to determine which substantive principles follow from the point of view agents with this self-conception.

Rawls is known for introducing and giving an account of the so-called 'CI-Procedure',[11] but his use of this idea has been misunderstood. Note for example the following remark:

> Now there are two reasons for studying the CI-procedure: one is to use it as a way of generating the content – the first principles along with the essential rights, duties and permissions, and the rest – of a reasonable moral doctrine. I don't believe that the CI-procedure is adequate for this purpose. This is not to deny that it is surely highly instructive… The other reason…is to elucidate and give meaning to the themes and features that distinguish Kant's view. Provided that the account of that procedure satisfies the content and freedom conditions [that the CI lead to some content and that it exhibit the moral law as a principle of autonomy]… its main value for us… is to bring to life and to make intelligible Kant's characteristic and deeper ideas. (Rawls 2000, pp. 163-4.)

Though Rawls's Kant is a constructivist about the content of morality, Rawls does not think that a 'CI-procedure' based on the Formula of Universal Law and the Formula of the Law of Nature is adequate to generate a complete normative conception, nor does he introduce it for that purpose.[12] Rather, he lays out the 'CI-procedure' in order to exhibit and to make sense of other distinctive features of Kant's moral conception – those 'deeper ideas' that he thinks moral philosophy had not yet recognized – such as the priority of right, the reality of pure practical reason, the idea of morality as based on autonomy of the will, the central role of a rich conception of persons as reasonable and the rational. Here let's explicitly add the foundational role of this conception of the person in generating the content of morality, which is to say, the

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[11] He acknowledges that his account of the CI draws on the work of O'Neill 1976/2013, Herman 1993, and Korsgaard 1996a (Ch. 2).

[12] Cf. also Rawls 2000, pp. 218-9: '…the CI-procedure is no more meant to teach us what is right and wrong than Frege's *Begriffschrift* is meant to teach us how to reason with the concepts expressed by "if-then," "and," and "not," or by "some" and "all". Again we already know how to do that.… I believe that Kant saw the value of having a procedural representation of the moral law to be what it discloses about that law and about ourselves – in particular what it shows about our persons, our freedom, and our status in the world. It prepares the way for a kind of self-knowledge that only philosophical reflection about the moral law and its roots in our person can bring to light.'

structure of Kant's moral conception as constructivist – that moral principles are based in and follow from normative commitments that we have in virtue of our self-conception as free, reasonable and rational, social agents. To exhibit these ideas we need some representation of the form of deliberation supported by the CI and some idea of how it can generate significant moral content. But a simplified and stylized representation suffices for that purpose. That is what the 'CI-procedure' is supposed to be, and not a recipe for generating all the content of Kant's moral conception.[13]

Kant, of course, did not dabble in 'metaethics', but recent interpreters have made claims about how his views map onto contemporary debates. Here Rawls focuses on the implications of Kant's doctrine of autonomy, Kant's canonical characterization of which is: 'Autonomy of the will is the property of the will by which it is a law to itself (independently of any property of the objects of volition)'. (*G* 4:440) Rawls's Kant accepts 'constitutive autonomy':

> … that the order of moral and political values must be made, or itself constituted, by the principles and conceptions of practical reason… In contrast with rational intuitionism, constitutive autonomy says that the so-called independent order of values does not constitute itself but is constituted by the activity, actual or ideal, of practical (human) reason itself. [Kant's] constructivism…goes to the very existence and constitution of the order of values. This is part of his transcendental idealism. (Rawls 1993, p. 99)

Likewise:

> [I]n Kant's moral constructivism, it suffices for heteronomy that the first principles are founded on relations among objects the nature of which is not affected or determined by our conception of ourselves as reasonable and rational persons (possessing the powers of practical reason) and by our conception of the public role of moral principles in a possible realm of ends. Kant's idea of autonomy requires that there exists no moral order prior to and independent of

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[13] To be clear, if the CI is indeed the 'supreme principle of morality', then some representation of the form of deliberation to which it leads should be able to generate main components of Kant's normative conception. But that representation need not be Rawls's 'CI procedure', nor are commentators bound by the four examples in the *Groundwork*. This work has the narrow aim of addressing specific foundational questions, not developing a complete normative conception.

