



Routledge Studies in Ethics and Moral Theory

RIGHTS-BASED ETHICS

FOUNDATIONS AND APPLICATIONS

Edited by

Marcus Düwell, Johannes Graf Keyserlingk, and
Philipp Richter



“In the intensity of its examination of the thesis that agent rights form the essential ground of morality, and in the scope and design of a practical ethics based upon it, this expert and critical collection provides invaluable analyses of rights in the context of climate change policy, ‘too big to fail’ banking, the crisis of health care, bioethical threats to freedom, and human rights abuses in corporate supply chains.”

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“This is a remarkable text bringing together some of the best rights theorists at work today. In part it is a welcome continuation of the Gewirthian tradition in rights thinking. In part it is a radical attempt to ensure that rights theory speaks directly to contemporary problems and crises. This is an essential and powerful demonstration that human rights, as moral rights, contain the philosophical and practical resources to meet real problems in principled ways.”

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Rights-Based Ethics

Rights-based ethics offer a conceptual framework to address the complex ethical issues of our time. This volume combines systematic and historical perspectives on rights-based ethics with discussions of a broad range of topics in applied ethics to assess the achievements and limits of rights-based approaches.

The normative concepts of fundamental human rights and human dignity play an essential role in considerations about global justice and international politics. However, these concepts have not been taken up sufficiently in the standard approaches to normative ethics. This volume contends that rights-based approaches in ethics not only offer a theoretical framework to explain complex normative concepts, but they can also offer answers to some of today's most complex moral questions. First, the book addresses the conceptual and foundational questions of rights-based ethics. Second, it offers historical and cultural perspectives on rights. Third, it explores how rights-based ethics can address applied issues related to climate change, health systems, global supply chains, and the finance industry.

This volume will be of interest to scholars and graduate students working in ethics, political philosophy, philosophy of law, and the social sciences.

Marcus Düwell is a Professor of Philosophy at Technical University Darmstadt, Germany. His research interests include foundational questions of moral and political philosophy, philosophical anthropology, bioethics, and climate ethics. His publications include the *Cambridge Handbook on Human Dignity* (2013) and *Towards the Ethics of a Green Future* (Routledge, 2018).

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ROUTLEDGE

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NEW YORK AND LONDON

First published 2026
by Routledge
605 Third Avenue, New York, NY 10158

and by Routledge
4 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

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This publication was made possible by generous support of the Open Access-monograph funds of the university library of the TU Darmstadt and by generous support of the Institute for Philosophy I at the Faculty of Philosophy and Educational Research of the Ruhr-University Bochum.

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ISBN: 978-1-032-84839-6 (hbk)

ISBN: 978-1-032-84838-9 (pbk)

ISBN: 978-1-003-51525-8 (ebk)

DOI: 10.4324/9781003515258

Typeset in Sabon
by Deanta Global Publishing Services, Chennai, India

In honor of

Prof. Dr. Klaus Steigleder
(Ruhr-University Bochum, Germany)

To his 66th birthday by his colleagues and friends



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Part 1

Introduction



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Rights-Based Ethics

Outline of an Approach

*Marcus Düwell, Johannes Graf Keyserlingk,
and Philipp Richter*

0.1 Introduction

Already a superficial look at introductory books on ethics will raise doubts that there can be something like rights-based ethics. In Aristotle, we read something about happiness and virtue, in Kant, we learn about autonomy and duty, and in Mill, we meet concepts like equality and utility – none of them treats “rights” as a basic concept. If we broaden the scope and look into political philosophy, we find concepts such as power, state, governance, and justice. Even in philosophy of law, we first encounter concepts like rules or laws before rights enter the scene. Thus, it is unclear why “rights” should be the center of philosophical attention.

Things are perhaps different if we consider the concepts that play a crucial role in the moral, political, and legal self-understanding of modernity. The *Declaration of Independence* counts “certain unalienable rights” among the “truths to be self-evident”, and the French Revolution refers to the “droits de l’homme” as a central reference point. And after the atrocities of the Second World War and the Holocaust, the United Nations has chosen “human rights” as its foundational cornerstone, while most contemporary states around the globe opened their constitutions with a bill of rights. In that sense, “rights” are internally related to (Western) modernity. In that context, rights have also become central to ethical and political debates. Think of the citizens holding equal basic rights in Rawls’s *A Theory of Justice* or the focus on rights to informed consent in bioethics, to mention only two debates. At the same time, we have found strong criticism over the last decades, seemingly exposing (human) rights as a mere utopian concept (Moyn 2010). Critics also complain about an inflation of rights (Ignatieff 2014) who fear that political systems might become ungovernable if right-claims clash with each other. In this regard, “rights” could be seen as an unpolitical concept (Menke 2020). Others worry that “rights” are an outdated anthropocentric concept, or even an articulation of Western imperialism. Nevertheless, rights are fundamentally related to the modern conception of the state, based on equality of all human beings,

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the rule of law, and a democratic form of self-governance. In that sense, one can wonder whether the current rise of autocratic and populist tendencies may represent a backlash against a system based on human dignity and human rights.

Despite or because of the criticism, this first brainstorming about “rights” demonstrates the importance of “rights” for our moral and political thinking. Therefore, the concept of rights deserves further investigation since it cannot be satisfying that it plays such a central role in contemporary moral and political thinking, while its systematic role in ethics and political philosophy is unclear and fundamentally contested. This is one reason why the current volume might be of interest even to those who are fundamentally skeptical of “rights” in general or “human rights” in particular. In the remainder of this Introduction, we will address various aspects of rights-based ethics.

First, in Section 0.2, we will discuss some common prejudices that may be considered obstacles to a more systematic discussion about “rights” in ethics, and in Section 0.3, we will briefly sketch the history of (natural) rights. Next, in Section 0.4, we will explain systematically in which ways “moral rights” could serve as a resource in normative and applied ethics, explicating the underlying concepts and positions and how the term “rights-based ethics” is to be understood. A central focus will be on the work of Alan Gewirth, who proposed an entire system of ethics based on rights already in the 1970s (see Gewirth 1978, 1983, 1996). This position is of central interest to some of the authors in this volume. Then, in Section 0.5 we will discuss the relevance of a rights-based approach in contexts of applied ethics with an emphasis on bioethics, environmental ethics, and business ethics. A particularly innovative discussion deserves special consideration: The relationship between risks and rights is explored in Section 0.6. This is debated by various authors in this volume since it is of central importance for understanding the role of moral rights in contemporary discussions. Finally, in Section 0.7, we will conclude with an outline of the structure of this volume.

0.2 **Rights-Based Ethics? – Understanding and Misunderstanding the Concept**

The term “rights-based ethics” may evoke all kinds of expectations – spontaneous enthusiasm in some, while feelings of disapproval in others. Thus, we should discuss what to expect from this concept and what not.

To start with, it may come as a surprise that we want to base *ethics* on *rights*, since one may expect rights to be a genuine concept of the political and legal sphere. The approach “rights-based ethics” is neither an attempt to confuse the moral, political, and legal dimensions nor a reduction of

law to ethics. “Rights-based ethics” presupposes, however, that there is a genuine moral dimension to rights – thus the concept of “moral rights” – and that these moral rights demand some authority in the political sphere. This statement deserves, however, some further specifications.

First, moral rights are not meant to be a concept for exclusive private or personal relationships, even though we might say, for example: “I have a moral right with respect to a friend that she takes my worries and fears seriously”. That may be correct, but if the friend does not meet those expectations, I cannot complain in a political-legal sphere about it. The concept of “moral right” may have such a personal-private dimension, but it is primarily to be understood as a concept for articulating claims in the public sphere. For instance, claiming a moral right that the informed consent of patients regarding medical treatment ought to be respected means claiming that, within an institutional setting of medicine, this right ought to be protected and that this protection should be realized by means of law and regulation. Thus, the concept of “moral rights” is not intended to depoliticize or delegalize discourses on rights. Rather, it introduces the specific moral dimension into that discourse: there is a claim that demands respect, and if this respect is refused, a moral wrong is happening. At the same time, this moral right is as such not a legal right that one may claim in the courtroom. However, one may claim that one ought to be able to claim the object of the right in the courtroom and that a legal system that does not grant this right is, morally speaking, a deficient legal system.

These distinctions are particularly relevant when it comes to “human rights” since this is quite evidently a concept with various layers. On the one hand, human rights are provisions under international human rights treaties, and as such, they are enforceable by the relevant human rights institutions. The specific legal status of these human rights is, however, a kind of second order right since the international treaties articulate the conviction that national legal systems should recognize these rights. On the other hand, human rights also represent moral demands aimed at establishing such internationally recognized rights. Over the past few decades, there has been a debate about the appropriate understanding of human rights (Nickel/Etinson 2024) in which the position of Charles Beitz (2011) played a central role. Beitz rejects the moralization of human rights since, according to him, this could weaken their status and normative power. Instead, he emphasizes that human rights institutions have already established a certain practice with their own logic and justificatory strategies. However, even Beitz acknowledged that the human rights system needs some moral basis. Such a moral dimension has certainly been the basis for the historical establishment of human rights, the conviction that human beings deserve recognition of certain rights.

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These considerations lead to the question: Why should we see “rights” as a moral concept at all? Why should we consider “rights” as more than a political and legal concept? Moreover, is the focus on rights not much too narrow for ethical theories? Is the strong focus on universal justice and rights, in contrast to virtue ethics or ethics of care, not a symptom of an impoverishment of contemporary ethical discourses? (see, e.g., MacIntyre 1981).

This discussion touches upon an extensive field within ethical discourses, and we only want to address three points here: First, it would be implausible to assume that rights could have a central place in our political-legal frameworks if they did not have a clear and understandable position in morality. To deny this would imply the existence of two separate normative frameworks – one for politics and another for morality. It must at least be possible to explain this relationship in a philosophically plausible manner. This implies, at least, explaining why “rights” have normative force, that is, why assuming that “A has *prima facie* a moral right to X” means that A’s right makes it, *prima facie*, necessary for others to act in a way that allows A to realize X. While there can be all kinds of complications, others are at least *prima facie* morally obliged to care about the right of A; otherwise, they do not understand what it means to grant a moral right. Furthermore, it would be implausible to assume that rights granted in the legal system have no moral justification at all.

Second, this leads us to the question of how rights relate to ethical theories like deontology or utilitarianism. Although these concepts have various meanings,¹ we will offer some general remarks. “Rights” is not a concept that refuses to take “consequences of actions” into account. On the contrary, rights are rather a criterion for evaluating the consequences of our actions; that is, whether actions are obligatory, permitted, or prohibited depends on how the consequences of those actions affect the rights of others. Rights set limits to the calculation of the maximization of utilities. In this sense, there is a tension between rights-based ethics and utilitarianism. Therefore, many scholars aim to justify rights within the Kantian tradition by assuming that the dignity of human beings grants them the status of a right holder whose rights ought to be respected (see Düwell 2014 and Göbel in this volume).

Third, that said, “rights” are not incompatible with further ethical considerations in terms of virtues and care. It is rather necessary to ask what kind of attitudes and habits are required if agents are obligated to respect the rights of others. Also, it is necessary to clarify what the ideals and virtues in a society committed to rights would look like, and what kind of societal and habitual presuppositions are the foundations of an effective rights-based ethics. However, these questions are not yet settled and should be considered topics for future research. (Instructive in this context

are Slote 1995; Sherman 2008; and the contributions of Richter and Vogel in this volume.)

These considerations, obviously, go beyond “technical” questions of moral philosophy and touch on the broader question of whether a rights-based ethics is embedded in or is an articulation of a specific type of society or a specific form of social life: Individualistic, atomistic, or perhaps ego-centric (regarding atomism see Taylor 1985). Are “rights” a concept which people use to keep distance from each other, based on the assumption that they are independent from each other? Is the idea of individualism not only a concept of Western Modernity? And does the entire liberal concept of society not rely on a very problematic and unrealistic view of the human being as an autonomous and independent individual? Are we not, from the very start, “social beings”, always interconnected, dependent, vulnerable, and fragile?

Of course, this touches upon an enormous variety of topics. Four remarks may be helpful: First, while it is true that rights shape a certain distance between human beings by demarcating what humans are not entitled to do to other humans, they also connect human beings. To see each other as a rightsholder is a certain way of shaping a relationship. We are related by mutual respect for each other’s rights. These are not only negative rights but also encompass positive rights, like rights to support each other – we will come back to this distinction below.

Second, in this relationship, humans are acknowledged as beings with needs. To some extent, this vulnerability and fragility of humans constitute a clue to a rights-based approach: it is only for embodied, vulnerable human beings that it makes sense to demand that they respect each other’s rights. If angels were supposed to be moral beings (Kant flirts with this idea), they could be imagined as fulfilling duties or being perfectly virtuous (even if one may have problems imagining what that could mean in detail). However, it would be difficult to think of such beings as rights holders since they are neither vulnerable, in need, nor fragile.

Third, it is correct that “rights” are in some sense connected to Western Modernity and that some norms that were originally not based on rights have been rearticulated in terms of rights. For instance, the prohibition against killing or murdering human beings was historically justified not by the idea of the right to life but by the belief that all human beings belong to God, who alone holds the privilege to decide about life and death. Additionally, it is a question for further research whether it may be plausible within “Non-Western” belief systems to embrace a rights-based ethics (Andanda/Düwell 2024). In any case, a connection between rights-based ethics and Western Modernity must not be understood as such ethics is only the articulation of the political and moral self-understanding of Western Modernity. Rather, one could argue that

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this modern worldview is only legitimate to the extent that a rights-based approach is justified.

Finally, we can ask whether choosing rights as the basic currency in moral discourses is a recipe for radicalization and polarization. For example, it has been observed in the case of the United States of America that the skyrocketing saliency of the rights discourse has led to a situation where every possible claim by every possible interest group demands a status of being non-negotiable (Walker 1998). The same has been observed regarding the further extension of human rights (Ignatieff 2014). If every form of wrongful behavior is immediately framed as a human rights violation, it becomes dubious whether the concept of “human rights” is still meaningful.

This may have to do with a misguided view on the nature of a right. Some might consider rights to be a dogmatic kind of concept that closes all further disputes: “A has a right to X” and “B has the duty to act accordingly” – full stop. Yet, one can easily see that this is a misguided view. Of course, some rights do articulate absolute demands, like the right not to be tortured or the right not to be subjected to genocide. But these are extreme cases of rights violations. The fact that there is a variety of rights makes it already clear that not all rights can have the same status or rank and that there will always be situations where it is simply impossible to fulfill all the respective obligations at the same time. In some respects, the idea that “ought” presupposes “can” is central here because there can only be a right to something if there is a way to realize the corresponding obligation. That means whether there can be an actual right to some goods depends on the possibilities to act accordingly. However, from a second order perspective, it may be morally required to create conditions under which rights that are currently not realizable can eventually be fulfilled. Here, “ought” demands “can”. This second order perspective leads to complex moral demands which include provision for resources and institutional assurance to guarantee the fulfillment of rights. Likewise, the goods to which agents might have rights are objects of prioritization and weighing. For instance, when it is claimed that rights are trumps (Dworkin 1978), this can only be understood to mean that rights formulate a demand of action that has a certain weight that deserves normative priority over other practical considerations (e.g., prudential ones). However, it cannot be understood in the way that every right has an absolute status. This means that it is the central task of a rights-based ethics to develop principles and criteria that enable us to balance and prioritize rights. This implies that rights cannot be treated as a dogmatic concept but one that needs reflection and justification within a discourse whose outcome cannot be determined in advance.

0.3 From Natural Law to Natural Rights – Some Historical Remarks

A rights-based approach to ethics will have to explain why it places rights at the center of its considerations and why rights are seen as a moral concept. While this may be discussed considering contemporary positions in ethics (see Section 0.4), there is also a history of thoughts about rights. There are some historical reconstructions of the history of rights within the natural law tradition (see, e.g., Brett 1997; Finnis 1980; Tierney 1997; Tuck 1979), and there are certain historical reconstructions of the emergence of the human rights tradition (see, e.g., Jellinek 1919). However, the “history of rights” is neither fully reconstructed nor uncontroversial. Some might approach the natural law tradition with prejudices since it is intertwined with the history of religion in Europe and seems to be in fundamental tension with a positivistic understanding of law. Both assumptions are, however, not necessary.

First, the natural law tradition is older than Christianity and rooted in ancient thinking. Second, within the religious tradition, natural law represents the rational, philosophical part of thinking about morality, politics, and law. In this sense, it is already opposed to moral doctrines stemming from revelation. Natural law is accessible via thinking. However, within, e.g., the Thomistic tradition, it was thought that human rationality and revelation are both rooted in the divine law that is present in God. In that sense, it was assumed that there could not be an opposition between revelation and rational insight in principle; it would only be possible that finite mortals fail to think correctly. But, as we can say, the natural law tradition represents a philosophical attempt to understand the practical dimension of human life in a rational manner. Third, natural law was not thought of in opposition to positive law (the law given by humans to themselves in valid procedures); it was only assumed that the natural law would demand authority regarding the way positive law is shaped.

Be it as it may, we do not aim to use reference to natural law as a justification for “rights-based ethics”. Rather we are interested in the question of how rights enter the scene in this context. “Natural law” originally meant that there are standards for good conduct and actions which human beings have access to through rational reflection. If there are natural laws, this does not necessarily mean that these laws are primarily articulating rights. However, since the High Middle Ages, a process can be observed in which “natural law” gradually transforms into the idea of “natural rights”. By “natural rights”, we mean a concept that sees certain rights enshrined in the human being. In contrast, in ancient Rome, having a right resulted from membership of a certain family, clan, or city. Now, however, it is understood as something that belongs to the human person as such. A central role in this transformation was played by a 14th-century debate about the

legitimacy of poverty that was provoked by the Franciscan ideal of living without possessions, as this was understood to be appropriate for a true follower of Christ. Within this context, the question arose about the status of someone without property (for this topic, see Düwell in this volume). This debate introduced various further distinctions that resulted in the idea of “subjective rights”, i.e., “rights enshrined in the subject”. Because of these considerations, the idea was born that human beings should be understood as beings with rights. The expression “natural rights” did not mean that, in some mysterious way, nature (in a biological understanding) would produce those rights, but rather that humans possess those rights in a natural way, that is, without supernatural insights. Everybody could achieve these insights.

It is contested how this step toward “natural rights” should be interpreted in detail – the debate is not finished. However, to see the origin of rights in the natural law tradition makes it at least less mysterious how “rights” could be seen not only as a legal but also as a moral concept. If one sees moral rights in this sense, it does not mean that the legal term (including the legal human rights terminology) can be reduced to its moral meaning. This is already obvious from the simple fact that the understanding of moral rights is open to contestation and interpretation. If rights were only a moral concept, we could never be certain whether we understand rights in the same way as our neighbor. In that sense, it is necessary that the law determines and enforces the rights of citizens – this function can never be replaced by moral convictions.

The historical development of the idea of natural rights makes it understandable why, in early modernity, these rights played a central role in discourses about the self-understanding of the state and politics, even if these rights were interpreted differently from how we understand them today, particularly when it comes to questions of race and gender. But an idea of rights which are enshrined in the individual makes it possible to understand the activities of these individuals in terms of moral rights, such as freedom of expression, religious freedom, and the like. All these topics can only become possible topics of right-claims under the assumption that the individual human being is a bearer of rights.

This glance into the history of the concept of rights shows that rights have a much longer history and that they are by no means only a result of debates about the justification of the modern nation-state since this concept was already a point of reference during the religious wars of early modernity. This development was not only a result of Christian theology but was also part of a rational reflection on the moral self-understanding of thinkers in the Middle Ages. In that sense, there is not any fundamental obstacle to assuming that the idea of rights may be acceptable within

historical traditions that were not influenced by Christianity to the same extent as European history.

0.4 “Moral Rights” in Normative and Applied Ethics

Following these brief historical considerations, we will move to contemporary discourses and introduce the central concept of “rights-based ethics”. It was already mentioned that “moral rights” have not yet been widely used as a conceptual resource in normative and applied ethics. To discuss practical-normative questions in ethics, it is more common to make use of concepts like autonomy, benefits, duties, interests, virtues, or well-being. Also, in contrast to familiar notions like consequentialism, utilitarianism, contractualism, or deontology, the concepts of “rights-based ethics” or “right-based moral theory” are not well-established. They are not commonly used by philosophers working in the field of ethics.

However, the notion of “rights of the human individual”, as mentioned above, has been a common theme in the history of Western political thought based on the liberal theories of authors like Locke, Paine, and Kant (Waldron 1984, 1). Today, the normative concepts of fundamental human rights and human dignity are essential in considerations about global justice and international politics. Moreover, at least implicitly, they are also pertinent to all kinds of policy issues disputed on a national level, e.g., the tasks of a welfare state. Regarding human rights, there is an ongoing debate in political philosophy about whether there are, if any, rights all humans possess and how they might be justified (Nickel/Etinson 2024). Political philosophy deals with questions about moral rights but rarely under this name. Mostly, “rights” are discussed within the legal or institutional context of the state (Wenar 2023), dealing with questions of how institutions should be organized to promote welfare and justice to their citizens and beyond. However, if we want to consider the possibility of an ethical approach to be “rights-based”, “it must be emphasized that ... rights also figure centrally in individual interpersonal transactions” (Gewirth 1996, 30). According to this, “rights” do not belong exclusively to the sphere of the state (e.g., legislative considerations or jurisprudence) but are an essential aspect of human actions whenever these are considered morally in ethical reasoning.

In legal theory or philosophy of law, there is research about the nature of rights, their normative functions, and their relation to other concepts (e.g., positive law). Additionally, without aiming primarily at a better understanding of legislation, law, and jurisprudence, there is research on the nature of rights and right-claims in order to achieve conceptual and metaethical clarification. This research aims to provide, in further steps, a basis for political and ethical reasoning.² This type of philosophical

research could be labeled “theory of rights” and classified as an area or type of “moral theory” (Thomson 1990, 1–4). Here, an important point of reference is Jeremy Waldron’s edited volume *Theories of Rights* (1984).

Waldron sees the common denominator of the collected papers in their interest in understanding individual rights as non-positive or moral rights: “Almost all of [the papers] are concerned with the question of the fundamental assumptions and commitments that a plausible theory of rights might involve” (Waldron 1984, 4). If we follow Waldron, the term “right-based theory” was first introduced in Ronald Dworkin’s *Taking Rights Seriously* from 1977 (see updated edition Dworkin 1978) (Waldron 1984, 12). Dworkin proposed a “tentative initial classification” of political theories into “goal-based, right-based and duty-based” (Mackie 1984[1978], 168). Now John L. Mackie applies this classification to moral theories and asks if there could be a right-based theory alongside the familiar consequentialist (goal-based) or deontological (duty-based) moral views (see Nielsen 1994, 162–163). In Mackie’s view, while Thomas Paine and, more recently, Robert Nozick base their reasoning on moral rights, these were not “fully developed” moral theories. Both approaches were concerned with critiquing “some political structures or policies” (Mackie 1984[1978], 168). As Mackie says, aside from Rawls’s implicit “deep theory”, as Dworkin claims, there are no explicit examples of “right-based moral theories” (Mackie 1984[1978], 168, 176).

However, there was and is reasoning about and based on moral rights across ethical approaches as well as in foundational works of political philosophy, as the papers collected in Waldron show. Waldron mentions approaches that attempt to establish a theory of rights in utilitarianism (e.g., Lyons 1984[1982] and further Lyons 1994; see also the consequentialist approach by Sumner 1987; however, see Gewirth 1982) and contrasts these with “non-utilitarian theories”. Among the latter, Waldron identifies theories that claim some rights to be “intuitively evident” (see, e.g., Nozick 1974),³ but also points out “one or two philosophers” who “have tried to go beyond this and produce what amounts to *transcendental* arguments for rights” (Waldron 1984, 19, emphasis in original). Waldron explains these arguments “attempt to show that the denial of rights or the overriding of them in certain cases is rationally self-defeating, because the denial or the overriding themselves involves an implicit recognition of the force of human rights” (Waldron 1984, 19).

As Gregory Vlastos sees it, roughly speaking: If certain activities of humans are evaluated or praised according to the standard of a particular activity or role, this presupposes an underlying equality which forbids evaluating or praising humans as such as being better or worse. In Vlastos’s reasoning, this idea of equal human worth functions as the foundation of all human rights (Vlastos 1984[1962], 74–76). The second philosopher

mentioned by Waldron, who aims at a foundation of rights via transcendental argument, is Alan Gewirth.

Gewirth developed a full moral theory with detailed reasoning in normative and applied ethics, which is precisely the theory Mackie was looking for along with Dworkin's classification (see above). In his own words, Gewirth undertook in *Reason and Morality* (1978) the attempt to show that "morality, far from being based on variable personal preferences or social conventions, has a firm rational foundation in the necessary conditions of human action" (Gewirth 1996, xi). According to Gewirth's non-consequentialist core argument, it follows that:

by virtue of having an indispensable need for freedom and well-being as the necessary goods of action, every actual or prospective agent logically must hold that he or she has rights to these goods and that all other actual or prospective agents also have these rights.

(Gewirth 1996, xi)

Gewirth's transcendental or reflexive argument (Steigleder 1999, 25–26, 135; cf. Düwell 2011, 155–156, 2017, 166–167) leads to the justification of the "Principle of Generic Consistency" (PGC), which all agents from their practical perspective must accept as *dialectically necessary* on pain of self-contradiction. In Waldron's volume from 1984, we find Gewirth's paper, "Are There Any Absolute Rights?", which he had published in 1981, reprinted. Regarding Gewirth's whole moral theory or ethics, Waldron says: "It is too early to judge the success of Gewirth's programme. But the kind of argument ... does seem to indicate a most promising approach to the idea of rights"⁴ (Waldron 1984, 19).

In the following years, Gewirth's approach was discussed, criticized, and defended (see, e.g., Regis 1984). However, this discussion was overshadowed by the widely recognized foundational theory of political morality by John Rawls (1971), which was generally more affirmatively received (Steigleder 1999, 11). In his second book, *The Community of Rights* (1996), looking back at the critical discussions of *Reason and Morality*, Gewirth mentions, besides numerous articles, "three full-length books, two in English and one in German"⁵ (Gewirth 1996, xi). The books by Deryck Beyleveld (1991) and Klaus Steigleder (1992; see revised and updated edition: Steigleder 1999) develop detailed reconstructions of Gewirth's argument, discussing the known critiques, and defending the foundational argument against misconceptions (see Bambauer in this volume). Gewirth responds to criticism in detail in *The Community of Rights* (Gewirth 1996, 1–30). Here, Gewirth identifies a certain, partial similarity to John Rawls's argument for the two principles of justice. This similarity consists in the use of "dialectical" reasoning, a methodological term introduced by Gewirth,

playing a crucial role in his foundational argument (Gewirth 1978, 42–47; see also Düwell 2017, 162–163, 171–172).⁶ In both Gewirth and Rawls, the reasoning is dialectical, according to Gewirth, since it unfolds from the perspective of an agent in a mode of reflective deliberation (Gewirth 1996, 26–27). The difference is, however, that Rawls’s starting point is dialectically *contingent* “because there is no necessity that any chooser, even one who is fully rational, proceed in this way, that is, choose from behind a veil of ignorance” (Gewirth 1996, 27, 188–192). In contrast, Gewirth’s reasoning starts with an undeniable claim about being an agent while reflecting on the presuppositions of agency. There is more to say about the details of the intelligent attempts to criticize Gewirth and the responses offered in his defense (e.g., see the volume edited by Boylan 1998). However, to come back to the possibility, efforts, and limitations of a rights-based ethics, it is important to note that all criticism against Gewirth has so far focused on the foundational argument in *Reason and Morality*, thereby neglecting the chapters “Direct Application of the Principle” (Gewirth 1978, 199–271) and “Indirect Application of the Principle” (Gewirth 1978, 272–365). But it is these chapters, in combination with *The Community of Rights* (1996), *Human Rights. Essays on Justification and Application* (1983), and Gewirth’s late work *Self-Fulfillment* (1998), that offer profoundly developed and helpful lines of thought relevant for ethical questions in normative and applied ethics. Before we explain the possibilities and efforts following a rights-based approach based on Gewirth and others in applied ethics, let us collect some characteristics of this approach.

Rights-based ethics should be able, as John L. Mackie puts it, to show how it is possible to derive other morally relevant elements or concepts (e.g., duties, goals) from rights (Mackie 1984[1978], 169). Furthermore, to reach at a fully developed “systematic moral theory” in these matters, this theory must prove that a multiplicity of rights could be derived from “a single fundamental one or from a small number of basic rights” (Mackie 1984[1978], 169; see also Dworkin 1978, 169–171; Nielsen 1994, 165–167). So, it may be likely, however, not necessary that rights-based ethics has to justify one single moral principle from which a multiplicity of rights can be derived (see the discussion in Boylan 2014, Chapter 6, 2021, Chapter 2). Therefore, it is, as Mackie already saw, not necessary to claim that there is a complete or final list of specific rights. According to Mackie, there should be a priori arguments to prove a rights-related principle or a small number of basic rights. In connection with empirical knowledge about the circumstances of actions, these principles are to be used to cognitively generate specific rights and help decide whether and to what extent certain right-claims are justified (Mackie 1984[1978], 178–179). Far from being a weakness, this openness is more of a strength of this type of ethical theory. According to Joseph Raz, rights have a “dynamic character”.

Rights “are not merely the grounds of existing duties. With changing circumstances, they can generate new duties” (Raz 1986, 185–186). This holds since many moral challenges in applied ethics arise from the use of new technologies or unforeseen changes. For instance, only scientific knowledge and research about upcoming climate change lead to questions about duties demanded by rights to protection against climate disasters (Lippold 2020). Similarly, only the widespread use of machine learning systems in healthcare raises the question of whether patients have a right to human judgment and decision-making in medical treatment (Dias Duran 2025). Thus, it is important for a rights-based approach to be able to respond to those new challenges while, at the same time, it should avoid adapting opportunistically to new demands in current reality. However, a systematic moral theory can provide guidance in the (re-)interpretation of legitimate rights under changing situations, something a strict list of rights is not capable of.

It should be noted that there is a strong affinity between Kantian ethics and a rights-based approach in highlighting the moral worth or dignity of every human or agent: “Each bearer of dignity constitutes a strict limit to the actions of others” (Steigleder 2014, 472). Also, legal theorist Joel Feinberg (1970), in his thought experiment about “Nowheresville”, a place lacking existence and practice of rights, argues that “the activity of claiming [one’s rights], finally, as much as any other thing, makes for self-respect and respect for others, [and] gives a sense to the notion of personal dignity” (Feinberg 1970, 257). In this respect, rights-based ethics stands, like Kantian ethics, in sharp contrast to utilitarianism, “which is interested in cumulative results and the maximization of the aggregate utility” (Steigleder 2014, 472). In contrast to this, rights-based ethics proceeds non-aggregatively but distributive, considering “the interest of each individual ... one at a time” (Waldron 1984, 14). Therefore, as non-consequentialist theories, both Kantian ethics and rights-based ethics have been classified as “deontological” ethics (Alexander/Moore 2024; Düwell 2011, 153; Steigleder 2017, 172).

Moreover, there is a further similarity between Kantian ethics and rights-based ethics if we focus on Gewirth (see also the papers in Chapter “Gewirth and Kantianism” in Boylan 1998; see also Steigleder in this volume). Both authors’ reasoning could be seen as being based on transcendental or reflexive arguments (see Steigleder 1999, 25–26, 135; cf. Düwell 2011, 155–156, 2017, 166–167 and see, respectively, Beyleveld and Steigleder in this volume). However, the two philosophers explain the presuppositions of agency or practical reason in different ways. While in Kant’s case, it is the concept of autonomy of reason, in Gewirth’s, it is the generic goods of “freedom” and “well-being” which are necessary preconditions to all actions. Without going into details of Gewirth’s argument

for goods, the general idea is that every agent has moral rights according to their “needfulness for action” (Gewirth 1996, 45). It can be said that rights-based ethics see freedom and the further necessary conditions of being able to act or to lead one’s life as the primary object protected by moral rights. The fundamental assumption is that all agents should be allowed and able to lead their lives freely. In addition to Gewirth, other attempts have been made to justify certain specific rights revolving around the concept of freedom (see, e.g., Steiner 1994, 229–282; Thomson 1990, Part II). However, in contrast to Gewirth, these approaches do not offer a strong justification, since they are partially founded in common morality.

To a rights-based approach, as is widely recognized within the liberal tradition, it is obvious that freedom in its practical realization must be organized and regulated. Since conflicts are to be expected, a rights-based ethics should be able to deal with conflicting rights in particular situations (Mackie 1984[1978], 177). To be sensitive to real-life problems and the rising normative challenges, the ethical deliberation in rights-based ethics must provide means to deal with conflicts by balancing normative claims and demands without unjustifiably infringing or violating the rights each individual agent possesses (Kamm 2008, 248–260; see also Kertscher in this volume). To deal with these complex and intricate issues, the structure of moral rights may be more suitable than focusing on goals or duties. The potential of this concept becomes more evident when we consider the formal taxonomy of rights developed by Wesley Hohfeld (often referred to as the “Hohfeldian Analytical System”) (Wenar 2023; see also Hansson in this volume).⁷ According to this system, there are four basic elements (claim, immunity, power, privilege) which are used to describe the complex normative, interpersonal relations included in a specific right (Waldron 1984, 5–8). Here, since we are aiming at dealing with practical-normative questions, it does not really matter whether the *Hohfeldian System* is the only or best way to understand rights. More importantly, it should be seen that moral rights are helpful to articulate specific, morally relevant relations between agents, organizations, and institutions in empirically informed scenarios. Following this conception, several questions need to be answered: Who is justified in claiming what? What is owed to whom? Who is entitled to compensation and who is responsible? What must be done or refrained from to fulfill the rights of individuals in certain situations?

To go into more detail, first, a right holder is (all things being equal) justified in *exercising* or *claiming* the object of his right, while this constitutes in all other agents a duty to, at least, not interfere with this exercise. Additionally, the right holder has the power not to exercise a right, which is often described as *waiving* a right (Sumner 2013, 356). In general, there are several ways to interact with the moral rights of individuals. Rights may be, for instance, fulfilled, infringed, violated, or overridden. If we

follow the proposal brought up by Alan Gewirth, a right is *fulfilled* “when the correlative duty is carried out, i.e. when the required action is performed or the prohibited action is not performed” (Gewirth 1984[1981], 92). Conversely, a right is *infringed* when the correlative duty is not carried out, whether by negative omission, positive action, or a complex of those. A right is *violated* when it is unjustifiably infringed. However, it is possible that a right holder may have a right in general, but here and now it is *overridden* or, in other words, justifiably infringed when there is sufficient justification for not carrying out the correlative duty which would be otherwise obligatory (Gewirth 1984[1981], 92; see also Gewirth 1978, 135, 343). For instance, helping a person in crisis could be more urgent than repaying one’s debts, but people have rights to both help and repayment.

To deal with the challenges of practical-normative questions, it is important to see that there must be a hierarchy of rights since not all objects to which one has a right can have the same importance. Therefore, criteria need to be developed to prioritize or de-prioritize claims according to the possibility of their justification. Gewirth proposes a hierarchy of rights which is structured by the value of the corresponding goods according to their “degrees of needfulness for action” (Gewirth 1996, 45, see also 1978, 343–345). For instance, “the rights not to be stolen from or lied to are overridden by the rights not to starve or be murdered if the later rights can be fulfilled only by infringing the former” (Gewirth 1996, 45).

Here, rights-based ethics differs from libertarian theories, which could also be seen as rights-based theories (Waldron 1984, 19), by “recognizing genuine and original positive rights or at least original positive duties, whereas libertarian theories only recognize negative rights but no original positive duties” (Steigleder 2017, 472). The justification for positive rights, like a right to develop self-esteem and self-respect, get help in crisis, receive education, or enjoy general socioeconomic rights, and a right to a welfare state, can be found in *Reason and Morality* (1978) and developed in more detail in *The Community of Rights* (1996, 31–70) (see Steigleder 1999, 145–155). A detailed rights-based approach also justifying positive duties is provided in *Basics Rights* by Henry Shue (1996, 35–51). We will discuss this approach below.

To explain the normative structure of positive rights, compare them with negative rights: If A has a negative right to X, then B has a duty to refrain from interfering in A’s having X. For instance, if A has a right to life, B has a duty not to kill or to refrain from taking A’s life. If A has a positive right to X, then B has a duty to perform actions until A’s right to X is fulfilled, e.g., if A has a right to health care services, B has the duty to provide him with those services (see Waldron 1989, 510–512). It should be obvious that the determination of the corresponding duty-bearer is often more difficult in cases of positive rights, and very often it will be

institutions that have to fulfill the corresponding duty. As Joseph Raz puts it: “One may know of the existence of a right without knowing who is bound by duties based on it” (Raz 1986, 184) (for instance, see Bobbert in this volume, considering the example of rights to nursing care). However, if a person is entitled to the objects of her rights, this must imply both negative and positive duties on the part of the addressees of these rights. As the fulfillment of positive duties is more demanding than the fulfillment of negative duties, a single person must only carry out a positive duty if she is able to carry it out “at no comparable cost” (Gewirth 1978, 218–219). If she can only save the life of another person by endangering her own life, she is not obligated to do so. Thus, the pertinence of positive rights is always context dependent. Furthermore, in view of the chronic needs of people or groups of people, a single person is not able to help “at no comparable cost”. However, collectively or through institutions, people can help “at no comparable cost”. Therefore, they have an obligation to ensure that such help is offered reliably, that the required institutions are established, and that they support the existing institutions. The criterion “of no comparable cost” presupposes the aforementioned hierarchy of rights. Importantly, it is not the case that negative rights will always have priority; it is rather a question of balancing which rights deserve priority under which conditions, which necessitates introducing principles and criteria for balancing rights (for a proposal of such principles see Gewirth 1978, 199–366).

Another characteristic of rights-based ethics, as seen in the discussion of positive rights, is that the *effective* fulfillment of rights is a positive goal; i.e., agents do not only have to omit interference with the rights of others but also have to undertake positive actions and reasoning about precautionary measures to secure the fulfillments of moral rights. This follows from the instrumental structure of agency (and holds also for duty-based ethics):

If A has a duty to do X, and if his doing Y is highly conducive to his doing X, then A has a duty to do Y if doing Y is in his power and if it does not involve his violating any of his other duties.

(Gewirth 1998, 136)

This does not require us to find and choose the best means, but it does require taking reasonable action to achieve the aim of the fulfillment of rights within one’s capacity. In fact, according to this demand, every right “generates waves of duties that back it up and root it firmly in the complex, messy reality of political life” (Waldron 1989, 510).⁸ However, there are often many ways to realize a morally required outcome, and there is always some incomplete knowledge about future events and insecurity

about appropriate provisions or strategies. Since this reasoning involves balancing and maximizing considerations, it was said there is the danger of turning rights-based theory, which does not allow the fulfillment of the rights of people in an aggregative way, into a “utilitarianism of rights” (Nozick 1974, 28–30) or “right-consequentialism” (Kamm 2008, 251) (see Gewirth 1996, 49–50). However, it is important to note that the addition of balancing, maximizing, and weighing goals in rights-based ethics does not require a commitment to consequentialist moral theory. Rather, a hierarchy of rights provides fixed normative criteria which cannot be surpassed or suspended by maximizing considerations. To achieve the effective fulfillment of rights, however, these criteria need to be empirically informed. This is the only way to find approximately optimal strategies, which include calculating compatible and feasible actions, taking precautions, and developing institutional measures. Here, rights-based ethics has the potential to overcome the dichotomy between deontology and consequentialism in some respects.

Besides Gewirth, the idea that it is obligatory to guarantee the effective fulfillment of rights to all agents constantly via institutions is also elaborated by Henry Shue. In *Basic Rights*, published in 1996, Shue explains: “A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats” (Shue 1996, 13). And basic rights, according to Shue, “are everyone’s minimum reasonable demands upon the rest of humanity” or, to put it negatively, “no right ... can actually be enjoyed in the absence of the basic right” (Shue 1996, 19). The concept of “standard threat” is important for reasoning in applied ethics; we will come back to this in the next section.

Shue’s justification of basic rights starts with the following premise:

Everyone has a right to something [1]. Some other things are necessary for enjoying the first thing as a right, whatever the first thing is. Therefore, everyone also has rights to the other things that are necessary for enjoying the first as a right.

(Shue 1996, 31)

The first premise may be understood as being partially empirical: We can assume that every person in a society has some right to a good, like property or physical integrity. According to Shue’s argument, it is not relevant whether this right (in premise [1]) is positively legalized or exists only according to the moral customs of a group. Since rights are normative concepts, this premise can even be assumed independently from people’s real-life circumstances. For instance, even in a slave-owning society, it could be said, based on the mere idea of human rights, that slaves should be free

and treated as bearers of rights. They would be entitled to these rights counterfactually even if the respective society would continue to wrongfully disregard them.

Shue's argument then proceeds: let us assume everyone has some right to a good. Then, regardless of what the object of this right consists of, let's call it "object1", the enjoyment of object1 necessarily depends on other objects (object2). It would be a contradiction to claim, "A has a right to object1" and "A has no right to object2, while object1 cannot be obtained without object2" at the same time. Therefore, we must conclude: "Everyone has rights to the other objects2 that are necessary to enjoy object1". Now, the rights that enable the enjoyment of rights are basic rights. Shue also puts it like this: "No right ... can actually be enjoyed in the absence of the basic right" (Shue 1996, 19). Here we find, as it seems, a kind of transcendental argument, albeit one unrelated to Gewirth's reasoning. Shue claims: There are rights. The enjoyment of the object of these rights has to be possible. The enjoyment of this object is logically and empirically possible only if fundamental enabling conditions are met. Therefore, there is a right to the enjoyment of these fundamental objects. In contrast to Gewirth, Shue starts from a moral point of view according to which rights already matter and morally matter the most. His argument is weaker compared to Gewirth's. However, Shue's rights-based approach holds potential in applied ethics.

0.5 From Rights-Based Theory to Applied Ethics

There is a substantial body of literature where "rights-based ethics" is used as a framework for discussions in applied ethics; it is perhaps even a characteristic feature that all the authors who see themselves as affiliated with such an approach do not limit their work to philosophical considerations but are engaged with contemporary moral challenges. While traditional approaches in applied ethics regularly refer to rights – with the specific moral ambition that rights ought to be protected, even in cases where their status in law is fragile (right to informed consent, right to health care, right to fair trial, etc.) – these approaches often lack a solid and systematically elaborated philosophical justification for those rights. Thus, some work was necessary to show how a rights-based approach relates to other approaches in applied ethics (see, e.g., Steigleder 2003a, 2003c; Düwell 2011).

In *bioethics*, the question of who has rights arises. This is a question regarding the status of human embryos or fetuses (Steigleder 1998a, 2004), human beings that are brain dead (Steigleder 2003b), and the questions to what extent do animals have rights as well (Schmidt 2008; Kaldewaij 2013). Furthermore, new technologies raise the question of whether there

is a right to have a child of one's own through artificial reproduction and how that may affect the rights of future children (Beyleveld 1998). Debates have addressed whether there is a right to prenatal or preimplantation genetic diagnosis and how that might affect the right to life of persons (Steigleder 1998b). It was also studied to what extent human embryos and fetuses may be the objects of research in the process, particularly when they are destroyed during the process, and how to evaluate the creation of animal-human chimeras and hybrids (Badura-Lotter/Düwell 2009). Finally, it was extensively discussed to what extent the patenting of genetically modified material is acceptable (Beyleveld/Brownsword 1993). Besides that, there are also questions about whether human beings have the right to receive organs from those who are brain-dead or from voluntary donors, and how to prevent the commodification of organs. Finally, the question arises whether – and if so, under which conditions – human beings are entitled to end their life or may be assisted in doing so.

All these discussions have directly to do with the status of rights holders and their immediate rights. There is, however, a huge number of debates in applied ethics that deal more with the structural conditions that influence the circumstances of rights-holders, their possibilities to enjoy the objects of their rights in the long run, or the environmental or ecological prerequisites of their lives. Long-term problems are involved when it comes to climate ethics, energy ethics, and environmental ethics. These topics involve questions regarding the rights of future people and precautionary duties to enable the fulfillment of rights of people in the future (Bos/Düwell 2017; Düwell et al. 2018). In the ethics of technology, scholars discuss how technology is replacing intentional actions of human beings and how that may change the possibility of agents claiming their rights (Brownsword 2008, 2019).

Taking a step back from the many specific contemporary challenges, it should be noted that any rights-based moral theory needs to be operationalized before it can be used to apply to real-world moral concerns. This operationalization is the practical starting point for theorists who seek to derive concrete normative judgments based on a solid understanding of the social, political, economic, and often scientific realities of the world. Shue describes this process as follows:

Rights theory becomes much more difficult, because one cannot offer only conceptual analyses. The conceptual analyses, which of course remain essential and perhaps fundamental, must be given in conjunction with an analogue of what the social scientists call “operationalization”. One must spell out, at least a little bit, what it would actually mean for a certain right to be fulfilled and enjoyed. This entails analyzing which

tasks must be performed ... and which kinds of people can reasonably be expected to perform them.

(Shue 2004, 226)

Shue's concept of operationalization involves a detailed examination of the specific tasks required to fulfill and enjoy a right, as well as identifying the actors responsible for carrying out these tasks. This approach ensures that rights are not merely abstract concepts but are grounded in practical realities. By specifying the duties and responsibilities of various actors, Shue's framework provides a pathway for "translating" rights-based theories into actionable policies and practices. This is important, for example, for both climate ethics and economic ethics, to mention only two especially important fields of applied ethics. Shue's concept of "standard threats" is helpful in determining specific rights and responsibilities within these fields.

According to Shue, if people have any rights at all, they at least have rights to the objects of basic rights, which include essentials such as security and subsistence. Shue further contends that the provision of (basic) rights requires that their objects be protected at least against major ordinary, predictable, and remediable threats, as opposed to "ineradicable threats like eventual serious illness, accident, or death" (Shue 1996, 32). Therefore, when it comes to protecting people's rights institutionally, the primary concern is not with inevitable threats, as societies simply lack the means to protect against all the improbable, unforeseen, or eventually unpreventable interferences with basic rights. Instead, the focus is on protection against threats that occur standardly.

It is worth mentioning that Shue's concept of "standard threats", like Gewirth's concept of "generic rights", opens a perspective to much broader applications of "rights-based ethics" than traditional rights discourses might suggest. While rights traditionally protected against torture, slavery, genocide, or violations of religious liberties and free speech, recent debates address very different topics. Today, we know that climate change poses significant threats to the basic rights of individuals, including their rights to security and subsistence. It stands to reason that the particular forms of standard threats people face, especially in the Global South, are determined and changed in decisive ways by how states respond to climate change (see also Heeger in this volume). Shue has written extensively on climate ethics, arguing that the impacts of climate change (such as extreme weather events, sea-level rise, and disruptions to food and water supplies) constitute standard threats that states have a moral obligation to address (Shue 2022). The failure to mitigate and adapt to these threats not only endangers the basic rights of current people but also imposes severe burdens on future generations (see also Düwell et al. 2018).

Now, moving beyond this general assessment of the injustices implied by the climate problem, the operationalization of Shue's rights-based approach allows us to identify a significant conflict of interest between the immediate needs of the poor today and the long-term interests of future generations (Shue 2013). The poor today rely heavily on affordable energy, often derived from carbon sources. However, continuing to use carbon-based energy exacerbates climate change, which poses severe risks to future generations. From a morally informed institutional perspective, Shue argues that to effectively combat climate change, it is crucial to implement mechanisms that lower the prices of non-carbon energy sources while raising the prices of carbon-based energy. This strategy aims to facilitate a transition with minimal human suffering since a rights-based approach to climate ethics must balance the duties toward future people with the rights of current generations, particularly those living under poor conditions (for a discussion of the technologies that exist to remove carbon from the atmosphere, see Broadhead/Placani in this volume).

However, climate ethics so far is quite general in its recommendations. It is easy to underestimate the extent to which modern life is based on fossil fuels and the difficulties of changing this (Smil 2022). The policies for solving the climate problem proposed so far are often unrealistic or insufficient. For instance, they do not take sufficiently into account that the climate problem can only be solved globally, through the coordination of international policies. Therefore, it is necessary to focus more on the solution to the climate problem than on its diagnosis (Steigleder/Heeger 2024; Steigleder et al. 2024).

Turning now to the field of economic ethics, and more specifically the issue of human rights violations in global supply chains. If workers across global supply chains have any rights at all, then, as Shue argues, they have rights at least to the objects of basic rights, including such essentials as security and subsistence. In global supply chains, however, threats like forced and compulsory labor, child labor, restrictions on the freedom of association, and the right to collective bargaining, health-damaging working conditions, and negative external effects on third parties qualify as standard threats. These threats are ordinary in many parts of the world, they occur predictably in certain industries and regions, and there are means to remedy them. In Shue's normative framework, and Gewirth would agree, it is the world's states that are generally responsible for protecting people against such standard threats by providing social guarantees. So, when applying rights-based ethics to global supply chains, one can make a substantiated case that it is states that are responsible for protecting the basic rights of vulnerable workers in such contexts (see Graf Keyserlingk in this volume). In those cases where states fail to live up to this responsibility, the moral demand for the fulfillment of rights would suggest that other actors

like multinational companies, which are often in a position to mitigate the described potential human rights infringements within their sphere of influence, step in and help. Indeed, this failure of states appears to be the standard case in parts of global supply chains which makes the question of corporate responsibilities a decisive one. Surprisingly, key political documents like the UN Guiding Principles on Business and Human Rights have little to say about this case.

After all, if one takes moral rights seriously in this context, it will suggest a reassessment of the responsibilities of multinational companies in such globalized economic contexts. If companies must assume (or cannot exclude) certain standard threats in their supply chains, they are morally responsible for taking proactive measures to address them, including conducting due diligence to identify and mitigate risks, providing support to vulnerable workers, and collaborating with other stakeholders to improve working conditions.

By “operationalizing” rights-based theory as executed in the example here, it can be shown that companies should play a crucial role in upholding human rights and ensuring ethical practices in global supply chains.

0.6 Integrating Risk Ethics into Rights-Based Frameworks

Operationalizing moral rights through institutional guarantees – assigning concrete duties to states, corporations, and other actors – can help to point out how moral claims translate into actionable policies. An analysis like the one offered by Shue seems suitable when it comes to *predictable* and *remediable* threats. However, it encounters severe limitations in contexts marked by *uncertainty* – a defining feature of many forms of human interactions, especially in modern societies, and of all the huge challenges of our times. Take climate change as an example: We do not precisely know what amount of carbon dioxide accumulated in the atmosphere will lead to an increase in average global warming, and we do not know what the (exact) consequences of a certain amount of warming will be, especially if it is below certain extremes. Renewable energy, while essential, comes with its own challenges: Low energy and power densities, volatility, intermittency, and high material and spatial demands. These challenges are connected to a lot of uncertainties. The same applies to other proposed technical solutions and the tasks to coordinate and combine them. A lot of uncertainties are also connected with other planetary limits and the questions of how to deal with them appropriately. It is necessary to understand that the imposition of risk, i.e., possible harm, on others can affect their rights and that ethics and rights-based ethics are, so far, not good at evaluating the different possible harms which possibly affect different people. Thus, the development of risk ethics and especially rights-based risk ethics is an urgent task.