those conceptions that determine the form of the procedure that specifies the content of the duties of justice and virtue. (Rawls 2000, pp, 236-7)

One might find it puzzling that, in the first passage, Rawls says that the 'order of values' is 'constituted by the activity, *actual or ideal*, of practical (human) reason.' (My italics.) In what sense 'actual activity'? One might have expected him to focus on the 'ideal' activity of practical reasoners, while at the same time holding that our actual exercises of reason, while imperfect, must be guided by and at least approximately satisfy ideal standards in order to be recognizable as instances of reasoning, and further that our only access to the ideal is through our own conscientious actual reasoning subjected to due critical scrutiny. (Perhaps all actual reasoning, even if defective, in some way recognizes or affirms the ideal standards of reasoning for human beings.) One might also hold that the possibility of practical reasoning guided by these standards depends upon certain actual historical and cultural conditions.

Even though Kantian constructivism is introduced precisely to give an account of moral objectivity, I suspect that remarks such as the above have misled some readers into thinking that it is incompatible with real moral objectivity, because they take constructivism to make moral facts depend on individuals' actual reasoning, evaluative attitudes, self-conceptions and so on.[14] But it is not essential to constructivism, and the Kantian constructivist should not hold that moral facts and principles are constituted by the *actual* reasoning, valuing, beliefs or self-conceptions of moral agents. Moreover I do not believe that the activity of reasoning and the self-conceptions referred to in the above passages from Rawls refer to actual bits of reasoning or self-conceptions that we accept as a matter of empirical fact. (Our 'conception of ourselves as reasonable and

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[14] Here see Wood 2000, p. 157, 374; and Kain 2004. In my essay 'Legislating the Moral Law', first published in 1994 and reprinted in Reath 2006, in the service of a constructivist reading of Kant I developed an analogy between the Formula of Universal Law (as the 'constitution' of the rational will) and a political constitution that establishes a legislative process for enacting political laws. I pushed the parallel between 'moral legislation' and political legislation, between moral principle and positive law, and looked for a way to give the moral agent some discretion in establishing moral principles (through discretion over the maxims brought for assessment). Kain 2004 criticizes this interpretation, and I now think that he was right to do so. I pushed this analogy too far. However constructivism need not (and Kantian constructivism should not) hold that either the content or the authority of substantive moral principles depends upon a discretionary act of a moral agent. (The authority of a principle may depend on an agent's self-conception, but that is not exactly a discretionary act. See Reath 2015, pp. 47-9, for discussion of the finer points.)

rational' is not a self-conception that we just happen to have; it clearly presupposes a priori normative principles.) Certainly in Kant there is space for the activity of rational agents as such, and for self-conceptions that are a priori or that represent structural features of self-consciousness or of the practical point of view.

Elsewhere Rawls writes that according to constructivism, in contrast to Nagel's 'view from nowhere,'

> the objective point of view must always be from somewhere. This is because in calling upon practical reason, it must express the point of view of persons, individual or corporate, suitably characterized as reasonable and rational. There is no such thing as the point of view of practical reason as such.' (Rawls 1993, p. 116)

There is no point of view of practical reason as such, any more than there is a point of view of the universe. (Sorry, Professor Sidgwick…) But there is room in Kant's philosophy for the point of view of free, reasonable and rational, social (and yes – human) agents as such – a universal human point of view that we can strive to occupy, perhaps by thinking and reasoning in concert with others of our kind (under the right social and cultural conditions). The Kantian metaethical constructivist should hold that the order of moral values is not independent of but rather is constituted by these *a priori* self-conceptions and the normative commitments and the reasoning that follow from them; that is how I shall understand this view in what follows.[15] The CI-Procedure is then a stylized way of working out what follows from this point of view – what principles we are committed to simply as free, reasonable and rational, social agents.

Since this is all very abstract, I will try to provide more detail about a constructivist conception in the next section (in at least a stylized way). I'll close this section with a brief comment on why Kant's conception of autonomy leads to constructivism. The aim of both the *Groundwork* and the second *Critique* is to ground the unconditional necessity that common moral thought assigns to morality, and Kant is led to his conception of the autonomy of the will by this aim. His great insight is that the necessity of moral requirement is genuine only if based in the autonomy of the will – that is, only if such requirements are based on a 'law that arises from [one's] will,' which 'according to its natural end is a will giving universal law.' (*G* 4:432) In other words, the necessity of moral requirement can be sustained only if the moral law is the

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[15] For a good discussion of this issue from a slightly different angle, see Engstrom 2013, section 5

formal principle that is internal to the power of rational volition. For this reason, his conception of autonomy does indeed require some kind of constructivism (plus, I'll argue, constitutivism). Moral theories that ground moral requirement in something external to the nature of the will – whether that be an independently given order of values or features of our psychology – are theories of heteronomy and fail as accounts of ordinary morality. This is not simply because they require a desire-dependent account of moral motivation (though they may).[16] Rather because they *begin* from some object or set of values in which human beings are presumed to have an interest, they lack the resources to show that that interest is *rationally necessary*. Because such 'material principles of morality' (*KpV* 5:39) are thus unable to account for the necessity of duty, they fail as accounts of common moral thought.[17]

3. Constructivism about the content, constitutivism about the authority

In this section, I'll draw on the discussion of Rawls's Kant in the previous section to outline a picture of Kant as a constructivist about the content of morality. I'll then outline his constitutivism about the authority of morality.

What is needed to make the case that a normative conception is a constructivist view (metaethically speaking)? First, we need a picture of how its basic moral principles are generated by a process of reasoning. Moreover, it must be plausible to hold that the truth or correctness of its principles consists in their following from correct practical reasoning that satisfies certain conditions, or in their being 'entailed from within the moral/practical point of view' (suitably characterized), rather than in conformity to an order of moral facts or values that is independent of our rational activity and a priori self-conceptions. For that to be the case, the process of reasoning (the practical point of view) must combine several different elements with normative

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[16] Stern 2012's discussion of the 'argument from autonomy' to constructivism takes the key move to be that intuitionist moral realism will require a desire-based form of moral motivation, which is thought to undermine autonomy. While Stern grants that intuitionist realism may require desire-based moral motivation, he does not see why that undermines autonomy. However, that is not the point on which the argument turns. Rather any moral theory that grounds obligation in a principle other than the formal principle internal to rational volition – that is any theory of heteronomy – is unable to account for the unconditional necessity of moral principle. A principle applies with necessity only if based in the formal principle that is internal to the will.

[17] I develop this line in Reath 2019a.

import, none of which leads to determinate normative implications in isolation. Further, these elements should include the self-conception of persons who employ this reasoning and to whom it applies. The reasoning can then be understood as a way of drawing out what normative principles follow from the point of view of persons so conceived. In addition, Rawls shows that in Kant's constructivism a rich conception of the person (as free and equal social agents, with specific rational capacities) plays a role in the reasoning that generates substantive moral principles. This is a defining feature of Kantian constructivism. As we have seen, the process of reasoning takes its 'form and structure' from the 'union of the principles of practical reasoning' (formal requirements of practical reason) with this conception of the person and society. Again, this makes it plausible that this process of reasoning is drawing out what follows from the practical point of view of free and equal persons with specific rational capacities and from the normative commitments that they have in virtue of this self-conception. That is, it makes it plausible that the truth or correctness of the resulting principles consists in their following from within this point of view.

Along the above lines I'll now propose that the CI be understood as applying the formal condition of universal validity that comes from pure practical reason to the a priori commitments that follow from our self-conception as free and equal agents with specific rational capacities (our self-conception as agents with autonomy). These normative commitments will set constraints on what maxims can consistently be willed as universal law, and when subjected to the condition of universal validity, also provide a 'direct route' to some general moral principles.[18] (The way in which the conception of the person plays a role in specifying moral content is seen in the role of such commitments in the practical reasoning to substantive principles.) This is a simple constructivist reading of the CI, and though it does not have explicit textual support, it fits much of what Kant does say.