To see what such a risk ethical framework could look like, we will sketch here the risk ethical theory of Steigleder (but see also the approach of Meyer/Stelzer in this volume). The fundamental question, and thus the point of departure for Steigleder's risk ethical reasoning, is this: If one takes the equal human rights of all parties involved seriously, then how can one justify exposing some people to risks of a certain action which may infringe their rights? As Steigleder observes in this context, rights-based theories tend to overreact when confronted with risks. They

have a sort of natural tendency to prohibit all risk impositions. For if one has a right not to be harmed in certain ways, one also seems to have a right not to be exposed to the risk of being harmed in such ways.
(Steigleder 2016, 261)

To address this challenge, Steigleder proposes that we must recognize the fact that the agents imposing risks and the recipients suffering the risk imposition have equal rights. In other words, people who impose a risk on others through a certain decision or policy have the same rights as those who are potentially affected by that policy. While permitting all risks would mean insufficient respect for the recipients' rights, prohibiting all risk-imposing policies would not only have absurd consequences but would indeed mean not taking the rights of the agents seriously enough. Rights-based ethics must pursue a balance: Tolerating certain risks when necessary for agents' freedom, plans, and chances while seeking to eliminate risks that jeopardize the objects of the rights of the recipients of risky actions. This dual perspective – focusing on the equality of rights of both agents and recipients – is, according to Steigleder, the key to determining which risk impositions must be tolerated and which must be prohibited (for the elaboration of this theory see Steigleder 2016, 2018).

To us, Steigleder's framework seems to offer a critical tool for reconciling the abstract universality of rights with the messy, contingent realities of our social world – ensuring that the operationalization of rights remains both principled and pragmatically resilient. However, there is more research to be done in a broad variety of detailed scenarios.

0.7 Overview of the Book

This volume has a contingent history. All contributors are, in one way or another, connected to Klaus Steigleder, Professor of Philosophy at the Ruhr-University of Bochum, Germany: They are his former students, colleagues, and/or friends. The editors themselves were inspired by Klaus to engage with “rights-based ethics” either by adopting such an approach or

relating to it through friendly criticism. Since he was the one who introduced the moral theory of Alan Gewirth to the German-speaking philosophical community, several contributions in this volume engage with the approach of Gewirth.

The volume is structured in five parts: Part 2 discusses “Conceptual and Foundational Questions”. Michael Boylan discusses the issue of rights-based ethics in general. Marie Göbel focusses on the understanding of human dignity. Sven Ove Hansson and Jens Kertscher discuss some general aspects and challenges to the concept of moral rights. Christoph Bambauer, Deryck Beyleveld, and Philipp Richter engage with some aspects of the concept of rights according to Alan Gewirth.

Part 3 discusses some “Historical and Cultural Perspectives on Rights”. Marcus Düwell delves into the history of the concept of rights in the Middle Ages with a focus on the medieval thinker Marsilius of Padua. Tobias Vogel discusses the question of “meaning in life” as a discourse between Alan Gewirth and Thaddeus Metz.

The contributions of Part 4 focus on “Rights in the Context of Applied Ethics”. Reiner Wimmer and Monika Bobbert discuss questions in the context of bioethics and nursing ethics. The contributions by Robert Heeger, Lukas H. Meyer and Harald Stelzer, and Adriana Placani and Stearns Broadhead deal with questions of rights in the context of climate change. Johannes Graf Keyserlingk focusses on questions of corporate responsibilities as a question of human rights. Vandad Sohrabi discusses the relationship between risks and rights in the context of banking systems.

The volume’s *final contribution*, Part 5, is by Klaus Steigleder himself. In this chapter, he deals with foundational questions regarding rights via the relationship between the approaches of Immanuel Kant and Alan Gewirth. His contribution not only illuminates the relationship of both thinkers in an exegetic way, but it also shows how the question of rights relates to Kantian philosophy, the probably most paradigmatic approach to moral philosophy in modern times.

We are aware that these essays will by no means be exhaustive when it comes to the topic of “rights-based ethics”. These essays do not aim to provide a conclusive answer on the topic; rather, our aim is to open the discussion. In that sense, as editors, we hope that the book will be an inspiration for further debates in ethical theory, political philosophy, and applied ethics from the perspective of rights-based ethics.

0.8 Acknowledgment

We are grateful to Andrew Weckermann and Rosaleah Stammer from Routledge/Taylor & Francis for their willingness to engage with this book project and their perfect support on the way toward publication. We are

grateful to Arthur Wei-Kang Liu for his excellent support in editing the chapters. We want to thank Pauline Möhle for carefully correcting the proofs and for creating the index. We also have to thank all the authors for their contributions and their constructive and cooperative attitude during the preparation of this book.

First and foremost, however, we are grateful to Klaus Steigleder, who, over many years, stimulated us by fostering an interest in this topic. “Rights-Based ethics” would not have been possible in this way without his enormous inspiration, work power, and commitment. We are deeply thankful for that. This volume is dedicated to him.

It is also important for us to remember our colleague Christoph Bambauer with this volume. Sadly, Christoph passed away while working on his contribution about the prudential basis of morality according to Gewirth. The draft was reviewed and completed by the editors. With this book, we want to contribute to preserving Christoph’s memory. The editors are also thankful to Christoph’s wife, Qian Ran, who provided us with the draft. Our deepest condolences go to Qian.

Notes

- 1 Gaus (2001a, 2001b) demonstrates convincingly that there are at least ten different meanings of “deontology” which refer to very different aspects and are partly contradicting each other. Thus, one should be quite careful with the use of this terminology.
- 2 However, this distinction between the disciplines mentioned here cannot always be drawn clearly. For instance, the distinction between a “will theory” and an “interest theory” of rights, as put forward by Herbert T. L. Hart (1982), is discussed in legal theory, political philosophy, and ethics.
- 3 Also, the rights-based approach by Judith Jarvis Thomson could be seen as being based on moral intuitions. However, her method of case studies or thought experiments, which, according to her, contain some shared moral truths which function as “data” is more sophisticated (Thomson 1990, 4–5, 32–33).
- 4 Therefore, it is very surprising that L.W. Sumner (2013) in his introduction to ethical reasoning about (moral) rights in *The Blackwell Guide to Ethical Theory*, completely ignores Gewirth’s rights-based ethics.
- 5 These are Regis (1984), Beyleveld (1991), Steigleder (1992).
- 6 The sequence of argument or judgments is a *dialectically necessary method* since it “proceeds from within the standpoint of the agent [and] begins from statements or assumptions he makes” (Gewirth 1978, 44). “It also undertakes to ascertain what is necessarily involved in this standpoint” (Gewirth 1978, 44).
- 7 Note that Hohfeld was primarily concerned with legal rights (see further explanation and critique in Thomson 1990, 37–78).
- 8 See the instructive example in Waldron (1989, 510):

The right not to be tortured, for example, clearly generates a duty not to torture. But, in various circumstances, that simple duty is likely to be backed up by other duties: A duty to instruct people about the wrongness of torture; a duty to be vigilant about the danger of, and temptation to, torture; a duty to ameliorate situations in which torture might be thought likely to occur; and so on. Once

it is discovered that people have been tortured, the right generates remedial duties such as the duty to rescue people from torture, the duty on government officials to find out who is doing and authorizing the torture, remove them from office, and bring them to justice, the duty to set up safeguards to prevent recurrence of the abuses, and so on. If these duties in turn are not carried out, then the right generates further duties of enforcement and enquiry with regard to them. And so on.

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Part 2

Conceptual and Foundational Questions



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1 Why a Rights-Based Ethics?

Michael Boylan

1.1 Ethical Realism and Ethical Anti-Realism

The first question that needs to be answered is whether posits concerning ethics connect to realities that actually exist in the world *or* whether they are purely conventional. That which is natural is true in virtue of its being connected to *nature* in a way that doesn't change. It is universal so long as the natural entity being referred to is also universal.

This is an important question to ask because a lot rides on the result. If ethics is a non-natural endeavor, then there is no *real* result to which we can direct our attitudes concerning potential action. For example, take the action of murder (the unjustified killing of an innocent person at will). If person A says that murder is wrong, does her judgment have the epistemological and consequential ontological weight similar to telling the world that water boils at 100 degrees Celsius at sea level? Presumably, the boiling point of water is a natural truth that can be verified or falsified by performing an experiment once the experimental apparatus and conditions are agreed upon and the results are properly recorded. This is the aspirational goal of scientific inquiry – is it proper for ethics to have the same goal?

One way to examine this is to ask about other sorts of inquiry – say fashion design in clothing. In the course of my life, there have been various styles of clothing fashion that took the marketplace by storm: Rising and lowering hemlines in dresses, baggy and tight-fitting pants, halter tops, and double-breasted and single-breasted sports coats, etc. But would anyone claim that one particular fashion was *the best* in a normative sense such that those who wore different apparel might be judged to be *ethically wrong*? Certainly not in a simple natural examination of the topic unconnected to other social issues.¹

Even when we change the venue to scientific realms and set forth empirical realities that have survived empirical testing, there might be intersubjective support among all who view the results and retest those results in their own laboratory. For example, all who use a heat measuring instrument in which all agree is accurate to measure the temperature, and examine

the question: “What temperature does water boil at when performed at sea level?” Then, so long as we all agree about the purity of the water we are testing (without considerable levels of sodium, etc.), we will all get the same results: 100 degrees Celsius. The facts of the event in question have been tested and subjected to others using the same experimental design in order to see whether the same result will occur. When this experiment and confirmation by others occur, then we can assert a foundationalist affirmation of said result.²

When the application of a foundationalist approach is a fundamental component of a resultant action we wish to undertake, then we have an epistemology to provide a structure for the future action that provides us with the conscious creation of a window to gaze out at where we want to go in life and how we plan to get there. This is a combination of critical, foundational epistemology and consequent pragmatism.³ The *idea* behind this process is that one *should* first have thought about the various components that are in the scenery of a potential action and then closely examine each separately and together in order to determine what they actually represent as a background for potential action (see Boylan 2021, on the ethical duty to be knowledgeable about the world, Chapter 3).

Under this account, to act without this propaedeutic is to be irresponsible to the rational part of our nature as humans. This aspect is recognized by most philosophers as important. On a continuum, we have Aristotle, Kant, and Gewirth heavily emphasizing deductive and inductive reason beyond all else, whereas Boylan, Nussbaum, and others also highlight emotion. Rosemarie Tong has set out reason as important but within the context of emotion as well.⁴

Thus, there are two sorts of powers within humans that are relevant to discovering the normative nature of human action: Reason (revealed via inductive, deductive, and abductive logic) and emotion that is rightly structured.⁵ The discussion of these preconditions for normative action I have characterized as “first-order” meta-ethics. Since World War II, much of English-speaking philosophy has been oriented toward an analysis of language only – non-cognitivism (the principal advocate of ethical anti-realism) (Boylan 2021, Chapter 10). These philosophers are advocates of a form of meta-ethics which they call “second-order” because they move beyond ethical preconditions for action and, instead, *talk about what culture and sociological or anthropological réalités* exist among communities at some specified time and place. This is *why* non-cognitivism is inherently relativistic in its discussion about *value* in human action. It is a descriptive exercise that is grounded in a social science that *seeks to explain*. This is all that the non-cognitivist can hope to achieve: A description that is situated in a particular time and place and continually subject to change. This is “second order-meta-ethics”.⁶

But this isn't good enough for many of us: Kant, Gewirth, Steigleder, and Boylan (and many others who follow along these lines). For these philosophers, the goal is *universality* – not some description of rational anthropology (as Kant himself dismisses as being the ultimate ground of morality in section three of the *Grundlegung*). What a rational anthropology gives us is a non-cognitivist account about what counts as “moral terminology” among people within some community, who set out attitudes that are asserted to be normatively good or bad without any account of *why* this is asserted to be the case.

The downside to the ethical non-cognitivist's account of ethics is that it merely describes “getting along” within a society. If one “follows the rules”, then one is characterized as *good*. But what if a society (such as the American Society of the latter 19th century) said that the *murder of a person who came from a particular social group, such as Native Americans* (the Indigenous people of North America), *was to be encouraged by such horrid maxims as: “the only good Indian is a dead Indian”*, then to “fit in” to such a society would be to commit murder (which most societies in the history of humankind would judge to be a horrendous moral crime).⁷ And yet that is what has happened in human history over and over again: “Commit serious moral crimes (as understood by the moral realists) because that is what it takes to *get ahead* (prudential imperatives)”.

The account of *why* this might be the case, from the standpoint of rational anthropology, is complicated – dealing with facts of current history (including government policies, economic conditions, social dynamics on favored and disfavored groups, etc.). But these are not intrinsic to the study of ethics, but rather extrinsic, based upon other prudential criteria that have nothing to do with ethics itself, as such.⁸ They may account for why certain candidates (rather than others) get elected in a democracy, or why certain products (rather than others) are purchased in the economic marketplace (assuming that such a marketplace allows for free transactions and open entry).

Which general approach is better is an important question to ask and, at the primary level, is based on the *ethical realism* versus *ethical anti-realism* foundational question. What would make one choose one starting point over another?

In order to evaluate the relative strengths of each claimant (ethical realism vs. ethical anti-realism), it will be necessary to assess the ability of agents to project their natural inclination toward egoism within the game situation of a micro community (2–100 people) and of a macro community (101 people and up), and to picture what it would be like to be an ethical egoist within such communities in which one was in accord with the shared community worldview and what it would be like to be a minority who was an *outsider* to the generally held view.⁹ Being able to “picture”

both of these possibilities is crucial for any agent to be able to fulfill the *completeness* portion of the Personal Worldview Imperative under one of the two key components (the emotional goodwill via empathy).¹⁰ It is also necessary to fulfill *coherence* under the command to employ inductive logic (since the ability to imagine the *generalization* of some proposition is essential for organizing statistical data [Boylan 2020, Chapter 5] into empirically justified law-like pronouncements).¹¹

1.2 Moral Realism and the Possibility of Altruism

It is the aim of most “single-principle theories” (SPT) in ethics to create governing maxims based on the nature of *reason* or the nature of *human action* that assume that this move to universal generalization is connected to *something real about human existence in the world* and not just semantic analysis *about* what is “considered to be” right and proper in this or that society.

These considerations lead us to a critical question in the ethical realist vs. ethical antirealist controversy: The possibility of altruism. From the ethical realist point of view, there *must* be a possibility in life to react to a situation that occurs in a manner that will go against the general prudential strategy of egoism.¹² Most animals on earth (according to the limits of their rational calculation abilities) seek what they perceive to be in their best interests – where “best” refers to physical rewards such as food, mating, territory, etc.

However, this essay will contend that it is possible to act in such a way (action x) that the agent does not perceive action x as advancing his perceived self-interest. The only motivation that would support this against the general, default imperative (to maximize prudential gain in every event) is that there is a superseding imperative that takes precedence and would change the motivation from psychological egoism to altruism (a moral grounding) (Boylan 2021, Chapter 5).

It will be the subject of this section of the essay to bring forward a couple of alternatives to what such *real* depictions of the human experience might be, in order to make a considered judgment on how to assess the role of human rights in the formulation of morality and the subsequent institutions that will follow from this within macro and micro communities.

One approach would be a survey to be given to a society about the virtues of human character that are recognized as being admirable. The advocates of virtue ethics believe there are certain behaviors that follow from habitual character traits that are held across cultures and times as being choice-worthy. If this is true, for example, *courage*, *wisdom*, *self-control*, *justice*, and *generosity*, then these virtues might fit the “universality” characteristic of moral realism (and distinguish it from the non-cognitivist

moral anti-realism and its associated moral relativism). But why these five character traits? Why not elevate *chutzpah*?¹³ The answer takes us back to whether altruism and sociability are the driving forces behind what we want to call “ethics”. If so, then protection of everyone’s just claim for some public good or service might require an informal legal structure that ensures the rights of claimants and the duty of others to allow for a fair arena to promote fair human striving – and not one that allows some over-aggressive party to snatch more than his, her, or their proper share (Boylan 2021, Chapter 5).

1.3 Deriving Human Rights from Human Nature

The most powerful objection to a “rights-based ethics” is the position that human nature is always and in every way about the satisfaction of egoistic motivations based upon maximizing pleasure such that *altruism* is never possible (Boylan 2021, Chapter 5). If it is the case that people are focused solely on the acquisition of money, sex, and power, then economic theories about the distribution of goods and services – such as utilitarianism (a moral realist theory that is based on this depiction of human aspiration that is “sold” from an individual viewpoint and then generalized to the group) – would be most apropos to a theory of ethics from the individual, moral realist standpoint. But such a selfish psychological egoism point of view is not a theory of ethics unless it expands to focus on the group’s happiness (which can support outcomes that do not directly help the agent).¹⁴ A theory of normative action that emphasizes the standpoint of individuals from the perspective of psychological egoism (leading to selfish betterment of the agent only) is not really a moral theory, by the standards of this essay. It is merely another instance of the selfish attitude of much of the natural animal kingdom.¹⁵ Rather, the development of the possibility of an altruistic standpoint situates the possible reason for elevating another’s interest above that of the focused individual involved.¹⁶

From this author’s view, in the world, he lives in (as well as his understanding of much of human history), psychological, selfish egoism has been the cornerstone of the general public’s worldview. This fact, however, doesn’t make it *correct*.¹⁷

Two theories that are often brought forward to give rise to concern for “the other” are Ethical Intuitionism and Virtue ethics.¹⁸ These theories are basically non-cognitivist moral theories – unless one holds a version of Divine Command Theory that renders these non-empirically based understandings to be both real and about the “right and wrong of human action” (Boylan 2020, Chapter 7).

The most significant argument against these approaches is that they are non-empirical and thus are not subject to falsification.¹⁹ When one

loses the power to empirically falsify, it undercuts the strength of the truth claim. However, it doesn't lead to a positive rejection either. What helps here is finding the most plausible account, abduction.

In order to explore what human nature is via abduction, one must set out possible answers to the question, "What are humans? What sort of machines do they most resemble?"²⁰ Some famous answers that have been put forward in human history include:

1. Humans as power/money machines.
2. Humans as pleasure/sex machines.
3. Humans as celebrity-seeking machines.
4. Humans are machines seeking to do good in the world to make it a better place.
5. Humans as action machines.

1.4 What Sort of Machine Do Humans Resemble, in General?

There are, of course, other lists about what human nature amounts to. Some of these appeal to accounts that are driven by "nature" and others are more "environmentally oriented" (aka "nurture"). Let's make a few brief remarks on each before proceeding. First, numbers 1–4 are all instances of *acting*, i.e., performing a particular sort of action. In order to actualize number 1 or 2 or 3, or 4, one must be able to *act*. So that no matter which alternative one chooses to identify the "authentic" human, it is only made possible by the ability to commit purposive action that will allow that given end to come to be: Therefore, humans are action machines.

Thus, at the most general level, one should choose an ethical theory to guide individual conduct and community institutions and policies that, at their heart, work to permit and encourage positive, purposive human action for all, with guardrails set out to ensure this free expression for all – i.e., not permitting one person's free expression to interfere with another's.²¹ Thus, if a single principle theory (SPT) is to affect every person by expanding a more extensive environment that allows them to execute their action plans, it would certainly satisfy the question set out in the list mentioned above.

1.5 The Dual Human Perspectives: Individualism and Communitarianism

Now, it is clear that we all exist on this earth as humans from both an individual and a community perspective. Each standpoint affects how we can properly plan and execute individual purposive action.²² What is

not so clear is whether our living together as purposive agents in a state of nature creates a problem (Hobbes) or will be met with an inclination toward co-operation (Locke) (Boylan 2014, Chapter 6).²³ No matter who is right on this controversial calculation, we can create a moral structure that will establish a framework of protection for the right to act according to one's personal worldview plan (so long as it is not breaking the rules of operation within the Personal Worldview Imperative and thus becoming oppressive to other agents' personal worldview plans) and is within the constraints of moral community worldviews.²⁴ To create such a protective policy grid of what *is* and *is not* permissible, it must follow from a general "policy-making" formula.

For Gewirth, the Principle of Generic Consistency (PGC) does all the work. From my point of view, we need two perspectives: One focusing on the individual and the other on the community membership of all individuals.²⁵ I should note here that other approaches, such as utilitarianism, over-rely on the community approach to the expense of the individual. "Rights-based approaches" in general offer a balancing formula that is absent in community-centric approaches such as utilitarianism.

1.6 What a "Rights-Based Approach" Adds to the Execution

Within these two perspectives (individual and community), the rights-based approach has a role to play in each. From the individual perspective, the *space* for individual execution of agency needs to be carefully set out so that each individual in a community knows what is available for them as they contemplate future action. In the case in which individuals are dealing with other individuals, the criterion of emotional goodwill (empathy → sympathy → action response)²⁶ used to partially satisfy the completeness requirement of the Personal Worldview Imperative is very important that it be exercised in a consistent fashion when dealing with friends, acquaintances, or people one just comes upon when living in the world. A rights-based approach to individual interactions suggests that, on the basis of morality, a rights-duty relationship occurs. The other party has a right that the primary agent treats her or him in an equal manner according to his or her personal worldview and their established relationship – even if it is only two parties who find themselves in a social contract as two humans who reside on the earth. If one of the two parties is in need or in jeopardy and the other can assist her or him at no major threat to her or his basic goods of agency, then the person should do so, based upon the emotional goodwill.

There is also a rational goodwill that requires one to act toward others according to reason: Deductive, inductive, and abductive logic.²⁷ Each person one confronts in the world has a right to expect that each agent is

committed to interacting rationally and that any conflicts or action items will be satisfied according to these three categories of reason.

From the community perspective, there needs to be a diverse geometrical scattergram representing various groups within the community. Considering both micro and macro groups, as well as the question of how representatives from those communities can set out their interests in order to negotiate a fair plan (meeting the requirements of the Shared Community Worldview Imperative). This policy plan is for the distribution of common resources in order to meet those communal interests as best as possible (subject to “ought implies can”). Examples of this sort involve social institutions and the public policies *they create and execute* within their micro and macro communities. This requires a public duty to create spaces for free dialogue in which policy issues that affect the community can be discussed openly without fear of reprisal. This free flow of ideas is for the common good of all. This is not a utilitarian-based criterion, but a deontologically rights-based background. From the Kantian and Gewirthian perspective, this follows from the various forms of the categorical imperative – especially the Kantian prohibition for treating others as “means-only” and the Gewirthian prohibition against idiosyncratic preference when they properly fall under the *general* purview of the PGC.²⁸ Free discussion from individuals (Personal Worldview Imperative) within a state that seeks to progress in creating public policies based upon truth is essential in the community’s quest to create a common body of knowledge that is based upon deductive, inductive, and abductive logic.

In these three logical instances, when the general context of the community is the realm of a “rights-based approach”, then it is the assertion of this essay that such a derived background is superior to the common alternative, which is the “self-interest-based approach”. This is because the latter creates a space in which groups seek their own enrichment, power, political advantage, or spoils of some commonly identifiable political group that is ultimately based upon their own self-interest (money, power, combat advantage). This direction is headed toward fascism. Fascism represents the extreme failure of the Shared Community Worldview Imperative, as propaganda takes over the common body of knowledge and logic. This is because fascism mischaracterizes the three forms of logic as the slanted language of the “elites”. When this happens, we have the situation described in formal logic when one violates the law of non-contradiction [$\sim (p \cdot \sim p)$]. If we characterize the principle of “not” the principle of non-contradiction as Φ , then anyone who asserts Φ may derive *anything* because, after accepting the principle of contradiction ($p \cdot \sim p$), anything can follow. But if everything *did* follow, then chaos and anarchy would be the conclusion. That would be the end of fair government.

This is why deductive logic is so important in establishing the “common body of knowledge” within the community perspective for the application

of an ethical theory. In order to do this, we need to recognize the legitimate authority of this, which amounts to the groundwork of a human *right*. This “right” is the groundwork for accepting SPT and other comprehensive ethical commands. Using the “action theory” characterization, which sets out that the most fundamental depiction of what it means to be human is to aspire to commit free human action, then whatever it takes to get us there would amount to the grounds of the contract between humans, in general, and particular humans under the logical move of existential instantiation – from a universal generalization that was properly formulated via inductive logic to a high degree²⁹ back toward a representative member of the universal generalization. When the generalization reaches these standards, one can set out an argument that grounds the right to those goods of agency and the correlative duty against others in the society or community to support those rights.

In my own rights-based ethics, I set these out in the “Argument for the Moral Status of Basic Goods” as follows:

1. Before anything else, all people desire to act – Fact.
2. Whatever all people desire before anything else is natural to that species – Fact.
3. Desiring to act is natural to *Homo sapiens* – 1,2.
4. People value what is natural to them – Assertion.
5. What people value, they wish to protect – Assertion.
6. All people wish to protect their ability to act beyond all else – 1,3,4,5.
7. The strongest interpersonal “oughts” are expressed via our highest value systems: Religion, morality, and aesthetics – Assertion.
8. All people must agree, upon pain of logical contradiction, that what is natural and desirable to them individually is natural and desirable to everyone collectively and individually – Assertion.
9. Everyone must seek personal protection for his or her own ability to act via religion, morality, and/or aesthetics – 6,7.
10. Everyone, upon pain of logical contradiction, must admit that all other humans will seek personal protection of their ability to act via religion, morality, and/or aesthetics – 8,9.
11. All people must agree, upon pain of logical contradiction, that since the attribution of the Basic Goods of agency is predicated generally, it is inconsistent to assert idiosyncratic preferences – Fact.
12. Goods that are claimed through generic predication apply equally to each agent, and everyone has a stake in their protection – 10,11.
13. Rights and Goods are correlative – Assertion.
14. Everyone has at least a moral right to the Basic Goods of Agency, and others in the society have a duty to provide those goods to all – 12,13.

1.7 Moral Goods and Their Accompanying Levels of Embeddedness to Action

To make better sense of this, I have created a triage of goods that are fundamental. The term “most embedded” means they are the most primary to action.

1.7.1 Basic Goods

Level One: *Most Deeply Embedded*³⁰ (That which is absolutely necessary for human action): Food, clothing, shelter, protection from unwarranted bodily harm

Level Two: *Deeply Embedded* (That which is necessary for effective basic action within any given society):

1. Literacy in the language of the country.
2. Basic mathematical skills.
3. Other fundamental skills necessary to be an effective agent in that country, e.g., in the United States, some computer literacy is necessary.
4. Some familiarity with the culture and history of the country in which one lives.
5. The assurance that those you interact with are not lying to promote their own interests.
6. The assurance that those you interact with will recognize your human dignity (as stated above) and not exploit you as a means only.
7. Basic human rights such as those listed in the U.S. Bill of Rights and the United Nations Universal Declaration of Human Rights.

1.7.2 Secondary Goods

Level One: *Life Enhancing, Medium to High-Medium on Embeddedness*

1. Basic societal respect.
2. Equal opportunity to compete for the prudential goods of society.
3. Ability to pursue a life plan according to the Personal Worldview Imperative.
4. Ability to participate equally as an agent in the Shared Community Worldview Imperative.

Level Two: *Useful, Medium to Low-Medium Embeddedness*

1. Ability to utilize one’s real and portable property in the manner one chooses.

2. The ability to gain from and exploit the consequences of one's labor, regardless of starting point.
3. Ability to pursue goods that are generally owned by most citizens (e.g., in the United States today, a telephone, television, and automobile would fit into this class).

Level Three: *Luxurious, Low Embeddedness*

1. Ability to pursue goods that are pleasant, even though they are far removed from action and from the expectations of most citizens within a given country (e.g., in the United States today, a European Vacation would fit into this class)
2. The ability to exert one's will so that one might extract a disproportionate share of society's resources for one's own use.

This is what separates a deontological moral realism set of maxims from other groundings for ethics and the law: A legalistic structure that sets out justifiable rights and the accompanied correlative duties against other members of the appropriate social unit in micro or macro community. This sort of structure should be recognized by those at that social level as *binding*.³¹ In my version of first-order meta-ethical principles from the community standpoint, the common body of knowledge (what is generally thought to be true among most members of the community – both factually and normatively) creates the social background that gives stability and strength to societies that accept its continued positive revision via the Shared Community Worldview Imperative. This strength (and the stability it brings along with it) is central to the rights-based approach with its various instantiations. It is a practical reason for any given society to choose this route.

1.8 Conclusion

This essay has sought to support the position of a rights-based ethical theory that will guide individuals dealing with other individuals within society in their interpersonal interactions as well as the functioning of the entire community as various factions strive to present and execute their understanding of how the group should move forward through the common body of knowledge and the various institutions that come to be from these understandings through the creation of public policy (subject to the restrictions set out by the Personal Worldview Imperative and the Shared Community Worldview Imperative).

It is the intention of this essay to promote the rights-based approach in both domains as being the best way to set out an environment that

is morally just and will give its citizens all that they can properly expect in their personal interactions and their personal opportunity to comment upon the public institutions and the policies that the community and its common body of knowledge will bring forth.

There are several rights-based approaches which have been briefly set out: (1) Boylan's first-order meta-ethical principles. (2) Also there are deontological ethical theories such as those of Kant, Gewirth, and their followers, which set out interpretations that will permit implementation within a range of minimal-state societies – especially democracies. The *rights* structure fits in well with an independent rule of law, making it a good fit for maximizing free action necessary for personal self-fulfillment.

The future of the world requires taking this approach seriously throughout all micro and macro communities if we are to have a livable space on the earth.

Notes

- 1 Other “non-simple” factors might include making coats out of animal fur, which accelerates the killing of animals just to create a pretty fashion coat, etc.
- 2 I intend the reader to examine the foundational epistemological texts of Roderick Chisholm, e.g., *Theory of Knowledge* (1977) and *Person and Object: A Metaphysical Study* (2014).
- 3 One good example of this is Willard Van Orman Quine, *Word and Object* (2013), or see Michael Hannon, *What's the Point of Knowledge* (2019).
- 4 Some of the dynamics of these approaches, as they often conflict in their basic methods, can be seen in the collected essays edited by John-Stewart Gordon, *Morality and Justice: Reading Boylan's A Just Society* (2009).
- 5 I set out the deductive and inductive logics in my *Basic Ethics* (Boylan 2021) and *The Process of Argument* (Boylan 2020). For “abduction”, turn to Boylan (2019). Regarding the proper structuring of “emotion”, see the Personal Worldview Imperative on *completeness* in Boylan (2014, Chapter 6), and Boylan (2004).
- 6 For a further discussion on some of the varieties of ethical noncognitivism see Boylan (2021, Chapter 10).
- 7 One popular book that brings this point home in the United States among the Aboriginal population is Dee Brown and Hampton Sides', *Bury My Heart at Wounded Knee* (2007).
- 8 The ancient Greek philosophers, such as Aristotle, called this duality: *kath auto* and *kata sumbebekos*. In the contemporary realm, the non-cognitivists can be grouped into several categories, such as the *emotivists* – see Boylan 2021 for examples.
- 9 For a discussion of this in moral terms, see Boylan (2004, Chapter 6). The accompanying economics is discussed in Chapters 7 and 8.
- 10 The other key component is the rational good will that requires that agents make their choices for action within the context of logic: Deductive, inductive, and abductive.
- 11 The Personal Worldview Imperative reads: “All people must develop a single comprehensive and internally coherent worldview that is good and that we strive to act out in our daily lives” (Boylan 2020, 236; cf. Hacking 2001, 247–268).

- Both Hacking and Boylan are keen on the rules for Universal Generalization in symbolic logic, which plays a key role here.
- 12 It has been the position of this author that if there were no ethics (except a “light” rational anthropology, aka ethical non-cognitivism), then there would not be anything contrary to psychological egoism, and ethics would be a sham. It all rests on the possibility of altruism. Some varied perspectives of this can be found in Sterba (2014, 239–241), Darwall (2014, 243–252), André et al. (2017, 313–332), Franco (2018, 52–77), Harman (2015, 337–351), and Piccinini/Schultz (2018, 1054–1064).
 - 13 “Chutzpah” is generally held to be conspicuous and flagrant boldness; generally, to promote self-interest to the point of exhibiting unbelievable gall, bordering on insolence. (Though advocates of it being a virtue are those who place psychological egoism and personal gain at a very high level.)
 - 14 This does not mean that the group should be the focus, as such. A deontological, individual, rights-based theory would satisfy the rights claims of individuals in the community (against whom the claims are made) by a correlative duty against the general community. The community is brought together in executing their collective duty, subject only to “ought implies can”.
 - 15 An exception to this would be instances where apparent altruistic behavior arises from a situation in which the individual and the group’s interests overlap (see Sober/Sloan Wilson 1999).
 - 16 For a discussion of this, see Fellner, *Probability and Profit* (1971), sections 25–28.
 - 17 There are, of course, the standard arguments on how minorities can be mistreated under a theory based upon the majority’s happiness (however it is calculated often with different results) and what is *best* for all (cf. Parfit 1984; Slote 1985).
 - 18 Two examples of these positions come from Heumer (2005) and Michael Slote on virtue ethics, discussed by Talukder (2010, 43–51).
 - 19 The ability to falsify a theory, whether it be in science, social science, or the humanities, is very important in *truth theory* (see Popper 1914). For a fine summary of the arguments for and against Popper’s position, see Keuth (2005). For a contrary view on *falsification*, as such, see Putnam (1974, 221–240).
 - 20 Thinking of “people as machines” is a cybernetic interpretation of nature as set out in Boylan/Teays (2022, Chapter 2; see also Boylan 2004, 36–38).
 - 21 By “positive” here, I intend to exclude plans of action that unfairly affect or harm others in their own personal plans for action.
 - 22 From my perspective, the individual standpoint is covered by the Personal Worldview Imperative while the community perspective is covered by the Shared Community Worldview Imperative: Each Agent must contribute to a common body of knowledge that supports the creation of a shared community worldview (that is itself complete, coherent, and good) through which social institutions and their resulting policies might flourish within the constraints of the essential core commonly held values (ethics, aesthetics, and religion). Though these two imperatives (Personal Worldview and Shared Community Worldview) are not a part of Gewirth’s opus, Alan mentioned to me at the time I wrote *Basic Ethics*, and the essay I wrote on the volume I edited on him (from a conference I organized at Marymount University, Boylan 1998), that he thought that these two approaches were compatible. I received a similar response from Klaus Steigleder when I lectured at his university in Bochum, Germany, in 2006.

- 23 Some nuances in these presentations can be found in Baumgold (2013, 838–855), Stanton (2011, 6–30), Graham (2014, 317–329), Bruner (2020, 705–726), Thorgeirsdottir (2015, 564–579).
- 24 Within my first-order meta-ethical construct, I set out the community perspective as covering the community perspective (see Boylan 2004, 2014, 2021).
- 25 Instead of packaging everything within a single principle (SPT) deontological ethical theory as Kant does in the forms of the categorical imperative or Gewirth does in the principle of generic consistency, I set out a first-order meta-ethical framework built around the Personal Worldview Imperative (for the individual perspective) and the Shared Community Worldview Imperative (for the community perspective) (see Boylan 2014, Chapter 6, cf. 2021, Chapter 2).
- 26 Here, the arrow symbol stands for causation.
- 27 The manner in which these three forms of logic interact is set out in Boylan (2020, Chapter 7–9).
- 28 This, of course, applies to the Shared Community Worldview Imperative and the Personal Worldview Imperative as well – though they are first-order meta-ethical principles that dictate how one should orient themselves before adopting a normative ethical theory.
- 29 For most social sciences, this is above 75 percent, and for most physical sciences, the figure is 97.5 percent.
- 30 “Embedded” in this context means the relative fundamental nature of the good for action. A more deeply embedded good is one that is more primary to action.
- 31 This final note of the rights and duties being recognized as “binding” is critical (see Hart 1961).

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2 Human Dignity as Absolute Inner Value and Moral Status

Marie Göbel

2.1 Introduction

Human dignity is widely understood as an absolute inner value of all human beings.¹ This value is thought to belong to all human beings equally and unconditionally: Human dignity neither comes in grades, nor can it be lost, nor does its possession depend on its actual recognition or respect by others. Rather, it is an “inner” or “intrinsic” value – human beings have human dignity simply by virtue of being human.² Human dignity, so understood, fulfills a central normative function: It provides a non-contingent, solid basis for certain unconditional moral claims of every human being, namely human rights. It was Kant who introduced dignity as a distinctive normative concept that directly relates to certain universal moral claims (see Steigleder 2016).

However, the idea that human dignity is an (absolute) inner value is not uncontested but evokes criticism of various kinds. For instance, it is claimed that the very idea that a value “inheres” in human beings is “mysterious” (Killmister 2020, 6) and obscure. Others object that it is deeply entangled with certain dubitable “metaphysical” assumptions, especially from Kant’s philosophy. Moreover, it is argued that human dignity should not be regarded as something that we inalienably have but rather as something that needs to be actively conferred – it is a social or politico-legal construction (see Killmister 2020). As a consequence of these and other criticisms of the idea of inner value, it has been proposed to interpret human dignity as a status instead (see, e.g., Killmister 2020; Schaber 2017; Waldron 2012). Importantly, these so-called status conceptions of human dignity are presented as a genuine alternative to so-called inner worth accounts of human dignity. Thus, human dignity should be understood as a status *rather than* as a value.³

In this chapter, I argue that this claim is implausible for three main reasons. First, the moral concepts of status and value point to one another in various ways, which makes it doubtful whether status can really be understood without value and vice versa. More specifically, the very idea

of a high and inherent moral status has value implications: One cannot even make sense of what it means to have this status without a reference to an idea of absolute inner value (Section 2.3). However, the same holds the other way around for the idea of absolute inner value, *if* it is really interpreted in the Kantian tradition, namely in self-reflexive terms: According to Kant, human dignity as an absolute inner value *directly implies* a certain moral status of all human beings (Section 2.4). While this does not add up to an argument about whether human dignity should be understood as a status or value, this – secondly – makes it fundamentally doubtful what could be gained by shifting the meaning of “human dignity” in this way. Rather, thirdly, this might appear as promising only on the basis of the mistaken assumption that the only way to understand inner value is in a “metaphysical” fashion, namely by identifying it with a quasi-natural entity or property with some kind of independent existence – and by attributing such a value naturalist view to Kant. By contrast, it is precisely Kant’s philosophy that shows how to conceive of human dignity in a much more plausible way, namely as a value that we have to *ascribe* to one another, as part of a necessary value judgment. Not only does the rejection of a value idea of human dignity, therefore, partly rest on insufficient engagement with Kant’s philosophy, but on closer look, the gap between a value and a status understanding of human dignity is also at least not as fundamental as proponents of status conceptions like to suggest.

2.2 Conceptual Premises: Human Dignity as the Ground of Human Rights

The focus of this chapter is on *human* dignity, as distinguished from contingent, empirical forms of dignity (see below), and further on a *moral* (rather than, e.g., a legal) concept of human dignity. It is assumed that human dignity grounds human rights, in the sense that it provides a reason why one should hold that all human beings have (moral) human rights and what these rights are (see Düwell 2010; Göbel 2019). So, it is a basic requirement for any conception of human dignity that it should make plausible why and how human dignity can serve as such a ground.

Human rights are here understood as a particular kind of rights: Moral human rights, as different from legal human rights. They are the moral rights that all human beings have simply by virtue of being human. So, (moral) human rights are universal: All human beings have equal (moral) human rights. They are also (and by implication) unconditional: The possession of (moral) human rights is independent of contingent empirical features and circumstances such as individual character traits, personal achievements, their politico-legal recognition, and so on. Rather, all human beings necessarily have (moral) human rights. Moreover, (moral)

human rights express categorical demands, in the sense that human rights may only be weighed against one another, but they may not justifiably be restricted for some reason that is not human rights-related (see Düwell 2014, here esp. 27).

These features of human rights imply certain requirements for whatever may serve as their ground. Because human rights are universally, unconditionally, and categorically valid, whatever justifies the claim that all human beings possess these rights must make reference to some feature that all human beings necessarily have in common. This has direct and important implications for how human dignity might be understood in this context. Following Gewirth, one can generally distinguish between two kinds of dignity concepts, namely an empirical and an inherent dignity concept (see Gewirth 1992). Often the term “dignity” is used in a sense close to the adjective “dignified”: It signifies “a kind of gravity or decorum or composure or self-respect or self-confidence” (Gewirth 1992, 12), i.e., (broadly) a certain kind of bearing, posture, attitude, or self-relation. Dignity so understood is empirical in that it is a *contingent* feature of human beings: As an empirical fact, one may or may not have dignity in this sense, one may gain or lose it, and people have it to different degrees. Moreover, “it may or may not have a specifically moral bearing” (Gewirth 1992, 12). In the present context, it is crucial to note that “empirical dignity” can be “consequent upon the having of rights” (Gewirth 1992, 12, emphasis deleted) but, because of its general features just indicated, cannot possibly ground human rights.

By contrast, “inherent dignity” (or, in other words, “human dignity”) can serve as such a ground. Dignity so understood is not a contingent but a necessary feature of being human: It is “inherent” in the basic sense that all human beings necessarily have it, and equally. So, it can neither be lost nor does it come in grades. Importantly, it also has direct moral implications: “[I]t sets certain limits to how humans may justifiably be treated” (Gewirth 1992, 12) and implies “peculiarly stringent moral requirements” (Gewirth 1992, 13).

With regard to the guiding question of this chapter, the crucial implication of these reflections is that human dignity has to be understood as an *inherent* (and by implication universal) *status or value*, respectively, depending on the relevant conception. According to Gewirth, “[human] dignity signifies a kind of *intrinsic worth* that belongs equally to all human beings as such, constituted by certain *intrinsically valuable* aspects of being human” (Gewirth 1992, 12, emphasis added, original emphasis deleted). Likewise, if one wanted to show that human dignity is a status rather than a value, then it would have to be a status that is not merely contingently conferred (like a social status) but a status that is moral and intrinsic, for instance, in the sense that human beings necessarily have it or necessarily

have to attribute it to one another. As I will argue in the next section, it is implausible to assume that the possession of such a status might be justified without a reference to the idea of (absolute) inner value.

2.3 Moral Status Without Moral Value?

Suppose that human dignity is a universal moral status. Then, as just explained, it would have to be an intrinsic moral status – a status that all human beings have simply by virtue of being human. Moreover, it would have to be a particularly “high”⁴ moral status. In this section, I will argue that it is doubtful whether one can spell out what it means to have this moral status without a reference to being intrinsically and absolutely valuable. In the next section, I will outline an account of absolute inner value that is not “metaphysical” in any way but self-reflexive.

While the idea of a moral status does, of course, occupy an important place in moral philosophy (think of debates about the moral status of embryos or animals, for instance), there is relatively little reflection on what “status” means in this context on a basic conceptual level. Presumably, the reason for this is simply that the basic meaning of the term seems generally clear:

An entity has moral status if and only if it matters (to some degree) from the moral point of view for its own sake. More specifically, one’s moral status consists in there being certain moral reasons or requirements, for one’s own sake, for how one is to be treated.

(Jaworska/Tannenbaum 2023, introductory section)

Three aspects of this concept of moral status need to be stressed. First, moral status comes in degrees. So, the claim that some being or entity has moral status (at all) merely tells us *that* it morally matters (at all) for its own sake, but it does not yet tell us *how* it matters, i.e., what kind of norms the possession of this status implies. For instance, one might hold that tables lack any moral status because there are no moral reasons why tables ought to be treated in particular ways for their own sake; that the moral status of animals implies that human beings are morally obligated to treat animals in particular ways but does not imply moral rights for animals; and that the moral status of human beings implies that they have moral human rights and correlative duties.⁵ As these examples indicate, it is noteworthy – secondly – that having a moral status may, but does not necessarily, imply the possession of moral rights. For instance, one might argue that being a bearer of (moral) rights presupposes that one is also a bearer of (moral) duties (because of the correlation of moral rights and duties) as well as the ability to claim rights, both of which would rule out

animals as potential bearers of rights. However, there is no reason why this should mean that animals do not have a moral status or that they ought not to be treated in particular ways.

Thirdly, and crucially in the present context, the qualification “for its/one’s own sake” requires further elaboration. That some being “matters ... from the moral point of view *for its own sake*” implies that there must be *something in or about that being* which *makes* it matter in this way. For instance, suppose that I am morally prohibited from smashing my neighbor’s table. The reason for this is not that the table morally matters for its own sake or “in itself” but that it is my neighbor’s property: The norm applies only insofar as the table matters for the sake of someone else (my neighbor). By contrast, if it were my own table, I could do whatever I wanted with it. The reason for this is that the table lacks any *intrinsic, normatively relevant* feature that might justify the claim that it morally ought to be treated in certain ways for its own sake. The addendum “normatively relevant” is important here: Clearly, no natural feature as such can ground a moral status. The fact that tables typically have four legs does not confer a moral status on them, just as the moral status of human beings is not grounded in the empirical fact that they typically have two legs. Rather, there must be something on top of this feature as it were: something that makes it morally matter in some way.

Another way of expressing this point is that there is nothing intrinsically *valuable* about the table: It lacks moral status because it is only instrumentally valuable (for its owner). Accordingly, another way of saying that some being or entity morally matters for its own sake or in itself is that it is *valuable* for its own sake, or in short, to have a moral status means to be intrinsically valuable.⁶

It is important to be clear about what this means in the present context. On the one hand, one might then say that some being’s moral status is *grounded* in its special value: It is because of some intrinsically valuable feature that it has this moral status. On the other hand, it would be misguided to think of the attribution of a moral status and of an intrinsic value as two distinct moral judgments. Rather, if to matter morally for its own sake *means* to be intrinsically valuable, then the attribution of a value, i.e., a value judgment, is *implied* in the attribution of a moral status, i.e., a “status judgment” – such that making sense of what it means to have a moral status presupposes a reference to having intrinsic value. In other words, the very idea of a moral status has value implications. This has an important consequence for status conceptions of human dignity: In order to consistently maintain that an idea of human dignity as a (moral) value is replaced by an idea of human dignity as a (moral) status, their proponents would have to show that it is possible to conceptualize human dignity as a universal, intrinsic moral status without a reference to the notion of inner

value. The preceding conceptual reflections raise doubts about whether this can be done.

In order to see what this implies for human dignity as a moral status, more specifically, a look at the concept of social status is useful. To avoid misunderstandings, let me stress that I am not interested here in the concept of social status as such but rather in how basic conceptual distinctions in social theory can contribute to a more nuanced understanding of the term “status” in “moral status”, and eventually of the moral status of human dignity.

Sociology distinguishes between two meanings of the term “social status”, among others (see Dahrendorf 1969; Lamnek 1989; Peuckert 1992). First, “social status” may stand for “social position” in the sense of “the relative location of a person in a limited social context, which results in certain role expectations” (Lamnek 1989, 697, my translation). One might also think of a “social role” here. In the present context, what is important to note about this understanding of status is that it does *not* imply any comparative valuation of status as higher or lower. For instance, “mother”, “father”, and “child” all signify a particular social position or role within the social context or system “family”, each of which goes along with certain role expectations. However, on this understanding of “social status”, this does not in itself imply a hierarchical order between these social positions – in simple words: To say that Ella has the social status “mother” rather than, e.g., the social status “child” is not to say that being a mother is somehow “better” or “higher” than being a child, according to *this* definition of “social status”. It simply means that Ella occupies a particular social position that differs from other social positions within the given context and goes along with specific role expectations. In what follows, I will refer to this status concept as status₁.

There is, however, a second meaning of the term “social status” that implies precisely such a comparative valuation and hierarchy (status₂). “Social status” then signifies “the *more or less high* position a person holds in comparison to other members of the respective social system (e.g., workplace, community, or society as a whole)” (Peuckert 1992, 331, my translation, emphasis added; see also Lamnek 1989, 697). So, social status stands here for a particular position one occupies within a hierarchically ordered system of society. Broadly speaking, this position is determined by contingent inherited or acquired features such as wealth and occupation and, based on this, social recognition or “prestige” (think of “status symbols” in this respect). Disparities in income, power, education, prestige, and so on go along with disparities in social status, which again are linked with normative ideas of better or worse, lower or higher, privileged or underprivileged, and so on (cf. Peuckert 1992, 331). Two features of this concept of social status need to be stressed. First, it has not only a

relational or comparative component (as the concept of social status₁) but also an *evaluational* or *hierarchical* component. For instance, a statement like “He was deprived of his status” does not, of course, mean that this person does not occupy any social position or role anymore but rather that his current status₂ is lower than his former status₂. Secondly, the attribution of a social status₂ does not only go along with certain behavioral expectations but also with particular entitlements and obligations, both on the part of the status-holder and others.⁷

How does this distinction in social theory help shed light on the idea of human dignity as a moral status? In what follows, I will disregard the social dimension of the two status concepts just introduced and focus on the relevant meaning of “status” only.

Even though it is sometimes suggested otherwise, it is important to note, first of all, that human dignity cannot possibly be a moral status in the first, non-hierarchical and non-evaluative sense (status₁).⁸ To say that a human being has the moral status human dignity, whereas some other being – say, a cat – has a moral status that is not human dignity is not merely to say that each of them has a *different* moral status (as in status₁). Rather, as Waldron rightly emphasizes, there is an idea of *highness* involved in the concept of human dignity: To have human dignity means to have the highest moral status and thus a higher moral status than any being that does not have human dignity (see Waldron 2012). So, besides having an unequal social status due to contingently acquired, inherited, or ascribed features, all human beings have an equally high moral status due to some intrinsic feature of being human. This highness manifests itself in a particular, distinguished set of norms (human rights). However, this cannot be the full answer to what constitutes this highness, inasmuch as the idea of a *moral* status is concerned. Rather – to pick up the above point – it presupposes that there must be something in or about human beings that justifies the claim that they do not just morally matter for their own sake to *some* degree but to the *highest* degree.

A likely answer is that human beings have not only an inner value but an *absolute* inner value. The term “absolute” has a number of possible meanings in this context.⁹ Here Kant’s well-known distinction between “inner value” and “price” is a useful starting point: “What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity” (Kant 1996, 434, emphasis deleted).¹⁰ Importantly, the absoluteness of this value (human dignity) is reflected in the *irreducible* moral status and the *categorical* moral norms that its possession implies: “Ultimately, a person possessing dignity must not be an offset against somebody else. She may not be sacrificed for the sake of another person or other persons” (Steigleder 2014, 471). So, human beings are absolutely valuable in the basic sense

that they are non-fungible and may not be traded off against each other. An absolute inner value endows its possessor with the particular moral status of being the bearer of certain inalienable moral claims, which categorically ought to be respected by others, namely, the human rights.¹¹ This means, among other things, that a human right of one individual may only be justifiably restricted in light of a higher-ranking human right of another individual but not by some reason that is not human rights-related or by numerical calculation; that there are at least some things which one may categorically not do to a human being or in other words, that there are at least some absolute rights; and more generally, that the status of being a bearer of (moral) human rights morally ought to be taken into account in all actions (see Steigleder 2014, especially 471–472).

The crucial point here is thus not only that the idea of human dignity as a high moral status implies the idea of an absolute inner value. Rather, the same also holds the other way around: The idea of a high moral status is directly implied in the idea of human dignity as an absolute inner value. This makes it fundamentally doubtful what might be gained by shifting the meaning of “human dignity” from value to status and how an idea of human dignity as a moral status could be opposed to an idea of human dignity as a value. This doubt is further strengthened if one takes the possibility of a self-reflexive understanding of human dignity as an absolute inner value into account. I turn to this in the next section.

2.4 Human Dignity as an Absolute Inner Value on a Self-Reflexive Account

Suppose now that human dignity is a value that grounds (moral) human rights. As explained above, it would then be an intrinsic value – as Gewirth puts it: Human dignity “signifies a kind of intrinsic worth that belongs equally to all human beings as such, constituted by certain intrinsically valuable aspects of being human” (Gewirth 1992, 12). What is the “nature” of this value, in what sense is it intrinsic, and what might give us reason to think that all human beings have such a value? Before turning to these questions, a few notes about the concept of a value are in order.