But where are we to go for Kant's conception of the person and in what sense does this self-conception carry normative commitments? Elsewhere I've argued that we may read a conception of agents with autonomy into the Formula of Universal Law (FUL). Very briefly, it follows analytically from the concept of a categorical imperative or practical law that the agents

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[18] I draw on and am much indebted to Stephen Engstrom's interpretation of the CI in Engstrom 2009, Chs. VI and VII, which I have adapted in certain ways. The idea of a 'direct route' to moral principles is his; see pp. 219-220. I'm also indebted to some of Barbara Herman's work, cited below.

subject to such principles 'must be regarded as self-legislating, and just on account of this as subject to the law…' (*G* 4:431) A practical law can only apply to agents with the practical and rational capacities that go into autonomy. (That is, the characteristics of 'practical laws' have implications for the kind of agents to whom they can apply.) Kant derives FUL from the 'mere concept of a categorical imperative', but as soon as he has that concept, the concept of agents with autonomy (as those agents who are subject to such laws) is likewise available to him. If so, it is reasonable to read this conception of agency into FUL, and to understand FUL as the principle of acting only from maxims that can at the same time consistently be willed as universal law for agents with autonomy.[19]

But since this reading of FUL might be contentious (I don't have space to develop it here), for present purposes it is simpler to appeal to Kant's well-known claim in *Groundwork* III, that a rational agent with a will necessarily acts under the idea of freedom.[20] This is not a claim that (as far as I know) appears in other works, but it is a perfectly general claim about both theoretical and practical judgment, and there is no reason to think that Kant gave it up. Moreover, since subjection to morality presupposes (transcendentally) free agency, we may assume that FUL applies to and is to govern the volition of agents who act under this idea. Now, the 'idea of freedom' is an *idea* under which we necessarily judge and act. That is, that we necessarily act under this idea is a claim about how the judging subject regards her own cognitive activity – in that sense a claim about the self-consciousness of judgment – and it carries normative commitments. For example, in claiming that reason does not 'self-consciously receive guidance from any other quarter with regard to its judgments' and 'must view herself as the author of her own principles, independently of alien influences', Kant holds that it is a constitutive feature of judging that one takes one's judging to be determined by one's correct

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[19] I develop this idea in Reath 2006, pp. 204-208.

[20] Kant writes: 'Now I assert: that we must necessarily lend to every rational being that has a will also the idea of freedom, under which it alone acts. For in such a being we conceive a reason that is practical, has causality with regard to its objects. Now, one cannot possibly think of a reason that would self-consciously receive guidance from any other quarter with regard to its judgments, since the subject would not then attribute the determination of its judgment to his reason, but to an impulse… reason must view herself as the author of her own principles, independently of alien influences…' (*G* 4:448) This claim is about the practical self-consciousness of rational agents in general, and not applied to the human being until 4:452.32.

application of the relevant principles and not by anything external to this application. That is, in judging, one takes oneself to be judging correctly; one is thus committed to changing one's judgment if one discovers that one has erred. To *act* under the idea of freedom, is to understand oneself to be determining oneself to act on the basis of a sound judgment of what one has reason to do in one's circumstances. (For detail, see Reath 2019b, pp. 227-234.)

Arguably it is also part of the idea of freedom that a judgment is *one's own.* It is constitutive of judging that one takes one's judgment to be determined by *one's own* application of the relevant principles (as an act of spontaneity). If so, it is part of one's self-conception in acting that one understands oneself to be forming and acting on one's own practical judgment of what one has reason to do. This is a general feature of practical self-consciousness, and it leads to (at least) two abstract normative commitments. The first is a commitment to forming your own judgment of what you have reason to do. (You take yourself to be, thus are committed to, forming your own judgment about what you have reason to do.) Factors external to your judgment of course bear on what is rationally supported, but their weight is a function of relevant normative standards, and these factors are to influence your judgment through your application of these standards. We may call this a commitment to the *independence of judgment*. Second, since rational agency involves acting on your judgment of what you have reason to do, it involves a commitment to realizing through your own causality the action or end on which you have settled. We may call this a commitment to *independence of action*. (Reath 2019b, p. 243)