The term “value” is potentially misleading, especially when it is used in a statement like “human dignity *is* a value” (as opposed to “X has a value” or “X is valuable”). For it suggests that values are a special kind of (normative) entities with a quasi-natural “existence” of their own. The same applies to the phrase “*inner* value”, where the spatial metaphor might be taken to suggest that values are something which one might locate, as it were, within human beings. This is certainly not to say that this is necessarily meant by “value” or “inner value”. Nor is it to deny the possibility that values might indeed be understood in this way (which would broadly be

a value naturalist approach). However, these spatial and existential metaphors imply the danger that *any* talk of inner value is identified with some “metaphysical inner kernel” conception.¹² By contrast, the goal of this section is to point out that this is by no means the only (and certainly not the most plausible) way to conceive of an inner value.

So, for a start, values should not be understood as entities but as (normative or value) *properties* or qualities: A value is nothing but the quality of being valuable. That something “has (a) value” then, at its core, means that it is in some way good, worthy, desirable, or valuable. Accordingly, to say that human beings “have” human dignity means that they are valuable in a certain way.

Generally speaking, one can think of the nature of a value property in two ways. The first option is again to conceive of it in (broadly) value naturalist terms. According to this view, a value property would be a normative, non-natural property comparable to a natural property or something that would supervene upon some natural property. It would have a mind-independent, quasi-natural existence and could be detected from a third-person perspective (e.g., through intuition). Arguably, this is often meant by a “metaphysical” understanding of values.

Alternatively, one might conceive of the “nature” of a value in self-reflexive or transcendental terms. Values are then inextricably linked with *value judgments*. That is to say, values do not have any kind of “existence” apart from judgments, but ultimately, there are only judgments that some being or entity is valuable. However, and crucially, this does not mean that there can be no absolute inner value on such an account. Rather, a value is intrinsic if it is not merely contingently ascribed (or not) but *necessarily* ascribed to some being or entity – the relevant value judgment is one that human beings necessarily have to make. Human dignity would then be a value that all human beings necessarily have to ascribe to themselves and to one another in the sense that it cannot consistently be denied that human beings have this value. This will be the understanding of human dignity pursued in what follows.

What does this mean more precisely, and what could give us reason to think that all human beings have an absolute inner value in this sense? To explain this, I will draw on Kant’s canonical reflections in the *Groundwork* (Kant 1996, especially 427–429).¹³ This requires a note about terminology in advance: The question of how Kant uses the terms “absolute”, “relative”, “inner value”, etc., cannot be addressed in any detail here. Suffice it to say that according to Kant, only human beings have an inner value, which is at the same time an absolute value. Indeed, he sometimes contrasts “relative value” with “inner value” rather than “absolute value” (Kant 1996, 434; see also Steigleder 2023, 157).¹⁴ The gist of what makes a value both an inner and an absolute value, according to Kant, is that it is

unconditional. So, an inner value is also an absolute value and vice versa, which is why I will leave further conceptual questions aside and largely use these expressions interchangeably in what follows.¹⁵

As beings endowed with practical reason, or in other words, as (rational) agents, we (human beings) act by pursuing *ends*, and we regard the ends that we pursue as *valuable*, i.e., as worthy of pursuit (for us). However, what ends each of us regards as valuable (for ourselves) depends on our contingent individual preferences and desires under contingent empirical circumstances:¹⁶ These desires differ from person to person, they might change over time, and so on. The value of the ends that we happen to pursue is relative to and conditional upon these presupposed preferences – as Kant puts it:

The ends that a rational being proposes at his discretion as effects of his actions ... 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.

(Kant 1996, 427)

The same holds for the means to these ends, which we likewise regard as (instrumentally) valuable only insofar as they are means to our ends. They, too, are only relatively or conditionally valuable.

To have an absolute value then means, first of all and negatively, not to be merely relatively and conditionally valuable in this way: If A is absolutely valuable, then A's value is independent of *contingent* acts of value attribution (which depend on contingent preferences, etc.). Rather, A is worth being valued for reasons that one might not just contingently endorse (or not) but that all human beings must necessarily share. A would then have an unconditional, absolute value. *In this sense*, A would also have an "inner" or "intrinsic" value. Importantly, "intrinsic" does not mean "not ascribed" here. Rather, it means that it is necessary for all human beings to ascribe value to this person, for reasons that no human being can consistently reject. It is a necessary value judgment.

What could such a reason be? Or in other words, why should one hold that all human beings necessarily have to ascribe an absolute value to one another as well as to themselves?¹⁷ For Kant, this follows from a reflection on the nature of moral norms on the one hand and the evaluative structure of human action on the other hand. In a condensed and simplified form, his argument can be reconstructed as follows: Moral norms are universally and unconditionally valid, i.e., they demand or prohibit actions categorically, independently of contingent individual preconditions. Moreover, as explained above, every human action involves setting oneself an end. Consequently, there must be an end which all human beings necessarily

have to regard as valuable, i.e., as worthy of pursuit, and which therefore constitutes the subject matter of moral norms. This end would then have an absolute, unconditional value (as opposed to the relative value of contingently pursued ends). It would be a necessary end or “end in itself”. Such a necessary end can not emerge from contingent individual desires (our sensual nature or our inclinations, in Kant’s terminology). Rather, it must be given by (practical) reason alone: Pure practical reason is the only possible source of necessary and thus absolutely valuable ends. This means, crucially, that pure practical reason must recognize *itself* as the only source of absolute value and, as such, must regard *itself* as possessing absolute value (cf. Steigleder 2023, 157). It is this self-referential argument that underlies Kant’s claim that it is pure practical reason, or in other words, the capacity to act morally, which has absolute value: “Pure practical reason must necessarily be thought as self-referential” (Steigleder 2002, 62, my translation, emphasis deleted). It must necessarily regard itself as an end in itself and thus as absolutely valuable. Because pure practical reason does not exist in the abstract but is *our* pure practical reason, this claim can also be put in a less abstract fashion: We (human beings) necessarily have to consider ourselves and all other human beings as ends in ourselves and thus as having an absolute inner value, insofar as we are beings who are capable of acting morally and hence the only source of absolute value.

The *direct* normative implication of this is that all human beings have a fundamental moral status *as* beings with an absolute inner value: All human beings have a fundamental and categorical moral obligation to always take the absolute inner value of other human beings (as well as of themselves) into account in their actions, i.e., to respect and treat one another as beings with that value and, by implication, status.¹⁸ It has already been indicated what this means more concretely in the discussion of “highness” in the last section.

For Kant, it is the capacity for moral agency that we necessarily have to regard as absolutely valuable and that grounds our dignity. However, one need not follow Kant in this regard to see what is decisive in the present context, namely, the possibility to understand and justify absolute inner value in a self-reflexive fashion (and without “metaphysics”) and the necessary attribution of a moral status this implies. A promising alternative is the view developed and defended in great detail by Alan Gewirth that (moral) human rights are grounded in the worth that all human beings – or, more precisely, all purposive agents – necessarily have to attribute to their agency (rather than moral agency), and that we morally ought to respect one another as agents (rather than as moral agents). For reasons of scope, a very short sketch of Gewirth’s argument must suffice.¹⁹

Like Kant, Gewirth starts from the idea that every purposive agent, from her perspective, has to regard the ends that she pursues as valuable

(for herself). Because pursuing any specific ends presupposes the general capacity of purposive agency or end-setting, every purposive agent, from her perspective, also has to attribute worth to this capacity, as well as to herself as the bearer of this capacity (purposive agent). Moreover, because exercising this capacity successfully depends on certain generic conditions (Gewirth calls them freedom and well-being), she also has to attribute worth to these conditions. In a further step, Gewirth argues that every agent, from her perspective, has to necessarily hold that she has both negative and positive rights to freedom and well-being. Finally, he argues that she also has to recognize that all other purposive agents have these rights, i.e., (moral) human rights. So, all purposive agents necessarily have to regard themselves and all other agents as bearers of (moral) human rights (to the generic conditions of their agency):

[I]t is from the worth that each agent attributes to her ends [...] and hence, a fortiori, to herself as purposive agent that there necessarily follows the claiming of rights to the necessary conditions of acting in pursuit of those purposes. Since she must acknowledge that the rights are had by all humans equally, this also serves to impose a moral restriction on the purposes she is justified in regarding as worth pursuing, and hence, too, on her ascription of worth or dignity to herself.

(Gewirth 1992, 24)

With these brief sketches, I can of course not do justice to Kant's and Gewirth's arguments. They serve to underline two points. First, in both Kant and Gewirth, the absolute inner value or dignity of human beings (or agents) is not understood as a quasi-natural ontological entity or property with some kind of independent existence. Rather, it is a value that we necessarily have to ascribe to ourselves and to one another, and it does not "exist" independently from this necessary value judgment. Accordingly, the claim that human beings have human dignity (and human rights) does not follow from a value that "inheres" in human nature but from an argument that reconstructs the normative claims that every agent, from her perspective, necessarily has to make. It is based upon a self-reflexive line of reasoning that shows that regarding ourselves and others as intrinsically valuable is a necessary implication of our practical self-understanding as agents (Gewirth) or moral agents (Kant).

There is nothing "mysterious" about human dignity so understood, nor about its ground. To be sure, both Kant's and Gewirth's arguments might be and have been criticized from various angles: One might object that they do not succeed, that they are based on false premises, that they have counterintuitive normative implications, and so on. However, one certainly does not do justice to them by presenting them as merely positing

some obscure “inner transcendental kernel” (Killmister 2020, 5) of human beings.²⁰

Secondly, in Kant and Gewirth, the necessary attribution of an absolute inner value (human dignity) and the necessary attribution of an intrinsic moral status are inseparable from one another: They are part of one and the same self-reflexive movement of thought that reveals the necessary implications of our practical self-understanding as (moral) agents. Essentially, this status consists in being the bearer and addressee of categorical moral norms (Kant) or moral human rights (Gewirth). In short, value directly implies status, where this status comprises the moral norms that correspond to this value. Once again, this makes it rather doubtful what might be gained substantially if this status were renamed “human dignity”, on a self-reflexive account.

Notes

1 Work on this chapter was part of the subproject on the ethical conflicts of goals in the Covid-19 pandemic of the project COMPLiANCE funded by the German Research Foundation, project number 458338078.

I am thankful to Marcus Düwell, Philipp Richter, and Klaus Steigleder for their highly helpful comments on earlier versions of this chapter.

2 I will use the terms “inner”, “intrinsic”, and “inherent value” indiscriminately throughout this chapter.

3 See, e.g., Waldron (2012, 27): “There are ‘absolute worth’ accounts of dignity and there are ‘ranking status’ accounts. I favour the second”.

4 As Waldron famously puts it (who proposes to interpret dignity as a [legal] status): Dignity is “a high-ranking status, comparable to a rank of nobility – only a rank assigned now to every human person, equally without discrimination: dignity as nobility for the common man” (Waldron 2012, 22).

5 These examples are just meant to be illustrative. I do not mean to defend any substantive position on these matters here.

6 I am aware that using “valuable for its own sake” synonymously with “intrinsically valuable” and “valuable for the sake of something else” synonymously with “instrumentally valuable” is disputed, and that it is also disputed whether or under what conditions “instrumentally valuable” is really the antithesis to “intrinsically valuable” (see, e.g., Korsgaard 1983). However, in the present context, this seems both adequate and sufficient to make the relevant point.

7 A third way in which the term “social status” might be used is close to how Waldron conceives of a legal status: Tracing back to Max Weber’s ideas about *Stand* (which is likewise translated into English as “status”), “social status” can also signify “the entirety of all inherited rights and duties of an individual” (where in Waldron these would not be inherited but legally conferred rights) (Lamnek 1989, 697).

8 Suzy Killmister makes this mistake when she explains the notion of a “social kind”, and more specifically the notion of “human” in “human dignity”, by reference to the social role of being a parent (see Killmister 2020, Chapter 6, and especially 130).

9 For an overview see Brandhorst/Weber-Guskar (2017); see also Göbel/Düwell (2017).

- 10 Needless to say, there is a long and ongoing tradition of interpreting the meaning of this passage and its normative implications that I cannot do justice to here.
- 11 According to Kant, human dignity grounds categorical moral duties but not human rights. Alan Gewirth, by contrast, has shown how, with the help of a self-reflexive method of argumentation, both human dignity and human rights can be justified (see Gewirth 1978 and below).
- 12 This danger is reflected in Suzy Killmister's critique of what she calls "inner transcendental kernel" conceptions of human dignity (see Killmister 2020, 5). She borrows this phrase from Michael Rosen (2012, 9).
- 13 The following reconstruction is guided by Steigleder (2002, 23–35 and 59–67).
- 14 Systematically, Kant's equation of "inner value" and "absolute value" is problematic because it does not allow for grades of inner value (e.g., one might hold that animals have an inner value which, however, is not absolute). Contra Kant, it is more plausible to assume that an absolute value is also an inner value but not necessarily vice versa. I thank Klaus Steigleder for helpful discussions on this point.
- 15 I also largely disregard Kant's own terminology here. For instance, he speaks of "subjective" versus "objective" ends, which, however, would be confusing in the present context. Let me add that I will not distinguish between human beings, persons, and agents. This distinction raises important and complex questions of its own, which, however, exceed the scope of this chapter.
- 16 I use the terms "preferences" and "desires" in a generic sense here so as to include interests, life plans, etc.
- 17 Here I draw again on Steigleder (2002, 59–67).
- 18 This obligation is "fundamental" in the sense that this is what morality is all about (it is essentially what the Categorical Imperative demands).
- 19 It is developed in much detail in Gewirth (1978).
- 20 This is Killmister's charge in Killmister (2020).

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3 Reason and Moralities

The Prudential Foundations of Ethics in Alan Gewirth's Procedural Rationalism¹

Christoph Bambauer†

3.1 Introduction

Any moral theory faces the challenge of determining the concept of morality for a number of reasons. The primary ones being the factual plurality of concepts of morality and the theory's need to clarify its own content. The necessity of this project becomes even more apparent if the theory in question implies a strong, universal claim of validity. Here, Kantian Ethics comes to mind. However, there is another practical theory that might be regarded as tying the knot between logic and morality even tighter. This is the approach of Alan Gewirth. Gewirth holds that the concept of free intentional action can serve as a starting point for the justification of strictly binding moral obligations: "The chief novelty is the logical derivation of a substantial normative moral principle from the nature of human action" (Gewirth 1978, x).²

Gewirth's approach starts with the phenomenon of teleological action and tries to avoid any further metaphysical burdens. Hence, Gewirth must show that and how it is possible to arrive at substantial moral principles despite his minimalist starting point. In Gewirth's view, a moral principle is justified if it is *dialectically necessary*, and that means, logically necessary in the first-personal view of the agent as agent. In this essay, I will focus on Gewirth's strategy of dealing with the challenge of conceptualizing morality. I will do this for three reasons.

(1) Gewirth's approach to determining "morality" may be rather complex, but it is far more convincing than existing alternatives in terms of avoiding the *trap of arbitrariness* – or so I will argue. (2) In this context, conceptualizing morality is especially demanding since moral normativity is supposed to imply logical stringency in a straightforward fashion. Arguing that any agent can deny the supreme moral principle only on pain of self-contradiction, Gewirth not only claims – like Kant does – that immoral maxims or reasons in some way "destroy" themselves but suggests that the agent, as a rational being, is at stake.³ (3) Since morality is supposed to be logically implied by teleological action, moral principles

are based on a non-moral “prudential” foundation. However, attempts to ground morality in non-moral foundations have been extensively criticized throughout the history of ethics. To emphasize the rational grounds of Gewirth’s account, it is necessary to show to what extent his view on the relationship between prudentiality and morality is sound.

Accordingly, in the following, I will focus on two main questions: To what extent can Gewirth’s approach provide a non-arbitrary concept of morality? And how does prudentiality relate to morality in Gewirth?

My analysis includes five steps. It will be outlined, first, why a definition of the concept of morality is both necessary and challenging – especially for a foundationalist project like Gewirth’s (Section 3.2). In the second step, I’m going to reconstruct Gewirth’s approach to determining “morality” (Section 3.3). Then, Gewirth’s justification of a supreme moral principle will be sketched in order to pinpoint the relation of prudentiality and morality (Section 3.4). I will discuss some of the main criticisms of his strategy (Section 3.5). It will be scrutinized to what extent Gewirth’s account can be challenged by alternative approaches while considering its structural limits (Section 3.6). In the last section, I will summarize the most important results (Section 3.7).

3.2 Reason and “Moralities”

Any theory of morality must more or less precisely explicate what morality is about, what moral reasons and principles are, and how morality relates to other forms of practical normativity, e.g., legality or prudentiality. Even those philosophers who aimed at a moral theory on purely rational grounds realized that you cannot derive any substantial moral content from mere logic or supreme principles of rationality. Again, this might not be a problem for moral theories per se. But if you aim at justifying a universal and strictly binding form of morality, you have to avoid the severe relativity that is characteristic of approaches that exclusively adhere to a specific ethical paradigm. Otherwise, any attempt to justify moral principles would be valid or relevant only relative to the presupposed concept of morality (I will call this *the argument from relativity*).

From a certain point of view, all these reflections may appear too complicated. Instead, one could hold that we may not exactly know how to justify a specific concept of morality, but we can take a look at all the different approaches and choose the most stringent one among them. Despite the problem of defining “morality”, we still would be able to properly evaluate the logical quality of methods and arguments. At this point, the approach of Alan Gewirth comes into play. Gewirth is fully aware of the methodological problems that go hand in hand with arguing for the necessity of a particular concept or principle:

It is possible for a proposition or principle to be necessarily true only within the context of a system of arbitrary definitions and axioms from which it can be shown to follow by rigorous deductive reasoning, so that to affirm the premises and to deny the conclusion is to incur self-contradiction. But the premises need not themselves be necessarily true.⁴
(RM, 24)

There is much more to say about the challenges of determining the concept of morality, but for my present purposes, I will focus on the following main problems: (1) The existing plurality of methods and strategies for conceptualizing shows that it is far from clear how to determine “morality” (RM, 2). (2) The main challenge for any moral theory consists of avoiding arbitrariness regarding its conceptual premises. (3) Formal criteria like (self-) consistency or coherence do not suffice to show that a concept of morality is non-arbitrary (necessarily true, right, etc.) in a meaningful non-circular way.

In the next two sections, I will explain and discuss how Gewirth deals with these challenges and the questions involved. His approach is complex insofar as his theory of morality is closely tied to a theory of rational agency that supposedly serves as the foundation of a supreme moral principle. This main theory, including the justification of morality, has a distinct context that is constituted by a number of preliminary remarks concerning the applied method of reasoning and defining the concept of morality. Hence, Section 3.3, I will reconstruct those remarks before sketching out the essential steps of Gewirth’s main argument in Section 3.4.

3.3 Preliminary Remarks: Morality, Agency, and Necessity

Gewirth aims at justifying moral obligations and rights as being logically necessary from the practical first-personal standpoint. To achieve this, Gewirth has to identify a starting point that is *morally neutral* and *non-arbitrary* at the same time. But not only that: Since his project consists in constructing a moral theory, the starting point also must imply *moral content*.

Before Gewirth develops his main argument, he discusses the problem of shaping a convincing concept of morality. In this context, he tries to take a stance that is immune to the most striking forms of criticism, primarily against the *argument from relativity*,⁵ including the petition principle-reproach. That is why he does not jump to the conclusion that right from the start we can assume that morality is real, that there is a “true morality”, and so on. Such a starting point would be far from morally neutral (which in turn means being far from universally valid). Instead, Gewirth starts with a rather defensive move by focusing only on the possibility of moral

demands and norms (RM, 29). Gewirth explicitly states that his argument does not require that one “accepts any morality in general or particular or that one upholds any norms other than those of deductive and inductive rationality” (RM, 29). Now, Gewirth’s question is: What are the necessary implications of the possibility of morality? Or in other words: What is necessary for morality to be possible? His answer to this question is essential for understanding both his emphasis and his methodical focus on action theory as the foundation of moral theory. Gewirth claims that the only thing that is strictly necessary for morality is rational action. Apparently, the necessity Gewirth has in mind is not a kind of causal or rational necessity but refers to the practical purpose of moral demands. His idea is that rational action is strictly necessary for morality since otherwise moral obligations and rights would be pointless. There must be at least some agents to whom duties and rights are directed.

Does this argument show that rational action can serve as a starting point for Gewirth’s moral theory? Is rational action *morally neutral* and *non-arbitrary* at the same time? First of all, the argument for the practical necessity of rational action appears to be valid in *any* moral context since any kind of morality requires rational agency in order to be possible, to become real (i.e., to become moral action).⁶ However, “rational agency” is far from being independent from morality, quite to the contrary. Hence, the idea of “moral neutrality” must be explained in more detail.

There are at least three different meanings of this concept: (1) Being independent from specific moral concepts, reasons, or principles. (2) Having no relation to morality whatsoever. (3) Relating to or being dependent on morality in general (in the sense of relating to moral normativity as such). Gewirth’s starting point is morally neutral, not because it does not relate to the sphere of morality at all (it supposedly does) but because its validity is not related to any *particular* concept or theory of morality.

Accordingly, Gewirth adopts the formal teleological model of action: “I do X for purpose E” (RM, 49). This account of rational action is not only the most prominent one throughout the history of ethics, but it is also a formal theory that allows for a very wide range of material specification. According to this view, an action is goal-directed behavior based on free will. Hence, actions have two generic features: Voluntariness and purposiveness (RM, 25). The term “generic” classifies those features of action that define actions as a genuine type of event (RM, 25).⁷ The teleological model of action itself is not a logical but a psychological theory: “The doctrine that every agent acts for ends or purposes that seem to him to be good has behind it a long tradition in philosophical psychology” (RM, 49).⁸

Beyond the argument for its practical necessity, the concept of teleological action has a further function within Gewirth’s theory. Rational agency not only supports the purpose of moral normativity, but is also supposed

to serve as the source of the substance of morality. Formal conclusiveness is not sufficient, since morality necessarily requires a material component as well. This material component would be nothing else than the “subject matter of morality” (RM, 24–25). Thus, one of the most genuine and original aspects of Gewirth’s theory is the idea of generating the content of morality just by reflecting on the generic implications of rational agency. Consequently, the justification of the supreme moral principle is structurally tied to determining the concept of morality (RM, 25; Beyleveld 1991, 68).

However, Gewirth’s methodological reflections also show that determining the content of morality does not directly imply the justification of the concept of morality. Determining moral content requires a descriptive idea of morality that allows for the general distinction of moral and non-moral issues (RM, 9). Following his method, determining the general characteristics of moral demands consists in identifying the lowest common denominator of the existing plurality of concepts of morality. The result of Gewirth’s analysis has a rather Kantian profile: Moral demands are supposed to be universal, categorically binding, cannot be overridden by non-moral reasons, and are tied to essential human interests.⁹

Regarding Gewirth’s overall strategy, a short remark is necessary. In contrast to Gewirth, some of the ways of conceptualizing morality are based on a kind of consensus. Therefore, those approaches are in need of a further normative premise or principle. One of such principles could be the following: “Those aspects of morality that are shared by most theories are valid because being widely accepted implies being valid”. *Prima facie*, this may also apply to Gewirth’s case. However, Gewirth’s use of this strategy is special in some respects, the most important one being that he does not immediately draw any normative conclusions based on the alleged “core meaning” of morality. For instance, his basic notion of morality does not imply any moral obligations or supreme principles that are supposed to be respected. Instead, he exclusively focuses on formal properties of moral reasons, e.g., being categorically binding. Hence, in contrast to a common understanding, Gewirth’s account is not epistemologically based on its notion of morality but on the very idea of teleological action (including the generic features of voluntariness and purposiveness). The descriptive concept of morality is necessary not for justifying substantial moral precepts but for categorizing the results of analyzing teleological action from the point of view of dialectical necessity. (This concept will be explained in Section 3.4.)

However, there is a specific requirement that Gewirth’s account has to face. On the one hand, from the logical reflection on the normative implications of teleological action, it does not follow that these implications are morally relevant *per se*. On the other hand, the descriptive core idea

of morality as the lowest common denominator of the plurality of moral concepts does not imply any normativity per se. Consequently, Gewirth's approach may not be in need of an external normative input but requires a particular argument that constitutes a systematic relation (a *structural link*) between the descriptive and normative aspects of his theory. I will explain this issue in Section 3.6 in more detail.

To better understand, first, why and how moral normativity might be implicit in teleological action, and second, to what extent moral reasons are related to other kinds of reasons in Gewirth's theory, I will give a short summary of the main parts of his argument from generic consistency in the next section. Due to my current framework, my main interest neither lies in reconstructing nor in evaluating Gewirth's argument fully but in his specifications of morality as "universal prudence".

3.4 Gewirth's Justification of a Supreme Moral Principle

There are various ways to reconstruct and understand the argument (White 2020; Steigleder 1999; Beyleveld 1991; Bambauer 2012, 2019; Boylan 1999), but for my present purposes, I will keep it short. The argument from generic consistency starts with the phenomenon of teleological action and its implicit axiology in a first-personal view: "First, every agent implicitly makes evaluative judgments about the goodness of his purposes and hence about the necessary goodness of the freedom and well-being that are necessary conditions of his acting to achieve his purposes" (RM, 48). These reflections can be dissected into four theses, all of which are supposedly dialectically necessary:

- I. I do (or intend to do) X voluntarily for some purpose E.
- II. E is good for me.
- III. My freedom and well-being are generically necessary conditions of my agency.
- IV. My freedom and well-being (as necessary conditions of my agency) are necessary goods for me.

According to Gewirth, any rational agent necessarily values her agency as well as its necessary conditions. Since agency is a necessary condition of action, he assumes that the agent transfers the value of her ends to their necessary conditions: Because I value my ends, I also have to value my agency as the ability to value. Since my agency only exists under certain conditions, I have to value my freedom and the other necessary conditions of my agency, my well-being. The concept of well-being includes both the internal and external empirical conditions for action: "Since ... agency is the condition of pursuing particular goods, the agent's well-being

is to be identified primarily even if not exclusively with the general abilities and conditions required for attaining any of his purposes” (RM, 60–61). Following Gewirth, the necessity of the goodness of my ends as well as of their conditions has a *dialectical* nature. Dialectically necessary judgments are judgments whose negation necessarily implies a logical self-contradiction from the first-personal view (RM, 43–44), since they refer to the generic features of action.

While the first part of the argument deals with the theory of action and the valuing of agency and its necessary conditions, the second part is primarily about the dialectical necessity of the so-called “prudential rights”:

Since the agent regards as necessary goods the freedom and well-being that constitute the generic features of his successful action, he logically must also hold that he has rights to these generic features, and he implicitly makes a corresponding right-claim.

(RM, 63)

The idea is to make a transition from evaluative to deontic judgments by referring to the consistency demands implied by the practical-logical framework that supposedly is constituted by the agent’s first-personal perspective. In this context, the following thesis has to be taken into account:

V. I have a right-claim to my freedom and well-being.

The apparent difference between valuing both one’s freedom and well-being and claiming the right to these constitutive goods is that the “generic right-claim”¹⁰ implies an “ought demand”: The agent *ought* to be able to act freely, and she *ought* to be well. At this stage of the argument, it is decisive to emphasize that this right-claim is not supposed to establish a moral but a “prudential right” (RM, 71). The sufficient reason for claiming the right to one’s own freedom and well-being is being an agent; hence, this aspect of Gewirth’s theory is called “Argument from the Sufficiency of Agency” (ASA) (RM, 110). The prudential character of the right claims is a direct result of their dialectical necessity: “Calling it ‘prudential’ signifies ‘generally’ that the claim to having this right is dialectically necessary, but need not be claimed for ‘moral’ (other-regarding) reasons” (Beyleveld 1991, 289). The dialectically justified rights of the agent are practical, but not moral claims since they are logical implications of a prudential self-relationship that is based on the generic features of action.

Since the validity of (V) is solely based on the generic features of action, the agent’s claim to her freedom and well-being is supposed to be universalized¹¹ and thus extended to (VI).

VI. Any agent has a claim right to her freedom and well-being.

At this point in the argument, it is crucial to realize that (VI) does not imply that any agent has to value the agency of *any other agent*. However, she has to recognize that any (other) agent has the same claim rights to the necessary conditions of her rational agency in her *individual yet universal first-personal view*.

According to the alleged symmetry of rights and obligations judgement, (VI) implies judgement.

VII. Any agent is obliged to not interfere with the other agent's freedom or well-being.

Insofar as the universal prudential right-claim to one's freedom and well-being is accepted, there are a number of moral implications that are supposed to be taken into account: Any agent ought to refrain from interfering with the free rational agency of other agents (RM, 128). By extending the individual prudential rights of (V) and transforming them to (VI), Gewirth aims to make a shift from prudential to moral rationality. According to (VI), the determination of my agency is restricted by the necessary conditions of the agency of other agents. As a consequence, in contrast to focusing on self-regarding reasons in (V), other-regarding reasons play an essential role in (VI) as well as in (VII). At this point, according to the primary purpose of this essay, the reconstruction of the argument is complete since the few remaining steps of Gewirth's sequence do not add anything substantial regarding the relation of prudentiality and morality.¹² The normative content of the supreme moral principle essentially consists of respecting any agent's agency and its necessary conditions. In the following section, I will both analyze and discuss the relation of prudential and moral normativity in more detail.

3.5 The Content of Morality: Prudential Rights and the Generic Features of Action

The reconstruction of Gewirth's argument up to the constitution of prudential rights and their universalization has shown that moral reasons are *universalized prudential reasons*.¹³

In the following, I will explain why moral reasons are based on prudential reasons only in a specific (rather indirect) sense. Then, I am going to discuss some of the major criticisms that reject Gewirth's concept of moral rights as universalized prudential rights on various grounds.

According to Gewirth, moral reasons are universalized prudential reasons, but they are by no means common prudential reasons that are at the

same time universally valid. Such a misconception of Gewirth's approach to "morality" would amount to the idea that there is nothing genuine or unique about moral reasons compared to prudential ones. In fact, since they are universal prudential reasons, they serve as a logically necessary limit of any particular prudential reasons. These limits are not based on prudential elements alone but first and foremost on the rational criterion of relevant similarities (see fn. 27). At the same time, universal prudential reasons ensure that any agent is able to pursue her individual goals and thus to act on one's particular prudential reasons within this framework.

Gewirth also holds that I have to regard all other agents as being logically obliged to respect my agency and its necessary conditions because I have a claim right to those conditions in the first place. This means that other agents are not supposed to regard themselves as being obliged to respect my agency in order to constitute my prudential claim right to freedom and well-being. Following Gewirth, the obligations of others strictly depend on my normative self-relationship. In a certain view, this approach is unusual since alternative accounts imply that any right-claim from my side presupposes a corresponding obligation of the other agents. In other words, my rights are the flipside of some other agent's obligation toward me (not the other way around).

However, Gewirth's view was challenged. I will now discuss three of the most pressing counterarguments against Gewirth's idea of moral rights as universalized prudential rights. While there are numerous other criticisms to choose from, I will focus on those fundamental points of critique that (in my view) are most likely to come to mind when confronted with Gewirth's account. Furthermore, the following discussions are supposed to support the explanation of what Gewirth's concept of morality is about.

Gewirth's view is challenged by a first counterargument. This argument implies that other agents are primarily obliged to respect the necessary conditions of my rational agency, and *therefore* I am justified in claiming prudential rights. In this view, the other agents appear to be constitutive of my prudential rights. Therefore, I will call it the *argument from intersubjectivity*.¹⁴ Generally, there are two candidates for a source of obligations (apart from Gewirth's approach, which is apparently rejected by the counterargument): (A) The obligation is grounded in the other agents themselves. (B) The obligation is grounded in another source that does not depend on them. If, as expressed in (A), the obligation is grounded in the agents, there could be two aspects that could give rise to moral normativity: (1) Either their individual properties or (2) their general practical identity as agents.

The first option (1) would be relevant if, for instance, we are talking about a relationship between parents and children. In such a case, the social role would be constitutive of certain obligations. The same holds

for professional roles like being a policeman or a medical doctor. In our context, there are several problems with this view: First of all, these role-dependent obligations can hardly count as moral precepts (at least not in general); second, there is no reason why these role-dependent relationships should imply a primacy of the commitment of one of the agents involved.¹⁵ From Gewirth's perspective, the concept of role-dependent rights and obligations as such is irrelevant because the normativity of the identity of being an agent is not in any way tied to any specific social or professional role. Quite to the contrary, taking these kinds of roles seriously requires being an agent in the first place. However, there is another aspect that is even more problematic: The underlying point of view that shapes the discussion and predetermines the available options. Gewirth emphasizes more than once that and why the reconstruction as well as the understanding of his argument requires adopting the formal first-personal perspective. Apparently, this crucial point is ignored here. Instead, a different scenario has been implemented that is based on the idea of two parties (A and B) and that either party A or party B has to be committed to the other party in question. This scenario is only possible due to a particular perspective that can be called the "view from above" or "the neutral observer". Hence, this approach is methodologically misguided and dysfunctional as a striking critique of Gewirth because of the adopted point of view alone. Gewirth is not logically committed to concede any of the aspects this counterargument proposes, so there is no reason for him to change his mind about his view of prudential rights.

The second option (2) can only imply that moral normativity is grounded in the general practical identity of the agent. As we have seen, this aspect of normative self-relationships is of primary relevance to the systematic profile of Gewirth's theory since being an agent supposedly is to be affirmed on pain of self-contradiction, including the positive evaluation of the generic features of action. However, just like the first one, the second option does not provide any rationale for rejecting my claim regarding the necessary conditions of my rational agency based on *my first-personal view as agent* (i.e., independent of any kind of intersubjectivity). This holds for two reasons: (1) On the basis of the formal general identity of being an agent, there is no reason why the other agents and their idea of being morally obligated should be accepted as a proper justification of moral precepts – in this perspective, all agents are equal in terms of being a possible source of moral normativity; (2) as was hinted at before, it is hard to see why Gewirth should accept such a critique due to ignoring the first-personal standpoint. Of course, it is perfectly fine to ask for a reason for adopting the first-personal standpoint, but beyond this point, it is questionable to what extent the sheer possibility of the third-person alternative

could in any way serve as a foundation for a compelling argument against Gewirth's approach.

This also holds regarding the third option (B) that other agents could be obligated toward me because of – for instance – the existence of moral facts that are independent of any agent in terms of moral value. I will come back to this option at the end of this essay. However, so far, the *argument from intersubjectivity* cannot show that and why Gewirth's dialectical justification is flawed.

The second counterargument focuses on the possibility that the prudential reasons of agent A could severely interfere with the prudential reasons of agent B (the *argument from possible conflict*). A prominent proponent of this argument is Adina Schwartz, an early reviewer of Gewirth's *Reason and Morality*. She holds that an agent could very well insist on universal prudential rights, but at the same time – without any logical contradiction – that her personal goals and interests matter more than those of other agents (Schwartz 1979, 656). Consequently, in her view, the prudential foundation of universal rights in Gewirth's account generally allows for my own prudential reasons overriding those of others.¹⁶ According to Schwartz, a proactive interest in the goals of others and the necessary conditions of their agency does not follow from my prudential rights but requires a further normative principle which eventually can be regarded as moral.

This argument is obviously flawed since the prudential starting point in Gewirth's argument does not simply entail having selfish interests and being justified in pursuing one's selfish goals no matter what. Hence, the universalization of prudential reasons does not amount to the idea that agent A can consistently reject the prudential rights of agent B. Gewirth's method of dialectical necessity is neither identical nor similar to the common strategic notion of prudential rationality that allows for competition between individual agents. The anti-Gewirthian disconnect of rationality and prudentiality in Schwartz's argument leads to an anti-Gewirthian disconnect of logic and morality. This second disconnect and the idea that the "sound prudential reasons" of other agents are "just" logically binding is problematic in two ways:

- 1) Logical necessity is not only the central criterion for practical necessity in Gewirth's account, but also, apart from his theory, it is far from clear which kind of necessity should be more binding and more necessitating for any rational agent.
- 2) Other agents' sound prudential reasons are not sound because they are prudential, but because they are logically necessary from the (universal) first-personal view of the agent. Regarding Gewirth's criterion of relevant similarities, the moral implications of universal prudential

rights do not come (as Schwartz suggests) from my moral respect for the other agent's agency as an addition to logical necessity but simply from being logically consistent: Even if I would love to ignore your agency, it would not make any sense for me *as a rational being*.

In a third counterargument, E.J. Bond argues that it is impossible to get from prudential to moral reasons just by logical transformation (Bond 1980a, 50; for a similar account, see James 1987). In his view, prudential rights are supposedly derived from a universal moral principle, but they do not serve as its foundation. I call this the *argument from circularity*. Furthermore, Bond insists on prudential rights – as universal as they may be – still being prudential and not moral rights. Contrary to Gewirth's own argument, the process of universalization is not supposed to *qualitatively* or *categorically* transform prudential rights into moral ones. In this view, the universalization of prudential rights only extends both the target group and the group of agents who can legitimately claim those rights. In his answer to Bond, Gewirth points out that the binding force of prudential rights does not depend on an implicitly presupposed moral principle but solely results from what is logically necessary from the practical first-personal perspective (Gewirth 1980, 66). As I mentioned before in my reply to Schwartz, I agree with Gewirth on this point.

However, the more interesting aspect of Bond's position is that he regards Gewirth's basic argument as true (see Beyleveld 1991, 79) but at the same time does not concede any substantial achievement in terms of providing a rational justification of a supreme *moral* principle. I will call this the *argument from prudence*. Gewirth's objection to his critique that prudential rights are justified without any (implicit) moral presuppositions may reject the circularity-reproach, but it cannot rule out Bond's thesis that universalized prudence does not equal morality (Bond 1980b, 74). I will come back to the *argument from prudence* in the next section since it addresses the central questions of this essay.

Summarized, none of the counterarguments discussed above are sufficiently convincing. The *argument from intersubjectivity* fails due to ignoring Gewirth's premises without providing a proper justification or superior alternative, the *argument from possible conflict* rests on a misunderstanding of "prudential", and the *argument from circularity* ignores the non-moral justification of prudential rights. However, while these criticisms can either be rejected or at least attacked on rational grounds, it remains to be scrutinized what the results of their critical reconstruction actually imply regarding the evaluation of Gewirth's method of determining both the descriptive concept and the normative content of morality. Furthermore, the *argument from prudence* seems to be a special case

since it can neither be dismissed nor does it explicitly undermine Gewirth's efforts – or so I will argue in Section 3.6.

3.6 Moral Rights as Universal Prudential Rights?

My previous reflections lead to the following intermediate conclusions: First, morality as universalized prudence in Gewirth's sense cannot simply be reduced to universal egoism or other selfish impulses. Universal prudential rights are neither based on prudential reasons in the usual sense nor do they imply that any agent is justified in just doing what she wants. They are grounded in *dialectical necessity* and justify the claim to the generic features of action. Hence, universal prudential rights do not allow for ignoring other agents' essential goals and needs but, to the contrary, justify specific restrictions of one's own actions that are implied by the obligation to respect any agent's agency and its necessary conditions. Second, because of being justified by dialectical necessity, prudential rights do not require any moral principle in order to be strictly binding for any rational agent. Hence, Gewirth's theory is not based on a *petitio principii* regarding moral norms. Third, the *argument from prudence* does not imply that Gewirth's argument for universal prudential rights is logically flawed but that it is deficient as an argument for the validity of a supreme moral principle.

Apparently, with regard to this argument, accepting both Gewirth's idea of dialectical necessity and the reasoning underlying his sequence of judgments does not necessarily entail the acceptance of universal prudential rights as moral rights. It remains to be determined to what extent this fact has an impact on the answer to our central question, "Is Gewirth's concept of morality non-arbitrary"? In this context, I will clarify how the *argument from prudence* can be dealt with on Gewirthian grounds and beyond.

Gewirth's search for a *descriptive core-meaning of morality* is not led by logical norms but rests on identifying a minimal consensus among existing ethical theories. While its results are not arbitrary, since they are based on a wide spectrum of established theories, it would be misleading to hold that Gewirth's formal concept of morality is necessary (or necessarily "true"). However, and this is the *missing link of descriptive and normative aspects* in Gewirth's account that has been addressed above (Section 3.4), his descriptive notion of morality can be further justified on rational grounds to the extent that, according to its determination of the realm of moral deliberation, moral reasons are supposed to refer to *essential human interests*. Also independent from Gewirth's main argument for focusing on dialectical necessity,¹⁷ one can assume that morality has something to do with rational agency and its necessary conditions since any object of interest can only be strived for if the agent in question can act according to the

ends she has *chosen and valued* in the first place. Hence, it is conclusive in its own right to hold that it is an *essential human interest to be able to act at all* and thus to regard the generic features of action (freedom and well-being) as an important material specification of the interests humans essentially have.¹⁸

At this point, *the argument from prudence* comes into play again. As was shortly discussed earlier, Bond generally agrees with Gewirth's argument for universal prudential rights but hesitates to call those rights "moral". Furthermore, he is a proponent of the *argument from circularity*. Contrary to this argument, I claimed that Gewirth's prudential rights do not presuppose a moral principle in order to be strictly normative in terms of dialectical necessity. However, there is a reason for Bond's intellectual sympathy for the argument of circularity that can tell us something significant about the structure of Gewirth's approach.

According to both Bond's *argument from circularity* and his *argument from prudence*, it seems to be obvious that prudential rights can only be understood as being grounded in a moral law (*argument from circularity*) and that moral reasons can only be genuine if they do not rest on reasons of another kind (*argument from prudence*).¹⁹ Hence, given these premises, it makes sense to reject the idea that it is sufficient to claim that "as an agent", I have specific prudential *rights* regarding the necessary conditions of my agency. Why do I *necessarily* have to regard myself as an agent? Where does this special status of "being an agent" come from? What does logic have to do with my necessary practical needs? Furthermore: Claiming that from the notion of "being a rational agent" it analytically follows that I necessarily need the necessary conditions of my rational agency would only amount to a tautology. And rejecting this tautology would not imply any logical self-contradiction, as it is supposed to be necessary for the negation of dialectical necessary judgments. All these questions and issues might lead to the acceptance of Bond's skeptical counterarguments, the most fundamental being the *argument from circularity*. However, if Bond himself accepted anything close to a Kantian scenario, then there could be a Gewirthian answer that might also convince Bond (or anybody else sharing his intuitions and objections, for that matter). Why should this be the case?

There is, in fact, an implicit parallel to Kant's and Gewirth's theory regarding the relation of morality and rational agency that can easily be overlooked or even downright denied. Granted, the difference between both accounts can *prima facie* be described as the difference between *bottom-up* and *top-down theories*: While the Kantian approach follows a top-down structure since it proceeds from the reality of moral normativity to the necessary practical reality of rational agency (implying the possibility of autonomy), Gewirth's reasoning seems to be taking the opposite route

by starting from the reality of rational action and aiming at the justification of a supreme moral law. However, the situation looks a bit different, taking into account Gewirth's preliminary remarks, since then the systematic context of his sequence of dialectically necessary judgments becomes relevant. Just like in the Kantian setting, Gewirth's argument does, in fact, not immediately start with the premise of free and rational action but with the assumption that the possibility of morality cannot be ruled out, or, in other words, that moral action must be possible. Otherwise, there would not be any need to assume the reality of teleological action (like he obviously does). To avoid the counterargument that the possibility of moral action already presupposes a precise notion of morality, Gewirth asks for the necessary conditions of *any* moral norms or laws one can think of and, by doing this, arrives at the conclusion that there is only one necessary condition: Rational agency. In this view, Gewirth's strategy of reasoning is similar to the Kantian one, the primary difference being that Gewirth does not start with reality but with the possibility of morality. In other words, If moral normativity is necessarily possible (as Gewirth suggests in *Reason and Morality*), free and rational agency must be real.

Regarding the *argument from circularity*, it is still true that Gewirth's prudential rights do *not* presuppose the reality of a moral law. The Kantian perspective on the reality of the moral law is similar to Gewirth's account to the extent that it presupposes or implies the existence of teleological action. At the same time, as I pointed out earlier, the Kantian approach differs from Gewirth's since, following Kant, any rational agent initially is aware of being obliged by the moral law (*top down*), while the Gewirthian agent is aware of being a free and rational agent in the first place (*bottom up*). However, in light of my previous remarks, one may argue that prudential rights might not require a specific moral law but that they do presuppose morality's practical-logical possibility. Only if morality is logically possible, then I am justified as an agent to claim that I am entitled to the necessary conditions of my teleological agency on rational grounds. The categorical normativity of the logical possibility of morality transforms my basic needs as an agent into the content of strict and necessarily binding claims that can only be dismissed on pain of logical self-contradiction.

At this point, one could ask, "How is the sheer possibility of moral action structurally tied to the logical necessity of my general practical identity as an agent?" The reason for this is crucial for understanding Gewirth's whole project: Since the logical impossibility of morality would necessarily imply the impossibility of teleological action, it would also logically imply the judgment "teleological action is impossible". As soon as we realize what other judgments are logically implied, the seemingly innocent statement from above becomes self-refuting: "Teleological action is impossible" necessarily implies "(teleological) agents are impossible",

and this judgment – reformulated from the appropriate first-personal view – is logically identical to “I cannot be an agent” or, finally, “I am not an agent”. Apparently, I already must be an agent to be able to reject “being an agent” since rejecting is an intentional activity. Mind you, this self-referential argument (a logical *reductio ad absurdum*) is not explicitly prominent in Gewirth’s own reasoning but follows from what he assumes to be true. It supports Gewirth’s premise of the possibility of moral action.

As I tried to show, Bond’s *argument from circularity* should be taken seriously, but there is a convincing answer that can be outlined on Gewirthian grounds. Bond has a point in insisting on asking where the strict normativity that is required by prudential rights comes from. At the same time, he is wrong in assuming that this bindingness has to be moral normativity. It is the normativity that is implied by the first-personal yet logical (i.e., dialectical) necessity of acknowledging one’s own agency and thus of being an agent.

However, the *argument from prudence* still challenges Gewirth’s account. According to this argument, universal prudential rights do not equal moral rights. The underlying intuition might be similar to the one that constituted the *argument from intersubjectivity*: Moral actions are supposed to be immediately grounded in my relation to you as a valuable being but not in self- and other-referential logical structures. Once again, it might be instructive to see whether Kant’s ethics would have the same or at least a similar problem. In Kant’s case, the idea is to rely on universalizable maxims, which means that maxims have to stand the test of logical consistency. Hence, moral maxims are nothing but universalizable maxims, while the maxims themselves are not required to have any moral content in particular. The moral value of actions is determined by the *form of the underlying maxims* alone. If I solely act based on respect for the moral law, then I automatically express my respect for other agents by indirectly respecting their rational nature. I do not value other agents’ rational nature first and *then* act on universalizable maxims in a second step in order to express my respect. At least from this perspective, Gewirth’s approach to morality is not exotic. Both accounts share the idea that moral action is rational action. Neither in Gewirth’s nor in Kant’s setting do we act on “pure” moral reasons in the sense that we have “immediate access” to the realm of morality without any “mediation” by our common rational or logical thinking. Even the respect for the moral law in Kant’s ethics is nothing else but valuing our own autonomous will as the ground of unconditional practical laws. Hypothetically, you could also reject Kantian ethics with the argument that it does not deal with morality but only with autonomy or logically universalizable maxims.

What alternative approaches to “morality” are there that do not trace back moral reasons to something like universalizable maxims or universal

prudential rights? The primary candidate seems to be a particular brand of moral realism that implies something like moral facts that can only be perceived by intuition. These kinds of facts could be regarded as the ground of “genuine moral reasons” and actions *insofar* as they are constituted neither by prudence nor by logic. If *this* is what morality is supposed to look like, then it is hard for Gewirth to catch up. In such a case, the only viable strategy that would remain is to focus on the justification of universal prudential rights in combination with the premise that morality is about essential human interests. While rejecting the idea of universal prudential rights being moral rights may appear to be unproblematic, it might be much harder to seriously question that being able to act is (or at least should be) unconditionally valuable from the practical first-personal standpoint. Furthermore, intuitionism as epistemology is heavily criticized for good reasons (RM, 8–9). Hence, even if there is a preference for moral facts for whatever reason, it might be questionable to accept the downsides of moral intuitionism that go with it. Apart from that, the substance as well as the ingenuity of Gewirth’s approach to moral theory can hardly be overestimated, considering its conceptual transparency, compatibility with various other theories, and stringency of justification. I will summarize the reasons for this view in my closing remarks.

3.7 Closing Remarks: Chances and Limits of Gewirth’s Approach to Morality

At this point, I will address the two main questions from the beginning in a condensed way:

- 1) To what extent can Gewirth’s approach provide a *non-arbitrary concept of morality*?

Gewirth’s concept of morality is non-arbitrary in two ways (corresponding to its two sources of legitimacy): The *descriptive notion* is non-arbitrary since it is grounded in the *formal essence* of existing moral theories, thus relying on already established approaches. And the *normative notion* is non-arbitrary due to its dialectical necessity.

- 2) How does *prudence* relate to *morality*?

While it is true that in Gewirth’s theory moral reasons are universal prudential reasons, it is decisive to consider the unique meaning of “prudential” in this context. Hence, a prudential right does not imply the right to act in a particular way but to be able to act at all (thus to have access to the generic goods that make rational agency possible). In this very specific

sense, morality rests on prudentiality, and its binding force is a dialectical necessity.

As discussed, Gewirth's concept of morality has been criticized in various ways. I argued against some of these criticisms by showing that they are based on misconceptions or flawed counterarguments. Nevertheless, Gewirth's approach cannot strictly rule out alternative conceptions of morality *per se*.

And, while a critical stance toward Gewirth can be justified by (for instance) referring to the "doctrine of the autonomy of morality" (Beyleveld 1991, 144), the proponents of the opposite view can emphasize that Gewirth's theory (1) serves as a kind of *meta-theory of morality* that is compatible with pretty much any moral account there is, (2) that it establishes a *strict form of practical universal normativity* without having to rely on essentialist presuppositions, and (3) implies a *theory of prudential as well as moral goods* without having to refer to further contingent premises. In any case, regarding both the advantages and systematic weaknesses of alternative approaches, Gewirth's account sets the bar high enough to raise the question of whether there can be a better way of both conceptualizing and justifying morality in a practical yet theoretically satisfying way.

Notes

- 1 Note by the editors: Sadly, our colleague and friend Christoph Bambauer passed away while working on this essay. The version of the article printed here was completed by Philipp Richter based on Bambauer's draft, mainly shortening it and correcting typos. The editors are thankful to Christoph's wife, Qian Ran, who provided us with the draft. Our deepest condolences go to Qian.
- 2 In the following, *Reason and Morality* (1978) is quoted as "RM".
- 3 This does not mean that Gewirth follows Korsgaard, claiming that a lack of morality eventually leads to the psychological disintegration of the agent in question (cf. Korsgaard 1996, 120–122). In Gewirth's setting, the agent who does not respect the necessary conditions of rational agency renders herself irrational in a fundamental way but is not supposed to become psychologically dysfunctional as an agent (though this might be a possible implication down the line).
- 4 Hence, neither self-consistency nor self-contradiction alone can serve as indicators for a good or bad justification of morality (or of *anything substantial* for that matter).
- 5 According to the argument from relativity, it may be hard, if not impossible, to strictly justify a moral principle or norm since it is difficult or impossible to strictly justify a concept of morality.
- 6 This holds since, as Gewirth rightfully points out, the purpose of moral precepts and principles primarily consists of providing a practical guideline for rational agents: "Amid the immense variety of such precepts, they have in common that the intention of the persons who set them forth is to guide, advise or urge the persons to whom they are directed so that the latter persons will more or less reflectively fashion their behavior along the lines indicated in the precepts" (RM, 26).

- 7 Furthermore, Gewirth associates voluntariness with causality and purposiveness with teleological guidance: Voluntariness refers to the means, purposiveness to the end; voluntariness comprises the agent's causation of his action, whereas purposiveness comprises the object or goal of the action in the sense of the good he wants to achieve or have through this causation. "Thus, voluntariness is a matter of initiation or control while purposiveness is at least in part a matter of consummation" (RM, 41). The concepts of voluntariness and purposiveness refer to each other insofar as it makes sense to presuppose the agent's *freedom of choosing ends* as well as her *freedom of pursuing those ends*: "By an action's being voluntary or free I mean that its performance is under the agent's control in that he unforcedly chooses to act as he does, knowing the relevant proximate circumstances of his action" (RM, 27).
- 8 Gewirth affirms this teleological tradition without making any efforts to explicitly defend it against alternative (causalist etc.) approaches to action. His trust in the teleological theory may be justified by taking into account his emphasis on the first-personal view of the agent. A critical discussion of Gewirth's premises regarding action theory can be found in Puolimatka (1989, 32).
- 9 "From among the diverse meanings of 'morality' and 'moral', a certain core meaning may be elicited. According to this, a morality is a set of categorically obligatory requirements for action that are addressed at least in part to every actual or prospective agent, and that are concerned with furthering the interests, especially the most important interests, of persons or recipients other than or in addition to the agent or the speaker. The requirements are categorically obligatory in that compliance with them is mandatory for the conduct of every person to whom they are addressed ... Thus, although one moral requirement may be overridden by another, it may not be overridden by any nonmoral requirement" (Gewirth 1991, vii–xvii, viii; cf. RM, 1).
- 10 "The right claim is an explicit or implicit demand made on all other persons that they at least refrain from interfering with the agent's having freedom and well-being" (RM, 66).
- 11 To be more precise, Gewirth justifies the step from (V) to (VI) by applying the "criterion of relevant similarities": "If some predicate P belongs to some subject S because S has the property Q (where the 'because' is that of sufficient reason or condition), then P must also belong to all other subjects S1, S2, ..., Sn that have Q" (RM, 105). If agent A has to regard the judgment (V) "I have a right-claim to my freedom and well-being" as true (predicate P) just because of her necessarily valuing her rational agency (property Q), then this applies to any other agent as well in the same way. That is: Any agent must regard (V) as true from her first-personal standpoint just by virtue of being an agent.
- 12 As was mentioned before, in this context, I have to work with a simplified and reduced reconstruction of Gewirth's argument. Profound reconstructions of Gewirth's whole theory of morality can be found in Steigleder (1999), Boylan (1999), and Beyleveld (1991). A unique critique of Gewirth has been put forward by Christian (Illies 2003, 93–95).
- 13 As far as I can see, "universal prudential rights" and "universal prudential reasons" are structurally linked to each other insofar as universal prudential rights are based on universal prudential reasons (of course, once established, these rights can serve as the normative ground of reasons as well). While, apparently, rights are not reasons, they share all the properties that are relevant in my current context of discussion (for instance, being dialectically necessary, being categorical, or being overriding).

- 14 Several variations of this idea are discussed in Beyleveld (1991, 201), Steigleder (1999, 83–86), and Bambauer (2019, 274–276).
- 15 In any case, it is about a relationship between two agents presupposing a symmetry of rights and obligations that does not allow for any normative primacy of either side by itself: Rights and obligations of parents and children or of medical doctors and patients are not simply deduced from each other but can be understood as two sides of the same coin. Of course, this also implies that there would be no normative priority of *my* prudential rights.
- 16 “Gewirth has only shown that each agent must claim these rights for him/herself on prudential grounds. Therefore, each agent is only logically bound to admit that all other agents have sound prudential reasons for claiming those same rights for themselves. Having so judged, an agent can coherently assert that he/she does not want others to achieve their goals. Therefore, he/she can argue, while it is prudent for each of them to demand rights to freedom and well-being, it is rational for him/her to refuse to grant such rights to any other purposive agent” (Schwartz 1979, 656).
- 17 Teleological action supposedly is a necessary presupposition for any normative theory of morality to make sense.
- 18 Gewirth’s moral theory entails a complex hierarchy of goods that is based on the idea of generic goods (including basic goods, nonsubtractive goods, and additive goods) (Gewirth 1978, 199–271).
- 19 One may call this the “doctrine of the autonomy of morality” (Beyleveld 1991, 144).

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4 Proving a Categorical Imperative by the Possibility of Self-Contradiction

The Paradox of Method in a Critique of Practical Reason

Deryck Beyleveld

4.1 Introduction

The fundamental question for moral philosophy is “What ought I to do?” (*Omega*). According to Alan Gewirth, the Principle of Generic Consistency (PGC)

Act in accord with the generic rights of your recipients as well as of yourself.

(1978, 135)¹

is the categorical imperative,² the supreme principle of all human practical reasoning, the answer to *Omega*, because its acceptance is “dialectically necessary” for all human agents.

Gewirth’s claim is not widely accepted, but Klaus Steigleder (e.g., 1992, 1999) and I (e.g., Beyleveld 1991, 2017, 2024; Beyleveld and Bos 2009) consider Gewirth to be right. My aim here is to explain why dialectically necessary commitments are categorically binding by integrating Gewirth’s argument for the PGC with the analysis of Kant’s argument for a categorical imperative by Beyleveld/Düwell (2020).³

Dialectically necessary commitments are strict requirements of human agential self-understanding (HASU), ones any human agent (“Agnes”) must accept by understanding the idea that she is able to act (i.e., able to do something to achieve her chosen purposes).

The PGC is the categorical imperative if and only if:

- (1) It is dialectically necessary for Agnes to accept the PGC; and
- (2) This makes the PGC, not merely the content of the *idea* of a categorical imperative, but categorically imperative *for* human *action*.

The most common objection to (1) depicts dialectically necessary commitments as essentially prudential (e.g., Williams 1986, Chapter 4; Korsgaard 1996, 133–134). It interprets the dialectical necessity of the PGC as Agnes’s

generic instrumental need for the GCAs. So construed, if Agnes denies that *she* unconditionally ought to act for the sake of *her* generic needs, i.e., in *her* prudential (generic) interest, she *does* contradict that she is a human agent. But it is not necessarily in her generic interest to act for the sake of the generic needs of any other human agent (e.g., Brian). Consequently, dialectically necessary commitments are only categorically binding *distributively* (individually, privately, subjectively), not *collectively* (mutually, publicly, objectively).

But the GCAs are not dialectically necessary for Agnes *merely* because having them is generically necessary for her. They are dialectically necessary for her because she must think that she ought to have them in a way that is consistent with the idea that she is able to think (understand) that they are generically necessary for her.

In Section 4.2, I explain why (1) is true when the nature of dialectical necessity is so characterized.

The key issue with (2) is whether the PGC is categorically binding on action merely because its acceptance is a strict requirement of HASU. Gewirth says that if Agnes rejects the PGC, she contradicts that she is a human agent (e.g., 1978, 112). Some critics (e.g., Shumaker 1979) claim that this does not entail (2) because Agnes can contradict that she is a human agent and not care that she does.

In Section 4.3, I argue that (2) is true because it is impossible to prove or disprove that Agnes *can care in a motivating way* whether she acts in accordance with HASU *for its own sake*. Agnes must accept that compliance with the requirements of HASU (the Imperative of HASU, “the IHASU”) is the supreme criterion for permissible human action because she *can* contradict that she is a human agent and not care that she does. Agnes can *cognize* something *as a law* of anything only by cognizing it as a strict requirement of HASU, cannot cognize *anything* without employing the powers of HASU, and imperatives *of any kind* require Agnes to be able to disobey them. So, for the PGC to be the law *for* human action, it is only necessary that it is not demonstrably impossible for her to be motivated to obey the PGC simply by understanding it. Normativity (permissible action) is not a fact of action, a fact about what Agnes *can* or *will* do, but a fact of HASU, a fact about what she *may* or *ought to* do, and a categorical imperative is a fact of *pure* HASU (HASU *by itself*).

Contrary to the most popular view (see, e.g., Henrich 1960; Ameriks 1981), this is how Kant argues for the existence of what he calls “the moral law” (a natural law for an imagined purely rational agent, one unaffected by heteronomous factors) as the categorical imperative for imperfectly rational agents (like Agnes) in *both Groundwork of the Metaphysics of Morals* (Kant 1998) (*GMM*) and *Critique of Practical Reason* (Kant 1997) (*CPrR*) (see Beyleveld/Diüwell 2020).

I agree that Kant's Formula of Universal Law (FUL)

Act only in accordance with that maxim through which you can at the same time will that it become a universal law⁴

(1998, GMM AK 4:421)

is a formula of the IHASU.

I also agree with Kant that the *exposition* of the concept of a categorical imperative (analysis of the concept of *having* the concept of a categorical imperative) *reveals* not only

what it contains [what its formula is], [but also] that it stands altogether a priori and independently of empirical principles ... [as] a synthetic proposition a priori [an a priori practical principle binding on an embodied being].

(1997, CPrR AK 5:46)

This is because the categorical imperative is

a fact of pure reason [i.e., fact of HASU alone] of which we are a priori conscious and which is apodictically certain.

(1997, CPrR AK 5:47)

This is simply because it is *impossible* to prove that it *cannot*, without any other incentive (i.e., simply by understanding its concept), motivate human action (e.g., Kant 1997, CPrR AK 5:47–48). In other words, it is because it is impossible to prove that free will is an autonomous will, one that functions independently of any heteronomous incentives or causes, that it cannot exist.

But, contrary to Kant, I consider that it is the PGC that correctly interprets his Formula of Humanity (FoH):

So act that you use humanity, in your own person or in the person of any other, always at the same time as an end, never merely as a means⁵.

(Kant 1997, CPrR AK 4:429)

4.2 Gewirth's Argument for the Dialectical Necessity of the PGC

Gewirth conducts his argument from within the dialectically necessary viewpoint of any human agent (Agnes) in which conformity with the IHASU is the criterion for permissible thought and action. His argument has three stages (Beyleveld 1991), the analysis of which Gewirth (1991, xiii–xiv, 1996, xi) endorsed. My presentation of it here, unlike in Beyleveld 1991, is explicitly Kantian, drawing on and refining my engagement with

Kant's moral theory in, e.g., Beyleveld/Ziche (2015), Beyleveld (2016, 2017, 2024), and Beyleveld/Düwell (2020).

4.2.1 Stage One

Omega arises for Agnes if she can understand what it means to say that she can act, by doing which she implicitly holds:

(I) "I do X as a means to achieve my chosen purpose E".

(I) is judgmentally neutral in not limiting the kinds of imperatives or purposes Agnes may be committed to. Gewirth's dialectically necessary method (DNM) reasons from the mere idea that Agnes can understand the idea that she can do something to achieve a purpose she can (is able to) choose to pursue.

Gewirth claims that, if Agnes rejects the PGC, she denies that she has any ability to hold that (I) characterizes her as an agent, thereby implying that she lacks the ability for *Omega* to arise for her, thus implying that it is unintelligible for her to make any claim about what she may or ought to do. If she denies that the PGC is categorically binding on her, she contradicts the idea that she can understand what she is denying.

To think of herself in terms of (I), Agnes must understand what it means for X to be necessary for E. If she understands this, it is dialectically necessary for her to accept:

(II) "If having or doing X is necessary for me to do E, then (provided doing so is possible) I ought to secure X or give up pursuing E".

(II) is a fact of HASU, given to Agnes by HASU. I have sometimes called it the Principle of Hypothetical Imperatives. But it is better to call it the Principle of Instrumental Reason (PIR) (like Beyleveld/Bos 2009) because Agnes must accept it whether E is a purpose she just happens to hold or one she unconditionally ought to hold. All imperatives are instrumental (serve purposes). They are only hypothetical when their purposes are conditional (heteronomous, not ends in themselves). If the sole purpose of an imperative is to achieve HASU, i.e., dialectically necessary, it is unconditional.

Whatever her purposes are, Agnes must attach the same value or importance to X that she attaches or must attach to E. Because the PIR is dialectically necessary for her, it formulates an aspect of the IHASU that shapes its content.

Therefore, given the concept of a GCA, understanding which is also dialectically necessary for Agnes, it is dialectically necessary for her to accept:

- (III) “I strictly ought (when I can) to secure my generic needs, whatever E, unless I am willing to accept generic damage to my ability to act” (i.e., “It is *generically* necessary for me to act to secure my generic needs, i.e., *prudentially* necessary in the sense that my having the GCAs is necessary for me to achieve whatever I might possibly choose to achieve *by my actions*)”.⁶

4.2.2 *Stage Two*

Given the dialectical necessity of (III), because Agnes will not be able to secure her generic needs if she does not have them, it is dialectically necessary for her to hold:

- (IV) “Other human agents (e.g., Brian) ought not to interfere with my generic needs against my will (i.e., unless I am willing to suffer generic damage to my ability to act), and ought to assist me to have them (if they can) when I cannot do so by myself and want assistance”. (This is equivalent to “I have both negative and positive ‘instrumental’ rights to the GCAs—rights to the GCAs under the will conception of a right”.)

Because the DNM requires Agnes to reason only from *her* dialectically necessary commitments, it is irrelevant that Brian *might not* accept (IV). But Agnes may not ignore *all* of Brian’s commitments. It is dialectically necessary for her to recognize that Brian has parallel dialectically necessary commitments. Just as it is dialectically necessary for her not to act contrary to *her* dialectically necessary commitments, it is dialectically necessary for Brian not to act contrary to *his* dialectically necessary commitments. This is because what makes Agnes and Brian human agents is that they both have the powers that make it possible to have HASU and need to have the GCAs. Both Agnes and Brian have dialectically necessary commitments because they have the powers and properties presupposed by their ability to ask *Omega*, while their need to have the GCAs provides the content of their commitments. The specific power that enables Agnes to think of herself as *a* human agent is what Kant (2000, *Critique of the Power of Judgment*, *CPoJ*) calls the power of judgment, possession of which is having *transcendent* free will in a negative sense (*transcendental* free will) the *ratio essendi* of Agnes’s dialectically necessary commitments *as such*.⁷ On the other hand, the *ratio essendi* of her dialectically necessary commitment *to her generic needs* is a synthesis of *transcendental* free will with her generic needs. This synthesis is not a mere conjunction. It exists in the unexplainable but necessarily presupposed relation between having *transcendental*

free will and having the generic needs, which is the same relation whether it is Agnes's or Brian's relation. Consequently, Agnes cannot intelligibly think that Brian ought to act out of respect for her generic needs if doing so is contrary to Brian's parallel dialectically necessary commitments. Thus, the intelligibility of (IV) rests on it being coherent for Brian to accept that he ought to act out of respect for Agnes's generic needs. This condition is satisfied because Brian's dialectically necessary commitment to secure his generic needs is also governed by the PIR, which allows him (if he so chooses) to act in accord with Agnes's generic needs without violating his own dialectically necessary commitment to protect his possession of them.

4.2.3 Stage Three

However, for the PGC to be dialectically necessary for Agnes, it must be dialectically necessary for her to act in accord with Brian's dialectically necessary commitments as well as her own. This will be the case if, and only if, it is dialectically necessary for Agnes to hold:

- (V) "The *ratio essendi* of my possession of the GRs is that I am a human agent (a being with HASU, i.e., one with *transcendental* free will, who needs the GCAs)".

According to Gewirth (1978, 110), (IV) entails (V). This is because, if Agnes denies (V), she must claim that the *ratio essendi* of her possession of the GR (what she must have to have the GRs) is something additional to what makes her a human agent, that having the powers of HASU together with her need for the GCAs is not sufficient for her to have the GRs. But, given (IV), it is dialectically necessary for her to deny that there are any conditions under which she may consider that she does not have the GRs. That there can be and are circumstances in which she cannot exercise the GRs does not mean that she does not have them. Therefore, it is dialectically necessary for her not to deny (V), from which it follows that it is dialectically necessary for her also to accept:

- (VI) "Because Brian is a human agent (someone with *transcendental* free will who needs the GCAs), he also has the GRs".

Therefore, it is dialectically necessary for Agnes to hold both (IV) and (VI); hence, to accept the PGC.

Although Agnes cannot be a human agent without being the individual human agent that she is (i.e., without having the heteronomous characteristics that distinguish her from all other human agents), she cannot be the individual human agent that she is without being a human agent (i.e.,

without necessarily possessing the properties and relations she shares with Brian that make it dialectically necessary for each of them to hold “I ought to act to secure my own generic needs”.) She cannot, therefore, coherently claim that anything other than what she must attribute to herself and Brian to think of both herself and Brian as human agents is necessary for her to have dialectically necessary commitments.

Since Brian must engage in parallel reasoning, the PGC is a dialectically necessary commitment for all human agents.

The most common objection to Gewirth’s claim that the PGC is dialectically necessary for Agnes is sometimes voiced by claiming that, because the DNM requires Agnes to reason strictly from her first-person perspective as a human agent, she must reason only from those characteristics that make her the individual human agent that she is. Gewirth’s DNM is monological. But only a dialogical method, one that treats reasoning as inherently public, can ground an imperative that is collectively universal. To derive such an imperative, Agnes must reason from the perspective she would have if she were in the position of Brian, her second-person perspective; but such reasoning is alien to Agnes’s strictly first-person perspective (see, e.g., Werner 2002).

It is impossible to justify the PGC *if* Agnes’s first-person viewpoint is fully private. The problem with this objection is that Agnes’s *dialectically necessary* first-person perspective is intrinsically dialogical because rationally necessary dialogical reasoning can (and does) exist only because Agnes’s dialectically necessary first-person perspective is inherently dialogical. Furthermore, *if* something more than Agnes’s dialectically necessary first-person perspective is needed (which is not the case), rationally necessary dialogical reasoning is impossible.

Kant’s comments on the *sensus communis* are instructive. He says that “humanity in one’s person” is the *ratio essendi* of the *sensus communis*, the “a priori faculty of judging” that underlies the possibility of any common (intersubjective) understanding (2000, *CPoJ* AK 5:293–294). As I understand him, the specific power that makes the *sensus communis* a *common* (a *shared*) sense is the power that makes it possible for Agnes to view herself as a member of *the class* of human agents. It grounds her ability to understand herself as an “I”, which grounds her dialectically necessary first-person viewpoint. It is the power that Kant elsewhere calls free will in a purely negative sense, the power of judgment, a power that has no specifiable substantive content, but which enables Agnes to think the universal vs. the particular, to imagine herself being other than what she is yet still be herself; thus, to recognize the possibility of the existence of others and what they might think. At root, it is the power *to think* the possible and the necessary, and the actual; hence, *to think* what is and not merely *feel* what is. As such, her possession of it is beyond any explanation

by experience, feeling, or desire, because she must have it to be able to *think* that *she* experiences, feels, or wants anything. This is because it is the power she must have if she is to have any idea of herself as *a* self at all. It is, therefore, the power that effects a synthetic unity of apperception between herself and other selves in her having the idea of *herself as a self*.

The *sensus communis* has three “fundamental principles”:

1. To think for oneself.
2. To think in the position of everyone else [i.e., to think as one would think if one could be in their position].
3. Always think in accord with oneself (Kant 2000, *CPoJ* AK 5:293–294).

These are “the maxim of understanding”, “the maxim of the power of judgment”, and “the maxim of reason” (Kant 2000, *CPoJ* AK 5:293–294), the fundamental principles that determine all “general rules and conditions for avoiding error” (Kant 2009, *Jäsche Logic* AK 9:57), unalterable “precepts for reaching Wisdom” (Kant 2006, *Anthropology* AK 7:200). They govern all possible human thought, which is practical in directing itself to understand why things happen, how things happen, and what or how to do what needs to be done to manage one’s existence in the face of the fundamental phenomenology of human existence, having experiences that one cannot predict or control to fit one’s desires just by desiring this to be the case. As an animal creature, Agnes has faculties of sensing, feeling, and desiring, but it is only through having powers of understanding that she can think that she has these faculties. It is only by exercising these powers that she can form ideas of these things, at which moment she simultaneously becomes conscious of herself and what is not herself. Agnes cannot think of herself without being able to think of something that is not herself, and the ability to think is the ontological ground (*ratio essendi*) of all the rules of human thought.

As such, the *sensus communis* is the combined powers of HASU. Because Agnes must reason in terms of her dialectically necessary commitments, she must think for herself. The reason the DNM starts from here is that the reasons for Agnes to act must give her reasons as the individual human agent that she is. But it also requires her to be able to think of herself as a human agent at all. A dialogical premise is only justifiable via what Agnes must think by virtue of what the IHASU requires her to think. And Gewirth’s argument does show that thinking dialogically is a necessary presupposition of thinking monologically, *provided that* thinking monologically merely means justifying this from Agnes’s dialectically necessary viewpoint *governed by the presuppositions of Omega*. So conceived, Gewirth’s DNM is *mono-dialogical* because its dialogicality is inherent in the idea that Agnes (oneself) cannot be the oneself that she

is (*herself*) without being *a* human agent (*herself*, the idea of *any*, *thus another*, oneself in the idea of one's own oneself) even though, at the same time, she can only be a human agent by being the individual human agent that she is. These two aspects need to be synthesized. One cannot have priority over the other in Agnes being *a* human agent, as they are conceptually co-ordinate. Agnes is, in her first-person thinking, involved in an *intrapersonal-interpersonal* discourse. But, *ab initio*, this discourse is not the *product* of the presupposition of a communicative discourse, of the possibility of disagreement or agreement, between Agnes and Brian, let alone of some *a priori* intuition. It is a presupposition of the possibility of disagreement or agreement between first-person Agnes and second-person Agnes, of the possibility of Agnes being able to ask herself, "What ought I to do?" As such, it presupposes that she can have different views about this, that the views she currently has (which at least partly characterize her as the human agent that she personally is) are not the only ones she might have. Otherwise, she would not remain Agnes if the views she has were to change, as no change of views would then be describable as a change of *her* views.⁸ To imagine herself as being able to have different views, she must think of *herself* as being herself in two aspects, *herself* and *herself*, which Kant (1998, *GMM* AK 4:451ff.) respectively calls her membership of the world of sense and her membership of the world of understanding. As such, the idea of Agnes as *a* human agent is not the idea of Agnes abstracted from everything that makes her herself (which is a contradiction in terms). It is the idea of what creates and constitutes her as a unity with the ability to think of herself as an individual existing in space and time and able to think of Brian as *another* human agent who is not her. Epistemologically, the concept of Agnes as *a* human agent grounds the concept of possible other human agents with whom communicative competence is both possible and necessary.

A categorical imperative is *not provable* on the basis that those who argue with each other, make demands on each other, etc., presuppose a shared competence and that this proves that they are categorically bound to act on this presupposition. Without more, those who engage in intercommunicative acts presuppose that their addressees are human agents only for as long as they continue to engage in intercommunicative acts. Such a practice is pragmatically extremely difficult to avoid, but it is conditional. Furthermore, Agnes cannot know that Brian is a human agent. She can only know that he behaves as though he is. So, even though Agnes presupposes that Brian is a human agent in "intercommunicative acts" with him, she is only unconditionally bound to treat him as an equal normatively if she is categorically bound to treat him as a human agent. But as I have argued in, e.g., Beyleveld/Pattinson (2000, 2010), this requires Agnes to be already bound by a categorical imperative. In other words, justifying

the presuppositions of intersubjective communicative acts as categorically binding on Agnes is only possible if dialogicality is intrasubjectively securable. Kenneth Westphal (2020) rightly insists that Agnes can *develop* her capacities to reason only in community with others. But to do so, she must already have the inchoate ability to do so.

4.3 Proving the Existence of a Categorical Imperative by the Pyrrhonian Dilemma of the Criterion

According to Millard Shumaker (1979), even if Agnes contradicts that she is a human agent by not accepting that she unconditionally ought to adopt the PGC, this is of no “practical” significance because Agnes might not care that she does. The “pain” of self-contradiction is no overwhelming deterrent against violating the PGC.

This objection relies on David Hume’s claim that reason (understanding) alone has no motivating power (1888, Part III, Section II, 415). Something can serve as a reason for Agnes to act only if it serves the purposes she wants to achieve. Only *hypothetical* imperatives really exist. It is impossible for a *categorical* imperative, as Kant and Gewirth conceive it, to exist because such an imperative requires Agnes to act for the sake of Brian’s possession of the GCAs, even though Agnes might not want to.

In any case, Shumaker considers that Gewirth’s reasoning is either question-beggingly circular or leads to an infinite regress. Because a categorical imperative is unconditional, Agnes categorically ought to act in accord with the PGC only if the IHASU, from which it derives, is itself also categorically binding. But this requires justification, for which any sufficient reason must itself be categorically binding. This produces an infinite regress.

However, Gewirth’s argument is not alone in facing such an objection. *Any* attempt to prove a supreme *objective* criterion for rational action or belief is open to this objection. The problem is posed by the Pyrrhonian Dilemma of the Criterion. Sextus Empiricus states it thus:

In order to decide the dispute which has arisen about the criterion [of truth], we must possess an accepted criterion by which we shall be able to judge the dispute; and in order to possess an accepted criterion, the dispute about the criterion must first be decided. And when the argument thus reduces itself to a form of circular reasoning the discovery of the criterion becomes impracticable, since we do not allow [those who make knowledge claims] to adopt a criterion by assumption, while if they offer to judge the criterion by a criterion, we force them to a regress *ad infinitum*. And furthermore, since demonstration requires a

demonstrated criterion, while the criterion requires an approved demonstration, they are forced into circular reasoning.

(Sextus Empiricus 1934, 2.4.20 as quoted by Kenneth Westphal 2002, 19 fn. 14)

Therefore, *at best*, Gewirth's argument shows what Agnes must accept *if* she believes that there is a categorical imperative, or *if* she is committed to not contradicting that she is an agent. But no absolute reason can exist for why she unconditionally ought to be committed to anything, and any conditional reason to commit herself to the PGC would not make it categorically binding.

Implicitly, however, Shumaker's objection goes further than this. Because it is based on Humean internalism, it implies that, because Agnes is a finite, embodied being, it is *incoherent* to think that a categorical imperative for human action can exist. It is unconditionally irrational for Agnes to commit herself to any such imperative. Kant himself claims (e.g., 1997, *CPpR* AK 5:32, 1998, *GMM* AK 4:454–455) that for Agnes to be *categorically* bound to act in accord with the IHASU she must be bound to act in accordance with what would be a natural law for a purely rational agent, one unaffected by heteronomous factors. But understanding the relationship between Agnes as the individual human agent that she is and Agnes as a human agent *per se* cannot require Agnes to subordinate her choices to those of a purely rational agent. Agnes cannot be a rational agent and no more. If she could be, the law of *her* agential self-understanding would be a law of natural necessity, not an imperative. Such a pure law cannot apply to human embodied Agnes as a categorical *imperative*. *Ergo*, the concept of a categorical imperative is a contradiction in terms. Put differently, the idea that a categorical imperative can exist presupposes that Agnes's will (which cannot be free because it is necessarily subject to heteronomous influences) is bound by the law of a free will (one not subject to heteronomous influences). The fact is that Agnes cannot be *an* agent, have any identity at all, unless she is *a human* agent, and *she* cannot be *a human* agent without being the *individual* human agent she is, so *constituted entirely* by heteronomous factors.

Bernard Williams (1986) makes this objection. Although Williams directs it explicitly at Kant, rather than at Gewirth, this is only because he falsely treats Gewirth as arguing from prudential human agency (i.e., from a necessary wish for her choices to be satisfied).

At root, any objection to (2) claims that the onus is on Kant and Gewirth to prove (which is impossible) that their arguments for the existence of a categorical imperative are non-circular or that the reason why the concept of a categorical imperative is coherent is that simply understanding the

concept of a categorical imperative can motivate Agnes to act in accord with it.

Kant (1997, *GMM* AK 4:450–453) admits that his argument for the existence of the categorical imperative for human action is circular. Though he does not mention Pyrrho, in effect, he admits that Pyrrho is right that no argument for basic criteria for reasoning and/or truth can be non-circular. However, as I interpret Kant, he contends that not all such arguments are *viciously* circular (arbitrary). He neither claims nor needs to claim, so does not need to prove, *either* that reason alone can motivate the will *or* that actions can be self-caused. The burden of proof lies solely on those who contend that the mere idea of a categorical imperative cannot motivate the will to prove this claim (*viz.*, that *only* hypothetical imperatives *can* exist and/or that *everything* that happens has a mechanistic cause). This is because (linking what he says in *GMM* with what he says in *CPoJ*) all arguments, all human reasoning, including the reasoning involved in the Pyrrhonian Dilemma (and/or arguing that the concept of a categorical imperative is incoherent, optional, or anything else at all) require possession and use of the powers of understanding of the *sensus communis*, understanding which requires thought in accord with the IHASU. Consequently, a dialectically necessary argument does not rest on thinking that Agnes can be a rational agent and no more, nor on thinking that she can be a human agent without being the individual human agent that she is. It rests merely on Agnes being able to imagine what a purely rational being would be like, which she must be able to do to be able to think that she cannot be such a being. I consider that Kant is right on all counts.

Kant considers that all understanding is purposive (e.g., 1997, *CPrR* AK 5:119–121), directed toward answering a question. Philosophical understanding addresses the overarching question, “What am I?”, in which “I” refers to *someone* capable of thinking, all understanding being that of a thinking subject (Kant 2006, *Anthropology* AK 7:127). Furthermore, the answer to the overarching question is a synthesis of the answers to three other questions: “What can I know?”, “What ought I to do?”, and “What may I hope?”, the answer to the latter being a synthesis of the answers to the previous two (Kant 1933, *CPuR* A804–805/B832–833 read with 2000, *CPoJ* AK 9:25, 2009, *Jäsche Logic* AK 7:57). As *philosophical* questions, these address what must be supposed for empirical knowledge and imperatives to be possible and to be able to judge the limits of reason and what human agents can realistically hope for. Furthermore, the purposiveness of human understanding makes all human self-understanding *agential* self-understanding, the possibility of which requires unity between practical and theoretical reason. Consequently, no presuppositions of theoretical knowledge can cast doubt on the presuppositions of HASU involved in its application to *Omega* (Kant 1997, *CPrR* AK 5:119–122).

Most accounts of Kant's argument interpret his claim in the first section of *GMM* [*GMM* I] that the categorical imperative exists in common human understanding (e.g., 1998, AK 4:402) as merely asserting that most persons believe that there is a categorical imperative. In *GMM* II, he argues that analysis of the concept of a categorical imperative shows that *those who believe that a categorical imperative exists* must hold that there can only be one such imperative; that the FUL, FOH, and other formulas reveal aspects of its content; that it is a synthetic a priori proposition; and that its existence presupposes that human agents can have free will. This, however, does not prove that there is a categorical imperative because the widespread belief that a categorical imperative exists might be a mistake. To prove that it is not, Kant argues in *GMM* III that the categorical imperative that his analysis of its concept has formulated exists because Agnes necessarily presupposes that she has free will, which fact is the *ratio cognoscendi* of the categorical imperative. He then defends this presupposition against Humean internalism and hard determinism by arguing that the nonexistence of free will is unprovable. But in *CPrR* (1997) (*or even at the end of GMM*) he abandons this transcendental deduction, claiming in *CPrR* that the categorical imperative is simply the fact of pure reason (about which commentators provide varying accounts) and that free will is, instead, merely the *ratio essendi* of the categorical imperative.

This is incorrect (see Beyleveld/Düwell 2020). In *both GMM* and *CPrR*, Kant argues that a metaphysical exposition (defined in 1933, *CPuR* B38) of the categorical imperative postulates (presents as certain without the mediation of anything else) its existence. A metaphysical exposition (which is what the analysis in *GMM* II is) is not an analysis of a concept (in *GMM* II that of a categorical imperative) as a freestanding idea, but of its *presentation a priori* in common human understanding (1998, *GMM* AK 4:389, 406) (i.e., in pure human reason *per* 1997, *CPrR*; in what he calls the *sensus communis* in 2000, *CPoJ*), i.e., in and by HASU, which postulates it as existing simply by Agnes being able to understand the idea of HASU. But this postulation is a mirage (reflecting an antinomy in HASU), unless it is possible (coherently thinkable) for Agnes to have free will (its *ratio essendi*) despite being subject to a universal principle of mechanistic causality and/or heteronomous influences. Given this, *GMM* III does not try to derive the categorical imperative from purely heteronomous practical reason, which Humean internalist critics think is necessary to do. The metaphysical exposition has already shown that she must think that pure reason is practical in her, hence that the categorical imperative exists, merely by understanding the idea that she can have its concept. What *GMM* III does is defend the postulation of the categorical imperative by explaining how it is possible (coherent) for heteronomously affected Agnes to think that she has a capacity for pure practical reason (which presupposes a capacity for free

will), which is necessary for dialectical necessity to regulate her actions. In his words, the purpose of the section in which he claims that Agnes necessarily presupposes that she has free will is preparation for explaining how

the deduction of the concept of freedom from pure practical reason and with it the possibility of a categorical imperative as well ... [can] be made comprehensible [in heteronomously affected Agnes].

(Kant 1998, AK 4:447)

This explanation is performed by a transcendental exposition (defined in Kant 1933, *CPuR* B40), according to which Agnes's cognition of a principle of universal mechanistic causality itself presupposes a spontaneity, a capacity for understanding, that it cannot explain mechanistically, which must (at the very least) be consistent with the possibility of the free will that is presupposed by the existence of the categorical imperative because *knowable* mechanistic causality is confined to her cognition of *observable* events (which requires the use of the a priori powers of HASU) and free will is not an observable event (Kant 1997, *CPrR* AK 5:47–48, 1998, *GMM* AK 4:459–461). That this explanation is to explain (make comprehensible) the possibility of the categorical imperative, not to justify it, is clear from Kant's explicit statement to this effect in *GMM* II (1998, AK 4:420) and when he says that explaining its possibility is sufficient to establish its necessity (1998, AK 4:461) (this sufficiency being because the metaphysical exposition postulates its existence).

In parallel with this, Kant dismisses Humean internalism by arguing for the existence of a categorical imperative in the following way (for more textual details, see Beyleveld/Düwell 2020). He agrees that Agnes is necessarily subject to hypothetical imperatives (1998, *GMM* AK 4:417). This is a fact of HASU (something dialectically necessary for Agnes to recognize). But this leaves it open whether the ends governing these imperatives are merely contingent (ends *only* of Agnes's choosing) or whether some ends that she chooses can be ends in themselves. This is because, to be able to understand the concept of a contingent end clearly, Agnes must also understand the concept of an end in itself. These concepts are coordinate and correlative to the concepts of conditional *vs.* unconditional ends and of a hypothetical imperative *vs.* a categorical imperative. They are all given a priori by HASU. But simply understanding the concept of a categorical imperative requires Agnes to accept that she ought to act in accord with it because, by its concept, it is an imperative with which *all* precepts (rules for action, maxims) must be consistent. At the same time, it is a principle that can exist only if its existence can depend on nothing other than Agnes being able to understand its concept. So, because it is by virtue of it being dialectically necessary for Agnes to have the concept of a hypothetical

imperative (which is and can only be presented as a fact of human *agency* by HASU) that it is dialectically necessary for Agnes to have the concept of a categorical imperative, the IHASU is the law *for* human *action*. If only hypothetical imperatives are possible (coherent in idea), HASU (*rational nature per* 1998, GMM AK 4:428–429), which presents its pursuit as an end in itself, is also impossible, which entails that hypothetical imperatives are also impossible. *Ergo*, Agnes cannot coherently suppose that only hypothetical imperatives are possible. Consequently, in terms Kant employs in *CPuR*, Agnes cannot think the concept of a categorical imperative distinctly (see how it is presented in and by her self-understanding, i.e., in and by HASU) without having to accept that it exists as a fact *for* human action (1933 *CPuR*, A807, 2006, *Anthropology* AK 7:137–138, B835 with 2009, *Jäsche Logic* AK 9:64).

Kant sums up his argument for the moral law as the law for human action when he says that there is a paradox of method in the critique of practical reason, by which he means in a critical approach to *Omega*. Like Pyrrho, Kant says that, in order not to be guilty of a *petitio principii* in a dispute, it is necessary to begin from a starting point that does not automatically rule out the possibility of what is at issue. The issue here is the existence of a categorical imperative. He agrees with Humean internalists that there are hypothetical imperatives. But they assume that there can only be hypothetical imperatives because they presume that there can be no ends in themselves, holding that reason cannot motivate action without some heteronomous incentive, which is something that they cannot prove (see 1997, *CPrR* AK 5:62–63). Though he does not say so at this point, he could say the same about his dispute with hard determinists. While he agrees with hard determinists that there are mechanistic causes (though, more precisely, that their existence is a necessary presupposition of the possibility of empirical knowledge), they begin dogmatically with the view that only mechanistic causes exist, which (again) is something that they cannot prove. While he cannot prove that Agnes has *transcendent* free will (i.e., that hard determinism is false), what he can prove is that neither the concept of a chosen end nor that of a mechanistic cause is even possible without HASU, the law of which is the IHASU, in consequence of which even Humean internalists and hard determinists presuppose an unexplainable spontaneity, which Kant calls free will in a negative sense (which is an epistemic not an ontological construct).

The key idea is that the *power* of judgment of the *sensus communis*, the *ratio essendi* of Agnes's ability to ask any question (thus of the *maxim* of the power of judgment) is a *ratio essendi* of her ability to ask both "What can I know?", thus of the *maxim* of understanding, and of her ability to ask *Omega*, thus of the *maxim* of reason. What this means, though Kant does not say so explicitly, is that Agnes must accept the FUL/FOH as the

law for human action because not to do so is to imply that she cannot ask *any* question. There is no contradiction in the synthesis involved in the idea of the maxim of reason as the law for human action, because it is not a synthesis between two propositions about objects but a synthesis necessary to be able to ask a fundamental question. This further entails that the idea of free will that Kant claims to have proved is entirely ontologically negative, *transcendental*, not transcendent, not the assertion of a soul substance or of any substance. As such, it does not entail the denial of the existence of a mechanistic transcendent substance.⁹ It is neither an affirmation nor a denial of *any specific* speculative transcendent substance or substances. Reason cannot account for free will other than as a presupposition of HASU thought of as a power Agnes must have for HASU to exist, for her to be able to think that she can think. All that HASU can postulate as beyond HASU is that there must be *something* (*some* transcendent substance) responsible, in a way beyond the ken of HASU, for Agnes to be bound by HASU and what it imposes on her. Most importantly, there is no guarantee that the laws that HASU imposes on Agnes are laws of the workings of the underlying something (see, e.g., 1998, GMM AK 4:462), even though HASU would not exist without it. For all that Agnes can know, transcendent reality might be the workings of an evil demon who delights in imposing the delusory powers of HASU on human agents. But this has no relevance for the existence of the categorical imperative, for any idea of its limitations is itself a product of HASU. Kant is absolutist about the strict requirements of HASU (allowing optionality only if it is consistent with these requirements), but dismissive of any positive claims about cognition of the operative nature of things beyond the compass of HASU to have insight into what is true of, or rationally necessary to believe about, *transcendent* reality's intrinsic operative laws.

If "God" is whatever, is responsible for everything, then HASU presupposes that God exists. But, for Kant, God is not merely a "Responsible for Everything Something" but is also "Perfectly Good", and he holds that, as such, the concept of God can only come from the idea of the moral law (e.g., 1998, GMM AK 408–409). *If* God exists, the *existence* of everything (including the moral law) is due to God. However, Kant is adamant that the existence of God (unlike the existence of free will) is not the *ratio essendi* of the moral law. It is not a necessary presupposition of knowledge of the moral law. Free will as the *ratio essendi* of the moral law exists *in* being an idea of HASU. On the other hand, the existence of God (*vs.* the concept of God), while an idea of HASU, is the idea of something existing whether HASU exists or not (1997, CPrR AK 5:105–106). Nevertheless, Kant claims that the existence of God is morally necessary (1997, CPrR AK 5:125); that it must be assumed for practical purposes (e.g., 1997, CPrR AK 5:133). What he means is not easy to decipher. But, if the idea

of God must be included among Agnes's practical maxims for her moral reasoning to be consistent (2000, *CPoJ* AK 5:450–451fn) and any belief in God's actual existence that requires more of Agnes than to have a moral disposition is idolatry (2000, *CPoJ* AK 5:458–459), not only ought Kant to mean that any belief about God (i.e., about the transcendent source of all things) is permissible only if these beliefs are not used to justify any act contrary to the categorical imperative, it is the most reasonable interpretation of what he does mean. Because Agnes cannot know that God exists, she morally ought to hope that the IHASU reflects the law of an ineffable transcendent reality as a whole (God) and act in hope that she is immortal and that all things are purposively organized in accord with the IHASU in the unfathomable nature of existence. But, putting this all together means that the categorical imperative requires Agnes to treat God as nothing more than the categorical imperative.

At bottom, Kant rightly thinks that the categorical imperative (which he should claim is the PGC) is the supreme principle, not only of all practical reasoning but of all human reasoning (see also Onora O'Neill 1989, 20).¹⁰ As such, it grounds a *transcendental* theoretical pragmatism as against one grounded in merely *contingent* commitments, desires, or satisfactions, regardless of whether these are personally or communally shared. Neither the existence nor the nonexistence of God as the "Omnipotent Perfectly Good Being" is justifiable as a speculative theoretical postulate. But the non-incoherence of God, the possibility of God's existence as a not incoherent idea, is a necessary practical postulate. Therefore, Agnes *ideally* ought to be a hopeful radical agnostic.¹¹

This is my answer, and should be Kant's, to his third question, "What may I hope?", which answers his overarching question "What am I?" to the effect that "I am a fearing, hoping being, able to ask questions, thus able to assert, deny, and doubt".

At the end of *GMM*, Kant says:

It is no censure of our deduction [i.e., proof of the unquestionable reality (AK 4:420, 445, 461)] of the supreme principle of morality, but a reproach that must be brought against human reason in general [i.e., a limitation it imposes upon itself] that it cannot make comprehensible [i.e., explain] as regards its absolute necessity [its apodictic nature] an unconditional practical law ... *by means of some interest laid down as a basis* [my emphasis] ... since then it would not be the moral law, that is, the supreme law of freedom. And thus we do not indeed comprehend the practical unconditional necessity of the moral imperative [i.e., do not find ourselves able to explain how free will is possible, i.e., how pure reason can be practical *by something external to it* (AK

4:458–459)], but we nevertheless comprehend (know) its *incomprehensibility*, and this is all that can fairly be required of a philosophy that strives in its principles to the very boundary of human reason.

(1998, AK 4:463)

4.4 Conclusion

The lesson to draw from this is that Kant's transcendental methodology is, essentially, a response to the Pyrrhonian Dilemma of the Criterion. Indeed, it is the only coherent response to it.

There are four different ways of responding to it:

- 1) The radical skeptic's response. All reasoning and knowledge is irreducibly subjective.
- 2) The "externalist's" response. Sound reasons' basic criteria are *self-evident* (neither requiring nor capable of justification *by reason*), *given to reason from outside of reason, either by direct empirical intuition (the logical empiricist) or by a priori intuition or revelation (the speculative rationalist or objective intuitionist)*.
- 3) The conceptual pragmatist's response. *Basic* criteria are irreducibly subjective, mere matters of individual or collective commitment, defining incommensurable worldviews within which reasoning can be *relatively* objective.
- 4) The transcendentalist response. Reason's basic criteria are *self-evidencing*, given by reason itself to Agnes as presuppositions of the possibility of being able to ask any questions.

What distinguishes Kant's response from the other three is that the others all presuppose that objective knowledge requires access to the nature of things in themselves. If this is impossible, they hold that no objective knowledge is possible. The radical skeptic is only wrong if there is presuppositionless access to the nature of things in themselves.

But there is no presuppositionless knowledge. Pyrrho errs in thinking that there are no *necessary* presuppositions, ones needed to be able to raise any questions at all and pose the problem Pyrrho rightly draws our attention to, as a consequence of which holding conformity with transcendent reality to be the test of objective knowledge and truth has no possible justification. The laws of HASU might not match the principles of transcendent reality's workings. But whether this is so or not is unknowable, a fact of HASU, true about the relationship between HASU and transcendent reality, knowable only by HASU.

Ultimately, given that the PGC is the law of HASU, what makes it the supreme law for human thought and action that takes an object is that for Agnes to deny this is for her to deny her ability to contradict herself or

anything else. It is precisely because she *cannot* give a non-circular answer to the question “Why ought I to obey the IHASU?” that the PGC is the categorical imperative for all thought and action, for it is only through HASU that she can have the idea of a circular answer.

A biblical analogy is appropriate. Agnes is nailed on the cross of reason. By possessing it, she has *transcendental* free will, the capacity to entertain concepts of good and evil, right and wrong, understanding which imposes the PGC on her as the categorical imperative. Original sin, as the Book of Genesis in the Bible has it, according to orthodox Christian doctrine, resides in Agnes’s capacity for reason. But there any analogy ends because reason cannot be held responsible for its own existence and, unlike what the Bible proclaims, can justify *no* positive account (theological, materialistic, or otherwise) of what might be responsible for its existence, permitting (*for practical purposes only*) any accounts so long as they do not promote disobedience to the PGC.

Notes

- 1 Generic rights (GRs) are claim rights to generic conditions of action (GCAs). A human agent needs a GCA to act at all or to have any general chances of acting successfully, regardless of what the agent’s purposes might be. Interference with a human agent’s possession of a GCA necessarily has some negative effect on that agent’s abilities to act. A GR is a claim right under the will conception of a right. According to this conception, the right-holder may release other human agents from their duty (which is positive and negative) to act in accord with the right-holder’s right. The right is *over* a GCA rather than merely *to* it. Human agents are finite, embodied beings who need to employ means to achieve their chosen purposes and have the disposition to do so. One’s recipients are other finite embodied agents whose abilities to act are threatened by one’s actions. Finite embodied agents are not necessarily human (biologically speaking), but I will confine my discussion to human agents. GCAs include life, correct information about the means to achieve one’s purposes, opportunities to get such information, and lack of interference with one’s ability to exercise one’s choice (freedom). What instantiates these conditions can vary from one human agent to another. However, while the necessary means to a GCA might vary (one’s food might literally be another’s poison), the idea of a GCA as such is not affected by this because, e.g., the reason a particular human agent has a GR to life, which requires a particular food to survive, is that all human agents need to live to be able to act, which is built into the concept of a finite embodied agent. While it is an empirically based fact that human agents need food to live, this fact is not dependent on a human agent’s purposes or anything that distinguishes one human agent from another. That one substance might be a healthy food for one human agent but be a deadly poison for another human agent does not affect this. This variability means that applying the PGC needs empirical knowledge about the circumstances and individuating characteristics of human agents, without affecting the a priori status of the PGC itself. The right to a particular food, when it exists, only exists because granting it is necessary to protect a GCA.

- 2 A categorical imperative is an end in itself; thus, one with which all the purposes that a human agent pursues must be consistent. As such, there can only be one such imperative because incompatible imperatives would cancel each other out, while compatible ones would be combinable into one. There can, however, be multiple categorically binding imperatives, but only if they depict various aspects of the one categorical imperative or are requirements set by its application to specific varying circumstances. Thus, different human agents can be categorically bound to do different things, but only because they are bound to do so by the single categorical imperative that is categorically binding on all of them.
- 3 Steigleder also interprets Gewirth's method as essentially Kantian. (For how my views about Kant relate to Steigleder's, see Beyleveld/Düwell 2020, Chapter 7.) Beyleveld (2017) also integrates Kant and Gewirth, as does Beyleveld (2024). But the 2017 article is more tentative about Kant, and the 2024 one has a different focus.
- 4 There are problems working out what Kant thinks a maxim is (see Beyleveld/Düwell 2020, 156–166). However, any principle that Agnes treats as a criterion for legitimate *action* is a maxim (e.g., 1998, *GMM* 4:421 fn.).
- 5 See fn. 6 *infra*. This has implications for the correct application of the categorical imperative, on which I have several disagreements with Kant.
- 6 Given the dialectical necessity of the PIR, it is dialectically *permissible* for Agnes not to want to be an agent, to choose not to be a successful agent, or not to continue to exist as an agent at all. As *dialectically necessary requirements*, GCAs have value for Agnes as necessary conditions for her to act, not because they have value in themselves. Life *is* a necessary condition for Agnes to have any other GCAs. This is a fact that Agnes must respect when deciding what HASU requires, which requires HASU to take it into account. But it is not a fact that HASU creates for itself. Agnes needs to live to kill herself, so she must value it to kill herself. But it does not follow that she must value it for its own sake. This is a critical point on which I disagree with Kant, who does not take account of the PIR as governing all instrumental imperatives, not merely hypothetical ones. Things become more complicated as soon as Agnes must take equal account of the GCAs of Brian to assess what is permissible for her to do. But this is not assumed but argued for. Furthermore, the consequence of this universality is not that Agnes must consider her life to be an end in itself, but only that her exercise of her right to end her life must be consistent with Brian's GRs.
- 7 According to Kant, *transcendent* free will is a self-causing ontological power. To consider that one has it in a negative sense is to consider that one has a power (the power of judgment) that cannot be explained by anything other than understanding its concept. To know that one has *transcendent* free will is to know that one cannot know whether having the power of judgment constitutes having *transcendent* free will or not.
- 8 According to Diogenes Laertius (2018, Book IX), Heraclitus held that one cannot step into the same river twice. According to Aristotle (1998, 4.5 1010a 10–15), Heraclitus's pupil Cratylus held that one cannot even step into the same river once. Analogously, the implication is that Agnes cannot even think of her own existence, for she is a flux with no fixed identity, there being no river of agency into which Agnes can step at all.
- 9 In his *The Metaphysics of Morals*, Kant is explicit that the necessary presupposition of free will gives us no adequate grounds for deciding whether man has a soul (in the sense of a substance dwelling in him, distinct from the body and capable of thinking independently of it, that is, a spiritual substance), or

- whether life may not well be, instead, a property of matter (1991, MoM AK 6:418–419).
- 10 More precisely, it is the supreme principle of all human understanding contained within the concept of a human being having any understanding.
- 11 Robert Hanna (2018) also constructs (or reconstructs) Kant as a radical agnostic in ways that share a number of features of my view, though the differences (which are beyond the scope of this essay) are as important as the similarities.

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5 Conceptual Tools for the Analysis of Rights

Sven Ove Hansson

5.1 Introduction

Rights have a central role in ethical and political discussions. Human rights violations by tyrannical regimes are major issues in international politics. Discussions on the living conditions of underprivileged minorities often refer to how their rights are infringed. In bioethics, the rights of patients are determinative for many ethical recommendations. In discussions about the climate crisis, we commonly refer to the rights of future people. The concept of rights appears to be our preferred way to express what we consider ourselves and others to be entitled to.

However, the notion of a right is complex. Rights tend to involve several people with different roles. Many rights only have to be realized if the right-holder demands it. Furthermore, most rights can be overridden by other normative stipulations, not least by the rights of other persons.

The purpose of this contribution is to provide some conceptual tools for the analysis of rights. These tools will be developed in Sections 5.2–5.5. In Sections 5.6–5.8, they will be used in the analysis of conflicts between rights. Section 5.9 concludes with a discussion on current needs for such analysis.