That one forms and acts on one's own judgment are minimal (and non-exhaustive) constitutive features of rational volition, and can be viewed as formal components of what one wills whenever one acts on a maxim. (In adopting any maxim, in addition to willing its substantive content, I will that I form my own judgment about reasons, execute that judgment through my own causality, etc.) In addition, the idea of freedom (we may surmise) leads to a commitment to the general material conditions needed to support the successful exercise of one's agency.[21] In the case of human beings, these conditions include the development of one's natural talents and the availability of mutual aid.[22]

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[21] Herman 1993, 119-127. 'Material conditions of agency' is her term.

[22] Note that all of these conditions point to ways in which rational nature (the capacity for rational volition) 'sets itself' as its own end – that is, sets its own exercise as its formal end. (Cf. *G* 4:437.21.)

These commitments (to independence of judgment and action, to the material conditions of agency) stem from our self-conception as free and equal rational agents. The proposal is to understand the CI (FUL) as applying the condition of universal validity to such a priori commitments, which then set constraints on what maxims can and cannot be willed as universal law for agents with autonomy. Take, for example, maxims that involve interfering with or trying to control another person's judgment – maxims that involve deception, manipulation, threat, coercion, and so on, for reasons of self-interest. The commitment to independence of judgment holds that any time I act on any maxim, I am committed to, thus will, forming my own judgment about what I have reason to do. This condition of course holds for the adoption of a maxim on this list. That means that an agent cannot consistently will both a maxim of controlling or interfering with another person's judgment about reasons and the universalization of that maxim. In willing the universalization of that maxim, one wills that all can reasonably accept the maxim as a principle on which all are free to act. But then one wills that others are free to interfere with one's own judgment about reasons, and moreover that one must accept their doing so (agree with their maxim). (Cf. Engstrom 2009, pp. 188-196.) One is then willing both one's own independence of judgment and conditions that undermine it, that indeed undermine the possibility of agency. One's willing then suffers from a deep incoherence that maps onto what has come to be called a 'contradiction in conception'. The same reasoning shows that one cannot consistently will both maxims that involve interference with the freedom of action of others (simply for reasons of self-interest) and their universalization.

Likewise the universalization of maxims that neglect the material conditions of agency leads to a contradiction in the will. One's self-conception as an agent contains a commitment to the material conditions of the successful exercise of one's agency; accordingly maxims that neglect these conditions (such as the maxims of 'indolence' and 'indifference') cannot consistently be willed as universal without a contradiction in the will.

The direct route to moral principles applies the condition of universal validity directly to the basic commitments that we have in virtue of our self-conception as free rational agents with autonomy. What one necessarily wills for oneself, one must will as a general principle for all. Applying the condition of universal validity to the commitments outlined so far leads to general principles that protect independence of judgment and action (principles that proscribe deception,

coercion, interference with the freedom of action of others, etc.) and to the obligatory ends of self-development and promoting the happiness of others.

This take on Kant's FUL presents it as leading to a form of reasoning structured by the 'union of practical reason' with a Kantian conception of the person. The purely formal condition of universal validity is what one wills simply as a free rational agent and holds for all rational agents. The self-conception of persons as free and equal persons with specified rational capacities (and as necessarily acting under the idea of freedom) introduces conditions with some content, though they are still formal features of finite rational volition. We can see how the form of reasoning that integrates these conditions generates a small set of general moral principles, here including both presumptions against adopting certain general kinds of maxims as well as positive moral principles (against coercion, etc.) and obligatory ends, all to be applied through judgment. I am not going too deep here or suggesting anything like a procedure for assessing individual maxims, and the hard work of detailed moral assessment and judgment is simply set aside. But as long as such assessment is guided by general principles of this sort, this brief sketch is enough to present Kant's normative view as recognizably and uncontroversially constructivist about the content of morality.[23]