5.2 The Basic Structure of Rights

The following short text provides an excellent summary of the major components of rights:

Rights are connected with certain interpersonal relations. There is a right-holder, an object of the right, one or several addressees of the right, a particular type or modality of the right and a justifying basis for the entitlement. The entitlement corresponds to a strict obligation for the addressee, based on the entitlement. For instance, when Müller has a right to life against Schmidt, then Schmidt has a corresponding strict moral obligation against Müller at least not to take his life. In this

context it is important to observe the difference between making a claim and having a claim. For an entitlement it is decisive to have a rightful claim to something, rather than having delivered or articulated a claim to it.¹

(Steigleder 2012, 181–182, my translation)

Rights can be either moral or legal. Since moral and legal rights have largely the same structure, they will be treated here as being of the same kind.

Contrary to an obligation, permission, or prohibition, a right is not a single moral or legal relation but a conglomerate of several such relations. I have the right to vote in the upcoming elections to the European Parliament. This implies that I have permission to cast my vote. But my right to vote in these elections is more than just my permission to vote. It prohibits everyone else from preventing me from voting, by force, intimidation, or any other means. Furthermore, it demands that the police protect me against any such attempts to stop me from voting. It also requires that local public authorities make the necessary arrangements with polling stations, election officers, etc. This exemplifies a general characteristic of rights. They have both a *core*, which is the part usually referred to when we talk about the right (“my right to vote”), and a *supporting part*, which consists of moral or legal relations that support the realization of the core in various ways.

5.3 The Core of Rights

The core of a right specifies the right-holder, which is the person or other entity in whose interests or for whose sake the right is upheld. The right-holder can be an individual person, but it can also be an organization capable of some kind of collective decision-making. Companies and trade unions are examples of such organizations. We also assign rights to at least some individual animals, in particular primates and animals held in human custody (Regan 1983). For instance, the current Swedish animal welfare legislation is commonly described as bestowing rights on dogs, namely the rights to exercise at least every sixth hour of the day and to veterinary care when they are ill, although the official text does not use the concept of rights (Jordbruksverket 2023). There is also a discussion about assigning rights to ecosystems or species (Brei 2013; Maloney 2016). So-called “rights of nature laws” assigning such rights have been adopted in many countries, in particular in the Western Hemisphere. In 2022, 24 countries had adopted legislation acknowledging rights of nature on a national level (Kauffman 2022). However, for simplicity, I will assume here that the right-holder is an individual human person. This is the paradigmatic case from which other cases have been derived.

In the voting example, the core of the right is a permission held by the right-holder. We can call such rights *permissive rights*. There are two other types of cores that need to be taken into account. Most commonly, the core can be an obligation for someone other than the right-holder to perform or refrain from some action. For instance, you have the right that I do not physically attack you. If I have borrowed your lawnmower, then you have the right to get it back. We can call rights whose core requires actions or omissions by others than the right-holder, *obligative rights*.²

The third type of core is a state of affairs not involving action by any specified agent. These are *state-of-affair rights*. Many of the basic human rights belong to this category; for instance, the Universal Declaration of Human Rights stipulates in its Article 25 that:

everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

This right has been criticized for being toothless, since it does not specify the agents who have to implement it. However, a right to a state of affairs can be interpreted as a right to have it implemented by those who are in the best position to do so. The rights listed in Article 25 have to a considerable extent been further specified in both international and national law (Kinney/Clark 2004). Most such state-of-affairs rights can be interpreted as incompletely described and in need of specification of the responsible agent(s). Klaus Steigleder has argued that the implementation of such rights can be “collectively organized and institutionalized (for instance through a welfare state)” (Steigleder 2021, 446).³ Obviously, collective obligations can imply obligations for individuals. “Even if we are not obliged to provide individual help, we can nevertheless be strictly obliged to contribute to the fulfilment of joint duties” (Steigleder 2012, 187–188, my translation).⁴

A permissive right is based on the appraisal that its core permission is, in some sense, beneficial for the right-holder. In many cases, this is because the permitted action is conceived to be beneficial in itself. For instance, all employees have the right to join a trade union, something that is clearly in their interest to do. (This right is protected in Article 23 of the Universal Declaration of Human Rights, which makes union busting a contravention of human rights.) However, not all permissive rights are of this type. For instance, I have the right to live on any diet of my choice, even if it consists exclusively of candy and alcohol. This is certainly not beneficial

for me. However, it is beneficial for me to be allowed to make my own choices of food and drinks. Both legal and moral systems of rights include a large number of permissive rights that allow the right-holder to do things that harm her- or himself. In these cases, it is the permission to perform or refrain from an action that is considered to be beneficial, not the actual performance or refrainment. We can describe these rights as *freedom-based*.

Obligative rights are also intended to benefit the right-holder. The simplest form of an obligative right has a core that is just an obligation. As one example of this, if your bank has removed a sum of money from your account due to a mistake, then the bank is required to redeposit that amount into your account. This they can do without asking your permission, for the simple reason that it is considered to be obviously in your interest that they do so. We can call this a *categorical obligative right*.

However, many obligative rights involve actions that the right-holder cannot be presumed to want. I have a right to have a new passport issued for me by the authorities before the old passport expires. However, they only do this if I apply for a new passport. This is because there is no point in issuing a passport for someone who does not want it. We can call this a *claimable obligative right*.

There is also a third type of obligative rights, namely those that hold “automatically” without any wish or demand expressed by the right-holder but can be withdrawn by the right-holder. For an example of this, suppose that you have borrowed a sum of money from a friend. Then your friend is the right-holder of an obligative right that requires you to pay back the loan on the agreed date of payment. Your friend does not have to request your payment in order to make it obligatory to pay, but she can relieve you of that obligation if she so wishes. This type of rights can be called *revocable obligative rights*.⁵

In a system of (legal or moral) rights that respects human freedom, we should expect the vast majority of obligative rights to be either claimable or at least revocable. This is because a categorical obligative right presupposes that some actions by others are sure to be good for the right-holder, or that agents should presume the right-holder to wish these actions to be performed, irrespective of what the right-holder herself says. Such rights can be plausible when it is impossible to obtain the right-holder’s opinion. An unconscious person who arrives at a hospital has an obligative right to receive the best treatment that the hospital can offer. Since there is no possibility of obtaining her opinion, this right will have to be treated as categorical (until she wakes up). However, in situations when it is possible to obtain the right-holder’s opinion, categorical obligative rights are problematic, since they do not take the right-holder’s opinion into account, although it would be possible to do so.

Categorical obligative rights are often associated with paternalism. For instance, in old-fashioned healthcare, a patient's right to adequate treatment was a categorical obligative right. In other words, it was a right that the physician was supposed to fulfil without involving the patient as a decision-maker. In modern healthcare that respects the patient as an autonomous decision-maker, the patient's right to adequate treatment is better described as a claimable obligative right or at least a revocable obligative right.

In discussions of sustainability, it is generally assumed that future people have rights that we should comply with, most importantly, the right to inherit an inhabitable earth with preserved biodiversity and other resources. As noted by Klaus Steigleder, our duties to future people differ from duties to living people in not being owed to identifiable individuals. "[O]ur duties in relation to future people do not arise out of concrete choices between the rights of particular persons living in the future" (Steigleder 2016, 256). Since future people cannot claim or revoke the rights that we assign to them, their rights are categorical obligative rights (with unknown right-holders). As we have just seen, it is always problematic to assign categorical obligative rights to people capable of determining their own interests, but in this case, there is no reasonable alternative to doing so.

5.4 The Types of Supportive Relations

The supportive part of a right can have several members. These members can be called adjunct (moral or legal) relations or, in short, *adjuncts*. They can be of different types. Some adjuncts directly promote or facilitate the effectuation of the permission or obligation that forms the core. For instance, like everyone else, I have the (permissive) right to read books of my liking. This is a moral right, and in many (but unfortunately not all) countries, it is also a legal right. In the country where I live, it is a legal right, and local authorities are legally required to keep libraries with a well-assorted collection of literature. This is a *directly promotive adjunct*, since it provides me and everyone else with opportunities to make use of the right in question.

To exemplify another type of adjunct, consider Donald, who has just received a prison sentence, which he has a (permissive) right to appeal. Preventing him from delivering the appeal to the court would be a crime, which means that his right to appeal is protected by an obligation not to obstruct his execution of it. Since this legal relation directly protects the core of Donald's right, we can call it a *directly contra-obstructive adjunct*.

In both these examples, the adjunct directly affects the core of the right. There are also adjuncts with less direct effects. For instance, if someone tries to prevent Donald from making his appeal, then the police will have

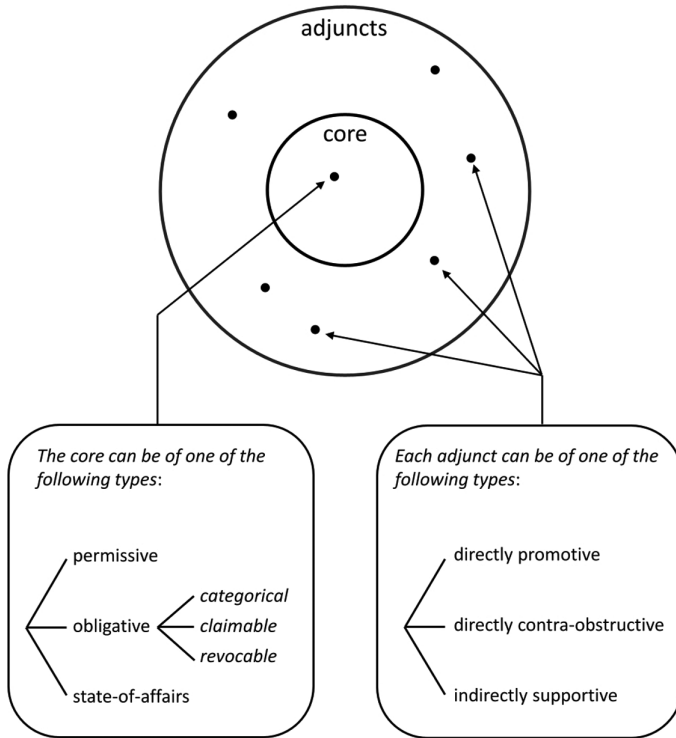


Figure 5.1 The Types of Legal Relations That Can Be Components of Rights.

to intervene against that person. Such *indirectly supportive adjuncts* can be of different types. (The example just mentioned is an obligation to enforce a prohibition.) In order not to make our framework too complex, we will refrain from further subdivisions of the indirect supportive relations.

Our classification system for rights is summarized in Figure 5.1.

5.5 Do All Rights Have a Supportive Part?

In the introduction, we assumed that all rights have both a core and a supportive part. It should be fairly obvious that all rights have a core. It is much less obvious whether there can be a right with an empty supportive part, i.e., a right with no adjuncts. To investigate this, it is useful to treat each of the three main categories of rights, i.e., permissive, obligative, and state-of-affairs rights, separately. Let us first consider permissive rights.

As we saw in Section 5.4, permissive rights can be justified by two types of considerations: (1) Beneficial effects of the permitted action as such, and (2) beneficial effects of letting the right-holder decide for herself what

actions she will take. All permissive rights have the second of these justifications, but not all of them have the first. If there is any case of a permissive right with no adjunct, then we should expect it to be one of the rights that lack the first justification. In other words, it should be a permissive right that the right-holder has for purely freedom-based reasons, without any foreseen beneficial outcome of the action per se. One clear such example is my right to eat my breakfast standing on my head. This is a special case of a more general, freedom-based right to behave as one pleases in matters not concerning anyone else. Although eating while standing on my head is certainly something I have the right to do (both morally and legally), no one has a (moral or legal) obligation to promote or facilitate my doing so, which means that this is a permissive right without any directly promotive adjunct. However, even in a case like this, others are obligated not to obstruct the execution of the right. Any attempt to obstruct my head standing would infringe on my right to enjoy my breakfast in the bodily position of my choice. This seems to be a crucial feature of permissive rights (but not of mere permissions). If others are permitted to prevent me from standing on my head – or from reading *Lady Chatterley's Lover* – then we would hardly say that I have the right to do so. If the law recognizes a person's right to live in the way that (s)he wants, then we also expect the law to prohibit interferences that make it impossible for people to do so.

For obligative rights, the situation is quite similar with respect to promotive adjuncts. It is easy to construct examples of obligative rights that are not supported by any requirement of promotion or facilitation. Suppose that Amelia owes Charlotte a sum of money. Then Charlotte has an obligative right that Amelia pay back the loan before it expires. There may be no one who is required to remind Amelia, or to persuade or otherwise motivate her to pay her debt. This applies both if Charlotte's right is legal and if it is moral. Thus, an obligative right need not have any support in the form of a directly promotive adjunct. However, it would be a strange situation for Charlotte to have a moral right to receive the payment from Amelia, while at the same time, there is no moral disapproval of actions that prevent Amelia from paying. We would hardly call this a right that Charlotte has. Similarly, a legal system that required the payment but had no restrictions against actions that impede the payment would appear to be incomplete. This seems to be a general feature of obligative rights. Like permissive rights, they always come with directly contra-obstructive adjuncts, but they do not always come with directly promotive adjuncts. In general, we expect that “the rights of persons include a right to effective protection of their rights” (Steigleder 2018, 475).

State-of-affairs rights are difficult to analyze in this respect. Basically, these are rights without any agent assigned to effectuate them. Since adjuncts have the function to support such actions by assigned agents, a

simple answer could be that there cannot be any adjuncts associated with state-of-affairs rights. However, we can extend the notion of an adjunct so that it also covers support of non-obligatory actions that contribute to realizing the right. For instance, civilians trapped in a war zone are covered by the general state-of-affairs right to have access to sufficient food. It may be so dangerous to enter the area that no one is under an obligation to deliver food to them. However, should someone do so, then they should certainly be (morally and legally) protected from attempts to prevent them from distributing food. (Such attempts are indeed prohibited by international law [see Pejic 2001].) It would not be unreasonable to regard this as an adjunct to the state-of-affairs right to food.

At any rate, our conclusion concerning adjuncts of permissive and obligative rights provides an answer to the question of whether talk of rights adds anything to talk of permissions and obligations. If I have a permissive right to walk on the High Street, is not this just another way to say that I have permission to walk on the High Street? And if I have an obligative right to receive €300 from you tomorrow, is this not just the same as you being obligated to pay me that amount so that I have it tomorrow? The answer is that a permissive or obligative right is a conglomerate that always contains some supportive moral or legal relation(s) in addition to the permission or obligation that forms its core. Expressed otherwise, a permissive (obligative) right is a permission (obligation), strengthened by other stipulations that bolster its achievability.

In the case of obligative rights, it should also be observed that contrary to a “pure obligation”, an obligative right specifies the right-holder, who is the person to whom the obligation is owed. For two of the three types of obligative rights, namely claimable and revocable rights, the right-holder has influence over its effectuation.

5.6 Rights in Conflict

It is not uncommon for rights to run into conflict with each other. Some examples:

On different occasions Brian has said to each of his two daughters: “If you get a doctoral degree, I will give you the beautiful gold necklace that has been in our family since the seventeenth century.” They have now both graduated as PhDs, and with good reason, each of them considers herself to have a right to the necklace.

Three patients in the hospital need an ECMO machine, and they all have a right to the best treatment the hospital can offer. However, the hospital only has one ECMO machine.

All the customers of the Danske Bank have the right to withdraw all their money today. However, if they all do so, the bank cannot pay them.

By a conflict between two rights, we will mean that they cannot both be upheld, or it would be markedly difficult or costly to uphold both of them.⁶ Both the cores and the adjuncts of rights can be involved in conflicts. We can distinguish between core conflicts, which only involve the cores of the conflicting rights, and adjunct-involving conflicts, which involve at least one adjunct of one of the conflicting rights. The latter type of conflicts is arguably less serious, since these conflicts can be removed by changes in the supportive parts that leave the cores unchanged. We will therefore focus on core conflicts. In what follows, we will investigate how the possibility of conflicts relates to the typology of rights introduced above. We will leave out state-of-affairs rights from the analysis, since they do not require any action unless they are complemented with a specification of the responsible agents, in which case they should be analyzed as obligative rights.

5.7 Core Conflicts Between Rights with the Same Right-Holder

A distinction can be drawn between conflicts among rights with the same right-holder and conflicts among rights with different right-holders. In the first of these cases, we can begin by noting that there can be no core conflicts only involving permissive rights with the same right-holder. This follows from a basic insight from deontic logic, namely that permissions pertaining to a single person cannot create a (moral or legal) conflict. If I am allowed to do each of several things but cannot do all of them, then this does not give rise to a (moral or legal) conflict. (Admittedly, such a situation can create a mental quandary for the right-holder if she finds it difficult to choose, but that does not amount to a conflict.)

Perhaps surprisingly, conflicts do not arise even if we extend the set of rights so that it contains permissive, claimable obligative, and revocable obligative rights, as long as these rights all have the same right-holder. The reason for this is very simple. Just as a right-holder can choose not to do what a permissive right would allow her to do, she can choose not to require the effectuation of a claimable obligative right that she has, and similarly, she can choose to revoke a revocable obligative right that she has. For a concrete example, suppose that Richard has a claimable right that Tanya repairs his old motorcycle, and that he also has a claimable right that Sophie scraps it and takes it to a recycling center. This creates no (moral or legal) conflict for Richard, since he can easily choose to activate at most one of these two rights.

However, this “conflict-free zone” for the single right-holder cannot be extended to also cover categorical obligative rights. Two categorical rights can easily be constructed such that they run into conflict. Suppose that Susie is a minor, and that she has (1) the right that her father provides for her in the way that he considers to be best for her, and also (2) the right that her mother provides for her in the way that she considers to be best for her. If her father and her mother disagree on what is best for her, then these two rights can run into conflict.

A categorical obligative right can also run into conflict with a right of some other type. Suppose that Antonia has a permissive right to send away anyone who wishes to enter her home, and that she also has a categorical obligative right that a representative of her insurance company performs a fire safety inspection in her house. If Antonia’s categorical obligative right is upheld, then it blocks her permissive right, making it impossible to realize. In addition to exemplifying a conflict, the example may also serve to highlight the problematic nature of categorical obligative rights when the right-holder is able to determine her own interests and make her own decisions. In this particular case, it is clearly not only in Antonia’s (objective) interest but also in that of the insurer that a competent check of the fire safety is performed. It would perhaps be better to describe this as a right that the insurer has, rather than the insured.

Examples like this might even lead us to question whether categorical obligative rights should at all be recognized. However, a linguistic reform that abolishes the use of the term “right” in these cases would not be easy to implement. This is because everyday language often refers to “rights” that leave no choice to the right-holder. We would not be surprised to find an insurance company advertising that their customers have “the right to a fire safety inspection every three years”, even if the insurance policy makes these inspections obligatory. More importantly, most of us would strongly agree that people with severe intellectual disabilities have the same right to adequate healthcare as everyone else, even if they are unable to make treatment decisions themselves, which makes this a categorical obligative right. It would be strange, and arguably also stigmatizing, to describe medical treatment as a right for some of us and an obligation for others. The use of the term “right” can be seen as a way to emphasize the importance of making sure that the healthcare provided is in the patient’s best interest and involving the patient as much as possible in the decision-making. In view of these considerations, it seems reasonable to continue using the term “rights” also in the categorical case. However, we need to distinguish carefully between the different types of obligative rights. We also have good reasons to critically scrutinize categorical obligative rights with a decision-competent right-holder, in order to determine whether they could be replaced by some other, more empowering, type of right.

5.8 Core Conflicts Between Rights with Different Right-Holders

As soon as we allow for more than one right-holder, nothing is left of the “conflict-free zone” that was delineated in the previous section. Two permissive rights with different right-holders can easily run into conflict. Suppose that an apple tree is growing on the border between my garden and that of my neighbor. If I have the right to graft the branches on my side and collect apples from these branches, and the neighbor has the right to cut down the whole tree, then we certainly have a potential core conflict. In order to exemplify conflicts between a permissive and an obligative right, we only need to change the example so that the neighbor has a contract with a gardener, who is obligated by the contract to take down the tree. To obtain an example of two obligative rights in conflict, we can add a second contract: I have contracted with an expert grafter, and I therefore have an obligative right that she grafts my side of the apple tree for me.

5.9 Conclusion and Further Work

We have developed a systematic classification of rights that goes more into detail than previous classifications, and we have shown how this framework can be used to analyze and categorize conflicts between rights. Our conclusions concerning core conflicts between rights can be summarized as follows:

1. A set of rights that only contains permissive rights, claimable obligative rights, and revocable obligative rights, all with the same right-holder, does not give rise to any core conflicts.
2. A set of rights that contains a categorical obligative right can give rise to core conflicts with other rights with the same right-holder.
3. A set of rights with different right-holders can give rise to core conflicts, irrespective of the types of rights (thus, even if it only contains permissive rights).

It should be emphasized that these results refer to the logical possibilities of conflicts between rights. How many and how serious conflicts a system of rights gives rise to depends both on what rights it assigns to different people and on the empirical conditions for satisfaction of these rights. From this point of view, we can divide rights into two main categories:

1. *Rights that everyone can have.*
This includes freedom of speech, equal rights to vote and to participate in democratic decision-making, the right to form organizations, basic education, the right to a fair trial if indicted, the necessities of a healthy life, including adequate food and healthcare, and much more.

2. *Rights that are impossible for everyone to have.*

This includes the right to a luxurious lifestyle, including private jets and other extremely resource-consuming excesses. It also includes rights to asymmetrical powers over other people, such as the right to have employees.

A morally defensible system of rights should have a strong emphasis on the first of these types of rights, the rights that everyone can have. This was well expressed by Klaus Steigleder:

It is characteristic of rights-based moral theories (or at least of the theories of the considered type) that they put moral rights in front of moral duties and that they assume a fundamental normative equality of the bearer of rights. Moral duties are primarily the duties of the addressees of moral claim rights, they correspond to the equal rights of persons and are justified by them. The rights are especially entitlements to certain basic interests all persons have.⁷

(2016, 254)

However, this is not how most legal systems of rights are constructed. A large part of the world's population still lacks adequate food and health-care, although they have a (state-of-affairs) right to this according to the Universal Declaration of Human Rights. Absurdly enough, the luxury of the excessively rich is legally protected, since they have a right to use their money in all kinds of frivolous ways, whereas much more important rights listed in the Universal Declaration lack legal protection and practical implementation in large parts of the world. Moral and legal analysis of rights has the important task of exposing these disparities and showing what it takes to transform the state-of-affairs rights listed in the Universal Declaration into permissive and obligative rights, constructed in ways that facilitate their implementation.

Notes

- 1 “Mit Rechten sind somit bestimmte interpersonale Verhältnisse verbunden. Es gibt einen Träger oder Inhaber des Rechts, einen Gegenstand des Rechts, einen oder mehrere Adressaten des Rechts, eine bestimmte Art oder Modalität des Rechts und einen rechtfertigenden Grund für den Rechtsanspruch. Dem Anspruch korrespondiert auf Seiten des Adressaten eine strikte Verpflichtung, die in dem Anspruch begründet ist. Wenn Müller beispielsweise ein moralisches Recht auf Leben gegenüber Schmidt hat, dann hat Schmidt eine korrespondierende strikte moralische Pflicht gegenüber Müller, ihr zumindest nicht das Leben zu nehmen. In diesem Zusammenhang ist es wichtig, den Unterschied zu beachten zwischen einen Anspruch erheben und einen Anspruch haben.

- Entscheidend für ein Anspruchsrecht ist, dass einem etwas zukommt oder zusteht, nicht dass man einen Anspruch anmeldet oder artikuliert.”
- 2 The two binary distinctions (1) whether a moral or legal position is held by the right-holder or by someone else, and (2) whether that moral or legal position is a permission or an obligation, give rise to four combinations. We have recognized two of these four combinations, namely a permission held by the right-holder (a permissive right) and an obligation committing someone other than the right-holder (an obligative right). The other two combinations do not give rise to rights. I have an obligation to pay my debts, but we would not describe this obligation as (the core of) a right with me as the right-holder. You are permitted to help me with my garden work, but this permission does not constitute (the core of) a right with me as a right-holder. (Here we are using “permission” in the everyday sense, in which a permission to perform some action is incompatible with an obligation to perform it, not in the common philosophical sense in which an obligation to do something implies a permission to do that same thing [Hansson 2013, 199–201]).
 - 3 “kollektiv organisiert und (etwa sozialstaatlich) institutionalisiert”
 - 4 “Selbst wenn wir nicht verpflichtet sind, individuelle Hilfe zu leisten, können wir dennoch strikt verpflichtet sein, zur Erfüllung gemeinsamer Pflichten beizutragen.”
 - 5 This use of the terms “claimable” and “revocable” were introduced in Hansson (1996).
 - 6 It is possible for a conflict to arise only in the combination of three or more rights, although all combinations of two of them are conflict-free. For simplicity, we will only consider conflicts between two rights. The generalization to a larger number of rights is straight-forward.
 - 7 John Stuart Mill made a similar statement about freedoms: “The love of liberty, in the only proper sense of that word, is unselfish; it places no one in a position of hostility to the good of his fellow-creatures; all alike may be free, and the freedom of one has no solid security but in the equal freedom of the rest” (Mill, 1977[1862], 610).

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6 The Problem of Aggregation in a Rights-Based Moral Theory

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6.1 Introduction

How can options for action be justified in cases where all the people affected are in the same situation and available goods – e.g., a particular medicine – cannot be distributed equally? In an influential essay, John Taureck argued that the number of people is not in itself a reason to help a larger group of people in need (Taureck 1977). His argument is directed against the possibility of aggregating well-being from across separate persons. In favour of this argument, he uses a certain view of the structure of duties to help as well as a value-theoretical assumption according to which values are “tethered” (see Korsgaard 2018, 9–11). Taureck thus supports a deeply rooted moral conviction: Human lives cannot be set off against each other; a conviction that is paradigmatically articulated and justified by deontological theories.

However, Taureck’s conclusions are not accepted unreservedly even by authors who sympathize in principle with his critique of aggregationism. This is due to the fact that his arguments are countered by a different kind of conviction. It seems worse when a larger number is harmed than a smaller one. This evaluative judgement obviously meets widely accepted normative beliefs, especially when very large numbers of potential victims are at stake. Consequentialist aggregation claims seem well founded in such cases. The debate following Taureck’s essay has thus become a flashpoint for the controversy between consequentialist and deontological theories.

The distinction between deontological and consequentialist theories in ethics is quite general. There can be major differences within both forms of theory. With regard to the following discussion, the distinction can therefore only be made on the very ideal level.¹ According to the view that I will take as a basis in this article, four characteristics are essential for consequentialism:

Firstly, consequentialist ethics define the concept of a right action as a function of a presupposed good, where good is understood as a desirable state of affairs (Wiggins 2006, 148).

Secondly, in consequentialist ethics, moral duties have the character of maximization requirements: i.e., an action is morally right if and only if it contributes to the maximization of the presupposed good (Rawls 1999, 24–25).

Thirdly, consequentialist reasons are agent-neutral, since the reasons for moral obligation specific to situations exist independently of the identity of the obligated agents (Nagel 1986, 152–156).

Fourthly, in consequentialism, the term “good” is used predicatively in the sense of “good” per se or “good period” (Thomson 2008, 12).

Following Rawls, deontological theories can be categorized by negating such characteristics (Rawls 1999, 30). Another feature of deontological theories not mentioned by Rawls is that deontologically grounded moral duties are agent-relative (see Nagel 1986, 175–180). With regard to the rights-based approach of Gewirth and Steigleder, however, it must be emphasized that the agent-relativity of deontological reasons and obligations does not imply a metaethical decision on the semantics of “good”. I will return to this point in Section 6.3.

Rights-based approaches also belong to the family of deontological theories. However, they do not fit easily into this dichotomy. This applies in particular to the version of a rights-based moral theory founded by Alan Gewirth and further developed by Klaus Steigleder and others (see Gewirth 1978, 1996; Beyleveld 1991; Steigleder 1999). This has to do with two special features of this theory: Firstly, Gewirth’s theory recognizes positive rights, including in particular the duty to help, which is justified as a moral right (Gewirth 1978, 217–230, 1996, Chapter 2). Secondly, rights-based approaches also allow for considerations of the consequences of actions – a point that Steigleder in particular has emphasized (Steigleder 2016, 7–8). In one point that is central to the Taureck debate, however, rights-based approaches adhere to their fundamentally deontological foundation: Rights cannot be aggregated; in this respect, aggregationist arguments are not available to them when solving trade-off situations such as those discussed by Taureck. How then can a rights-based approach deal with this problem? Klaus Steigleder has outlined a solution in several recent articles (see Steigleder 2016; Steigleder/Graf Keyserlingk 2022), which I will present and discuss below.² I proceed in two steps. First, I will analyse Taureck’s argumentation. One pillar of this argumentation is the justification of a “permissibility claim”, which is based on a certain understanding of duties to help, but also on an axiological assumption. In the second step, I discuss Steigleder’s proposal. Irrespective of the context of Taureck’s overstated and unrealistic scenarios, Steigleder’s consideration of an axiological extension of the rights-based approach deserves particular appreciation.

6.2 Taureck's Argument

Taureck's argument has been widely discussed and criticized since the publication of his essay. It has primarily been understood as a criticism of aggregationism.³ In order to structure my explanation of the argument, I distinguish, following Hirose (2015, 112–115), between three intertwined lines of reasoning, which can be summarized as three “claims”: (1) A permissibility-claim, (2) a no-worse-claim, and (3) an equal-respect claim. According to most interpreters, the permissibility-claim is not sufficiently substantiated (e.g., Hirose 2015, 114). The discussion has therefore focused primarily on the no-worse-claim and the equal-respect claim. Nevertheless, I will discuss the permissibility-claim in more detail, because I believe that an important point of Taureck's argument is lost if it is ignored. Here, Taureck makes a substantial assumption about the structure of the duty to help. It is therefore useful to elaborate on this aspect of Taureck's argument in preparation for the discussion of Steigleder's position. For, as will become clear, Steigleder takes into account this essential point for his own characterization of the duty to help.

Since different types of normative judgements also play a role in Taureck's discussion, I would like to begin with a few remarks about them first. On the one hand, a distinction can be made between evaluative judgements concerning the value of things or persons. These judgements are assessed with the value predicates “good” and “bad”. On the other hand, normative judgements in the narrower sense are to be distinguished from this, i.e., judgements that present certain actions as required, forbidden or permitted. The normative predicates for these judgements about actions are “right” and “wrong”. Both dimensions of evaluation must be distinguished: It does not follow from the evaluation of a thing as “good” that it should also be brought about. Judging something to be good does not mean wanting it. And even if it is true that you praise or recommend something when you judge it to be good, it is something different from wanting it. This would require an additional argument, although it is of course undeniable that evaluative judgements are possible reasons for action. In connection with evaluative judgements, I also recall the distinction already introduced in Section 7.2 between agent-neutral and agent-relative values or reasons. As will become clear, Taureck argues that evaluative judgements in the rescue conflicts he discusses can only be meaningfully interpreted as agent-relative. Since consequentialist approaches only accept agent-neutral values or reasons, the controversial point is whether there is also an intelligible agent-neutral basis for such judgements that does not rest on consequentialist assumptions.

I come now to Taureck's “permissibility-claim”. Taureck justifies it by working out a contradiction between two intuitions. He starts from a scenario that he adopts from Philippa Foot (2002 [1967], 24–25):

The situation is that I have a supply of some life-saving drug. Six people will all certainly die if they are not treated with the drug. But one of the six requires all of the drug if he is to survive. Each of the other five requires only one-fifth of the drug. What ought I to do?.

(Taureck 1977, 294)

It is a particularly simply constructed and generally unrealistic scenario that requires a tragic decision between a smaller and a larger group here and now. Prioritization problems in medicine and rescue conflicts of other kinds, e.g., in natural disasters, are more complex and allow for different problem descriptions and solution strategies. In the numbers debate, however, the focus on this type of decision-making situation has prevailed for the sake of discussing underlying normative approaches.

The intuition that initially arises in this situation seems to be that the five people should be rescued – “special considerations apart” (Taureck 1977, 294). What kind of considerations could these be? Taureck goes on to give several examples that could justify an exception to the intuition in favour of the larger number. Some of these refer to special characteristics of the persons in this group: “Perhaps he is close to discovering some wonder drug or is on the verge of negotiating a lasting peace in the world’s perennial trouble spot” (Taureck 1977, 294), or she differs from the rest of the group in some other way relevant to the decision. Another type of exception refers to characteristics of the five people that could justify not taking them into account: “They might be five driveling old people or five idiot infants, loved by no one” (Taureck 1977, 295). Taureck also mentions special relationships that one might have with one of the people: It could be one’s own child or someone with whom one has made a special contract (Taureck 1977, 296). The logic in these cases is clear: I owe it to my child to prioritize it over the other five people in such a situation and to save it. Such considerations can establish a right for a particular person to be saved, so that in such a case, their right would be violated if this did not happen. Only in such special cases is it morally permissible, according to this intuition, to deviate from the rule of saving the greater number.

Taureck does not share this view, namely because it conflicts with other intuitions that the proponents of the greater number normally also consider to be correct. What beliefs might these be?

At first glance, Taureck’s following variation of Foot’s initial situation can be understood as referring to beliefs that extend the range of exceptions to the pro-number rule. Taureck assumes that one of these people is someone the person facing the question of what to do “knows and likes” (Taureck 1977, 295). This person, whom Taureck calls David, may be saved if the other five are strangers, only because of this relationship. Under this description of the situation, it is at least morally permissible to

save David. Although the duty to help, if one understands it according to common intuition, demands that five people be saved, it is morally permissible to save the one person, David, if one knows and likes him. This is only possible, according to the intuition called forth by Taureck, because the facts that constitute the relationship to David provide a reason for saving David that is contrary to the demand to save five. This alone is enough to favour David. Taureck concludes from this that there is no fundamental obligation to save five. That is, the number does not count. The argument requires further explanation.

The point of this carefully constructed example is that it differs in one specific respect from the exceptional cases considered so far. In the case of David, neither certain characteristics of the other five people nor the special relationship with the rescuer can justify a duty to save one person instead of five. Taureck writes accordingly:

The fact is that I would act to save David's life because, knowing him and liking him, my concern for his well-being is simply greater than my concern for the well-being of those others, not because I recognise some overriding obligation to him.

(Taureck 1977, 297)

This is purely a personal preference. The relationship with David is not sufficient to establish an obligation. While in the other cases a claim would be violated if five people were saved instead of the one person with whom there is a special relationship, this does not seem to be the case here. This possibility alone, which, according to Taureck, can be intuitively recognized, is enough to invalidate an interpretation of the duty to help that demands the rescue of the larger number (Taureck 1977, 298). The intuition that it is obligatory to save five thus collides with the intuition that it is morally permissible in the situation described, i.e., that no injustice is done if David is saved.

Defenders of the pro-number intuition are unlikely to be convinced by this. They might dispute that being more concerned about the well-being of one particular person is enough to negate the duty to save five.

Taureck, therefore, varies the example once again. It is now assumed that the drug belongs to David. In this case, one cannot claim that David is obliged to take his own life and leave the medicine to the five other people. It is therefore permissible for David to save himself. If this is true, Taureck argues that it is also permissible for a third party to help David.⁴ If, under this assumption, it is permissible to save one person instead of five, then there can be no general obligation to save a larger number. Taureck writes accordingly:

Thus far I have argued that, since it would not be morally impermissible for the one person, David, to use all of his drug to save himself instead of these five others, it cannot be morally impermissible for me, were the drug mine and given that I am under no special obligations to any of these five, to use it all to save David instead of these other five.

(Taureck 1977, 301)

It should be clear that David is allowed to save himself in such a case. It would not only be too demanding of David to make such a sacrifice (Hirose 2015, 114). What's more important is that there is no impartial standpoint from which it would appear better for David to give up his medicine. The impersonal balancing of the death of one person against the death of several others seems absurd from David's first-person perspective. For whom would it be better if five die? (Taureck 1977, 299) From a first-person perspective, everyone's own life is more important than that of others. In addition, by saving himself, David is not violating anyone's rights (Taureck 1977, 300).

But what justifies the assumption that a third party is therefore also allowed to do what David is allowed to do, namely, administer the medicine to him? Doesn't this point itself seem counterintuitive? According to Taureck, this follows directly from the permission for David to save himself. However, as Hirose points out, this is not correct. Taureck obviously assumes that the permission can be transferred from one person to another (Hirose 2015, 114), and he would at least have to provide further justification for this. He merely states that in such cases, it is permissible to take the perspective of the person in need of help and to support them.

If one takes Taureck's claim to articulate an intuition at its word, one would have to explicate the content of this intuition. Duties to help are generally determined by concern for the well-being of others. Agents make the well-being of others their own and support them in pursuing their well-being where they cannot do so on their own.

Alan Gewirth takes up this idea by recognizing positive rights in addition to negative rights. People must not only take care to delimit their room for manoeuvre against each other but also look after each other and take responsibility for each other. Positive rights are supported by a general solidarity between beings capable of purposeful action, who recognize and acknowledge each other as being in need (Gewirth 1996, 41). In the consideration of positive rights and the exercise of correlating positive duties, actors make the care of others for their basic goods their own, insofar as they cannot obtain them themselves.⁵

Taureck, however, goes beyond such common views of duties to help by emphasizing a directly second-personal dimension in the fulfilment of these duties. Such acting, as Taureck's explanations suggest, presupposes the ability to take on the perspective of others (Taureck 1977, 301). According

to Taureck, the ability to take on the perspective of others constitutes the practice of the duty to help. In fulfilling our duty to help, we relate to other people in a special way and are involved in our interactions with them. We are not observers, but always and essentially participants, in that we make the goals of others our own.⁶

What is special about Taureck's intuition here, however, is that there are not only situations in which the duty to help is justified by a claim of other persons to be helped, but there are also situations in which it is morally permissible to direct benevolence towards a particular person without this kind of partiality violating a right of others. If one shares this intuition, then it must seem doubtful whether there is a general duty to always help the greater number in the trade-off situations discussed by Taureck.

Following this line of reasoning, one mistake made by pro-number advocates would be to ignore this second-personal aspect of the duty to help. The ability emphasized by Taureck to adopt the perspective of others in the exercise of this duty is ignored. Rather, the duty to help is understood as something impersonal, in accordance with a tendency that is particularly characteristic of consequentialist approaches to identify the moral point of view with a point of view of impersonal impartiality.⁷ According to this view, it is not bad that something wrong happens to person X, but that, viewed impersonally, something wrong happens at all. If, on the contrary, one accepts Taureck's argument, the following applies both from the first-person perspective of the affected person and in certain cases also from the perspective of the helping person: "It is better *for X* if Y does not happen". The permissibility-claim at least allows the idea that there is no general obligation to make such decisions from an impersonal point of view.

This consideration has not convinced most critics. The discussions have therefore focused mainly on the no-worse-claim. The no-worse claim states that it is no worse if the five strangers die than the individual stranger (Hirose 2015, 115; Lübke 2008). Taureck thus generalizes an argument that he has already put forward in support of the permissibility-claim: There is no standpoint from which the death of one person can be judged as "better" period.

The argument in favour of the larger number intuition can be explained as follows:

- P1 It is worse if five die instead of one
- P2. The duty to help requires preventing the worse (as far as it is in one's own power)
- C. Therefore, five must be saved

Taureck discusses the question of how the evaluative judgement from the first premise is to be understood. There are certainly examples of meaningful evaluative judgements of this kind. For instance, in the case of objects

that can be valued according to an objective standard, e.g., a price, it makes sense to claim that it is better to save five instead of one from a fire. Adding up the value of the individual items to a total value is unproblematic here. If this is true, however, the second premise becomes false because saving these objects cannot be meaningfully understood as fulfilment of a duty to help. The rescuer does not adopt the perspective of the rescued objects and does not empathize with them (Taureck 1977, 306). On the other hand, situations in which the second premise is true, i.e., when people are helped, the first premise becomes unintelligible because there is no objectifiable value that can be added up to a total value. The question here can only be what is better for the individual person concerned. The better-than judgement is therefore always to be understood relative to a person for whom something is better or worse: “Five individuals each losing his life does not add up to anyone’s experiencing a loss five times greater than the loss suffered by any one of the five” (Taureck 1977, 307). So it is worse for David if he dies and worse for each of the other five people if they die. The neutral, impartial standpoint from which good or bad can be added up from across separate individuals is not available when it comes to people and their well-being or suffering. Therefore, one cannot meaningfully judge that it is worse if the five strangers die than if the individual stranger dies. This is the core of Taureck’s argument in favour of the no-worse-claim.⁸

The claim is not, as Hirose (2015, 118) assumes, based on an invalid transfer of David’s first-person perspective to that of the rescuer but on a claim about the meaning of “good”. If it is true that a good is always someone’s good, i.e., related to a bearer, then the rescuer, even if he were to adopt a neutral position towards David, could not simply judge that it would be worse if five were to die instead of one. Conversely, the justification for saving David would not be that it is “better” if David survives. Taureck does not elaborate on this point but seems to take it for granted that this assumption about “goodness” as tethered value is self-evident.⁹

Evaluative judgements are often expressed with reference to the interests of others (“good for X”) or relative to an evaluation standard (“good as Y”). Peter Geach (1956) and, in a further development of this argument, Judith J. Thomson (2008) have shown that predicative usages in which something is labelled as good in an agent-neutral sense (“good period”) are categorically incorrect and therefore incomprehensible (Lübbe 2008, 85, 2015, 99; Meyer 2014, 15, 19 follow this argument). According to Geach and Thomson, “good” is a term that can only be used attributively. For every evaluative judgement, it must therefore be clear what something is supposed to be *good as*. Thomson summarizes this as follows: There is a property of being a good K if and only if K is

a goodness-fixing kind (Thomson 2008, 21). As Gilbert Harman, commenting on Thomson, writes:¹⁰

there is no such property of being a good pebble, a good act, a good fact, a good state of affairs, a good possible world and so on, unless one means, for example, a good pebble that can be used as a paperweight, a morally good act, a state of affairs that is good for Jones, a possible world that is a good example in a certain discussion, and so on.

(Harman 2011, 435–436)

The same applies to “better”. One thing cannot be better than another, period; it can only be better in this or that respect.¹¹ To summarize, we need a goodness-fixing kind relative to which something is good, or a purpose relative to which something is good. There is also, as Harman makes clear, a difference between a “morally good action” and an action that is “good for the agent”. However, this is because the phrases “morally good action” and “good for the agent” have a different meaning and not because “good” has a different meaning in moral contexts (Harman 2011, 436). The distinction between a first-personal and an agent-neutral or impartial standpoint does not change this. The impartial standpoint as such does not justify agent-neutral evaluative judgements. Even an impartial observer can only make an evaluative judgement relative to a person (see Lübbe 2008, 85; Lübbe 2015, 105–108).

If it is true that an evaluative judgement is always bound to a bearer or presupposes a goodness-fixing kind and even an impartial judgement does nothing to justify an agent-neutral evaluation here, then, according to Taureck, the only option is to flip a coin (Taureck 1977, 306). This is the only option for someone who has to decide without preference in favour of one of the persons in such a situation in order to do equal justice to the claims of all those affected. This is the equal-respect claim (for further discussion, see Hirose 2015, 119–122).

Finally, I summarize some results of this reconstruction of Taureck’s argumentation that are particularly relevant for the assessment of Steigleder’s contribution to the number debate: (1) In certain trade-off situations, it may be permissible to help one person instead of five (permissibility-claim). (2) For the exercise of duties to help, perspective-taking from the internal point of view of those involved is essential. (3) Judgements about good are always relational, i.e., tethered to perspectives of persons for whom something is good. An aggregation of the good across individuals is, therefore, conceptually inconceivable. (4) In the trade-off situations discussed by Taureck, only the toss of a coin remains if one wants to do justice to the claims of all those affected, i.e., to give everyone the same chance of being rescued.

6.3 Steigleder's Non-Aggregationist Approach

Taureck's problem also applies to rights-based approaches that recognize positive rights. Rights can be restricted and weighted, but they cannot be aggregated (Steigleder 2016, 5, 8). Aggregationism is neither compatible with the deontological character of rights-based approaches nor – at least *prima facie* – with the concept of rights. The question then is whether it is possible within the framework of such an approach to do justice to these two intuitions without becoming incoherent.

Steigleder responds to the four points mentioned above as follows: He does not accept the first point, the permissibility-claim; he accepts the second point (internal perspective) with the proviso that he characterizes the duty to help more abstractly. This means that the adoption of the other's perspective, emphasized by Taureck, has only an accidental character, which at best plays a role at the empirical or executive level. According to Taureck, on the contrary, this is an essential normative feature of what it means to fulfil this duty and therefore a necessary condition for the plausibility of the permissibility-claim. Steigleder does not accept the third point. He considers the criticism of Taureck's no-worse-claim to be fundamentally correct (see Steigleder/Graf Keyseleink 2022, 153). He also does not accept the fourth point (coin toss) as a practical consequence of the equal-respect claim. It is true that a rights-based theory must also take equal account of all those who have a right. However, Steigleder draws other practical consequences.¹²

He has outlined a proposal that takes up some of Gewirth's ideas and expands them to include an axiological dimension. According to Steigleder, normative judgements can be made from different perspectives. This applies both to evaluative judgements and to judgements about the rightness of actions. Normally, the relationship between persons in morally relevant situations is viewed from the internal perspective of the interacting persons involved. Normative judgements are made from this perspective. This is obviously the case with the duty to help. As the previous explanations have made clear, duties to help are characterized by a special personal relationship, which includes the ability to adopt the perspectives of others. Furthermore, the perspective of those involved has an ethical dimension of responsibility: Actors assume responsibility for others or for each other by supporting other people in the pursuit of their well-being where they cannot do so alone, whereby the assumption of responsibility not only has a past dimension but is also oriented towards the future (Steigleder 2016, 4–5).

Accordingly, the concrete determination of duties to help is always initially done from an internal perspective. However, it is fundamentally true for all moral relationships that reciprocal claims and demands are made and negotiated from the perspective of participation. Even more generally,

it can be stated that the mutuality based on interpersonality characterizes the moral standpoint in deontological theories.¹³ The reason for this is that the persons in such situations are involved as participants, as interactors, and not as observers. From this perspective, maximization and aggregation demands are excluded (Steigleder/Graf Keyselingk 2022, 153). Here, the rights-based theory and Steigleder follow the view that deontologically based judgements about what is to be done are agent-relative.

The special feature of the rights-based approach, however, is that it also allows for considerations of consequences, which are normally considered a distinctive characteristic of consequentialist theories (Steigleder 2016, 7–8). This applies because the consequences of one's own actions on others' rights must always be taken into account, but it also has to do with the already mentioned ethical dimension of responsibility. The focus on consequences becomes particularly relevant in situations in which one is placed in an observer's perspective from the outset. This is always the case when one's own rights are not affected and no person involved has any special claims, i.e., one does not violate any obligations if one disregards a special claim. A typical example of this is when you arrive at the scene of an accident. No person has a special right to help here. Another example would be the distribution of a scarce resource.¹⁴ In all these cases, as many people as possible should be saved (Steigleder 2016, 9). Here, Steigleder follows the view that Foot advocated in her original example of the scarce medicine: When positive duties collide, it is necessary to help the greater number (Foot 2002 [1967], 27–30). Aggregation can therefore be justified from an external perspective. In this particular case, the absolute value of each person is aggregated. According to Steigleder, the reason for this is that the absolute value of each is best considered when as many as possible are saved who have an absolute value. Since in this case no person has a particular claim, no rights are violated. In this respect, the possible disadvantage suffered in such cases is also not an injustice (Steigleder 2016, 9; Steigleder/Graf Keyselingk 2022, 153). Steigleder further claims that there are not only situations of this kind that permit such a judgement; he also believes that in certain situations there is a duty to abandon the internal perspective and adopt an observer perspective (Steigleder 2016, 10). If Taureck cases are such situations, then there would be a general obligation to switch to the observer perspective in them. This would reject Taureck's permissibility-claim.

While the ethical dimension of responsibility allows us to consider the consequences of actions without having to accept consequentialist maximization claims, the idea of a change of perspective is based on an axiological assumption that justifies a maximization claim in certain situations. As far as the Taureck cases are concerned, the rights-based approach has the further advantage of being more realistic in practice, in contrast to more

demanding contractualist solutions or lottery procedures.¹⁵ I will comment on this idea in conclusion, as it is the main reason for Steigleder's rejection of the no-worse-claim, and add two points where I still see a need for clarification.

6.4 Concluding Remarks

As has become clear, the subject of the aggregation claim is not rights. This would not be compatible with the basic principles of the rights-based approach. From the observer's perspective, what is aggregated is an unconditional good or an unconditional value, namely, the unconditional value of beings capable of purposeful acting who have rights. Gewirth discusses goods in the context of purposeful action, which presupposes necessary goods to whose protection all beings capable of acting are entitled (Gewirth 1978, 51, 1996, 16–21 on the justification of human rights). Furthermore, Gewirth suggests the idea that beings who have rights also have an unconditional value. One could justify this with an argument based on Kant. Every value presupposes a subject for whom something can be of value. It therefore presupposes a subject that can make value judgements. Since every purpose includes an evaluation (Gewirth 1978, 51–52), the ability to act also includes the ability to make value judgements. Every value judgement requires a reference point for evaluations that is not itself a relative value (if there were only relative values, there would be no value at all). Such a non-relative point of reference is the evaluating subject, which is the source of all value judgements and must therefore attribute a value to itself. According to this line of argument, the capacity of beings capable of purposeful action is characterized as unconditionally valuable, i.e. unconditionally good.¹⁶ However, speaking of “unconditionally” or “absolutely” valuable is ambiguous and leads to difficulty. On the one hand, “absolutely” can be understood to mean that this value is irreducible to another or cannot be weighed against others. However, as Steigleder argues at this point, “unconditional” or “absolute” must be understood in the sense of *good period*. The former would be compatible with Thomson's or Taureck's analysis presented in the previous section. It would at least not exclude the meaning of good in a certain respect (e.g., if one understands the concept of person as a goodness-fixing kind). Then, however, the talk of absolute value would no longer be compatible with maximization demands. This would only be conceivable in the second case, which, however, if one follows Geach-Thomson and Taureck, presupposes a categorically incorrect use of “good”.¹⁷

Another question remains. According to Taureck, a better-than judgement can only be based on a relative good for a person. A point from which one could judge that something is worse or better period is not available.

We have seen that Steigleder does not follow this line of argument. Rather, he assumes that such a standpoint is actually adopted in certain situations and also claims that there is a general obligation to adopt this standpoint (Steigleder 2016, 10). How could such a duty be justified?

In light of this, two points need to be clarified: *First*, it is by no means self-evident for deontological theories to accept the distinction between actor-relative and actor-neutral reasons.¹⁸ It would therefore need to be clarified how this distinction can be justified within the framework of a rights-based theory in such a way that it also becomes clear when a change of perspective from the primarily agent-relative perspective to the agent-neutral perspective is obligatory.

Second, the axiological question of the non-relative use of good (“good period”) needs to be clarified, as it is a metaethical basis for meaningful talk of aggregation claims on the agent-neutral point of view. Steigleder’s proposal opens up this discussion from an axiological perspective within rights-based approaches. This point is an important outcome of his considerations, which is also relevant independently of the very specific question of dealing with Taureck cases.

Notes

- 1 For a detailed assessment of different attempts to distinguish consequentialist from deontological approaches, see Werner (2011). With regard to the Taureck debate, it should be mentioned that consequentialists have tried to integrate deontological constraints and develop moderate versions of their approach (Dufner/Schöne-Seifert 2019); conversely, deontologists have tried to avoid Taureck’s strong conclusions and justify pro-number arguments that avoid aggregationism (see Kamm 2007; Lübbe 2008, 2015; Timmermann 2004).
- 2 For a systematic classification of rights and different types of conflicts between rights, see the contribution by Sven Ove Hansson in this volume.
- 3 It is not possible to list all the literature on this topic here. Kamm (2007), Lübbe (2008) and above all Lübbe (2015) (with a detailed bibliography) are fundamental (see also Meyer 2006, 2014; Dufner/Schöne-Seifert 2019).
- 4 Ben Saunders, who recognized the relevance of this point for Taureck’s argument, includes this step as a separate premise in his reconstruction of the argument (Saunders 2011, 250). However, he apparently considers this premise to be unproblematic, as he does not discuss how it could be justified (see already Parfit 1978).
- 5 For a presentation of his argument, see Gewirth (1996, 38–44) and the respective commentary by Steigleder (1999, 145–156).
- 6 Hirose (2015, 114) overlooks this point when he merely states that, unlike in the case of self-help, no overly demanding sacrifice is required if one expects to save the greater number in such a case. However, Taureck justifies David’s permission to prefer himself by stating that, from a first-person perspective, it is not clear what it would mean if it were better for David himself to die instead of the five others. The requirement for demandingness emphasized by Hirose is secondary to this.

- 7 On the moral point of view, see Baier (1958) and the overviews in Misselhorn (2011) and Bloomfield (2013).
- 8 According to Meyer (2014, 20–21), people should not be treated like objects whose value can be aggregated; otherwise, they would be degraded (see the critical discussion in Dufner/Schöne-Seifert 2019, 24–26). Taureck’s argument seems stronger to me: In moral relationships, the internal perspective and the possibility of being able to adopt the perspective of the other person as a participant are decisive. Taureck reminds us here of the categorical difference between persons and things. To clarify this point, I have identified “objectifiable value” with “price”, as this value can be quantified. Objects have an objectifiable value because they can be priced, not, as Dufner and Schöne-Seifert (2019, 25) assume, because their goodness is valued in a person-neutral way. Persons have no price. Even if one were to attribute a qualitative value to persons, which should also apply without restriction (e.g., Kantian “dignity”), it would not yet be clear whether this value (whether from a first-personal or third-personal perspective) can be aggregated – at least it would not be if one follows Taureck. In order to justify this claim, an additional argument from the semantics of “good” is necessary. More on this below.
- 9 For criticism see Norcross (2008) and Dufner/Schöne-Seifert (2019, 22–23).
- 10 Dufner/Schöne-Seifert (2019, 21), on the other hand, believe, referring to Nagel (1986, 160–161), that “good” period can be understood in the sense of a judgement that expresses a disinterested pro-attitude. In this sense, pain can be judged as something bad period and not just as bad for someone (the same would apply to certain positive value judgements). Speaking of good “states of affairs” would therefore be an elliptical way of expressing a judgement about an agent-neutral value. But “pain” and “pleasure” are, according to Thomson, no goodness-fixing kinds. For this reason alone, this objection is not convincing. It is rather the other way round: The phrase “pain is bad” is an elliptical form for “bad for X”. It also seems to me linguistically implausible to describe pain as something bad period (pace Nagel). This is certainly true for states of affairs.
- 11 The consequentialist thesis, according to which action should be taken so that the result or state brought about is better than another, cannot therefore be formulated in a meaningful way (for critical discussion see Arneson 2010).
- 12 Contractualist solutions or other forms of lotteries are also out of the question for him. Lübbe (2015) proposes a nuanced solution according to which equal allocation opportunities must be guaranteed for the scarce resource to be distributed, or at least distribution rules that are equally in the interests of all those affected.
- 13 As can be seen here, talk of a moral point of view is ambiguous. In consequentialist ethics, it is usually identified with an impartial observer’s standpoint (see the references in fn. 7). As my explanations above make clear, this is not self-evident and is probably more the artefact of a certain type of theorizing. In this respect, Steigleder’s characterization of a genuinely moral perspective, based on Gewirth, is more convincing.
- 14 Such cases would also include Taureck’s example of the rescue of two groups of people of different sizes from an island shaken by volcanic eruptions (Taureck 1977, 310).
- 15 As an example, see Steigleder/Graf Keyselingk (2022) on the current debate about combating pandemics.
- 16 Gewirth (1996, 66) has outlined such an argument himself, which I paraphrase here in a slightly modified form. For the analogous argumentation in Kant, see

- Richter (2013, 84–88) and Steigleder (2002, 61–67), see also Steigleder (2012), Gewirth (1992) and Richter’s contribution to this volume.
- 17 Gewirth addresses this axiological dimension in connection with the question of the meaning of human dignity (Gewirth 1996, 65–66). He also establishes an absolute right, i.e., a right that may not be restricted (Gewirth 1981; Steigleder 2016, 8). To my knowledge, he does not discuss the question of the aggregation of value or the possibility of agent-neutral evaluative judgements.
- 18 For a famous critique of this distinction, see Korsgaard (1996).

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7 What Do I Morally Owe to Myself?

On the Moral Right to Freedom and Duties to Oneself in Alan Gewirth's Rights-Based Ethics

Philipp Richter

7.1 Introduction

Today, many philosophers consider morality to be “fundamentally interpersonal and other regarding” (Timmermann 2006, 505). In this view, moral norms are primarily meant to restrict people’s self-interested behavior toward others. While it is assumed that people take a strong interest in what is good for them, it is said that they tend to make use of others for their own benefit.

While there have been many arguments against moral egoism, there is the less discussed other extreme of the moral saint or hero (cf. Wolf 1982),¹ who sees herself as a tool to satisfy the needs of others only. Intuitively, it seems odd to claim that a person’s own needs should morally always come second, and that a true moral agent should sacrifice herself for the benefit of others. So, the question arises whether a seemingly heroic act in some cases could also be seen as an act of morally wronging oneself.

If we take a closer look at a person’s self-regarding actions between the extremes of moral egoism and heroism, there are also self-regarding actions of neglect or unworthy self-treatment that exhibit a lack of rational self-care (Muñoz 2022). Such actions might be neutral regarding others, i.e., they neither benefit nor harm others, but are harmful to the agent himself. If morality were only other-regarding, these actions of assumed self-harm would be morally permissible or irrelevant if others were not harmed. However, this would seem odd, since it would mean that whatever one does to oneself, there is no morally wrong treatment.

While it seems obvious that questions about what we owe to each other lie at the heart of moral philosophy, we also must clarify whether there is a protected area of action that is negatively determined as encompassing those actions that are protected from the demands of other-regarding morality (contra moral heroism) and positively determined by what, if anything, it is that I morally owe to myself (contra lack of rational self-care). One way to prove moral heroism and the disregard of rational self-care to be morally wrong is to show that there are duties to oneself that

might forbid certain actions that would actually or consequentially be acts of wronging oneself.

However, we must distinguish between self-regarding actions that only do harm to the person herself and those that do harm to the person, and indirectly or in consequence are harmful to others as well. Consider, for instance, that a drug user is harming herself, but her lifestyle also has a negative impact on her children. Adapting Judith Thomson's terminology, I am going to call the former *actions of pure self-harm*,² assuming these actions have no negative consequences for others. It is my assumption that it is not evident which self-regarding actions are clearly wrong and which must be performed. Here, duties to oneself could function as a standard or a rational ground to distinguish between justified self-regarding actions and actions of wronging oneself morally.

A challenge to ground duties to oneself stems from the ability and moral principle of free choice. If one is *prima facie* morally justified to exercise free choice as long as others are not harmed, then one is, as Marcus G. Singer puts it, never really bound (Singer 1959, 202–203, cf. 1963). This is because the choice to follow the principle one has previously bound oneself to and one's choice to counteract and revoke this principle are both justified exercises of free choice. This is called the problem of self-release. In this essay, I am going to tackle the challenge of self-release against the background of moral heroism and rational self-care. At the heart of duties to oneself, there is a conceptual need to connect universal moral demands with a person's striving for what is best in herself. I find this to be discussed profoundly in Alan Gewirth's rights-based moral theory, especially in his late work *Self-Fulfillment* (1998).³

The moral theory developed by Alan Gewirth is, on the one hand, very liberal when it comes to life choices and ways of life. On the other hand, Gewirth draws a clear picture of what a reasonable agent must morally do for his own sake. In *Reason and Morality* (1978),⁴ Gewirth establishes a supreme moral principle which proves that all agents have equal moral rights to the generic goods of action. Among other things, there is a right to freedom. In *Self-Fulfillment*, Gewirth tries to combine this *Principle of Generic Consistency* (PGC) with conceptions of the good life, explaining how *universalist morality* (derived from the PGC) and *personalist morality* about what is best in oneself and for oneself are intertwined.⁵ Note that "personalist morality", according to Gewirth, is no moral egoism or opportunism (SF, 54). Furthermore, it consists in knowledge about how to improve one's skills and capacities, finding out what is of true value for oneself, and finally what makes one's life worth living. At the intersection of the perspectives of these two moralities, the author discusses the question of whether there are any duties to oneself.

In this essay, I follow Gewirth's reasoning about duties to oneself. As a premise, I take his argument for the PGC from *Reason and Morality* to be sound. My aim is to check if this moral principle, which is mainly other-directed, could also function as a possible ground for duties to oneself.

In Section 7.2, I am going to set the stage by explaining the liberal aspects of Gewirthian rights-based moral theory and the challenges to ground duties to oneself. Section 7.3 will, firstly, explain possible objections to duties to oneself anticipated by Gewirth). In Section 7.4, I will reconstruct the argument to derive these duties from the PGC in *Reason and Morality* and in *Self-Fulfillment*. From duties to oneself, it also follows that the agent has rights to himself, since he is a rational agent. Here, Gewirth's concepts of *rational autonomy* and *reasonableness* need to be explained (Section 7.5). Gewirth's argument will then be checked against the objections raised by him (Section 7.6). From this, we will arrive at the puzzling thesis that whatever one does in the pure self-regarding use of freedom, one always acts in accord with one's own generic rights. Therefore, the *reasonable* agent seems to fulfill his duties to himself automatically, since he is acting rationally. This puzzling conclusion must be avoided (Section 7.7).

7.2 The Right to Free Choice and the Challenge of Rational Constraints

Compared with similar ethical theories, Gewirth's approach is quite liberal regarding individual life choices: "Persons must be left free to live their lives as they please" (RM, 265; cf. 256). Because of the generic right to freedom, an agent is justified in doing as he pleases, even if his actions seem odd or run counter to common moralities. As an example, Gewirth names actions such as "eating excessive amounts of candy or pursuing pornography" (RM, 265). The PGC "limits the freedom of agents only where they coerce or harm other persons, that is, where the agents violate the rights of their recipients to freedom and well-being" (RM, 270–271).

However, it should be noted that the formula of the PGC is not only directed at others, but also self-directed. It says: "Act in accord with the generic rights of your recipients *as well as of yourself*" (RM, 135, my emphasis). And this is logically necessary: If *all* agents possess moral rights to freedom and well-being, then *this* agent also has these rights herself. Therefore, it follows from the PGC that both extremes would be wrong: To generally prioritize my rights over the rights of others or to deny them having any rights (moral egoism) or to surrender my rights to the benefit of others (moral heroism) (RM, 140; 188–191). As Gewirth says, the PGC keeps the opposition to self-interest "within careful bounds" (RM, 191) Here self-interested actions are not identical to acting out of mere egoism.

But what exactly does it mean “to act in accord with the generic rights” of others and of oneself? One must, as Gewirth puts it, “see to it, so far as one can, that one fulfills the correlative obligations” (RM, 135–136). If the PGC demands actions in accord with one’s own generic rights, then there must be moral duties to oneself. However, there are challenges to the very concept of duties to oneself stemming from the high value of personal freedom in Gewirth’s theory. If, according to my right to freedom, I am morally justified in doing as I please, if I refrain from violating the rights of others, how should there be any moral constraints on freedom in its pure self-regarding use?

This challenge can be elaborated further if we compare Alan Gewirth’s moral theory to the moral philosophy of Immanuel Kant. Both authors’ reasoning could be seen as being based on transcendental or reflexive arguments (Steigleder 1999, 25–26, 135). However, the two philosophers explain the presuppositions of agency or practical reason in different ways. Compared to the *Categorical Imperative*, the PGC does not demand acting in accord with the strong concept of freedom as autonomy. Furthermore, the PGC demands to act in accordance with your *right* to freedom (and the rights of others). While Kant’s theory is duty-based, Gewirth’s theory is rights-based.

The difference is that, according to a duty, you *must* act, while an object one has a right to *may* be claimed or not. It is up to the right holder to waive it.⁶ On the one hand, it is, in Gewirthian moral theory, a task of all other agents to make sure not to violate or infringe the rights of a recipient. On the other hand, the right holder is always justified against others in claiming respect for his free choice. Basically, only the agent’s informed consent would allow others to interfere.⁷ Of course, this is plausible if others were trying to make use of a person to achieve their own goals, thereby harming or degrading her. But this would also hold if others were trying to intervene “paternalistically” to prevent harm from a person she would inflict on herself.

Gewirth discusses several cases of assumable self-harm that are protected by the right to freedom. For instance, to Gewirth, there is no moral wrongdoing in committing suicide or in taking drugs like heroin.⁸ (RM, 264). Also, a “Christian Scientist” should be allowed to refuse a lifesaving blood transfusion (RM, 262). And, under certain conditions, a person should even be allowed to give herself into slavery or similar dependency (RM, 264). To me, it seems that all these actions are candidates for imprudent and self-harming actions exhibiting a lack of rational self-care.⁹ But, according to Gewirth, if the criteria of *unforcedness*, *knowledge*, and *calm state of mind* are met, we are not justified in stopping the person (RM, 258, 265). If, according to this, imprudence and pure self-harm are consistent

with the formula of the PGC, a justification of duties to oneself would seem to be very difficult.

However, there is another side to the picture. To Gewirth, the self-regarding use of freedom is not left to normative arbitrariness. In the foundational argument for the PGC, it is proven necessary that the agent needs to consider his freedom and well-being as necessary goods of agency (RM, 61). From a logical point of view, an agent who is trying to achieve his purposes would contradict himself by stating that he is acting without or against his freedom. Such an agent would do both “affirming and denying that freedom and well-being are necessary goods” (RM, 71). Practically, an agent is necessarily interested in successful action and thereby also in the necessary goods of agency (RM, 53–54). “Now every agent, so far as he can, brings it about that his level of purpose fulfillment is not decreased or lowered by his actions” (RM, 55). There is, as we can see now, a tension between the rational demands of agency and the examples of seemingly justified actions of pure self-harm. While a “normal agent” is and must be interested in the preservation and growth of his agency, the PGC seemingly would not, if the rights of others were not violated, forbid a life that is self-harming and imprudent. But it seems counterintuitive that the PGC would not allow for reasoning that helps to detect a possible moral wronging of oneself in the excessive use of pornography, overdoing drugs, admitting oneself to totalitarian ideologies, prostitution, a cult, or into slavery, and so on. The concept of a right to freedom in its self-regarding use needs to be discussed further in connection with Gewirth’s conception of duties to oneself.

7.3 “Duties to Oneself” in *Reason and Morality* and in *Self-Fulfillment*

Reason and Morality and *Self-Fulfillment* both offer short chapters on the concept of duties to oneself (RM, Chapter 5.19, 5 pages; SF, Chapter 4.6, 6 pages). The texts are nearly identical.¹⁰ But it strikes the eye that the objections against duties to oneself differ in content and number. In *Reason and Morality*, Gewirth develops five possible objections:¹¹

- 1) Strict duties justify coercion to enforce them. This would, firstly, allow for a large degree of paternalism in the name of duties to oneself. Secondly, the concept of internal self-coercion seems absurd.
- 2) A duty to oneself implies a right against oneself. This leads to the problem of self-release: The right could be waived all the time, and the duty never needs to be fulfilled.¹²
- 3) A violator of a duty to himself would at the same time gain and lose something, which doesn’t make sense.

- 4) Duties are meant to curb our inclinations. But our inclinations are naturally against self-harm and in favor of our own interest. Therefore, this kind of duty is nugatory.
- 5) Duties to oneself or self-regarding virtues are not moral obligations by the social definition of morality, “that has been accepted here” (RM, 5.19, 334).¹³

In contrast, in *Self-Fulfillment* there are six possible objections to the concept of duties to oneself. Objections V and VI are new,¹⁴ while number five from *Reason and Morality* no longer appears.¹⁵ The list of objections in *Self-Fulfillment* is as follows:

- I. *Problem of paternalism and oddity of self-coercion* [identical to 1].
- II. *Problem of self-release* [identical to 2].
- III. *Violation of duty to oneself is a moral null-sum game* [identical to 3].
- IV. *Duty to oneself is nugatory* [identical to 4].
- V. *Burden as well as benefit*: If there is a duty to develop a disposition or character trait like prudential virtues, which bears on freedom and well-being to gain more of these, then “the same objects are benefits and burdens to the same person” (SF, 136).
- VI. *Problem of unlimited duties or “non-moral” duties*: Duties to do what is conducive to one’s self-interest would lead to an unlimited number of duties, thereby including mere instrumental action to whatever self-ish goals into morality.

The references to objections I, II, III, and IV are the same as in *Reason and Morality*. I assume Gewirth developed objections V and VI in connection with reasoning on the new topics and challenges he tackles in *Self-Fulfillment*, which, for instance, deal with the connection of personalist and universalist morality. Objection VI can be seen as a similar theme to objection 5, but without begging the question of a specific definition of morality.

To anticipate, in *Self-Fulfillment*, Gewirth finally concludes that agents “have duties to themselves in connection with self-fulfillment because the optimal value it embodies sets objective requirements for their choices and actions” (SF, 217; cf. SF, 134). However, the challenge remains of how to bring together the liberal aspects of the PGC and the “objective requirements” bearing on the person’s self-regarding use of freedom. To discuss this further, let us have a look at Gewirth’s reasoning to justify duties to oneself.

7.4 Gewirth’s Explanation of Duties to Oneself

Gewirth claims that there are at least two ways in which duties to oneself can be derived from the PGC (SF, 136). The first way of reasoning consists

of two parts: The first part could be called the “argument from follow-up duties”. The second part might be called the “argument from reasonableness as an aspect of self-fulfillment”. The second approach is more illustrative or metaphorical. Gewirth calls it the “analogous way”. I will not discuss this second way further.

The argument from follow-up duties aims at transferring the universal moral obligatoriness of duties toward others into a self-regarding demand for the provision of general means to fulfill these other-directed duties. The second part is more complicated. It aims to show that it follows from the rationality of the agent that he has a *right against himself* to live a life obeying the PGC.

The first part of the argument bears on the instrumental structure of agency:

If A has a duty to do X, and if his doing Y is highly conducive to his doing X, then A has a duty to do Y if doing Y is in his power and if it does not involve his violating any of his other duties.

(SF, 136)

If the PGC demands the doing of X, one must also take actions that are means leading to X. Maybe, it is not necessary to find and choose the *best* means, but you’ll have to choose at least *one means* to achieve the aim of the action demanded from you. Therefore, from the PGC’s demand to act in accord with the rights of others, there is also a follow-up duty to develop “self-regarding qualities or prudential virtues” (SF, 136).¹⁶ Virtues could be seen as a reservoir of general means, which also set requirements for choices and lifestyle. In this sense, it would be wrong to be “slothful, ignorant, improvident” or to live an “unintelligent life”, since this will make it unlikely that one is able to constantly fulfill the PGC’s demands (SF, 136). However, while being *self-regarding*, these requirements are no direct or strict moral duties in themselves but demands to acquire means to fulfill other strict duties.

Still, there can be many means to achieve actions in accord with the rights of others. And, as Gewirth puts it, while being useful to the reliable fulfillment of duties to others, possessing these virtues is also advantageous to the agent himself (SF, 137). However, dispositions like courage, temperance, or prudence are morally ambivalent means; here, Gewirth departs from the Aristotelian tradition. Virtues are helpful to both moral and non-moral causes (SF, 127). This is why the fostering of general means according to the figure of follow-up duties is restricted further by the additional demand of the non-violation of duties to others.

To conclude, in this first part of the argument, it is neither directly morally required to have these virtues (if the general means might be substituted by something else) nor is it the agent himself to whom these actions are owed.

Now, the second part takes the argument one step further: What was discussed before as a means to fulfill strict duties to others is now considered something the agent morally and directly owes to himself: “That he should try to attain such qualities is also a duty to himself” (SF, 137). Gewirth’s argument goes as follows: The reasoning that leads to the recognition of the PGC as the supreme moral principle follows the “same standards and criteria” of reason by which the agent also is and remains a rational agent and can attain his self-fulfillment as capacity fulfillment (SF, 137).¹⁷ By the same use of reason following “independent, necessary criteria of rationality”, practical knowledge about three normatively relevant elements of rational agency is acquired:

1. I must always act in accordance with the PGC.
2. I must act in a way to be and remain a rational agent.
3. I must improve my rational agency to attain “capacity fulfillment”.

While element 1 is clearly a moral demand or duty (if we accept the PGC), this is not as obvious in cases 2 and 3. Especially, there is a need for clarification of element 3. This third element relates to the agent’s self-fulfillment.

To explain this concept, Gewirth notes that there are many ways and aims to bring to fruition a human’s deepest desires and interests. Put in the terminology of *Self-Fulfillment*, there are valuable objects in a broad sense called “aspirations”, and there are valuable “capacities” to be actualized in achieving, enjoying, or producing these desired objects (SF, 19–20, 39–41, 63–64). Capacities and aspirations are the formal objects that classify the essential goods contained in all possible ways of life (SF, 64–65). However, as Gewirth claims, to identify, compare, and evaluate which of these ways of life is worthy and best, the capacity for reason needs to be applied and fostered. Reason is a precondition to achieve self-fulfillment (SF, 216; cf. SF, 75, 78–79). Whatever capacity a lifestyle lays emphasis on, it always involves the use of reason (SF, 223).

Now, we can see that the middle term linking the three normative elements mentioned above is the use of reason. Self-fulfillment is best for oneself (and everybody also has a conative striving to acquire it). And there is no capacity fulfillment without the use of reason. But the use of reason also demands obedience to the PGC (1) and to maintain and provide for one’s rational agency (2). Therefore, by the guidance of reason, I owe it to myself to live a life following the PGC and to be a rational agent. Gewirth also calls this a “reasonable” life, self, or agent (SF, 87–90).

Note the implicit premise: To Gewirth, there is no selective or partial use of reason. It is not possible to make correct use of reason if applied in an instrumental manner to achieve selfish or self-interested aims only, while being ignorant of the demands of reason regarding others. Gewirth states, since the use of reason is a precondition to achieve self-fulfillment, and through reason we recognize the PGC, the disregard of the PGC would be a failure or improper use of reason and therefore a counteraction to self-fulfillment. If an agent lived an unreasonable life, he would lower his options for self-fulfillment or make it even impossible for himself. A part of the means to achieve self-fulfillment is, besides compliance with the PGC, also the requirement to be and remain a rational agent (see above element 2).

To sum up, leading a reasonable life is both morally required and advantageous to the agent in his self-regarding use of freedom. Put in more detail, the first way of reasoning justifies the moral requirement in two respects. First, the agent has a follow-up duty to be and remain reasonable to fulfill his duties to others. In this sense, the follow-up duty is indirectly a moral duty (the first part of the argument). Second, the agent has a strict duty to obey the PGC, since this obedience is part of being reasonable, which is a precondition for achieving what is best in himself. So, being reasonable is something he must do for his own sake (the second part of the argument).

Gewirth does not say this explicitly, but the second part of the argument also leads to a shift in perspectives. According to “personalist morality” (SF, 54), the agent will place emphasis on the second part of the PGC’s formula: He sees himself obligated to act in accordance with *his* generic rights (RM, 135). Therefore, he must make the best use of the objects of these rights for his own good, while not violating the rights of others. Here, the rights an agent has also function as directives or ends, which demand certain positive actions and negative omissions by himself to himself through maximizing considerations.

What the second part of the argument achieves is to explain that the morally demanded obedience to the mainly others-directed PGC is at the same time part of rational self-care owed to oneself. Freedom and well-being as generic goods of agency are morally neither only means to act in accord with the rights of others nor are they only of instrumental use to achieve selfish purposes. Instead, they are also ends which, from the point of view of personalist morality, need to be taken as intrinsic values. At the same time, because they are part of me being reasonable, they also offer guidance and constraints to my attempts at self-fulfillment.¹⁸

7.5 Being Reasonable as a Right to Oneself

So far, we have learned that there is indeed a duty to oneself. Since the agent has this strict duty “to himself qua rational agent”, there is, as

Gewirth claims, also a *right* he has *against himself*: “A right that the PGC be obeyed by him” (SF, 137). Now, objection II from above becomes relevant: The problem of self-release. Let me start with an example.

If I, for instance, promised to take my parents to the airport, they may release me from this duty when they come across an easier option for traveling. In this case, the parents may choose to waive their right. But being obligated by my promise, I may not step back from my duty.¹⁹ In contrast, according to Gewirth, the rational agent cannot give up his special right to the PGC being obeyed by him. He must not release himself from his duty to obey the principle (be it for his own sake or for the sake of others). This is because the special right does not stem “from an optional decision, desire or transaction of his” (like in the case of my duty to the parents). Rather, it derives from the “rational aspect of himself”. And “while remaining rational”, the rational agent cannot “give up either his rights or his duties in this area” (SF, 137).

At first glance, it is not clear why the arguments discussed before makes it necessary to assume that there is a *special kind of right* an agent has against himself. This right which is not waivable by choice of the right holder seems unusual. To me, it seems Gewirth wants to draw our attention to two things: First, it is not a matter of choice to be rational or not, but it is something similar. Second, presenting a right one has against oneself makes it plausible to attribute a certain value to agents (“dignity”) (see Gewirth 1992).²⁰ This should give them reasons to develop self-respect and self-esteem. Without these self-regarding virtues, it seems nearly impossible to achieve capacity fulfillment (SF, 94).

To explain the first point, a reference to Gewirth’s distinction between “rational consent” or “optional, voluntary consent” is helpful (RM, 306). While rational consent or choice is fully determined by rational arguments, optional ones are also or only guided by variable desires or opinions (RM, 307). In the case of the latter, if explicit reasons are involved at all, they are not fully or not by themselves driving forces to arrive at a consent. However, in any case, an agent is in final control of accepting or withholding consent by verbal declaration or by showing compliance in action. Inevitably, in “empirical rationality”, there will be some violations or failures to comply with pure rational criteria (RM, 140).²¹

However, choosing is a purposive action. And such actions presuppose *rational autonomy*, i.e., to choose and follow general principles or reasons and to live a life according to them (RM, 138). Gewirth distinguishes “rational autonomy” in a broad sense from one in the strict sense. While the latter represents the correct use of reason, like thinking and acting only from true beliefs and valid inferences, the former represents a more realistic picture of a limited use of reason, which includes deficits or faults,

such as producing invalid inferences, judging from a lack of knowledge, or suffering from incoherent self-control. But both pictures represent *rational autonomy*; even a faulty use of reason is thought- and action-guiding as it contains general claims to lead one's life according to them.

Gewirth emphasizes that the criteria of rational thought are independent of our acceptances or choices. And the fact that we sometimes knowingly or unknowingly fail to comply with them may suggest that they are valid or not by our choice. It might seem that being rational or not is a choice, since the demands of reason do not stem from "outside" of yourself (RM, 303). There is no other person demanding something from you or an occurrence of a natural force; it is something in your thoughts directing your further thoughts and actions according to it.

It is tricky: One practically *can* waive one's right to be reasonable. On the one hand, this is morally and rationally wrong (one is never justified in doing so). However, on the other hand, it is at the same time not morally or rationally wrong, since one would no longer be addressed by rationality's demands if one had done so. In this sense, the successful waiving of this right is a kind of fundamental exit option. While being a rational agent, one cannot give up being reasonable, but it is possible to use rationality to cease being an agent when, for instance, ending your life by refusing a lifesaving blood transfusion or giving yourself into slavery. Here, the picture drawn is an either-or option, and it holds for being a rational agent or completely ceasing to be one.

To conclude, there is one basic, direct duty to oneself, namely, at the same time to obey the PGC and to be reasonable, from which all the specific duties to inculcate the rational virtues in oneself follow. And there is a similar moral right to oneself: While being reasonable, there is the agent's right to be reasonable and that the PGC is being obeyed by him. But this is not a right in the common meaning of this concept, since waiving it will make you unable to claim or exercise any moral rights anymore.²² Being in this state would make it very unlikely or even impossible to achieve self-fulfillment.

7.6 Resolving the Objections

Is Gewirth's argument successful in grounding duties to oneself? To check the coherence of Gewirth's reasoning, we must reconsider the anticipated objections mentioned above in Section 7.3.

Objection IV ("nugatoriness") was already rejected alongside the first part of the argument. Agents are not necessarily inclined to do what is best for themselves in the long run (SF, 137; RM, 335). Therefore, a duty to oneself in this regard is not nugatory, but a necessary constraint to curb short-term thinking.

In *Self-Fulfillment*, Gewirth explicitly claims to have resolved objections III, V, and VI. Numbers III (“moral null sum game”) and V (“burden equals benefit”) are resolved in the same way: The constraints placed on the agent from the duty to develop rational virtues are “beneficial requirements” that the agent “accepts for himself” (SF, 138). By disregarding them, he would lose the higher good of his self-fulfillment and gain nothing.

Gewirth’s answer to objection VI (“unlimited and ‘non-moral’ duties”) is very short. He says: “Since the requirements are restricted to the necessary goods of action, the argument for them does not justify duties bearing on contingent selfish ends” (SF, 138). It is true that the duties to oneself are restricted to morally required causes. Not every means of achieving whatever is seemingly good or desired is a moral duty. But still, there is a wide variety of actions that need to be taken to improve reasonableness. However, Gewirth is correct that these are not “without limit”, since there is an algorithm to derive dutiful actions from being conducive to the best self-regarding use of freedom and well-being.

Gewirth doesn’t say this explicitly, but the problem of self-release, objection II, was also addressed in the argument we’ve seen above. According to this, by living my life as a purposive agent, I constantly, at least partially, demand from myself to be reasonable and remain a rational agent (this is *rational autonomy* in its broad sense). If one waives the corresponding right, one ceases to be able to rationally bind or release oneself from anything anymore (see above the fundamental exit option). But from the duty to obey the PGC or to inculcate the rational virtues, I may not release myself, since I have these duties “qua rational agent” and not by choice. If imprudent, failing to foster or to live by the virtues, what one does is a failure of reason and morally wrong.

I think this is the picture Gewirth wants to draw about duties to oneself, thereby explaining how the universalist morality and the personalist morality interact. But we will have to double-check the cases of the assumed self-harmers or the imprudent agents mentioned above. Here, objection I (“paternalism and self-coercion”) needs to be discussed. This objection is about the legitimacy and feasibility of coercing somebody into an appropriate self-regarding use of freedom.

Indeed, the concept of “self-coercion”, as Gewirth puts it, seems odd. Self-coercion would be the same as free choice, while unsuccessful self-coercion would be identical to the decision to omit the action. Whatever one does, one could additionally assert one has forced oneself to, without giving more information than there had been a decision to do so. “Self-coercion” is not at all similar to oneself being exposed to coercion by other agents or by natural forces; it is a metaphor to express attempts at self-motivation. But one is not able to determine oneself to act without one’s decision.

The other half of the *objection from coercion* was about the permissibility of paternalistic interference by others, which, according to the liberal aspect of Gewirthian theory, seems morally wrong in many cases. Here, our first question must be whether it would even be possible to coerce someone into being reasonable? The answer is: Not really, due to the decision requirement in the self-regarding use of freedom. Here, effective coercion is only possible in an indirect way of making a recipient comply with demands others consider to be reasonable. At best, this would be an action by voluntary consent, without being rationally informed or derived by the person herself. And if there is no voluntary consent, the remaining means would only be violence, threat, manipulation, or similar ways of forced choice. Even if an occurrent use of freedom could be indirectly controlled from outside, it would remain questionable if such means would help to foster rational autonomy and reasonableness in the long run. Here again, there is the hindrance that a person must inculcate rational virtues by her own activity.

7.7. The Question of a Morally Right Use of One's Own Moral Rights

In general, Gewirth's arguments for duties to oneself seem convincing, but what about their application in particular cases? Our question was whether acts of assumed self-harm or imprudence could be judged as morally wrong by the standard of duties to oneself. Remember the cases, injecting heroin as an exercise of one's right to freedom, refusing a lifesaving blood transfusion out of religious beliefs, or placing oneself into inextricable dependency, like slavery.

A variation of the self-harmer in a *prima facie* positive sense is the moral hero or saint, which Gewirth discusses as well (RM, 188–189; cf. SF, Chapter 5.2). A *moral hero* is surrendering his rights to freedom and well-being for the sake of others, for instance, saving their lives by sacrificing his.²³ But, as Gewirth says, according to the PGC, a heroic action is not wrong, although it seems the hero is not acting in accord with his own generic rights. According to Gewirth, the hero's action would be morally wrong only if he let others interfere with it (SF, 180; RM, 189–190). But this is not the case, since the hero's self-regarding action operates from free choice and is purpose-directed; therefore, it logically does not allow for hinderances and disturbances by others.

From this, we can see that it is Gewirth's puzzling thesis that whatever one does by free choice, be it a heroic or a self-harming act, one always acts in accord with one's own generic rights. This is because, without any freedom or well-being, there will be no purposive action (RM, 53–55, 77, 136, 194). At least *some* freedom or well-being must be "used" while acting

purposively. So, we might say that every action is “self-consensual” in the meaning of voluntary or optional consent. But is it necessarily a rationally correct consent as well?

Obviously, this is not the case. First, in interpersonal relations, an action may wrong others by violating their rights. So, while being voluntary, the action is not rationally right (or in Gewirth’s words, *not reasonable*). Second, an action in the self-regarding use of freedom might lack rationality, for instance, due to a lack of knowledge. The agent might assume a means leads to a desired outcome, but in fact does not.²⁴ This further applies to choices of ends; for instance, holding something to be a good way of life or to be advantageous in the long run, when in fact it is not.²⁵

We might be tempted to conclude that the self-harmer just lacks knowledge about being reasonable. However, this is not true, since one main element of a reasonable self’s knowledge is about the PGC. Precisely, this principle demands action in accord with your *rights* to freedom and well-being,²⁶ and an imprudent self-regarding action as a “self-consensual” and purpose-directed action is an exercise of freedom, which is justified. So, it is not wrong to be imprudent or to act in a self-harming way; since whatever one does is “self-consensual” in the meaning of both voluntary consent (by acting freely) and rational consent (by acting in accord with one’s generic rights). This is odd and seems to contradict any intuitions about duties to oneself. A duty that is fulfilled by whatever one does as long as there is any purpose, while not violating the rights of others, seems absurd. However, this is a consequence of knowing and obeying the PGC, which is an element of being reasonable.

To solve this problem, I propose to introduce an additional type of rational standard of a more Aristotelian kind into Gewirth’s reasoning. In the so-called *ergon* or *function argument*, Aristotle states it to be man’s function (*ergon*) to follow rational principle.²⁷ Therefore, the good life consists of living according to or being obedient to reason, which in this teleological conception is achieved gradually (Korsgaard 1986, 277–278). Life choices are relatively better or worse by a standard of complete practical reason (Korsgaard 2008, 144–147). This is different from the either-or option we discussed above: In that case, there was a complete disjunction between rational and irrational, not allowing for degrees of reasonableness. According to the gradual conception, we do not differentiate between rational and not rational, but between degrees of more or less reasonable actions according to the *telos* of perfect reasonableness.

With this Aristotelian premise in mind, we can say that each free choice could be seen as stemming from both voluntary and rational self-consent, as it is an exercise of one’s generic rights. However, as the cases of self-harm or imprudence indicate, not all actions are equally good in the long term or dispositional meaning of freedom.²⁸ There are better or worse choices,

which could be seen as being gradually more or less reasonable. While in personalist morality, there are gradually better or worse actions in the self-regarding use of freedom. In terms of universalist morality, there is only a binary distinction between morally right and wrong. From the point of view of personalist morality, it could be said that a pure self-harmer is not acting *completely* morally wrong, but *relatively less* good compared to what would be completely reasonable. As we have seen above, one's own freedom and the conducive rational virtues are in the personalist morality of intrinsic value. However, from the perspective of universalist morality, an agent is completely free and justified in doing whatever he wants, as long as his actions do not violate the rights of others. Here, actions of pure self-harm are not morally wrong.

To summarize, duties to oneself in Gewirth cannot *be* fulfilled while being and remaining an agent, but in personalist morality, this could be qualified further as acting better or worse. And these actions can be criticized "from outside" according to the standard of a completely reasonable life and therefore also allow for kinds of paternalistic interference in an educational way.²⁹ Even though there is a right to one's freedom, from the understanding of being reasonable, there is also the right and duty to expose oneself to rational criticism about the self-regarding use of freedom. Indeed, it is possible to know intersubjectively in a spectrum of better or worse what the appropriate way to live as a reasonable self is (an important part consists in the care for one's long-term freedom).

The heroin user, the Christian scientist, or the self-abandoning slave or cult follower is not violating their generic rights and is morally allowed to do so (exercising their right to freedom while not harming others). However, they all are acting less well than an agent omitting such actions. This holds since these choices do not contribute at all to freedom, well-being, or the rational virtues, which are conducive to self-fulfillment.

However, we must admit that this only holds in general, since a seemingly pure self-degrading action, like subjugating oneself to prostitution or similar, in some cases, could be the only means to escape miserable life circumstances.³⁰ In such cases, someone is only partially disrespecting themselves by surrendering occurrent and risking long-term freedom, thereby hoping to be in a better position later. But this can be a risk worth taking, and it is not necessarily completely self-disgracing.

To conclude, by acting, the reasonable agent fulfills his duty to himself automatically, but his actions can additionally be criticized and judged (from the point of view of personalist morality) as relatively better or worse according to the standard of reasonableness as the best core exercise of freedom in its self-regarding use, which means inculcating and living by the rational virtues. However, this raises many questions about appropriate and efficient ways of educating each other. So far, we have

not discussed which justifiable and efficient ways of “educational interferences” to help others follow reasonableness and achieve self-fulfillment by their own choices exist. Finally, the question of duties to oneself turns out to be a challenge of education at its core.

Notes

- 1 The topic of moral heroism is part of the discussion about supererogatory action (Urmson 2023[1958]) or the demandingness objection (Hurka 2024).
- 2 To isolate the philosophical or ethical core problem of risk imposition, Thomson distinguishes different types of cases. The relevant one is the one of *pure risk imposition*. Here, imposing a risk on someone might be wrong, even if no tangible harm was caused (the risk didn't materialize as a negative effect) and no fear or discomfort was caused to the recipient (see Thomson 1986, 176).
- 3 I am going to quote *Self-Fulfillment* as “SF”, naming the page.
- 4 In the following, I will quote *Reason and Morality* as “RM”, naming the page.
- 5 Besides the *universalist* and the *personalist morality*, in *Self-Fulfillment* there is also the *particularist morality*, which is a morality of special duties and rights related to the roles and groups agents are part of, e.g., love, family, field of occupation, and nation.
- 6 The right holder is (all things being equal) justified in exercising or claiming the object of his right. This includes the power to waive a right (Sumner 2013, 356–358). And, as Gewirth puts it, “claiming or laying claim is ... a purposive action” (RM, 76).
- 7 Note, according to Gewirth, this is not true when it comes to social arrangements, which themselves are justified by the PGC. Gewirth discusses criminal law and jurisdiction, market economy or competition, the minimal state, and the supportive state. In these fields of practice, participants follow certain rules that are transparent and derived from reason, therefore also allowing for certain rights to be overridden (for instance, free choice or consent). In this essay, however, I want to address the possible wrongdoing of an agent in general and therefore apart from certain roles or positions in social arrangements.
- 8 Gewirth mentions the case of a person who injects heroin, knowing this to be no good (e.g., most likely addicting, harmful to physical health, a risk to mental health and self-control), but considering it a legitimate exercise of her right to freedom (RM, 76).
- 9 To Gewirth, this is not an uncommon or absurd behavior of agents. Referencing Erich Fromm's *Escape from Freedom*, he mentions the case of persons who, by choice, “putting their destinies into the hands of dictators or total institutions” (RM, 53). But such actions, as Gewirth puts it, always require a closer and case-by-case investigation: The seemingly voluntary surrender of freedom might be pathological behavior or a case of forced choice in a mixed action setting, where a person sees herself forced to surrender freedom to gain well-being to escape a severe crisis.
- 10 Cf. the note in *Self-Fulfillment* (SF, x) that Chapter 4.6 is a reprint with “minor changes” from RM, pages 333–338.
- 11 For the sake of comparison and overview, I'm going to reduce the objections to short keyword phrases.
- 12 The modern version of this paradox was formulated by Marcus G. Singer, who is also quoted by Gewirth (cf. Muñoz 2022).

- 13 In a footnote (RM, 334, fn. 16) Gewirth assigns the following references: For objection 1, he refers to Kurt Baier: *The Moral Point of View*, Chapter 9. For number 2, it is Marcus G. Singer: *Generalization in Ethics*, p. 311ff. For number 3, it is referred to Aristotle, EN 1138a17-20. Kant: *Metaphysics of Morals, Doctrine of Virtue*, AA 384–385, and Leonard Nelson: *System of Ethics*, p. 134–135 stand for number 4. While objection 5 is related to John Stuart Mill: *On Liberty*, Chapter 4.
- 14 To avoid confusion, I use Roman numerals for the objections discussed in *Self-Fulfillment*.
- 15 Note that this objection is not further discussed in *Reason and Morality*.
- 16 Following the philosophical tradition, Gewirth considers “prudence” to be a virtue that is closely related to effective agency. For Gewirth, “prudence” figures as a very sophisticated and complex disposition: It is the ability to calculate efficient means, but also the ability to distinguish between particular and more general ends, thereby clarifying what is worth pursuing in one’s life (RM, 243). This virtue also includes self-knowledge of one’s own abilities and knowledge about one’s natural and social environment. In light of the concept of prudence, according to Gewirth, it is necessary for an agent to “avoid getting into the condition of his proximate inability” (RM, 253).
- 17 Gewirth explains the concepts of *reason*, *reasons*, *reasonableness*, and *rationality* in detail in another paper (Gewirth 1983). He takes “reason” to be a cognitive “second order power” to exercise procedures of explaining or evaluating contents taken from other sources, thereby providing and using universal criteria (Gewirth 1983, 240, 243). Here, reason is not a hypostatized entity, but a procedural power to check, correct, or justify reasons, which are in themselves not yet properly inferred or justified. The main criterion of reason is the principle of non-contradiction (this is the “basic unity” between “the rational and the reasonable” [Gewirth 1983, 227]). In the article, Gewirth aims to clarify the relation between *rationality*, which is held to characterize “efficient, self-interested action” (thereby being morally ambivalent or ignorant), and *reasonableness*, which is commonly taken to include morally right actions toward others as well (Gewirth 1983, 225). Following the principle of non-contradiction, *rationality* consists further in, first, reasoning according to deductive logic and conceptual analysis and, second, in means-ends or cause-effect-reasoning (Gewirth 1983, 228–229; 243–244).

The argument for the supreme moral principle, the PGC, proceeds *rational* from a non-deniable premise about being an agent via deductive logic and conceptual analysis (in a dialectically necessary way, cf. RM, 42–44) to the morally relevant conclusion that all agents have the same moral rights to freedom and well-being. This conclusion is rational, since no agent can reject it on pain of self-contradiction. “Hence, the argument [for the PGC] has established that it is rational, in the most stringent sense, to be reasonable” (Gewirth 1983, 232–233). To be *reasonable* means to realize that selfishness is not a supreme normative standard, but self-interest needs to be subordinated to the moral demands of the PGC. However, the reasonable person must also make use of means-ends-reasoning to “ascertain what is the most efficient means of protecting the rights of persons” (Gewirth 1983, 244). So, *reasonableness* contains, as Gewirth’s argument goes, the *means-ends rationality*, while reasonableness is normatively superior to it as the fully correct or valid use of reason in inferring morally right ends. Connected to *reasonableness* as a long-lasting, practice-guiding disposition is *rational autonomy* in the “sense of being a self-controlling, self-developing agent” (Gewirth 1983, 245; cf. RM, 138–141). What it

- practically means to be reasonable is further explained by Gewirth via the rational virtues, duties to oneself, and via self-fulfillment as capacity fulfillment.
- 18 Therefore, it seems a convincing claim by Klaus Steigleder that, according to Gewirth, from the 'positive self-evaluation' every agent arrives at by following the argument for the PGC, since he can see himself as being an agent having moral rights to basic, non-subtractive, and non-additive goods, it follows that all agents and him possess *dignity* in a strict normative sense (Steigleder 1999, 141–143). For an elaboration on the concept of intrinsic value, see the contribution of Klaus Steigleder in this volume.
 - 19 In this example, I assume keeping a promise is a moral duty.
 - 20 In this essay, which is reprinted as chapter 5.1 in *Self-Fulfillment*, Gewirth explains dignity as a kind of "necessary respect" an agent logically must have toward himself and other agents for being able to act purposively: "Now, there is a direct route from this ascribed worth of the agent's ends to the worth or dignity of the agent himself. For he is both the general locus of all the particular ends he wants to attain and also the source of his attribution of worth to them" (Gewirth 1992, 22). In this sense, the concept of dignity as a positive self-evaluation follows from the foundational argument for the PGC. While the argument in *Reason and Morality* focuses more on deriving the moral rights an agent has, the concept or perspective of *dignity* focuses on what an agent must think of himself while being aware of these moral rights he has.
 - 21 However, it is not always likely that voluntary consent will be given. For instance, it is not likely that a caught criminal would voluntarily consent to the institution of criminal law and to be punished by it. But there are rational arguments, which he could also learn about, as to why this institution and him being punished are rationally necessary (cf. RM, 301–307).
 - 22 I think this is what is meant by calling this right a "second order right" (Steigleder 1999, 177). Since it is a right that, while being reasonable, is not rational to waive, but furthermore functions as a motivation to cherish one's value as being an agent or to see agency and the connected virtues as something that has the highest value, worth fostering and achieving for oneself (while also acting in accordance with the generic rights of others). However, there still and always is the exit option to make use of goods, which an agent is morally entitled to and by which his dignity is exemplified (Steigleder 1999, 141–142), to fundamentally "degrade" oneself.
 - 23 Throwing oneself on a live grenade to save the lives of others is the example given by Urmson (2023[1958], 19).
 - 24 Gewirth calls this a lack of inductive reasoning.
 - 25 This could be seen as an additional lack of deductive reasoning and prudence.
 - 26 See the difference in Kantian theory as mentioned above.
 - 27 Aristotle (1984, 1098a5–15): "If this is the case, and we state the function of man to be a certain kind of life, and this to be an activity or actions of the soul implying a rational principle, and the function of a good man to be the good and noble performance of these, and if any action is well performed when it is performed in accordance with the appropriate excellence: if this is the case, human good turns out to be activity of soul in accordance with virtue, and if there are more than one virtue, in accordance with the best and most complete".
 - 28 Gewirth distinguishes between occurrent and dispositional freedom (RM, 254).
 - 29 In *Reason and Morality*, Gewirth mentions in this regard that "extensive educational measures" were generally justified (RM, 265).

- 30 This only holds if these choices do not follow from forced choice, severe lack of knowledge or lack of education, from mental illness, or were committed under a lack of a “calm state of mind” (RM, 253).

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Part 3

Historical and Cultural Perspectives on Rights



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8 Rights, Coercion, and the Will of the People¹

On the Relationship between Politics and Normativity in Marsilius of Padua

Marcus Düwell

8.1 Introduction

One argument against “rights-based ethics” has to do with the history of rights. Referring to rights in ethics implies a universal demand – particularly explicit in “human rights” that are supposed to be rights every human being deserves to enjoy – while we know that the concept of a “right” (in the sense of an “individual” or “subjective right”) emerged at a certain time and in a particular geographical region. This leads to the question: Are “rights” to be seen as merely a contingent product of certain social and historical conditions? If that were the case, we would have to ask: How can an idea that is only a contingent product of history have any universal validity? A closer look at the history of the concept may help us to overcome this strict alternative and develop a more complex picture. This article tries to contribute to such a debate.

The history of the emergence of the concept of “rights” has been analyzed and evaluated in various ways. Of course, rights in the sense of legal titles can be found in most legal systems (for example, a wealthy family in ancient Rome had a claim to a seat in the Senate). But the modern concept of a “right” is not a privilege bestowed by a king or acquired by tradition but something that belongs to the human being without any act of conferment. How this can be conceived is open for discussion because “having rights” is not a natural feature of a human being like “having a nose”. Thus, the crucial question is: Since when and under which conditions have human beings come to be seen as bearers of rights? This idea – that the “having of rights” is inherently connected with the individual human being – is often referred to as “subjective right” or “individual right” (see, e.g., Brett 1997). Since the 18th century, this concept of “rights” has played a dominant role in Europe’s political self-understanding, and in the 20th century, it became the cornerstone of international law. However, the intellectual and historical sources that led to the emergence of this concept are still contested, as is the interrelationship between its social-political history and its intellectual underpinning. Some scholars trace the emergence

of rights back to Christianity. Others see it as a result of the religious wars in Europe, the political achievements of enlightenment, or some social and political struggles.² Most scholars see them as an exclusive discovery of Western history, later exported around the globe. Some see “subjective rights” as an articulation of an atomistic social concept, interconnected with colonialism, egoism, and anthropocentrism. Others refer to the specific importance of the idea of “rights” in struggles against oppression and in protecting individuals from abuse and arbitrary use of power. According to them, the normative commitment to the rights of individuals since the 18th century has been central to subsequent normative struggles – for the abolition of slavery, for the fight against discrimination on the basis of race and gender, and for the idea of states governed by the rule of law, where each individual has rights that states are expected to respect and enforce.

As it was mentioned in the introduction of this volume, the relationship between the moral and political dimensions of rights is a central topic for discussion that leads to the question of how a “rights-based ethics” can be conceived. Various authors in this volume refer to Alan Gewirth as a central author for such an approach (see the Introduction to this volume and particularly the articles of Bambauer, Beyleveld, Göbel, and Steigleder). Gewirth presented an argument that aims to demonstrate that the rational self-understanding of agents necessarily entails a commitment to the idea that the agent himself, like all other agents, is entitled to certain rights which are indispensable for the exercise of their agency. Political institutions ought to be committed to safeguarding these rights. In his book *Reason and Morality* from 1978, Gewirth presents a quite formal defense of this argument and demonstrates how this moral principle can be applied to various contested social, political, and economic issues. However, in *Reason and Morality*, history or the historical development of concepts plays little role. One could even wonder whether Gewirth’s entire approach represents an unhistorical or idealized view of morality. Thus, we have to ask: Have rights always been there? Has it always been self-evident to understand morality in rights terminology? At the same time, it is remarkable that Gewirth, before engaging systematically with ethical thinking, also conducted research into the history of philosophy. One of his achievements is a monograph about the book *Defensor Pacis* by Marsilius of Padua (published in 1951), along with the first full translation of the *Defensor Pacis* into a modern language (published in 1956). These publications had a strong influence on the reception of Marsilius in the 20th century. Marsilius of Padua (c. 1285–1343, the dates are not completely certain) was a politician, rector of the University of Paris, and an eminent political thinker. Due to strong tensions with the Church (to put it mildly), Marsilius was banned, excommunicated, and therefore never prominently received. Even though Marsilius was part of the broader

Aristotle reception in the High Middle Ages, he was, in some sense, an untimely figure or, as Annabel Brett puts it, “a fourteenth-century Paduan troublemaker” (Marsilius of Padua 2005, X). Marsilius defended a clear division between church and state, the superiority of the state, and – one might even say without exaggeration – some form of democratic organization of the state, which is remarkable by any standards for the 14th century. Furthermore, in recent times, some scholars claim that he was the first to defend a substantive concept of subjective rights (Tierney 1991, 2014, 122–141) – a view not shared by Gewirth himself. Thus, we find an interesting constellation: One of the most prominent developers of the “ethics of rights” studied Marsilius of Padua extensively from a historical perspective. The importance of Gewirth’s contribution to Marsilius’s research has often been emphasized (see, e.g., Nederman 2001). However, to my knowledge, the connection between Gewirth’s historical research on Marsilius and his systematic writings on moral and political philosophy has never been investigated.