So far this is a restricted constructivism that takes the 'basis' or 'materials' of the 'procedure of construction' for granted; since it does not go 'all the way down', it does not address all questions that one might have about the authority of the procedure and the principles that it generates. The condition of universal validity is simply taken from pure practical reason. Is that a capacity that we human beings have? Does the animating conception of the person apply to us? Is the point of view of free and equal rational persons as such *our* point of view? At this point I turn to constitutivism to address such questions and to complete the account, here of the authority of this form of reasoning and the principles and judgments that follow.[24]

Kant's constitutivist account of the authority of morality argues that the FUL is the formal, i.e., internal constitutive norm of our free rational agency. Such an account has two

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[23] I think that this view is consistent with Barbara Herman's overall view in Herman 2021, in that it does not propose using Kant's universalizability procedure to assess individual maxims or actions, but that requires further discussion.

[24] Here I summarize a line of thought developed in more detail in Reath, forthcoming. I omit many details, and will not try to assess the plausibility of the basic arguments.

general components. The first is the claim that the FUL is the formal principle of the power of rational agency conceived in a certain way, which is to say the principle that specifies what it is to exercise that power, by following which one does exercise that power, and that tacitly guides all exercises. As such, it is authoritative for any agent who understands herself to be exercising that power, or engaging in that form of rational activity. The formal principle is both descriptive of the power and its ideal exercise and normative for its exercise in finite rational agents through one's self-consciousness of exercising the power. This component of the account aspires to show that an agent's self-conception as free, rational agent with autonomy commits her to morality.

The second component is a conception of *our* rational agency. To show that the first element applies to us human beings, we need to establish facts about the nature of our agency – for example, that *we human beings* have the rational powers that figure in the first component. Indeed, for this account to establish the unconditional necessity of morality, it must make the case not just that we have these powers, but that they are a necessary feature of our self-conception as agents – for example, that these rational powers represent our proper self. With both components in hand, Kant's moral constitutivism holds, in a word, that the FUL is the *formal* principle of a *necessary* self-conception. This is a dual necessity in that both components are required to support the constitutivist conclusion. Furthermore, the second component carries much of the burden of justification.

The argument for the first component, common to both the *Groundwork* and the second *Critique*, concludes with the claim that the moral law is the law of a freewill. (*G* 4:447, *KpV* 5:29) Setting aside the details of what this claim means, the argument proceeds from analysis of the nature of free agency. It turns on the thesis that that rational will is a law to itself and that the FUL is that law. (G 4:440, 447) I understand this to be the thesis that the FUL is the law that arises from the nature of free rational volition, which we articulate through our own self-conscious reflection on the nature of rational volition (its formal aim, characteristic activity, etc.). The first component of the account, then, is that the FUL is the formal principle that arises from the nature of free volition, through which one exercises that rational power.

The second component concerning the nature of our agency is more complicated. In both the *Groundwork* and the second *Critique*, Kant needs to establish that we have the power of pure practical reason, but his strategy for doing so is different. After the opening analytic claims that connect rationality, freedom and morality, *Groundwork* III takes a detour through the spontaneity

of theoretical reason and the intelligible world to establish that we human beings necessarily act under the idea of freedom (*G* 4:452.32) and that we conceive of our free, intelligible capacities as our proper self. (Cf. *G* 4:457.34, 458.2, 461.4.) The overall argument is not neat, but it permits a neat summary of Kant's moral constitutivism in the *Groundwork*: FUL is the formal principle of free agency, and we necessarily act under the idea of freedom and conceive of our intelligible capacities as our proper self. Our self-conception as free agents, active in all rational choice, then commits us to accepting the priority of morality.

I believe that the Analytic of the second *Critique* has the same constitutivist structure, though the relevant facts about the nature of our agency, specifically the reality in us of pure practical reason, are established through the fact of reason. Let me just stipulate here that, in addition to the authority of morality, what is given through the fact of reason is that we have certain powers of personality and free agency, and that they are necessary to our self-conception as persons. (We have any powers of rational agency that are presupposed by subjection to the moral law.) And again the CI is the formal, that is, necessary constitutive principle of these rational powers. The CI is then the formal principle of a set of agential powers that are necessary features of our self-conception as persons. (See Reath forthcoming, Section III.) Arguably in both works, what carries the burden of justification is the conception of the nature of our agency – what kind of agents we are or understand ourselves to be.