My interest in the topic is not so much to understand the influence of Marsilius on Gewirth’s systematic thinking (although this would be an interesting project). Rather, the aim of this article is to understand how the specific view on politics and the state that Gewirth identifies in Marsilius could be related to the emergence of an idea of “subjective rights”. To study this relationship in an author who stood at the cradle of the concept of “rights” may provide some insights into the general preconditions for the discovery of the moral validity of “rights”. I formulate this cautiously since I do not want to make strong claims about the omnipresence of rights here. The aim of this article is much more modest. I only want to ask whether we can say anything about the conditions under which the concept of “rights” made sense in Marsilius’s context and whether this can tell us anything about the general presuppositions for understanding “rights”. The article will proceed in three steps. Section 8.2 will present some central points of Gewirth’s reconstruction of Marsilius’s political philosophy and some discussions about the concept of “rights” in Marsilius. Section 8.3 will look at the Franciscan debate about poverty in the 14th century, Marsilius’s position in that debate, and its significance for questions of rights. Section 8.4 will develop a more systematic discussion about the conditions under which the concept of “rights” make sense. Section 8.5 will draw some preliminary conclusions for the future debate about the historicity of a rights-based ethics.³

8.2 Gewirth on Marsilius of Padua

The *Defensor Pacis* consists of three parts. The first develops a general perspective on the state, the second outlines a view on the church, and the third

(shortly) draws conclusions from the other parts. It has been observed that contemporary scholars have focused their attention primarily on the first part (Sternberger 1981, 93), and Gewirth has indeed strongly emphasized the systematic significance of the first part. Gewirth interpreted Marsilius's work in the history of medieval philosophy and – by doing so – outlined the distinctive profile of the political philosophy of Marsilius of Padua. We encounter Marsilius not only as a representative of medieval conciliarism and a fierce critic of the pope but also as a figure deeply embedded in the medieval reception of Aristotle, particularly his political philosophy. According to Gewirth, Marsilius's political philosophy rests on three pillars (Gewirth 1951, II. Part, xxxii–xliv):

Firstly, Marsilius offers a concept of a good political order in terms of *natural law*. Thus, he provides the normative basis for the assessment of the quality of the state.⁴ Like other medieval thinkers, Marsilius derives insight into natural law not from divine law but from reason. Human reason will direct us toward the goal in life, but human beings will have different views on what constitutes a good life. Of course, for Marsilius, the goals people choose are constrained by the religious, economic, and moral ideals of his time – human beings are not equal, and they live with the goal of attaining eternal life. Therefore, the plurality of lifestyles will be limited. Nevertheless, Marsilius justifies freedom of choice, which will result in a plurality of goals people want to realize in their lives. Many scholars in the Middle Ages were aware of this, but Gewirth observes that most of them are interested in the question of how the state can have a constitution that supports the best way of living (referring to a spiritual version of Aristotelian virtue ethics). Marsilius, however, starts from the idea that the state must enable all citizens to lead a “sufficient life” (Gewirth 1951, 108). The state has to ensure the necessities for life, with the “preservation of the state” being the necessary precondition for doing so. Gewirth quotes Marsilius:

Because among men thus gathered together there arise disputes and quarrels, which if not regulated by the norm of justice would cause battles and the separation of men *and thus finally the destruction of the state*, there had to be established in this association a standard of things just and a guardian or maker thereof.

(Gewirth 1951, 106, emphasis in original)

Thus, the state's primary function is not to direct human beings toward an ultimate goal but to enable human beings to first of all lead their life. And the justification for this task is not given by reference to religion but by a problem that emerges from the ability of human beings to choose their goals. In such a situation, the political order has the task of protecting

and providing the generic condition of agency as Gewirth discusses it in his later writings (Gewirth 1978, 64–104). In comparison to his contemporary authors, we find in Marsilius a kind of change of *ends and means* (Gewirth 1951, 104–115, emphasis in original), in the sense that the means necessary to foster the ability of humans to make their choices in life take priority.

Secondly, from this normative idea follows the coercive task of the state to enforce peace. Gewirth emphasizes that, for Marsilius, peace is only possible if the “unity of the state” is secured (Gewirth 1951, 115–121, 151). He writes:

The Marsilian unity is no longer a moral leadership to a single *end*, but solely a unity of governmental *function* – for coercive political *means*. Unity of government means that regardless of how many individual “rulers” are in the government, there must be a “numerical unity of every action, judgment, sentence or command which is forthcoming from them”. All authorities in the state must thus be “reduced or ordered under one supreme government”, whether this consist in one man or in many.

(Gewirth 1951, 118, the quotes are from Marsilius, emphasis in original)

The coercive power of the state extends to everyone, including the church. That means, while Marsilius fully respects the existence and legitimacy of the church and the religious life, there is a clear order: the religious life and the authority of the church are constrained by the control of the political order. Legal certainty is created by the fact that there are no longer any disciplinary measures, no professional or special rights that are not subject to the authority and control of the state. As Gewirth explains: “[T]he appeal to the ‘objective’ requirements of the preservation of the state brings the priesthood under the jurisdiction of the government” (Gewirth 1951, 123). Without such coercive power, the state would never be capable of ensuring the conditions under which citizens could lead their lives in a sufficient way.

Thirdly, this compulsory task of the government must, however, be legitimized by the will of the people:

(T)he government, despite the great authority which those doctrines give to it, is in the complete Marsilian doctrine itself subordinated to the whole people of which it is only a part ... the ruler must in all cases derive his authority from election by the citizen body.

(Gewirth 1951, 123)

Marsilius is not committed to any specific form of government; in fact, the people should decide how they want to be governed. But he is, in any case, committed to the idea that the government should be legitimized by election. We find here a mutual control function: the government has coercive power to control the life of the people according to the political order, but, at the same time, the population legitimizes the government. Importantly, this election is not seen as a way in which the divine will is indirectly articulating itself; it is rather genuinely the will of the people that articulates itself in the election (Sternberger 1981, 94–95).

For Marsilius ... no other kind of government is even to be considered legitimate. He flatly rejects any ruler of government which is not under the law or not subject to correction by people for transgressing the law, as well as any law which is not made by the people.

(Gewirth 1951, 240)

These three points are the basic themes discovered and reconstructed by Gewirth as guiding principles for Marsilius. Starting from here, we can emphasize some elements in more detail.

First, Gewirth emphasizes that Marsilius formulates not only some material principles for good governance but he also brings to the fore some general expectations one could have with regard to the task of normative political philosophy. According to this line of thought, political philosophy has, as Gewirth sees it, the task of presenting a systematic account of politics that is capable of integrating all three elements: (1) A normative account of the good political order, (2) a theory of conflict and coercive power, and (3) the legitimation of politics by the will of the people. These three elements necessarily depend on each other. In my words, if there were no need to anchor the political order in the will of the people, there would be no need for politics in the first place. Politics arises only because there are people with a will. But the fact that people want something leads to different ideas of the good. Therefore, there must be a general account of the good in normative theory that can be justified philosophically. This normative theory must be enforced, for without enforcement, there is no political order. This enforcement would be totalitarian if the political order were not anchored in the will of the people. Thus, those three elements can – according to Gewirth – only be understood as mutually dependent. At the same time, they show why there is a need to have something like politics and what the principles of good governance are.

Second, with regard to the second element of this political account, the enforcing power of the state, Marsilius could not be clearer when it comes to subordinating the church to state power. We can perhaps generalize this point: Religious, ideological, and moral orientations and their

corresponding forms of organization must be subordinated to state power. What I find interesting in this view, however, is that his claims are formulated without any reference to ideas of religious freedom, possibilities of choosing between churches, religious confessions, or something alike. Marsilius is familiar with the idea of a religion that makes an absolute claim on individuals, their lives, and actions – a type of religion unknown to Aristotle and the authors of classical antiquity. Nevertheless, the entire setting of modernity is not relevant for Marsilius because there was no plurality of Christian churches and confessions as we know it since the Reformation. Instead, there is only one church with the pope at its top. Those human beings that form the citizenry of the state are, at the same time, members of the religious community. Yet, the state must insist, if we follow Marsilius, on its coercive power and the subordination of the church. This means this insistence on the authority of the state is not seen, as it would be later in the 16th or 17th centuries, as necessary in order to enforce tolerance between religions or at least some form of peaceful coexistence. The lack of this entire context is relevant if one has in mind that the philosopher of law Georg Jellinek argued that the modern institutionalization of human rights within the context of the American Revolution was primarily motivated by the desire to safeguard free choice of religion (Jellinek 2006).

In that sense, one could say that Marsilius's claim for the subordination of religion to the state is even more radical. Even though he is a Christian author in every respect, he sees the need for unrestricted coercive power of the state, even if the members of a state are homogeneous with regard to their religious beliefs. There must be a "unity of the state" not founded on religion (Gewirth 1951, 115–125). This unity can only be shaped and sustained by enforcement, and this insight does not follow from some specific Christian beliefs or from conflicts between Christian churches but from the necessity to ensure the conditions of a "sufficient life".

Third, Marsilius emphasizes the potential for conflict between human beings as emphatically as Hobbes. It is, however, important that Marsilius does not attribute this potential to a specific destructive character trait of human beings. On the contrary, Marsilius avoids the Augustinian references to human sinfulness and the fallen nature of man. Human social relations are potentially conflictual simply because free citizens have different ideas about how to organize their lives. Thus, possible conflicts arise from human freedom itself, not from bad intentions. However, Marsilius emphasizes that the political order has to be legitimized by the will of the people. This means that the quality of the political order is not judged by its outcome or the consequences it brings about, but by whether or not it is legitimized by the will of the people. The necessity of politics results from human freedom, but, at the same time, the justification of the political

order is necessarily bound to the will of the people. Thus, there is a necessary connection between all three elements: the natural law order, state authority, and orientation toward the will of the citizens.

8.3 The Franciscan Debate on Poverty: Marsilius and the Emergence of Rights

Having outlined Gewirth's view on Marsilius's political philosophy, I will now use it as a starting point for a closer look at the emergence of rights since, according to historians of ideas, it is this 14th century context in which ideas of "subjective rights" originate (Brett 1997, 49–87). Brian Tierney refers to the "distinction between two meanings of *ius* (*droit*), objective law or subjective right, and the delineation of the relationship between these two concepts remain as central features of various modern rights theories". And he further claims: "Marsilius was the first political theorist to emphasize this distinction and to explore in detail its implication" (Tierney 1991, 8, emphasis in original) – a reading that is not uncontroversial (Tierney 1996, see also 1997, 104–130, 2014, 122–141; Brett 1997, 63, 69). However, it is generally acknowledged that the debate about poverty and property in the context of the Franciscan movement played an important role. Therefore, it is perhaps important to briefly look at this debate.⁵

These debates about the emergence of rights start with a terminological question regarding the Roman concept "dominium", which refers to a domain that is controlled by someone and its relationship to the Roman term for law, "*ius*". Richard Tuck introduces the problem by quoting the theologian Mazzalini da Prierio:

Dominium, according to some people, is the same thing as *ius*. So that anyone who has a *ius* in something, has *dominium* over it; and anyone who has a *ius* to the use of something, has *dominium* in it, and vice versa ... According to other people, it is not identical, for an inferior does not have *dominium* over a superior, but he may have a *ius* against him. Thus for example a son has a *ius* to be fed by his father, and the member of a congregation has a *ius* to receive the sacrament from a prelate etc. So they say, to have *dominium* implies that one has a *ius*, but not vice versa; for in addition to a *ius* one must have superiority.

(Tuck 1979, 5, emphasis in original)

There is thus a tension between a legal title in the sense of an objective legal provision (by positive, canonical, or natural law) and a right understood as a power enshrined in the individual. That there is an objective duty of the father to feed his child does not mean that the child has a right (in the

modern sense) that lies within the individual itself and that grants him control over the father's actions. This means that if the father fails to feed the child, a wrong is occurring, but this wrong does not originate in a subjective right of the child.

This tension became a problem within the debate about the Franciscan ideal of renouncing property. A natural right to property was a central element of natural law, and the Franciscan ideal challenged this in a specific way. While the Franciscans did want some freedom from “temporal things” such as food and clothes (Tierney 2014, 137), they nevertheless wanted to make use of what they obtained through begging or found in the forest. This debate forced them to think about the relationship between the temporal or earthly things and the subjects that use them. By investigating this closely, one has to differentiate different relationships between the subjects and the things they use. Brett presents the position of the pope via his adviser Nédellec in the following way:

To the contrary is the argument that whoever uses an object, either uses it as his own or as belonging to another. If he uses it as his own, therefore he has a right of some kind in it, because we say “This is mine”, “This is yours”, to the extent that you and I have a right of some kind in that object. But if he uses it as belonging to another, then he acts unjustly, and in consequence just or licit use is inseparable from *dominium*.

(Brett 1997, 55, emphasis there)

It is not the point here to discuss the details of this debate, but rather to ask how *dominium* (control over things) is related to property and the subject and what Marsilius's position in this debate was. While the pope insisted that only property legitimizes the use of goods, Marsilius insisted that there is a difference here. It is permissible to voluntarily renounce property. This follows both from natural law (those who have a right do not have to claim it against others) and from divine law because the early church around Jesus renounced property according to tradition. However, this permissibility of renouncing property does not coincide with the renunciation of the use of things obtained through hunting or fishing, as a gift, or as a result of labor. What is important here is “the assertion that use could be separated from every kind of ownership” via the introduction of permission into the idea of a right and the distinction between *ius* as objective law and subjective right. Tierney quotes Marsilius:

[N]o one can licitly make use of any temporal thing ... without right (*ius*) or without having any right (*ius*) in it, taking *ius* in the first and

second signification. For every act not commanded or permitted by law (*ius*) is not licit (*licitum*) as is evident from the definition of the word licit.

(Tierney 2014, 137, emphasis in original)

Tierney elaborates on the significance of permission via referring to Georg Henrik von Wright (Tierney 2014, 128–132, referencing von Wright 1951), who explained that permissions refer not only to those acts that are neither obligatory nor forbidden. Permission is rather implicitly presupposed in the concept of the obligatory. For an act to be potentially obligatory, it must at least be permitted. Based on this consideration, Tierney reconstructs the idea of Marsilius as distinguishing between the permissibility to renounce property and the permissibility to renounce the use of things altogether. For if man were to use nothing, he would die, and suicide is forbidden by divine law. Therefore, it is obligatory to use things to avoid and counteract suicidal action. And since it is obligatory, it must also be permitted.

Marsilius argues, according to Tierney (1991), in the following way: It is permitted to use things, and it is obligatory to do so when necessary for survival. But while it is permitted to use things, it is also permitted to renounce property. In that sense, a distinction is introduced between the permissibility of “using things” and “having property”. This makes it possible to introduce a moral permission to live free from property. It is important to stress that this argument does not lead to the rejection of property altogether, but rather that it is permissible for individuals to voluntarily renounce it. Once again, Tierney about Marsilius:

He wanted primarily to maintain that, although all licit use had to be in conformity with *ius* (in both sense of the term), this did not necessarily imply that the user had a right of ownership even in consumables or any right that could be asserted before a human court. For Marsilius ownership and use were conceptually separable; one could renounce the one and retain the other. For instance, one could renounce all ownership of external goods by a religious vow of poverty, but one could not take a licit vow to renounce all use of things. This was because to do so would be tantamount to suicide which was forbidden by the positive divine law “Thou shalt not kill”. The fundamental right of self-preservation was also a divinely imposed duty and so inalienable.

(Tierney 1991, 11)

I could only outline some aspects of Tierney’s reconstruction of Marsilius, which are developed by a consistent interpretation of the natural and divine law. But an important point here is that, in this approach, the subject and

its powers occupy a new position. The subject does not merely have rights because the human or divine order has granted them, but subjective rights are introduced as a specific element of the legal order.

As a side note, it should be mentioned that this entire debate takes place in a context that also marks the end of natural law understood as a moral and political account that is founded in an ontological or religious order. Christoph Hübenenthal (2019) has reconstructed how, in the Middle Ages, a new understanding of moral order emerged, grounded by rational self-reflection on the nature of human freedom. One can assume that the emergence of subjective rights is a central element of this development.

This debate about Franciscan poverty and its impact on the idea of “subjective rights” has recently been interpreted as a form of depoliticization. Christoph Menke (2020) has claimed that the new focus on subjective rights has to be seen as a way to make the normative order dependent on pre-political and private claims. The pre-political subject claims respect for its private interests, and the normative order sees itself as the Guarantor of those claims. But by doing so, the fundamental antagonism – the fundamental struggle that forms the essence of politics – is endangered. Menke interprets this step, following Nietzsche, as a way to give some standing to the poor and the powerless while ensuring, at the same time, that they remain poor and powerless, instead of fighting for a different political order. “Rights”, in this view, are a means of depoliticization, by drawing attention away from political challenges and stabilizing current economic and social inequalities. I will not deny that Menke’s perspective on rights is a possible function of rights, but I do not see that this function necessarily follows from the concept of “subjective rights”. If we consider Marsilius (who is not mentioned by Menke), we can see that giving the will of the people a normative standing is rather about safeguarding the possibility of a political conflict, but in a form where the conflict is dealt with by political means and not by war.

8.4 The Universality and Historicity of Subjective Rights

To the extent that the reconstruction above is appropriate, we can now discuss the more general question under which assumptions the concept of a subjective right can be conceived in light of the discussion around Marsilius.

In a *negative sense*, we can say that Marsilius’s approach to politics and the state does not rely on a conviction in Christianity, the will of God, nor a specific concept of sin or revelation. The concept is neither based on a specific understanding of history, such as an eschatological or apocalyptic approach. Likewise, Marsilius’s approach does not rely on overly demanding or contestable views of human being. Neither does he assume that

human beings are, in a qualified sense, inclined to do harm to their fellow human beings nor that they are particularly inclined to do good. There are, however, some other assumptions needed to reconstruct those conditions, without which the idea of the state would not make sense.

In the first instance, we have to understand the type of problem to which the establishment of the state is a response to. In other words, what are the assumptions without which it would not be intelligible to create a state? Here, it suffices to assume that humans strive for goals, that they want to realize goals in their lives, and that they have different views on the way they want to live their lives and how cohabitation should be organized. Furthermore, we have to assume that human beings want to relate to each other or at least that they need to relate to each other for the realization of their goals. This implies that they potentially want to use the same means for the realization of their goals, and so it is unavoidable that there are conflicts about the right course of action. These conflicts can lead to destructive and self-destructive consequences. In such a situation, it is required to establish an authority to avoid self-destructive consequences. This requirement does not follow from specific (e.g., particular egoistic) motivations by the agents involved. Thus, agents do not have to be conceptualized as utility-maximizers or mere rational egoists. It is rather sufficient to assume that the agents in question are intentional agents: They strive for the realization of goals, and there is the possibility of conflicts with fundamentally frustrating effects on their possibility of goal fulfillment.

Thus, we only have to make quite minimal assumptions to understand that there is a problem regarding human social life to which the concept of Marsilius gives a response. Yet, Marsilius insists on the “unity of the state” and particularly the coercive power of the state as the answer to this problem that emerges within human social life. This can be made intelligible by referring to what social theories have called a triadic concept of the social sphere (see Bedorf et al. 2000). I will explain this following Luhmann (1972). To understand possible conflicts between agents, we have to assume at least two social positions: Ego and Alter. Ego can choose between courses of action; there are more options than Ego de facto realizes, and it is contingent (not determined by nature) which action Ego chooses. Ego knows that Alter is in the same position, and both know that the realized course of action is contingent. Alter knows the same from Ego, and both know from each other that they have this knowledge. In that situation, they form expectations regarding the possible actions of the other. Stable cooperation requires that these expectations become normative; that is, expectations regarding acceptable courses of action. Being able to develop those expectations is a prerequisite for successful cooperation. Those expectations can be established in various ways. If expectations are disappointed or compliance fails, there can be different forms of sanctions

according to the social groups. Take, for instance, a couple living together for many years perhaps developed very specific expectations regarding acceptable behavior in their household, which may be very different from the normative expectations that hold in a neighborhood, between football supporters, or within a monastery.

The logic of normative expectations, thus far, only presupposes two social positions: Ego and Alter. Without these two positions, there is no need for the development of normative expectations, but these are, in some sense, unstable since they fully depend on the acceptance by the agents involved. This instability can only be stabilized by the social position of “the third” – not in a numerical sense but rather a different social position that is not involved in the cooperation but becomes part of the agreement about normative expectations. Thus, approval of the third will be a precondition for the acceptability of the normative expectations. This social position can be occupied by different possible actors, e.g., a judge or a God (represented by a priest or the like). For Luhmann,⁶ this triadic structure is introduced to explain the function of law, but it is important to see that this construction is more fundamental for social relationships in general and is not depending on the social conditions of developed social orders. Even in so-called primitive societies, the social figure of “the third” is presupposed to stabilize normative expectations. Moreover, we can qualify different types of social orders by the way in which this social position is realized and legitimized.

The analyzed social structure is fundamental because it does not only depend on the assumption that the problem of regulation of expectations is dependent on a logic that follows from the concept of intentional agency. And we can see that the reconstructed logic of the state as “Defensor Pacis” does, *prima facie*, not depend on specific presuppositions regarding historical facts like the existence of religious conflicts but rather arises from the conditions that make history possible, that make social life as a cooperative enterprise possible at all. For the context of this article, it is now relevant to wonder what this means for the position of subjective rights. Not all social orders presuppose subjective rights, but we can distinguish those that do respect them and those that do not.

One could now wonder what necessary starting points for an approach to subjective rights would be. Is it a certain historical or social situation, like a religious war or the like? Following the analysis above about Marsilius, it should have become clear that it is central that the normative order is not independent of the will of the individual but legitimized by the will of human beings. The renouncement of property by the Franciscans can be seen as a real-life thought experiment of how far human beings go with regard to the exercise of their will. Even though the Franciscans understood their will as determined by the *Imitatio Christi*, it was them who

decided to see themselves as disciples of Christ and therefore to renounce property. That means that the normative order cannot overrule their will. At the same time, if authority is given to their will, this needs to be already embedded in an order in which this authority is respected. Since even the Franciscans cannot live in complete isolation, they were in need of an order that safeguards their demand to life as disciples of Christ. This, however, requires that there is a political order with enforcement power in the first place. It also requires that the order is organized in a way that the conditions of subsistence of the subject are safeguarded to enable the subject to develop a meaningful will. This does not necessarily presuppose a homogeneous society of people that have the same mindset; it could be quite an antagonistic society. Rather, it only requires a political order that is based on respect for the status of beings with a will. Such a political order is, however, not one that just implements majority decisions but one that asks how respect for the will of the people can be realized over time.

I am, of course, aware that this line of argument leads far beyond the context of medieval political thought. However, if we think further along these lines, it is unavoidable to ask whether specific institutionalizations of rights are necessary for safeguarding rights for all. In discussions about the universality and historicity of human rights, it is crucial to ask whether these issues depend solely on specific modern, Western, or religious assumptions. The engagement with Marsilius as a medieval thinker in the interpretation of Gewirth shows that the idea of subjective rights can arise from reflecting consistently on the fundamental aspects of politics and social relations of intentional agents.

8.5 The Future of Subjective Rights

This article started with revisiting Gewirth's interpretation of the model of politics by Marsilius of Padua. This model is based on the insight that there is a fundamental connection between the idea of political normativity, the coercive nature of the state, and the will of the people. This connection has been interpreted in two ways: anthropological or normative. Anthropologically, the entire idea of politics becomes only plausible if we assume that humans are capable of developing an idea of the good, that they strive for something in life, that there are potential conflicts between them, and that the state is a political entity created by the will of human beings. Normatively, we could see that in Marsilius's approach, these anthropological facts are sufficient for the articulation of a normative account of a morally good political order.

In the next step, we have seen that the foundation of politics in the will of the people is a sufficient foundation for the development of an account

of subjective rights. If this is correct, we have reasons to doubt that the idea of rights is only possible in terms of the religious conflicts of modernity. We also have reasons to doubt the criticism brought forward by Menke that rights emerge in history as a form of depoliticization. It is rather plausible to trace the sources of rights back to a reflection on the conditions of social life itself, even before modernity and without reference to (religious) European history.

When referring to Gewirth's interpretation of Marsilius, I intentionally referred to a modern author who defended a transcendental justification of rights, which assumes that human beings can understand the authority of a rights-based approach on the basis of rational reflection and not on the basis of historical contingency. At the same time, Gewirth engaged with the contingent historical developments of Marsilius's ideas. It is important for my article not to conflate both perspectives. My approach started from the contingent historical development but has tried to show a way from the contingent history to the universality of human rights that may be informative for future debates on rights. By way of conclusion, I will briefly highlight six of them:

First, focusing on the genesis of rights in the European Middle Ages gives us reasons to assume that there are possible pathways toward a rights-based approach outside of European history. The construction of politics and the emergence of rights within the approach we discussed are not bound to specific sources that are inconceivable outside the intellectual history of Europe.

Second, a concept of rights must necessarily be embedded in a broader understanding of normativity and the coercive power of the state. There cannot be any theory of rights that does not ask to what extent states are justified in their coercive power in order to safeguard those rights.

Third, a rights-based approach will necessarily have to ask how the understanding of rights is related to a general approach to politics, human striving, and the will of human beings.

Fourth, a normative theory of rights will necessarily link ethics and political philosophy together. While the understanding of politics cannot be deduced from an ideal normative theory, such an account of politics presupposes some concept of the good.

Fifth, such a theory of rights will have to be related to the idea of enabling human beings to lead their lives. The idea of Marsilius asking for the conditions to lead a sufficiently good life is at least an interesting starting point for normative debates.

Sixth, if one sees rights as grounded in the will of human beings, they will have something to do with human beings' ability to exercise their freedom.

Maybe this list can also serve as starting points for further debates about the future of rights and reinterpretations of rights within the challenges of the 21st century, such as a globalized economy, digitalization, and ecological challenges. However, as we have seen, the normative reflections in terms of “rights” have a much longer history. Neither debates on “human rights” nor “fundamental rights” in the 20th century, nor the political ideologies of the revolutions of the 18th century, are the “whole story”. The idea of rights is rather embedded in a longer history of normative thinking. A discourse on the future of rights will only be appropriate if this broader context is taken into consideration.⁷

Notes

- 1 The article is dedicated to Klaus Steigleder on the occasion of his 66th birthday. I have known Klaus for over 40 years and consider him to be a philosophical teacher for me, even though I never formally studied with him. Nonetheless, I profited enormously from his publications on Kant’s practical philosophy, which I consider to be a major contribution to Kant scholarship. I also learned from him what applied ethics could mean – a concept that was hardly known in Germany when he started to publish on it. Nearly 35 years ago, I first encountered Gewirth’s philosophy when Klaus Steigleder wrote his PhD thesis on him. At the time, I had no idea that this reception would have such an impact on my further philosophical thinking.
- 2 There are numerous attempts to reconstruct the historical emergence of rights. In my view, important reconstructions of the history of (natural) rights since the Middle Ages are Tuck (1979), Tierney (1996) and, Brett (1997). For the modern development, it is almost impossible to provide an overview of the important literature. For the emergence of human rights in the 20th century, important studies are Glendon (2001), Morsink (2009), and Moyn (2010), which present very different views on the development. It is impossible here to engage appropriately with those differences.
- 3 Perhaps it is superfluous to say, but I should mention that I am a moral philosopher and not a historian of philosophy. Thus, I read the book with some systematic interests, and I do not have the ambition and the competencies to contribute to the historical research on the philosophy of the Middle Ages.
- 4 As a side remark, I should mention that if we speak about a “state”, we should keep in mind that Marsilius is thinking about city-states like Padua and not modern states. At the same time, Marsilius drew implications from his approach regarding the relationship between state and church, with consequences for the empire, implications which brought him into the center of a conflict between pope and emperor.
- 5 The following reconstruction of the position of Marsilius follows Tierney (1991, 2014, 122–141).
- 6 It should be mentioned that this analysis is developed within the early writings of Luhmann when he was still working with concepts of agency that he tried to avoid in later writings. I am indebted to Gesa Lindemann for pointing me to the importance of the early Luhmann.
- 7 I want to thank Philipp Richter, whose extensive questions about this article forced me to strive for more clarity.

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9 Do Immoralists Suffer a Loss of Meaning in Life?

A Focus on Gewirth's Theory of Self-Fulfillment and Metz's Fundamentality Theory

Tobias Vogel

9.1 Introduction

In this article, I make an indirect contribution to rights-based ethics by discussing the extent to which its universalist moral norms are related to the perspective of meaning in a good life. Gewirth argues in his book *Self-Fulfillment* (1998) that the cases of conflict between rights-based ethics and the good life are systematically minor, can be avoided, or can even be interpreted as a positive interrelation.¹ He thus invalidates essential conflict perspectives of the debate on the relationship between the good and the right. In accordance with a systematically limited but strictly binding range of duties of rights-based ethics, I therefore do not want to pursue the question of whether a more moral life in the form of an over-fulfillment of duties is also a more meaningful life. Instead, I want to pursue the question of whether falling short of the scope of moral action mandated by rights-based ethics represents a loss of meaning. The specific question, then, is how the violation of universalist moral norms, as they underlie rights-based ethics, endangers the meaning in our lives. In this way, the approach taken here can contribute to the question of what motivates people to fulfill universalist moral norms of a rights-based ethics of duty.

Gewirth treats the question of motivation at length in one passage of *Reason and Morality* (1978), since this question poses a problem for any reason-based moral justification. The problem of motivation does not appear at the beginning of Gewirth's moral argument: This argument starts with the agents' interests in the preconditions of their capacity to act, to which the agents claim a moral right. The motivation problem of the agents becomes acute when it comes to the universalization of this claim, i.e., the assignment of moral rights to all agents. Although the area of corresponding duties is systematically limited in the approach of rights-based ethics, the motivation problem becomes acute here because the rights of others limit the legitimate scope of agency of a person (Gewirth 1978, 190–191). Gewirth sees the motivational basis of his moral principle as

follows: Reason-based justification means that rational agents have at least one rational reason for acting in accordance with the moral principle. Conversely, the necessary involvement in a contradiction in the case of noncompliance with the moral principle means having at least one rational reason for refraining from corresponding immoral actions. Complementary is the content to which the formal aspect of rational consistency refers. For what is at stake here are the preconditions for the agents' capacity to act, which are to be subject to the protection of moral rights (Gewirth 1978, 194–196). “This content is a direct source of human motivations, and the principle is derived from the agent’s judgments that directly reflect this motivation” (Gewirth 1978, 196).

Gewirth’s conclusion about the motivational power of his reason-based moral principle thus rests on the assumption that we place enormous value on the rational consistency and agency of human beings. In his theory of self-fulfillment, he systematically unfolds this significance in relation to our life practices, thus embedding it in a theory of the good life. In this way, Gewirth specifies and deepens in *Self-Fulfillment* the substantial determinations of the good that are the starting point of his justification of morality and at the same time designate the material content of his moral principle. Furthermore, Gewirth systematically combines this theory of the good with the strong moral elements of his universalist principle by anchoring self-fulfillment in being reasonable as the most valuable capacity of autonomous agents striving for a good life (SF, 71–93). This reasonableness, as he already pointed out in *Reason and Morality*, embodies autonomy in two different senses. In the broad rational sense, it refers to a general principle under which the agent subsumes his respective actions in a coherent manner. This does not mean that the principle itself is rationally justified or rationally generalizable. In the strict rational sense, autonomy presupposes this and means acting in accordance with a justifiable universal moral principle (Gewirth 1978, 138). So if reason is the most valuable capacity for self-fulfillment, and if a good life is well conceived in terms of self-fulfillment, then living a good life, according to Gewirth, means not just acting autonomously in a broadly rational way, but developing the capacity of reason to a level that enables acting autonomously in a strictly rational way – in accordance with the moral principle of generic consistency.

Despite Gewirth's strong emphasis on autonomy in the strict rational sense for his theory of self-fulfillment, the following essay deliberately aims at a reduced reception. The focus of this reception is solely on autonomy in the broad rational sense for the following reasons: The justification of Gewirth’s moral principle is the subject of controversial debate (Steigleder 1999; Beyleveld 1991). If this essay were merely to trace Gewirth’s way of thinking, the violation of universal moral norms could possibly be derived

more directly as a loss of meaning within this framework, but under the premise of a controversially discussed justification of morality. The intention of this essay is to make Gewirth's conclusions on the question of motivation regarding the connection between universalist morality and the good life convincing also to those who are not convinced by Gewirth's moral justification. This means reconstructing a perspective of the good that can be applied to the level of universalist morality rather than already containing it. Thus, the crucial problem of motivation, which Gewirth emphasizes with regard to the universalizing step of decisively affirming the moral right claims of other agents, is consequently developed here only from the perspective of the good.

I consider the focus on the meaning in life to be fruitful in unfolding the perspective of the good, because the meaning in life represents a third aspect of the good life alongside happiness and morality, embodying a dimension of objective values (Wolf 2010, 2–3) that can be interpreted in terms of universalization (Metz 2013, 215–217). Here, the meaning in life can play an important bridging role between universalist morality and happiness, since it interacts with both and embodies an existential motivation itself. Gewirth does explicitly address the meaning in life in *Self-Fulfillment*, but only to a limited extent. He devotes one section (SF, 182–189) to this aspect. Yet, the broader contexts of *Self-Fulfillment* are highly relevant to current philosophical debates about the meaning in life that have developed since Gewirth published *Self-Fulfillment*. However, the reception of Gewirth's *Self-Fulfillment* in this debate is extremely limited. Only for Thaddeus Metz does Gewirth's approach seem to play a relevant argumentative role. Along with Susan Wolf, Metz is one of the most influential figures in the debate. And Metz is of particular interest here because he develops one of the most elaborate theories of the meaning in life with a strong reference to universalist morality. It will be shown that Metz's reception of Gewirth has serious shortcomings but is at the same time crucial because it reveals both the universalizing step and the substantive side of Gewirth's moral theory from the perspective of the meaning in life. Once the shortcomings have been addressed, it will become clear that Metz's theory of the meaning in life, in harmony with Gewirth's theory of self-fulfillment, provides important insights into the question of the extent to which a violation of universalist moral norms represents a loss of meaning.

Meanwhile, several approaches try to show the connection between a good life and morality. For example, by emphasizing the social form of our life practice, which is guided by socially prevalent values and recognitions, the universalist dimension of morality remains vague – socially prevalent values and recognitions may not be based on a universalist moral norm (Fenner 2007, 147–167). With reference to Metz's approach, the

universalist dimension incorporated in the meaning of life should become more apparent. Furthermore, the focus on meaning in life is not limited to issues of social practice that threaten an immoral agent with social exclusion or loss of social identity, but rather, a loss of meaning in life carries with it the existential perception that one's life may be pointless altogether.

In the following section (9.2), the essay begins with a presentation of the most basic thought of self-fulfillment in terms of aspiration-fulfillment and capacity-fulfillment. From there, section (9.3) will show how Gewirth's approach to self-fulfillment can be introduced into the current philosophical debate on the meaning in life. Section (9.4) presents Metz's reception of Gewirth within the framework of his Fundamentality Theory and points out the deficits of his reception. Section (9.5) uses the similarities between Gewirth's and Metz's approaches to show to what extent a violation of universalist moral norms indicates a loss of meaning. Finally, section (9.6) provides a brief conclusion.

9.2 Self-Fulfillment as a Developmental Process of the Deepest Aspirations and the Most Valuable Capacities

Gewirth explains the principle of self-fulfillment as follows:

Self-fulfillment consists in carrying to fruition one's deepest desires or one's worthiest capacities. It is a bringing of oneself to flourishing completion, an unfolding of what is strongest or best in oneself, so that it represents the successful culmination of one's aspirations or potentialities. In this way self-fulfillment betokens a life well lived, a life that is deeply satisfying, fruitful, and worthwhile.

(SF, 3)

Central to the concept of self-fulfillment is the developmental process of the self, which is also covered by the related concept of self-realization. Hans Krämer captures this developmental process within the framework of his concept of self-realization by distinguishing between a factual and a normative self. A factual self, as we find ourselves in our present situation, formulates the ideal of a normative self, to which it strives in the process of self-realization and to which it gradually adapts (Krämer 1998, 106–120). As the above quotation makes clear, Gewirth interprets this process of self-development as the realization of qualified aspirations and abilities, respectively, of the deepest desires and the most valuable capacities.

Aspirations are expressions of desires, but they are not the same as desires. Desires become aspirations when they are endowed with an action-guiding intention to realize them, i.e., they must take on the character of personal goals. This presupposes that a desire is not only regarded

as technically realizable, but also that the respective desire is regarded as sufficiently valuable to distinguish it as actively worth striving for. In turn, this evaluation is not limited to the feeling of happiness that results from the realization of a particular goal, but it also extends to the significance of the articulation and pursuit of a particular goal for the personal self. Being a certain person, characterized by certain goals and their pursuit, can be of even greater value for a person's self-image than the realization of the respective goal. In this respect, the most important aspirations are not those that result from the strongest urge toward a particular object, but those that result from the deepest desires, i.e., desires that are particularly significant or even constitutive of personal identity (SF, 21–24).

Thus, aspirations anchor people in their lives by linking the fulfillment of goal articulation, goal pursuit, and goal realization with their personal identity. At the same time, we experience ourselves as autonomous in our choice and pursuit of aspirations when we go through the multifaceted process of self-determined reflection and identification described above. In this way, we open the perspective on ourselves to control our desires, motives, and behavior in the pursuit of our goals according to our own values and rules. In this self-understanding of our individual autonomy, we are not only concerned with achieving a desired goal, but also with attributing the pursuit and achievement of a goal to ourselves and making this interpretable as an expression of our own identity (SF, 32–40). Accordingly, autonomy denotes the constitutive mode in which aspirations for a fulfilled self acquire their meaning, and in this function, autonomy is at the same time to be regarded as a particularly important and desirable good (SF, 35).

Capacities enable us to choose and pursue our aspirations autonomously. The value of a capacity is first measured by the context in which it is embedded by a particular aspiration. A successful baseball player relies on different capacities than a successful chess player, so different capacities are of different value to them (SF, 69–70). To make a less context-dependent and more generalizable statement about the value of a particular capacity, a greater abstraction is needed. The question then is not which capacities are relevant for the purposes of a particular context, but which capacities are crucial for our aspirations and their likelihood of success in the first place, and in this respect also realizable and applicable to people in general (SF, 67–69). Gewirth sees these characteristics on an abstract level in the fundamental qualities of well-being and freedom (SF, 109–110).

As in his other works, Gewirth divides well-being into basic, non-subtractive, and additive well-being, to which he assigns the respective capacities as the most important virtues for a flourishing life. At the level of basic well-being, he assigns the ability to maintain one's physical and psychological integrity, insofar as this can be influenced by one's lifestyle.

At the level of non-subtractive well-being, he assigns the capacity to avoid self-destructive behavior, which can be seen as a reaction to setbacks of various kinds, at least as profound discouragement up to resignation (SF, 122–123). While these two types of capacities primarily represent necessary framework conditions for successful aspirations, additive well-being, as a process of increasing one's own capacities, denotes the actual mode of activity of self-fulfillment. Here it means, above all, the ability to broaden and deepen one's horizons, to educate oneself, and to engage in new things, making aspirations accessible that were previously inaccessible. It refers to learning on the basis of previous aspirations and the knowledge about oneself gained from them, which enables a person to adapt to further aspirations in a more reflective and appropriate way (SF, 123–125).

As a reflexive capacity, the person's internal capacity for freedom is closely related to the reflexive aspects of additive well-being: In order to use one's freedom effectively, one must be able to make qualified choices, to insert them as concrete cases into more general considerations based on a sound understanding of the situation and of oneself. This, in turn, means being able to control one's desires and behavior in a reflexive way, to develop them through reason, and thereby to develop one's autonomy (SF, 113–114). The ability to reason, which Gewirth considers the most valuable capacity, is of outstanding importance, for reason enables us to question the truth-related content of justification of our reasons. Reason thus opens up to us the ability to judge the extent to which our respective reasons carry weight or the extent to which they are to be rejected or revised (SF, 72). In this respect, the significance of reason is by no means self-referential; it is not exhausted in applications of logic or other purely theoretical or intellectual activities. Rather, it plays a role in every practical context when we consider what goals we should set, for what reasons, and by what means we should strive for their realization (SF, 75–77). Accordingly, reasonableness is a necessary condition for self-fulfillment as capacity-fulfillment. In other words, whichever way of life most closely corresponds to our respective identities or fulfills our deepest desires must always exhibit reasonableness.

9.3 Self-Fulfillment and Meaning in Life

Contemporary philosophical debate distinguishes between a meaning of life and a meaning in life. The meaning of life is based on an external attribution of meaning to human life and is based primarily on metaphysical assumptions. In order to exclude these metaphysical questions, philosophers largely limit themselves to the question of the meaning in life, i.e., under which conditions a person can internally ascribe meaning to his or her respective life practice (Metz 2013, 3, 144–160). Meaning is thus

understood as a third dimension of a good life alongside happiness and morality (Wolf 2010, 2–3).

In the philosophical debate, various criteria are given for the attribution of meaning to life: For example, being active is cited as a criterion in contrast to passivity. Furthermore, meaningful activities are subjectively about having a positive relationship with them in a willing and affective way, but beyond that, it is also about an objective value dimension of this activity or the purpose to which it is directed. This objective value dimension is something that opens up to us not only in a purely affective way but also in a rational way and deserves respect and appreciation independently of our pleasure. The dimension of objective value also refers to the criterion of self-transcendence, insofar as meaning-oriented activities must not be purely self-referential but must be directed to something that transcends oneself and by which one's life makes a difference (Wolf 2010, 9–11). Closely related to self-transcendence is the criterion of social embeddedness (Kühler 2018). The consideration of the totality of one's life as a comprehensive way of life also presupposes rationality in the sense of a coherent life narrative or life story (cf. Taylor 1989, 47–52; Metz 2013, 46–58).

To begin with, Gewirth presupposes active agency within the framework of self-fulfillment through aspiration. And to the extent that in the developmental process of self-fulfillment we do not simply pursue unrelated goals by means of unrelated actions but strive for rationally coherent connections and prioritizations within the more general framework of a way of life, a narrative pattern for a life story worthy of identification opens up here. Furthermore, the goals we set for ourselves must not only be attainable, but we must also perceive them as valuable (SF, 186–188). Moreover, according to Gewirth, self-fulfillment involves value in both subjective and objective dimensions: Without the subjective dimension of aspiration, a meaningful life could hardly be understood as an autonomous life in which people actively strive toward their respective ideals of life. Without an objective dimension, on the other hand, any subjective aspiration, however unqualified, would already be a meaningful one. It is therefore important to combine the subjective dimension of aspirations with an objective value dimension for the concept of a meaningful life. The objective value dimension refers to capacities as formulated in the generalized context of promising aspirations of autonomous agents based on well-being and freedom (SF, 183, 186). From the perspective of acting persons, life has meaning in terms of worthwhile goals that are attainable and worth striving for (SF, 185–188). In the words of Gewirth: “According to the conception of the meaning of life presented here, meaning is supplied by agents who interpret their lives as striving for highly important purposes they make their own”² (SF, 188). With this simultaneously

subjectivist and objectivist value-theoretical location of meaningful activities, Gewirth comes close to the relevant definition of meaning in life by Susan Wolf, which she formulates as follows: “On this conception, meaning in life arises when subjective attraction meets objective attractiveness, and one is able to do something about it or with it” (Wolf 2010, 26).

The objective value aspect of meaningful activities is closely related to the criterion of self-transcendence. Relation to something that proves valuable to us through reflexive reference to objective reasons enables us to ascribe meaning to our existence beyond our volitional and affective inner life. Our existence is given meaning in this perspective when it makes a difference by orienting us to something other than our own pleasure (Wolf 2010, 18–30). Gewirth discusses this criterion by identifying value contexts on the basis of the classical tripartite division of the true, the good, and the beautiful, to which respective fields of activity correspond, e.g., scientific inquiry, good conduct toward other people, artistic practice. From our respective subjective point of view, these fields embody objective values, insofar as we find the standards and yardsticks of the respective goodness instead of just setting them subjectivist, e.g., as pure judgments of taste (SF, 177). To contribute to these values is an essential form of self-transcendence. And indeed, the exceptional personalities in these fields mentioned by Gewirth, e.g., Albert Einstein, Wolfgang Amadeus Mozart (SF, 178), are among the classical examples of the meaning in life in philosophical debate (cf. Metz 2013, 227–231). In this perspective of excellence, self-transcendence is measured in terms of capacities that may be desirable ideals for many people but are nevertheless beyond their reach (SF, 182).

However, the criterion of self-transcendence does not need to be elitist or limited to the respective heroes of science, art, and morality. For the concept of self-transcendence can, firstly, refer more generally to a person’s orientation toward something beyond his or her subjective pleasure. And Gewirth points out, especially in the context of the fulfillment of aspirations, that happiness can hardly be achieved only in a direct way, but in far-reaching contexts presupposes a commitment to something that one judges important and valuable, independently of one’s own well-being (cf. SF, 50). Secondly – and this points to the criterion of social embeddedness – we find non-subjective value standards in various forms of relationships, as Gewirth explains in his reflections on particularist morality.

Social relationships are in many ways reference points for our aspirations and the foundations of our identity, mediated by social roles, ranging from intimate relationships, family, friendship, and collegiality to political and cultural affiliations (SF, 141–142). In such relationships, we also apply and develop our capacities, making social relationships not only a field of aspiration fulfillment but also of capacity-fulfillment. In doing so, we exercise our capacities according to the established value standards of the

respective social context, e.g., in raising children, when we are concerned with being good parents. The same is true for other social roles: When we strive to be a good friend or a good fellow citizen, we are not simply following our subjective inclinations, but through our actions, we are contributing to a context of values that we encounter and by which we judge our actions (SF, 144).

Gewirth illustrates this especially in relation to love. For all the subjectivity and intimacy of love relationships, there are non-subjective standards by which we judge what distinguishes a good love relationship from a bad love relationship, and what distinguishes a good partner from a bad partner, making him or her accordingly lovable or unlovable. If our role as a partner is only about our own inclinations and happiness, the relationship will certainly be disappointing because an instrumental relationship with our partner will dominate. Rather, a good love relationship is characterized by making the other person's well-being the object of one's own aspirations for her own sake and developing one's own social and empathetic capacities in it. At the same time, the same aspiration of the partner toward us enhances the capacities of our own self-understanding: We can understand ourselves better through our partner and develop our self-awareness of what is lovable about us (SF, 146–150). By developing ourselves appropriately in intimate and other relationships, and by positively influencing other people and their self-fulfillment, provided we meet the value standards of the social relationships in question, we successfully align ourselves with something other than ourselves and thereby make a difference. In other words: We give meaning to our lives through self-transcendence.

9.4 Thaddeus Metz's *Fundamentality Theory of Meaning in Life* in Reference to Gewirth's Self-Fulfillment

Thaddeus Metz develops his theory of an objective value dimension of meaningful activities to fill a gap in the relevant approach of Susan Wolf (Metz 2013, 184). Wolf attaches great importance to the level of objective values in her approach to the meaning in life, but, as she herself states, she does not provide a theory of objective values. She gives various examples of objective values but does not make clear what distinguishes this level of objective values in general (Wolf 2010, 45). To find an explanation of what is objectively valuable about what we orient ourselves to and self-transcend, Metz turns to Gewirth's theory of self-fulfillment. Metz finds his starting point in the role Gewirth assigns to reason as the fundamental human capacity for reflection. Meaningful orientation is constituted within the reflexive horizon of reason and expands all the more as this horizon expands (Metz 2013, 217). Thus, the ability of reason to judge

specific issues from a general perspective and to reflexively assign value to them on the basis of their generalized validity moves to the center.

Metz gives two examples to illustrate this. First, he refers to the objective standards by which we measure the value of a work of art. The more universal and timeless the message of a work of art appears to us, the greater the value we place on it (Metz 2013, 215). Second, he cites the example of love as a possible counter-objection, since our affectionate attention is only directed toward certain persons. In order to refute this objection, Metz devises a possible response by Gewirth, which is close to the actual arguments given by Gewirth above on the subject of love, but Metz does not refer to the corresponding passage in Gewirth's text at all. In essence, Metz turns this objection into support for his position by emphasizing that the subjective and special attraction that love exerts on us only becomes understandable against the background of more objective and universal evaluative contexts through which we perceive our partner as lovable and judge our relationship as a good partnership (Metz 2013, 216).

Metz sees the merit of Gewirth's perspective primarily in two aspects: In contrast to approaches that see the objective value aspect of meaningful action only in the promotion of the well-being of others, Gewirth additionally refers to the characteristics of the agent. Meaningful action is thus not exhausted in a certain result of action, but the reference to the reflexive qualities of reason makes it possible to link the meaningful orientation toward something outside oneself, i.e. self-transcendence, back to the internal qualities of the agents. Meaning is thus internally related to a person's identity, capacities, and virtues, and to the process of her development within the framework of self-fulfillment. Second, the reference to reason is broad enough to encompass reflected and planned action in its breadth and depth, as it underlies moral action, intellectual and artistic activity – that is, in the context of valuing the true, the good, and the beautiful (Metz 2013, 215, 218). Metz therefore derives the following principle from Gewirth's reflections: "A human person's life is more meaningful, the more that she employs her reason in ways that transcend particularity" (Metz 2013, 217). He adds: "I think that this theory of what makes a life meaningful is the strongest one to be found in, or rather suggested by, the literature" (Metz 2013, 217).

However, he considers this result to be short-sighted in two respects and emphasizes the underdetermined nature of the universalization criterion. First, not every further step of universalization must point to an expansion of meaning. In the realm of the true, for example, a plausible scientific theory about physical or chemical processes does not need to be more meaningful than a plausible theory about biology, anthropology, or culture, even if the scope of the former is more universal. Second, there is the question of triviality. For example, Nelson Mandela's life is said to be

particularly meaningful because he fought for human rights. If, instead, he had helped everyone have fresher breath or cut their toenails, his contribution would still be to the general condition of people, but it would hardly have the same significance. Similarly, a literary work about the loss of baby teeth contributes to the universal conditions of human life but can hardly claim the same significance as a work about existential human conflicts (Metz 2013, 217–218).

To remedy these deficiencies, Metz directs the criterion of universalization to the fundamental conditions of human existence: “A human person's life is more meaningful, the more that she employs her reason and in ways that positively orient rationality towards fundamental conditions of human existence” (Metz 2013, 222). He elaborates this principle in the value contexts of the true, the good, and the beautiful. For example, when a person like Nelson Mandela uses his reasonable autonomy to fight for human rights, this does not involve a more universal aspect of human life than cutting toenails. But it is so much more important and meaningful because, unlike cutting toenails, it reflects the fundamental conditions of human autonomy (Metz 2013, 227–228).