Kant's constructivism moves from a conception of persons as free, rational, social agents with autonomy to a set of substantive moral principles, by showing which principles follow from the point of view of persons so conceived. But as we have seen, this is a restricted constructivism. It simply takes the condition of universal validity in hand from pure practical reason and does not attempt to support the applicability to us of the broader conception of the person. Kant's constitutivism completes the account of the authority of morality by making the case, roughly, that the FUL (which expresses the condition of universal validity) is the formal principle of our free agency, and that the broader operative conception is indeed a necessary component of our self-conception as persons – or alternatively that the point of view of free rational agents with autonomy as such is our point of view. It grounds the 'materials' that are the

'basis' of the constructive procedure used to arrive at substantive moral principles. In this respect, Kant's constructivism and his constitutivism are complementary.[25]

4. The question of realism

In the previous section, I argued that we should read Kant as a restricted constructivist about the content of morality and as a constitutivist about its authority. The first claim strikes me as uncontroversial. I find the second claim plausible (of course!), but clearly more needs to be done both to develop this view as an interpretation and to assess its philosophical force. In this last section, I want to raise the question of whether Kant's constitutivism ushers in a form of realism. This section will be somewhat speculative.

I have argued that a constitutivist account is needed to establish the normative force for us of the formal condition of universal validity and of Kant's complex conception of persons and society. Furthermore, I have argued that for Kant the normative force of the condition of universal validity is grounded in the fact that the CI (FUL) is the formal principle that arises from the nature of the rational will (or alternatively, from the nature of pure practical reason). Likewise, the constitutivism needs to make the case that the operative conception of the person is a *self*-conception of *our* nature as free rational agents. These 'natures' are not 'constructed', or derived from the practical point of view in the way that moral principles are, since they are the basis of the practical point of view. But then does reference to such 'natures' usher (or smuggle) in a form of realism to underwrite Kant's moral constructivism?[26] I will argue that it does not, or at least that it does not lead to realism in the ordinary sense.

Some theorists have argued that insofar as the authority of the CI is grounded in the nature of the rational will, or the nature of pure practical reason, or the nature of reason (any of which could be a part of our rational nature), Kant's moral conception is ultimately a form of moral realism. (See, e.g., Watkins and Fitzpatrick 2002, Kain 2004.) The relevant question here is whether in Kant's system the 'nature' of any such rational power consists in mind-independent (metaphysical) facts that are prior to our rational and cognitive activity, self-conceptions or forms of self-consciousness, and so on.

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[25] Schafer 2015, pp. 691-2, notes that constructivism and constitutivism are 'natural bedfellows'.

[26] Various theorists have noted that a restricted constructivism is still consistent with a realist basis. See e.g., Street 2010 and Schafer 2015.

What goes into the 'nature' of a rational power, such as that of free rational agency, the pure will or pure practical reason, or even reason in the most general sense? (Our rational nature consists in our possessing some set of such rational powers.) A rational power has a nature in virtue of having a formal end or characteristic mode of activity, or a set of a priori internal standards according to which it operates. (For example, it is the nature of practical reason to move from practical principle to choice in a way that satisfies a condition of universal validity, or as Kant says at *G* 4:412.28-9 to 'derive actions from laws'. Reason in the most general sense is the faculty that seeks completeness or systematic unity in a domain of cognition, or the unconditioned condition of everything conditioned. (Watkins and Fitzpatrick 2002, p. 356)) The 'nature' of a rational power is not decided upon by any subject, and the principles that go into that nature can be stated in abstraction from their employment by any subject. But as a capacity to be exercised by a subject and normatively guided by the subject's self-consciousness of its formal aim and any relevant norms, a rational power does have an essential connection with self-consciousness. Thus it is not clear that the 'nature' is independent of the rational activity or self-consciousness of a subject.[27]

For Kant, such rational powers are 'intelligible' capacities – normatively guided capacities for spontaneity. Likewise our nature as free rational agents with autonomy is intelligible. None of these powers are items or properties in the phenomenal world that are known theoretically. Rather, their natures are known from within the practical perspective. That is to say that our access to their 'natures' (formal end, or internal norms, etc.) is from within the point of view of a rational subject with the power, through self-conscious reflection on their formal aims or characteristic activity and the normative standards that guide their exercise. Our access to the nature of a rational power is then not independent of our possession and self-conscious exercise of that power.

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[27] Let me try to clarify the connection of rational powers and self-consciousness. The idea is not just that rational activity is self-conscious (though it is), but that it is normatively guided by a subject's self-consciousness. In exercising a rational power, one is aware that one is doing so, and this self-consciousness involves some at least tacit understanding of the formal principles that determine what it is to exercise the power. One's exercise of the power is guided by this representation of what one is doing, including a representation of the relevant principles and of oneself as following them. For further discussion, see Reath 2013, p. 44ff., or Reath forthcoming, Section I.

But that may be merely an epistemological point. (Perhaps what we access through self-conscious reflection from the practical point of view are facts or norms that are not constituted by the operation of our rational and cognitive capacities.) The key question is whether the natures in the sense of the 'being' of these powers, so to speak, are independent of the operation of our rational and cognitive capacities, or of the self-consciousness that normatively guides the exercise of these powers. A related question here is: can the nature of an intelligible capacity outrun our ability to grasp it, or the self-consciousness through which we exercise it?

I am inclined to think that the answer to both questions is, No – that the nature in the sense of the being of a rational power is not a (metaphysical) fact that is independent of our rational and cognitive activity, or self-conceptions. One cannot untangle what the power is from a subject's self-conscious ability to exercise the power; or perhaps the power just is that capacity – the self-conscious capacity of a subject to guide oneself by the formal norms that define the capacity. Thus I am inclined to think both that the 'nature' of a rational capacity is a) essentially grasped from within the perspective of a subject who has and exercises the power, and b) not independent 'in its being' of the subject's activity, or of the self-consciousness that normatively guides the exercise of the power. If so, the appeal within a constitutivist account to the nature of a rational power, or to our rational nature, does not import a form of realism. Constitutivism then lines up with the constructivist dimension of the conception in not appealing to an order of facts that is independent of our rational activity and self-conceptions.

Of course, there is more assertion than argument here, and it may not persuade some readers. What is at stake? Since a rational power is a capacity for self-conscious rational activity, its nature (I claim) is given through that self-consciousness and not independently of a subject's rational activity, self-consciousness and self-conceptions, and so on. I have tried to make it clear that the self-conceptions that constitute the nature of a rational power, or our rational nature, are not the ways in which we actually think of our capacities and agency as a matter of empirical fact. Since the formal principles that structure such capacities are a priori, there are no worries about the objectivity that all parties want to secure, in this case of the content and authority of the substantive moral principles that issue from the point of view of free rational agents with autonomy. These points lead me to conclude that Kant is not a moral realist. Other theorists may think that the fact that the nature of these powers are not 'constructed' or chosen by us is enough to introduce a form of realism into Kant's moral conception. How we set the boundaries of the

term 'realism' does not settle any substantive questions. What is important in the end is to understand the contours of a philosophical conception and to see how it differs from alternatives. I have been trying to bring out one distinctive feature of Kant's moral conception – its reliance at various junctures on our self-conception as free and equal persons with autonomy. However, if someone insists that any appeal to the 'nature of rational volition' puts Kant's constructivism on a realist foundation, I won't begrudge the use of the term. But it is not realism as ordinarily understood.[28]

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KpV   *Critique of Practical Reason*, tr. Mary Gregor, Introduction by Andrews Reath, Revised Edition (Cambridge University Press 2015).

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[28] I'm indebted to Sonny Elizondo and Sasha Newton for discussion of the issues in this section.

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