The crucial deficit in Metz's reception of Gewirth is that he reduces Gewirth's theory to the reasonable step of universalization and ignores its material side, implying that it does not have a place in Gewirth's work at all (Metz 2013, 227–231). In fact, despite the argumentative importance he attributes to Gewirth, Metz refers to only seven pages of his book (= SF, 177–183) (Metz 2013, 210–215). Against this background, it is hardly surprising that Metz does not even consider the broader argumentative contexts of the theory of self-fulfillment. Gewirth's theory of self-fulfillment is based precisely on a qualified emphasis on the fundamental conditions of human existence, placing them in the developmental perspective of an autonomous life. To this end, Gewirth saw the fulfillment of aspirations, on the one hand, as the realization of the deepest desires, i.e., those desires that have a special significance for one's own identity. On the other hand, he focused on capacity-fulfillment as the realization of man's most valuable capacities. In this context, he identified reason as the most valuable capacity, insofar as its power of judgment is decisive for classifying individual aspirations and capacities into the generalizable, context-independent fulfillment conditions of one's own developmental perspective. From there, the most important practical capacities were shown to lie in reflexive freedom and the basic, non-subtractive, and additive dimensions of well-being. The whole point of reason-guided universalization within the perspective of the good in *Self-Fulfillment*, then, is that it is directed toward the generally human developmental conditions of an autonomous life practice.

Thus, Metz's two objections to Gewirth, based on which he develops his theory, do not apply at all. It is wrong to assume that in Gewirth's approach every further step toward universalization would have more meaning, since he limits the relevance of rational universalization to the practice of human self-fulfillment from the outset. In this respect, it also makes no sense when Metz seems to go beyond Gewirth by focusing on the fundamental conditions of human existence that are responsible for autonomous human life, since this focus on intentional human action is the line of vision of Gewirth's entire philosophy. Nor is Gewirth's perspective affected by the problem of triviality. On the contrary, in contrast to Metz, Gewirth provides a differentiated criterion of consideration, insofar as he names capacities and goods on the level of well-being alone, to which different weights are assigned for human action. In his moral philosophy, Gewirth thus uses the criterion of "the degrees of needfulness for action" to determine the importance of different goods, such as the basic goods before the non-subtractive goods and these in turn before the additive goods (SF, 88) – even if this criterion is somewhat relativized in the horizon of self-fulfillment, insofar as, as described above, the practice of personal development is primarily assigned to additive well-being. For meaningful activities, this means a surgeon who saves lives does not necessarily have a more meaningful professional practice than an inspiring teacher, even if the former makes a difference for basic goods and the latter "only" for additive goods. At the same time, this means that Gewirth has no problem classifying cutting toenails as less relevant to the meaning in life than performing surgery or teaching.³

Metz's approach to fundamentality is directly relevant here because it makes the step of universalization guided by reason fruitful in connection with Gewirth, in order to determine the objective value dimension of the meaning in life. And Metz also gives the objective value dimension of meaning a substantial element. What turned out to be wrong is not the relevance of the substantial element, but Metz's claim to go beyond Gewirth. In fact, Gewirth defines the substantial side of the good even more precisely than Metz.

9.5 Violations of Universal Moral Norms as Loss of Meaning

What is particularly fruitful about Metz's approach is that his distinctions are not limited to activities that are either meaningful or meaningless (with all the gradations of more or less), but he also lists a third type of activity that directly reduces the meaning in life. These are activities that negatively affect the fundamental conditions of human existence. Such activities are subject to moral prohibitions (Metz 2013, 233–234). From this perspective of meaning, reason-guided universalization is no longer limited

to pointing out the general preconditions of self-fulfillment. This is where the other half of the universalizing double step of reason comes into play, which aims directly at the moral theory of Gewirth. Through this second half of the double step, other agents are interpreted in the same value context, and thus the same moral validity is ascribed to them as to oneself (SF, 93). Here, in accordance with Metz, this is to be understood as the constitutive expansion of the horizon of meaning described above beyond a limitation to the purely particular: Be it the appreciation of a work of art because it conveys a universal message about human existence; be it the fascination with a scientific discovery because its truth can affect all our understandings of ourselves and the world; or be it the identification with our own social roles because they correspond to what makes us good friends, partners, parents, or colleagues.

A loss of meaning is therefore imminent through the violation of a universalist moral norm because it cannot be coherently reconciled with the value standards that open our horizons of meaning. A violation of universalist moral norms thus indicates that a person's horizon of meaning is either so narrow from the outset that meaning in life can only arise in an enormously reduced way, or that this violation must come into serious conflict with the value standards of his or her horizons of meaning, so that a rupture with a coherent way of life and the identity that corresponds to it is implied. According to Gewirth, the former indicates that the perspective of autonomous development is so limited that there is hardly any potential for successful self-fulfillment (SF, 96). The latter, i.e., the identity conflict, would, according to Gewirth, represent an alienation from oneself (SF, 118) and come into conflict with one's own autonomy, because "autonomy includes having a secure sense of one's own identity" (SF, 115). Only from a secure sense of one's own identity can a coherent direction of development in the sense of successful self-fulfillment be determined at all (SF, 115).

The categorization of a violation of universalist moral norms as a loss of meaning in life can be further demonstrated by Gewirth's distinction between self-esteem and self-respect. Both self-esteem and self-respect denote virtues on the level of additive well-being. Gewirth interprets self-esteem primarily as a virtue of prudence, indicating an awareness of one's own capacities and the value of one's goals. Self-esteem thus denotes a person's confidence that he or she can achieve his or her goals and, at the same time, that they are worth striving for. Self-esteem can be understood as the fundamental virtue through which we gain access to meaningful activities based on goals that are attainable for us and that meet the qualitative requirements of the respective value standards. Self-respect, on the other hand, is a clearly moral virtue for Gewirth, insofar as it refers to universalist moral norms. Self-respect means being aware of one's own

dignity, ascribing value to oneself in accordance with the value ascribed to others, and accepting corresponding rights and duties before and for one another (SF, 94–95).

With the help of these two virtues, different kinds of reduced meaning can be distinguished. First, in line with the broader perspective of self-fulfillment, a reduction of meaning in life can be an advocated result of one's own autonomous life choices and their developmental perspectives. This is the case, for example, when one decides to shift the focus of one's life from one's capacities and aspects of self-transcendence to one's pleasure. It is true that capacities and meaningful activities are, for the most part, positively related to happiness, in that meaningful activities that require many of our capacities also promote our enjoyment of those activities. On the other hand, the development of our own capacities can also be very demanding and stressful (SF, 50, 62). Meaningful activities can also be exhausting and self-sacrificing and mean that we put our pleasures far behind what we devote ourselves to in a meaningful way (cf. Metz 2013, 183–184). If we perceive an imbalance that is detrimental to our own well-being, it may be appropriate to direct our aspirations more toward our own pleasure than toward the further development of our capacities and meaningful activities. Even though we have the right to always expand our horizons of meaning and capacities within the framework of additive well-being, we do not have to make full use of this right. This form of self-chosen reduction of meaning does not imply a loss of self-esteem or self-respect and, thus, does not imply a real loss of meaning. The prerequisite for this, of course, is harmony with our identity and the fundamental preservation of our meaning in life.

A real loss of meaning is rather a failure to live up to more objective standards of value. For example, if a person's deepest aspiration is to be a great artist, but she realizes that her works of art do not convey universal messages about human existence, but are merely trashy, then that person experiences a loss of meaning through reduced self-esteem. This loss of meaning, however, does not need to change her self-respect, as long as she still sees herself as a valuable and dignified human being whose developmental perspective of self-fulfillment is important. From this fundamental self-understanding, this person can set new and different goals and revise her way of life accordingly. The meaning-oriented perspective can change its object here instead of narrowing its horizon of universal value standards. The rupture with the aspiration to be a great artist represents an incoherence in one's life path that must be managed coherently within the developmental perspective of self-fulfillment. This can be done above all because such a loss of meaning does not involve any incoherence with the developmental perspective of self-fulfillment as a positive orientation toward fundamental human conditions of existence.

A violation of universal moral norms, on the other hand, does not mean merely making a life choice within the framework of self-fulfillment, or merely missing a value standard (e.g., through trashy arts) that, within the plurality of different life paths, has given meaning to one's aspiration by promoting fundamental human conditions of existence (e.g., through great art). Instead, a violation of universal moral norms means breaking with the evaluations that provide general and objective reasons to distinguish one's own developmental perspective as good, important, and meaningful. Such a loss of self-respect involves a much more difficult challenge than the loss of self-esteem: In contrast to a person whose loss of meaning amounts to a loss of self-esteem, it is not simply a matter of restoring one's life coherence within the developmental perspective of self-fulfillment. A person who has lost self-respect must first bring her life (back) into line with the generalizable value standards of a developmental perspective that allows for broad horizons of meaning.

9.6 Conclusion

While the rational contradictions of immoral agents can be pointed out from a moral-theoretical perspective,⁴ the perspective of the meaning in life pursued here has attempted to show why this contradictoriness poses a problem for the good life of such agents. Perhaps the figure of the amoralist becomes even more odd if one also imagines such a person as having no meaning in life. This makes the construction of a happy amoralist even more questionable, since it is doubtful whether such a person feels depth and meaning in her life, and whether she feels any happiness at all that is not merely superficial. Conversely, people who feel confronted by the absurdities of human life,⁵ and who draw the conclusion from such an experience of existential meaninglessness that moral action does not matter, can expand their horizons of meaning in life by endorsing universalist moral norms. The problem of motivation, which in Gewirth's justification of the moral principle becomes acute in the assignment of moral rights to other agents, can thus be given the following twist: A restriction of the legitimate sphere of action does not represent a restriction of meaningful perspectives of action, but, on the contrary, expands a person's horizon of meaning. On the other hand, agents who risk a loss of meaning by violating universalist moral norms can still evade it: They can counter incoherence in their lives, due to a single moral violation, by trying to redefine morally bad reasons as good ones and apply them to their specific situation. And if they have an overall narrowed horizon of meaning due to a lack of universal perspective, and this does not make even continuous moral violations appear incoherent, they can still secure their meaning in life by devoting themselves all the more vehemently to a purely particular

reference. A coherent agent with a broad perspective on the meaning in life has not only moral-theoretical reasons, but also eudaimonistic reasons for not wanting to trade places with such a person.

Notes

- 1 In the following, *Self-Fulfillment* (1998) will be quoted as “SF” along with naming the page number.
- 2 Note that Gewirth does not distinguish between the meaning of life and the meaning in life in his terminology.
- 3 This is not to deny the meaning of pedicure as a professional practice, as well-cut toenails can be at least a relevant aspect of people's aspirations.
- 4 For an overview and conclusive interpretation of the self-contradictions of universalist egoists and amoralists from a Gewirthian moral-philosophical perspective, see Steigleder (1999, 99–108).
- 5 For an analysis of these absurdities see Nagel (2012).

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Part 4

Rights in Contexts of Applied Ethics



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10 On a Freedom-Based Concept of Person and Its Bioethical Consequences

Reiner Wimmer

This essay is divided into two sections. The first one explicates some essential aspects of the experiential and logical basis of the concept of person. The second part tentatively draws a few consequences from that concept with regard to some bioethical problems which increasingly disturb us nowadays.

10.1 The Concept of Personhood – Foundational Considerations

It is my conviction that the fundamentals of ethics are, in the last resort, universally rooted in the biological and transcultural conditions that constitute human life and people's self-understanding. Therefore, I will start with an explication of the way people understand themselves and one another in everyday life and in their scientific endeavours. Such experiential explication requires neither metaphysical nor scientific concepts. On the contrary, rationally founded metaphysics, sciences, and humanities conceptually presuppose a self-understanding that is implicit in all human practice, insofar as it refers, above all, to truth and the ability of free consent to truth (or what is believed to be the truth in a particular case).

I think that the most succinct, concentrated, and forceful formula of such an explication is the following: Human beings are beings able to behave towards themselves and to relate to their own behaviour as well as to themselves as the origin of this behaviour. Such behaviour towards oneself is a reflective relationship containing two aspects. The first, which may be called in the broadest sense "theoretical", involves perceiving and recognising all sorts of things: living beings, states of affairs, events, acts, including a person's (self-reflective) awareness or consciousness of his or her own perceiving. The other aspect, understood as "practical", includes evaluative and, in particular, critical assessments referring to persons' behaviour as well as the subject's own behaviour, underlying intentions, and aims. In both respects, theoretically and practically, humans necessarily think of

themselves as accountable and responsible subjects inevitably held to the unconditional claims of truth and (pre-moral) rightness.

Such accountability and responsibility towards truth and rightness presuppose freedom. Freedom may be realized on different levels: as freedom of action: being able to do without restraint what one is capable of doing and what one intends to do; as freedom of choice: being able to choose between different courses of action as between ways and means towards ends set by others or by oneself; and as freedom of decision: being able to decide autonomously on the objectives and purposes of one's own actions.

The freedom to act, choose, and decide conceptually implies being responsible for the relevant courses of action. Actions, choices, and decisions can be ascribed to the person who carries them out; they are not products of natural processes in which things happen without the person's involvement. Rather, these courses of action (as well as the physical and perhaps mental sequences of events whose substrata they are, in the sense of necessary yet not sufficient conditions) do not take place without having been initiated and implemented by individuals, who are usually able to give reasons for their actions. It is in this sense that people are responsible for their actions, choices, and purposes (in this context, the word "responsible" has to be understood in a very broad sense; it is not restricted to morality). The question, however, is whether this kind of freedom is merely relative, i.e., whether the rules, the principles, and the purposes on which we base our actions are due to laws, drives, impulses, and desires over which we have no control (although we might think we do and even persuade ourselves that we do), and which might even be completely removed from our consciousness.

To put the question more fundamentally: Are not people's relationships with themselves, with all their epistemic, evaluative, and acting abilities, necessarily limited? Awareness of and statements on concrete limitations can always be taken one step further, but at no point is it possible to make sense *in toto* of the impulse itself, which brings people to reflect and to form opinions. Thus, as a matter of principle, the objectivization and the assessment of ourselves never come to an end and never yield any final results. There are no final certainties about whether people ultimately consider themselves as moral beings, and if so, what kind of moral persons they are. Thus, the Delphic God's demand, "Gnothi seauton" – "Know thyself!", is part of the conceptual basis of morality. Yet, oddly (or perhaps even paradoxically) enough, this demand can never be met completely. In a free transposition of Socrates' self-characterization, regarding the divine demand and his effort to satisfy it, one might say:

I know that I do not know myself from a moral perspective. I do not know whether, morally speaking, I am a human being or a monster.

I know that in this crucial, indeed uniquely essential respect, I do not know the very truth!

One might ask what the significance of this basic human situation is. I assume that it has religious significance, but this is not the topic under consideration. Instead, the topic is the concept of person and its bioethical implications.

So far, it has been established that every living being can be understood as a creature behaving towards itself. Further, a responsible subject is characterized by the ability to behave towards this behaving towards oneself. Thus, subjects can dissociate themselves from their own drives, desires, impulses, etc. In addition, they can dissociate themselves from the basis of such drives, i.e., from what we call “their nature”; they can even dissociate themselves from what was set in advance for them, the environment, fellow human beings, nature, and society. Finally, they can dissociate themselves from their personal histories for which they are responsible, i.e., from their “second nature”, as well as from current opinions, and thus from nearly the entire natural or acquired character. Yet, there is one exception: Nobody can dissociate from the fundamental impulse to dissociate nor from its motivational character. This fundamental limitation to personal self-objectivization prevents also the definitive answer to the question whether or not, in the ultimate and pre-reflective sense, human beings are free to determine themselves. There seems to be at least a general possibility to extend the scope of their statements concerning themselves ad infinitum, since every limitation which they perceive, as such, is already surmounted.

The question is whether limitations exist, in which people are no longer able to objectify and from which they cannot dissociate themselves. These unrecognized, perhaps unidentifiable conditions of human nature would, therefore, remain effective and define human self-determination. Alternatively, could it be that human beings are, in this ultimate and essential respect, free and capable of such essentially pre-reflective self-determination? This question cannot be answered. We are, however, not left without hope. It can be shown that the thesis of universal determinism cannot even be properly stated since its claim to truth would be pragmatically self-contradictory. Indeed, its meaning – including the meaning of the terms used in formulating the thesis – would be lost beforehand. Nevertheless, the ultimate reality of human beings might be like the one this thesis attempts to assert. At the same time, it becomes obvious that the proof, that the determinism thesis cannot be proven, is no evidence of its antithesis, the freedom thesis. Here, we have to confess our *ignoramus*, indeed, our *ignorabimus*. Needless to say, that in most parts of daily life as well as in the sciences, we have no choice but to take freedom for granted

and to let this conviction guide us. Without such conviction, our everyday activities and scientific inquiries, and, above all, the identification of physical, mental, or social constraints or laws would no longer be conceptually possible. Thus, as long as one lives consciously, one cannot fall back behind this conviction. It is for conceptual (and not merely psychological) reasons that one is not able to convince oneself of the truth of a mechanically, biologically, or psychologically universal determinism regarding oneself, maintaining, for example, that one is nothing but a computing machine. Yet, this proof of the conceptual impossibility of being convinced of one's total lack of freedom does not prove that one is free.

Whereas the conviction that one is not free is logically and conceptually impossible, the conviction that one is free (even if in varying degrees according to different situations) is meaningful and cannot be refuted, though there is no proof for it and though it can be shown that there can be no such proof. Therefore, the conviction that people are able to determine themselves can rightly be called "absolute trust" or "unavoidable hence necessary (but non-religious) belief". All living human beings who lead their lives consciously and self-reflectively share this belief, even if they experience themselves factually as encircled and persecuted by the most powerful physical, mental, and social constraints. This belief, however, is not indestructible. Coercion and force can become so overwhelming – e.g., under torture – that a person can no longer bear them and psychologically collapses. For some time, this person is deprived of the ability of self-dissociation and self-determination.

To hold people accountable for their reasoned actions, choices, and decisions, or to regard them as able to perform the above-mentioned theoretical or practical acts is to attribute to them the concept of person. In what follows, I use the term "person" in its primary sense as shorthand for the basic formula of an experientially oriented anthropology referred to earlier. At the same time, I believe that this formula (or one that is conceptually equivalent) represents the nucleus of the concept of person in an adequate way, comprising the essential components of both the philosophical conception of the human person in the Stoic, the Jewish Christian, and the Kantian tradition, as well as the modern conception of unconditional and unrestrained human rights and dignity pertaining to all human beings, which lies at the foundation of the constitutions of truly democratic states. This philosophical and legal conception of human beings as inviolable persons is, as indicated, rooted in everyday discourse and practical understanding of oneself and others. Therefore, I am deeply convinced that other philosophical and religious traditions (e.g., classical Chinese Taoism and Confucianism) place much emphasis on the conception of human beings as occupying the status of persons who are responsible for being obedient to heaven and nature (*tao*), although these traditions may not use terms

which denote “subject” or “person” with such clarity or rigour as Western traditions do.

However, the following error needs to be avoided. It is not possible to deduce straight away the morality of unconditional respect for persons out of the conception of personhood itself. Although the reflective relationship to oneself – which constitutes the personhood of the human being – provides the foundation of morality or ethics, the following condition has to be met so as to give morality its binding, normative force and thus to make it “real”: persons must regard themselves as endowed with absolute value by which they are distinguished from all non-personal beings and thus endowed with dignity, which extends to all other persons and accords them absolute respect, simply because of their personhood. Needless to say, normative morality could also be built on a different principle, e.g., the consequential principle of weighing the needs and interests of living beings. Depending on its interpretation, this principle may, however, either be inadequate on the assumption that it excludes the person-principle and does not grant absolute moral status to persons, or it may simply be an extension of the person-principle to non-personal creatures. In cases of conflict, however, the principle must be interpreted to the effect that it commands the dignity of persons to be preserved in any circumstances. Thus, the principle of weighing interests is seen as a meaningful extension of the person-principle.

Today there is a tendency to treat the concept of person not as an experiential concept in the above-indicated sense, but as an empirical one in the scientific sense, namely, the status of person allows grades, and different degrees of personhood can be attributed to human beings, resulting in different values of different developmental states of personal beings, which can be given different weight in situations of conflict. Some bioethicists have argued that the traditional view, according to which all humans are persons in the same way, needs to be differentiated. Otherwise, we would ignore the obvious fact that there is a large, morally relevant difference between a human foetus and a healthy adult with respect to their personhood and their status as a person. I think that the very point of the classical conception of personhood is not to allow any gradation so that the real differences, synchronically between individuals or diachronically between various states of one and the same individual, are irrelevant concerning the *ascription* of personhood; they are highly relevant concerning the *treatment* of a person, namely in accordance with his or her needs in a particular situation.

A further conceptual remark may be added. I think neither the classical nor the experiential approach to personhood needs to be restricted only to human beings. In fact, the traditional position was not that “being a human” and “being a person” are intensionally and extensionally

equivalent (i.e., these expressions have the same meaning and refer to the same individuals). Neither was “being a human” defined via “being a person” or vice versa (so as to make sure that both expressions meant the same). However, personhood was seen as a necessary, though insufficient, condition of being a human, and being a human was a sufficient, though not necessary, criterion of personhood. Thus, all human beings were to be treated as persons, but not all persons had to be humans. The idea was to account for the personhood of God and incorporeal spirits. Of course, the conceptual difference between being a human and being a person opens not only the possibility to speak of God and incorporeal spirits as persons but also the possibility to speak of humans who are neither persons nor are invested with the status of person, as well as other living and corporeal beings which are persons insofar as they possess the above-mentioned abilities characteristic of personhood; for it cannot be excluded merely on conceptual grounds that there might be genera or species of animals whose members are persons.

In fact, in contrast to the traditional metaphysically oriented view, the experiential approach results in a tripartite distinction (to be ethically considered in part II). First, there are human beings who qualify as persons because they satisfy the above-mentioned criteria relevant for ascribing personhood and, consequently, hold the status of persons. For example, they have rights based on personhood. Second, there are other human beings who hold the person-status as well, though they are not already persons but are endowed with the essential capabilities of becoming persons (even if they are contingently hindered by physical, biological, or social conditions in developing the abilities required for obtaining personhood). Third, there are human beings who lack even basic capabilities and therefore do not even occupy the person-status; paradigmatic for this case would be anencephaly.

10.2 Some Consequences for the Status of Human Embryos

The concept of person and the relation of human persons to themselves or to one another explained so far includes the following features: First, a person is conceived as the same in different temporal stages, with the variations of properties attributed to that person as long as the above-mentioned abilities characteristic of personhood obtain. Second, the status of a person or its attribution depends on the degree of development of the bodily, intellectual, or emotional abilities of an individual or their qualities. Personhood cannot be divided into lower or higher degrees; there is only the alternative between personhood and no personhood. Third, there is a way of ascribing the status of person to a human being which is, in a sense, independent of the ability or inability for acts characteristic of a person.

For instance, when people refer to their own or other people's lives, or to the beginning of life in the mother's womb (or perhaps in vitro), or when, after recovering from a coma, they talk about their own or other people's condition in a coma, they may say, for example, "These were happy days when I felt you the first time under my heart", or "My mother told me that she conceived me on a nice day in May during the first year of World War II", or "As early as in the fifth month of my existence before birth I got this disease because of my mother's heavy smoking and drinking". These examples illustrate that there is not only the continuity of the history of a living being but also the conception of persistence of personal identity during all stages of development, the beginning of which is the event or, perhaps more exactly according to what embryology tells us, the process of conception as the beginning of a whole though not yet totally individualized being. The phase-ontology or event-ontology of human beings presented by Derek Parfit and Peter Singer neglects, for instance, that aspect of identity-consciousness and is in discord with our self-understanding and self-estimation.

In my opinion, the aforementioned ascription of the status of personhood can be justified, not only in retrospect out of the self-understanding of an adult but also on the assumption that a human being lacking the abilities of a person, as in the case of a human embryo, foetus, and a newborn baby, has, in normal circumstances, when all developmental conditions are fulfilled, the capacity or the capability of becoming a person in the sense of acquiring and executing the relevant abilities. The attribution of the status of a person in that third respect is, theoretically speaking, a contrafactual presupposition because the genetic and physiological make-up alone is insufficient for becoming a person. But it is, at the same time, a practically effective anticipation without which there would be no human persons; human parents have to treat their newborns as persons (as if they were already persons) in order for their children to become persons. Needless to say, they do not understand their loving educational behaviour as something based on a strategic fiction; if they did, that would not be a treatment of human beings *as persons*. In treating infants as persons in the full sense, parents are not only pragmatically correct but also in the sense that human beings (foetuses, embryos, newborns) usually occupy the status of persons by virtue of their identities throughout all stages of their development. This identity is, at any rate, only perceptible from the inside perspective of a grown-up person and only in retrospect. Externally, they are not yet persons in the sense of being able to behave as persons, but insofar as they are capable of becoming persons, there is a real fundament of attributing the status of persons from the outside as well. This means, morally, that parents have to avoid everything which might endanger the unborn child and to provide an environment beneficial to the newborn.

Even when parents plan to have a child and that child has not yet been conceived, they already have moral obligations towards it. Thus, they treat the future child anticipatorily and imaginatively as a person insofar as they have to respect all the essential demands of the child. These demands are such that, if they are not fulfilled, the child can later reproach the parents for neglect. Such demands include the right to be cared for and the right to have provisions made for bodily, mental, and social conditions of education that are truly humane. In this regard, exceptional situations are conceivable in which it would be irresponsible to give birth to a child. In cases such as anencephaly, where it is impossible for the foetus to develop into a person, or in cases of disastrous and catastrophic living conditions, e.g., in situations of nuclear warfare, which would deny the future person essential living conditions, abortion or early euthanasia may not only be tolerated but even be considered morally imperative in the interest of the affected human being.

The moral consequences resulting from the position explained above are obvious. Since human beings during all stages of prenatal and postnatal existence and development occupy the status of persons insofar as they are per se capable of developing the abilities characteristic of personhood, and since I am unable to see any moral difference between such human beings who are already persons and those who are not already persons but are capable of becoming persons, all harmful acts resulting in their loss of fundamental human capabilities, or in their loss of life itself, are morally forbidden; likewise, any research or experimentation on human beings holding the status of persons who either have not given informed consent, or are unable to do so, is morally prohibited. Obviously, embryos cannot consent to such research. This moral prohibition does not allow for any gradations because neither personhood nor the status of person gives any licence for accepting them. And since the status of a person is the highest moral status of human beings, no weighing is acceptable in the interest of other impersonal and therefore necessarily lower goods. Only in cases where life-claims of human beings occupying the status of persons compete with one another and this competition cannot be resolved with reference to their person-status alone, a weighing of their life-claims on other reasons than those regarding their person-status is morally legitimate (for instance, when a foetus endangers the life of its mother). To avoid any morally unjustified instrumentalization, any demand on other human beings for donating vital organs to those who need them to survive has to be examined first of all with reference to the ethical person-principle, demanding, for instance, explicit consent to the removal of the organs. For similar reasons, it cannot be morally justified that during the totipotent state of its cells, an embryo is divided in order to use one of its cells for diagnosing the genetic health of the other parts of the embryo, destroying the cell through

this manipulation. Without causing such damage, a genetic diagnosis may be morally innocuous but the aims implicit in this procedure may be not. Equally, it is not morally allowed to experiment with spare embryos after embryo transfer. Due to the unresolved problem of spare embryos, in vitro fertilization (IVF) is morally highly dubious. Experimentation with and research on embryos are morally permissible only in cases where diagnostics are so far developed that embryos can be diagnosed without reasonable doubt as being incapable of becoming persons (for instance, cases of anencephaly).

In Germany, experiments with embryos are legally forbidden. I think that the law is consonant with our deep-rooted morality concerning persons and beings capable of becoming persons. Therefore, our endeavours should aim to institutionalize similar, restrictive legal regulations all over the European Union and ultimately all over the world. Of course, I am not so naive as to think that under the present circumstances this can be achieved. Political compromises are therefore necessary. It is, however, not the ethicists' task to anticipate them. Ethicists must think on principle, not on pragmatic notions. In my opinion, research on human embryos would be morally permissible only if the rights of the embryos implied in their status as persons are not violated. Hence, it cannot be morally legitimate for people to produce "spare" embryos or embryos only for the benefit of other persons. Consequently, legal allowances and regulations for producing "spare" embryos (for instance, during IVF) or for doing research on them, without respect for the embryos' rights, are morally illegitimate as well but may be tolerated if no better regulations on moral grounds are politically available. It may be morally acceptable to produce fetal tissue or embryonic bodies (perhaps by removing the genes before fertilization which are causally responsible for brain development) which are, per se, not capable of becoming persons if they lack the genetic disposition for evolving a brain. But these questions I leave to moral casuistry.

The issues so far considered in Section 10.2 of this essay concerned only bioethical problems with regard to personhood at the beginning of human life. Similar questions arise at the end of life with regard to the moral status of the dying person. I think of the possibility of transplanting organs from a person whose brain is irrevocably degenerated or destroyed, as well as of the artificial prolongation of the physiological lives of brain-dead people. In cases like these, it has been argued that it does not seem adequate to attribute either personhood or the status of person to them because they have lost not only the abilities generally seen as characteristic of human subjectivity and personhood but also the capacity or capability to evolve or to renew such abilities. Therefore, I conclude that there is an asymmetry between these people and human embryos and newborns insofar as the latter are endowed with the capacity to become persons. Brain-dead

persons resemble those embryos and newborns who lack that capacity. There is, however, an important difference. Since the dying, regardless of their present condition, undoubtedly had been persons in the past, they are attributed the legal and moral status of personhood. For this reason, their will concerning the transplantation of their organs must be respected. Similarly, legal duties towards their last will and testament are observed, and respect is shown to their mortal remains, and their reputation is preserved beyond death. The different conditions defining the status of personhood with regard to human beings on their way to personhood, e.g., embryos, and human beings having lost the capacities of persons, seem to imply a conceptual and, consequently, an ethical differentiation of the status of person itself. While the person-status of embryos and newborns is due to the strength of their person-capacity and thus requires unconditional respect, the person-status of adults who have lost their respective abilities and capacities is only conditional in the sense that higher-ranking goods and duties may be taken into account in situations of conflict. The same is true for embryos or newborns who lack the capacity of becoming persons (e.g., anencephalics). While those who have lost the relevant abilities of a person enjoy the status of persons, at least in the indicated conditional sense, human beings who are essentially incapable of personhood do not. Therefore, I do not think that moral objections based on the status of persons can be raised against using them in experiments or as repositories for organs. It must, however, be noted that the incapability must be qualified as an essential one. External facts will never be able to alter the status of personhood once acquired. This applies equally in situations where the death of a newborn child with a functioning brain, resulting from an incurable disease for which no therapy is yet available, can be predicted, as in cases of abortion of an embryo capable of developing a brain, or of the destruction of viable embryos not implanted during embryo transfer procedures. The status of personhood can only be denied when, in a specific case, it is impossible for an embryo to develop a brain, and thus when the essential condition of personhood cannot be met. The lack of a brain in an embryo may be the result of natural causes, e.g., genetic conditions, or of artificial intervention. In my view, such intervention may be morally allowed if the objectives of such intervention are morally justified.

11 Moral Rights as Criteria for Professional Nursing Care

Monika Bobbert

11.1 Introduction

Since the 1950s, professional nursing has been professionalized and academized in the English-speaking world; nursing in German-speaking countries followed suit from the 1980s onwards. Although the areas of responsibility of nurses and doctors complement each other, professional nursing is increasingly taking shape as an independent profession. The International Council of Nurses (ICN) defines nursing as follows:

Nursing encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well and in all settings. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people Advocacy, promotion of a safe environment, research, participation in shaping health policy and in patient and health systems management, and education are also key nursing roles.

(ICN 2002)

It was common for nurses to administer medication, infusions, or injections, manage wounds, or assist with operations and imaging procedures on a doctor's orders. In addition, activities that focus on the "basic care" of the sick and infirm are traditionally part of their professional duties. In the period after the Second World War, nurses wanted to show that there was more to good nursing care. Since the 1950s, nursing theories have been developed to deal with various objectives of nursing care. Furthermore, nursing diagnoses have been developed, which now significantly characterize nursing and have partly replaced nursing theories. For this reason, the objectives and corresponding areas of nursing can vary greatly. Additionally, national professional traditions, cooperation with other professions, and the actual financing models of the respective health-care system have an influence on the range of nursing care.

In view of the debates within the profession and the constantly contentious health policy issue of which nursing care services should be financed by a public healthcare system, the ethical question of which care people have a justified moral claim will be analysed below by means of Gewirth's rights-based approach. To do this, it is first necessary to identify the similarities and key differences in the spectrum of nursing activities.

11.2 Professional Nursing: Established Theories and Diagnosis Systems

11.2.1 *The Method of Defining the Areas of Nursing*

Even the method for determining the range of nursing tasks is a challenge. In this contribution, the definition of what is understood by nursing is based loosely on the method, but not materially on John Rawls's wide reflective equilibrium (Rawls 1951): The ideas of professional nursing discussed in sections 11.2 and 11.3 are the result of a back and forth between nursing tradition and respective factual practice and nursing theories – i.e., not, as in Rawls, between theories and principles with the aim of forming ethical judgements. The result thus reflects a certain “overlapping consensus” between nurses. This profession-specific consensus is then in turn modified by the division of labour between nursing, medicine, and social work, as well as by the reimbursement of costs in the healthcare system. The range of tasks of nursing developed in this article can be regarded as an interim status but has a certain normative overhang, as it reflects ideal concepts of professional nursing, which have been formed based on a nursing practice that has grown and been considered good.

Like disease definitions and related medical treatments, all nursing theories and diagnosis systems contain ethically relevant assumptions and judgements.¹ Most nursing theories, but also nursing diagnosis classification systems, are based on human needs or activities that are set² and to which professional nursing care is directed – probably because this is intended to outline “good” nursing practice.

From an ethical perspective, one could discuss the anthropological assumptions on which nursing care needs and actions are based or problematize the areas of work that have historically been assigned to nurses. However, this article can only examine the question of which nursing services are owed from an ethical perspective. On this basis, however, an ethical-normative core area of nursing care can be identified.

11.2.2 *Established Nursing Theories*

In nursing theories, the tasks and goals of professional nursing are usually derived from a basic theory of needs or resources, from an “evaluative”

understanding of nursing by the respective nursing experts and certainly also from the actual nursing practice of the respective country. What these theories had in common was the view that professional nursing is neither based solely on medical prescriptions in connection with a bio-functional concept of disease (Boorse 1977)³ nor that it consists only of tasks relating to the patient's nutrition and personal hygiene (so-called "clean and satiated" nursing care), but rather that nurses have to respond to a person's individual needs and resources with nursing measures. In line with a "holistic" view of the human being with diverse needs and abilities, nurses wanted to see their care not only in somatic terms but also in psycho-social and spiritual terms.

From the 1970s onwards, the self-care deficit theory of the American Dorothea Orem (1959, 1997) was widely received in the UK, the USA, and German-speaking countries. In the UK and German-speaking countries, the nursing theory of Nancy Roper, Winifred W. Logan, and Alison J. Tierney (Roper et al. 1980, 2000) was also widely disseminated. Prior to this, the theory of the Swiss Liliane Juchli, first published in the 1970s (1997) had been predominant for three decades, especially in German-speaking countries. In Germany, Monika Krohwinkel's theory (1993; 2013), based on Nancy Roper et al., was also used in practice.⁴ Depending on reception processes, these nursing theories achieved a high level of recognition and became decisive for the nursing practice of a country, although nursing theories have recently lost importance (see, among others Lister et al. 2020, 17).

The following section provides insight into the nursing theories and diagnosis systems that are relevant today, as these have an impact on nursing practice as soon as nursing goals are set on this basis and corresponding nursing actions are carried out.

11.2.2.1 Dorothea Orem, USA: Self-Care Deficit Theory

The American Dorothea Orem began developing a nursing theory in 1959 in order to realize a curriculum for nursing training (Orem 1959). Orem assumed that people have the ability to care for themselves and maintain their health in the long term. Her theory emphasizes human abilities and the responsibility for self-care. However, if a person is unable to do so, nursing care should compensate for these self-care deficits (see for the following Orem 1997). Apart from this, disease prevention and health education are important goals of nursing for Orem.

Unlike the nursing theories presented below, Orem does not start with general needs but defines deficits by assuming "self-care requisites" (Orem 1997, esp. Chapter 7, 191–210). In her complex theory, she first describes eight vital requirements that must be fulfilled by self-care, the "universal

self-care requisites”: These are associated with life processes and the maintenance of human structure and functional integrity:

1. The maintenance of a sufficient intake of air...
2. water [and]
3. food.
4. The provision of care associated with the elimination process and excrements.
5. The maintenance of a balance between activity and rest
- 6 [...] and between solitude and social interaction.
7. The prevention of hazards to human life, human functioning, and human well-being.
8. The promotion of human functioning and development within social groups.

(Orem 1997, 191–192)

The promotion of normalcy includes, among others, the development and maintenance of a realistic self-concept and the identification and attendance of deviations from one’s own functional and structural norms (Orem 1997, 192). Moreover, Orem mentions developmental self-care requisites (Orem 1997, 196–200): They are either specialized expressions of universal self-care requisites that have been particularized for developmental processes, or they are new requisites associated with an event. According to Orem, the ideas of good life associated with “normal” biological and psychological development reflect a consensus that has emerged in biology and the social sciences (Orem 1997, 196).

Finally, Orem calls health deviation self-care requisites (Orem 1997, 200–202): These are required in conditions of illness, injury, or disease or may result from medical measures required to diagnose and correct the condition:

1. Seeking and securing appropriate medical assistance
2. Being aware of and attending to the effects and results of pathologic conditions and states ...
3. Effectively carrying out medically prescribed diagnostic, therapeutic, and rehabilitative measures
4. Being aware of and attending to or regulating the discomforting or deleterious effects of medical care measures
5. Modifying the self-concept (and self-image) in accepting oneself as being in a particular state of health and in need of specific forms of health care.
6. Learning to live with the effects of pathologic conditions and states and the effects of medical diagnostic and treatment measures in a

lifestyle that promotes continued personal development (Orem 1997, 201–202).

Nursing is required when an adult or child is incapable of or limited in providing continuous self-care. Orem identifies five methods of helping (Orem 1997, 14–20): Acting for and doing for others, guiding another, supporting another, providing a developmental environment, and teaching another.

Orem’s resource-oriented approach to “providing a developmental environment” is particularly illustrative: The helper has:

to provide or help to provide environmental conditions that motivate the person being helped to establish appropriate goals and adjust behavior to achieve results specified by the goals. The needed environmental conditions may be psychosocial or physical.

(Orem 1997, 18)

Self-care is therefore necessary for people’s lives in general, their development, and their health. To provide only as much care as necessary, self-care competence must be analysed in detail and compared with the need for self-care. Orem’s nursing care theory is still relevant in practice in the USA, the UK, and German-speaking countries.⁵

The following nursing theories by Juchli, Roper, and Krohwinkel are based on the needs hierarchy of the psychologist Maslow (1954, Chapter 3–4). According to his anthropological assumptions, people strive in ascending order for the satisfaction of physiological needs, safety needs, needs for belonging and love, for respect and esteem, and finally for self-actualization.

11.2.2.2 *Liliane Juchli, Switzerland: 12 Activities of Daily Living*

The theory of Swiss nun Liliane Juchli shaped generations of nurses in German-speaking countries, as her textbook, which was first published in 1971 (1997 [1971], 73–551; Schewior-Popp et al. 2021, 257–636), was the only one for a long time, and the Anglo-Saxon development was only received more intensively with the increasing academization of nursing. Juchli wanted her “activities of daily living” (ADL), which should be the focus of nursing care, to be understood as an “organizing structure in the context of a holistic view of the human being” in connection with an “art of healthy living” (Juchli 1997, 74).

In addition to caring for patients with specific diseases, nurses support people regarding their ADLs as follows:⁶

- 1) Being awake and sleeping.
- 2) Moving.
- 3) Washing and dressing.
- 4) Eating and drinking.
- 5) Excreting.
- 6) Regulating body temperature.
- 7) Breathing, pulse and blood pressure.
- 8) Feeling and behaving safely.
- 9) Organizing space and time – working and playing.
- 10) Communicating.
- 11) Being a child, woman, man.
- 12) Finding meaning in becoming – being – passing away.

Activity (8) requires actions on the part of the nurse to prevent risks and errors in the care of a person and to ensure a high standard in personal and environmental hygiene. In contrast, however, activity (9), which has an effect on the well-being of the person in need of care, is understood to be more comprehensive (Juchli 1997, 79). Supportive nursing here consists of helping people to help themselves. For instance, it might be necessary to react to disruptions in the work-leisure rhythm. For activation and rehabilitation, occupational therapy or art therapy should be used if necessary, or the nurses themselves should introduce appropriate elements. If activity (10) “communicating” is impaired, conversation situations can be specifically designed to discuss personal matters or to sympathize, or non-verbal forms of communication such as “basal stimulation” can be used. The activity “finding meaning” requires, among others, that nurses provide support in living with illness or limitations, rethink previous life goals, deal with grief, provide palliative care, and accompany dying people.

The theory of ADLs sees the person as an individual and relational being with their environment and their relationship to transcendence (Juchli 1997, 88–89). Nursing includes self-help elements, pedagogical elements, resource-oriented elements, support in crisis situations in life, and support with the ADLs, as far and as much as is needed (Juchli 1997, 89–90).

In German-speaking countries, Juchli’s theory was replaced in the 1990s by the theory of Roper et al. and its further development by Krohwinkel. I will come back to this below.

11.2.2.3 Nancy Roper, UK: 12 Activities of Life

Like Juchli, Nancy Roper et al. (1980, 2000) refer to the nurse expert Virginia Henderson (1969), who assumed universal human needs and transferred these to nursing care. For a nurse, it is difficult to assess needs as such but easier to observe the patient’s behaviour in the context of life

activities (LAs) (Roper 1990, 38), as they are observable, describable, and in some cases, measurable. For Roper et al., unlike Juchli, “finding meaning” is not a need. Instead, religiosity and the search for meaning are merely factors that influence LAs. Professional nursing refers to a model of life, the LAs, which people perform across the lifespan on a continuum of dependence and independence (Roper 1990, 21–25, 67–352):

- 1) Maintaining a safe environment.
- 2) Communicating.
- 3) Breathing.
- 4) Eating and drinking.
- 5) Eliminating.
- 6) Personal cleansing and dressing.
- 7) Controlling body temperature.
- 8) Mobilizing.
- 9) Working and playing.
- 10) Expressing sexuality.
- 11) Sleeping.
- 12) Dying.

Depending on the disease or limitation, only certain LAs may be relevant to the nursing process. For example, many aspects of the LA “expressing sexuality” are important for a woman before and after a mastectomy. In addition, the 12 LAs are developed to varying degrees over the course of a person’s life and are influenced by sociocultural, religious, economic, and political factors. A person’s individuality is reflected in the way and frequency with which they perform, their knowledge of and attitude towards the LAs. Nurses must support a person with those LAs that they are no longer able to perform themselves to a sufficient extent, and prevent possible failures in advance.

However, Roper et al. also recognize that LA-related goals cannot always be achieved through nursing interventions alone. Nurses must not forget that in a multidisciplinary team, their intervention and the contributions are mutually dependent. The nursing intervention can rarely be isolated and directly and unambiguously linked to the “outcome” (Roper et al. 1990, 63).

However, LAs do not only refer to an individual, but can also be meant more broadly, such as “activities for the purpose of providing a safe environment”. This LA involves nurses acting, for example, in relation to an unfamiliar environment, noise exposure, accident risks, infection, and medication-related risks with regard to a person in need of care. Nurses also work in the public sector to prevent infectious diseases and combat

environmental pollution, particularly in relation to air, water, or harmful substances (Roper et al. 1990, 67–100).

Roper's theory was used in the 1980s as a framework for curricula in practice, training, and research (Roper et al. 1990, 20). However, Roper et al. have not only influenced English-speaking but also German-speaking nurses from the 1980s onwards.⁷

11.2.2.4 *Monika Krohwinkel, Germany: 13 Activities and Existential Life Experiences*

The German nursing expert Monika Krohwinkel built on Roper et al.'s theory, slightly modified and expanded its life activities to include two additional activities (see Krohwinkel 1993, 2013) to focus on the physical and psychological coping with incisive experiences of illness or disability. Her additional activities (AELs) are:

- 13) Securing social areas of life.
- 14) Dealing with existential life experiences.

With the activity of securing social areas of life, she wanted to focus more on situations following hospitalization. In addition, holistic nursing care must support people in dealing with emotional and existential experiences in connection with illness and impairment. Existential experiences often go hand in hand with the loss of independence, worry and fear, mistrust, isolation, hopelessness, pain, and dying. The relationship with the nurse can lead to existential experiences that are associated with confidence, trust, and well-being.

Krohwinkel developed her idea of a “holistic-promoting process of nursing” in 1984 as part of a research commission from the German Federal Ministry of Health (according to Juchli 1997, 118). It aims at:

- 1) The fulfilment of the needs of a person in need of care.
- 2) The promotion, maintenance or recovery of existing abilities – regardless of prognosis and state of health.
- 3) Nursing assistance, which consists of acting on someone's behalf, guiding, supporting, counselling, and promoting.

Krohwinkel's theory was taken up by the new Nursing Professions Reform Act (German Bundestag, *Pflegeberufe-Reformgesetz* 2017, in particular Part 2, Para. 2, Sec. 4) alongside Roper et al. and Orem. According to Krohwinkel, nursing responds to the physical and psychological situation of those in need of care, pursues prevention and rehabilitation, and provides counselling and support in all phases of life, especially in the dying

process. In Germany, this theory is currently well established alongside nursing diagnosis systems (e.g., Hellmann 2022 or Kreikenbaum et al. 2022, where nursing process planning is based on the AELs).

11.2.3 Established Nursing Diagnosis Systems

The discussion has now developed to the effect that nursing theories are increasingly being replaced by “inductive” theorizing. In particular, the use of nursing diagnoses has become common (cf. for the USA, Makic et al. 2022, using the North American Nursing Diagnosis Association (NANDA) diagnoses). In the digital care planning and documentation systems, elements from various theories are additionally combined with nursing service elements that are refinanced by the health and care insurance funds.⁸

11.2.3.1 American Nursing Diagnoses and International Reception

The development of nursing diagnoses by NANDA began in the USA in 1973 (Herdman et al. 2017, foreword). Nursing diagnoses describe the reasons why someone needs nursing care, and they describe the type of care required. Thus, the necessary interventions can be derived from nursing diagnoses. They are also used for standardization and quality assurance, as well as good documentability of care.

In contrast to the nursing theories outlined above, the NANDA diagnoses initially give the impression of being purely descriptive and empirical. Ultimately, the NANDA diagnoses, which are regularly revised, are a statistically validated compilation of currently common nursing problems, interventions, and outcomes. Initially based on practice in the USA, where the healthcare system and the division of labour between the various professional groups have evolved, NANDA-I (International) now allows the submission of nursing diagnoses from other countries.

The NANDA-I classification scheme impresses with its pronounced psycho-social orientation (Herdman et al. 2024): It is true that diagnoses from somatically oriented domains predominate – such as:

- Health promotion.
- Nutrition.
- Elimination and exchange.
- Sexuality.
- Safety/protection.
- Comfort.

However, these already include social and environmental aspects. For example, the “sexuality” domain contains diagnoses of sexual identity,

and the “safety/protection” domain contains damage caused by violence from others or environmental factors. In addition, there are several psychosocially oriented areas, such as:

- Perception/cognition.
- Self-perception.
- Role relationship.
- Coping/stress tolerance.
- Life principles.
- Safety/protection.
- Comfort.
- Growth/development.

Although these domains contain far fewer diagnoses, the “role relationships” domain includes, for example, a variety of problems in interpersonal relationships, the “coping / stress tolerance” domain includes problems in coping with life crises, interpersonal conflicts and mental disorders, and the “life principles” domain includes impairments in decision-making, moral or spiritual distress, and impaired religiosity.

NANDA-I diagnoses deal with actual potential human responses to health problems and life processes, according to the authors (Herdman et al. 2017, Chapter 9.5). For example, in the face of a medical diagnosis of stroke, nursing is concerned with a holistic understanding of the impact of stroke on the patient and family, i.e., impaired verbal communication, risk of falling, disrupted family processes, chronic pain, and powerlessness.

11.2.3.2 *Other Forms of Nursing Diagnoses*

Other nursing diagnoses, such as those of the American nursing scientist Marjory Gordon, were adopted early on by Western European countries such as the UK and Germany (Gordon 1998). Her “functional health patterns” formed the basis of NANDA diagnoses in the 1990s, but Gordon’s diagnoses today contain additional “practice-relevant” diagnoses (Gordon 1982, 2000). Conversely, the NANDA diagnoses have also evolved, for instance, in the form of the “prevention” and “child development” domains (Herdman et al. 2024, part 4, domains 12 and 13). Gordon’s functional health patterns, from which she developed her nursing diagnoses (Gordon 2000, 1982), still characterizes textbooks in the UK today (Lister et al. 2020, 17).

Although the Swiss nursing scientist Silvia Käppeli (1997) at the Centre for Development, Research and Continuing Education in Nursing (ZEFP 1997 & 2000) at Zurich Cantonal Hospital was in the 1990s the first in Europe to further develop the US nursing diagnoses and set up her own classification system, the NANDA-I diagnoses are now mostly used in German-speaking

countries – consented to by national nursing scientists⁹ – and supplemented by some additional diagnoses that the editors of the German version recommend for use (Doenges et al. 2024, 7–9), e.g., for oral and dental care.

Overall, it should be noted that nursing care based on diagnoses is usually less clearly localized in theory in terms of nursing needs and goals. The problem is exacerbated when digital systems are used for nursing care planning and documentation (Bobbert/Rabe 2022). In addition, the further development of diagnoses depends on the actual nursing practice in each case.

11.3 Which Nursing Care Services Are Morally Owed?

In health policy and scientific discourses, the understanding of professional nursing, nursing theories and evidence-based diagnosis systems has led to partly similar and partly different nursing problems, goals, and measures, which are now implicitly or explicitly reflected in nursing care planning and service catalogues. What similarities and differences are important from an ethical perspective?

11.3.1 *Similarities and Differences in Nursing Theories and Diagnosis Systems*

There is an agreement that the relationship between the nurse and the person in need of care is fundamental, as nursing should not be a mere performance or technique. In addition, the following ethically relevant similarities and differences between the nursing theories presented can be identified: Somatic or biological functional limitations caused by disease, accident, disability, or age are the common denominator of all nursing theories and diagnosis systems. Nursing support must be provided here, not just in the form of compensatory activities but with the aim of restoration, improvement, and alleviation.

In addition, the nursing theories and diagnoses discussed emphasize that individual factors such as culture, gender, and religion influence the performance of body-related activities. They need to be considered. On the one hand, in view of the professional ethos that has grown over the decades of wanting to provide individualized care, and on the other hand, to respect the right to self-determination of the person in need.¹⁰

Because nurses do not want to ignore the fact that impairments always go hand in hand with psychological, existential, and social issues, all nursing scientists since the 1960s have been trying to express their concern for “holistic care”. With the help of nursing theories, they have worked out what constitutes nursing beyond medicine based on the bio-functional concept of disease. However, they each have a different focus.

Juchli and Krohwinkel placed particular emphasis on the psycho-social and existential dimensions of the human being. This means nurses need to have skills in psychological and existential dialogue, social counselling, and support.

Most nursing theories also consider family members a part of the social network to include them as a resource or to be able to deal with stressful relationship conflicts. However, Orem, who speaks of the self-care requirement of “functioning and developing in social groups”, and the NANDA, with its family and community-based nursing diagnoses, have the most comprehensive range of tasks. This is due to the health and social system in the USA, which, in contrast to the German-speaking health systems, recognizes “family medicine” and “family and community care”.¹¹ In the UK, on the other hand, similar to the USA, there is community nursing with highly qualified district nurses or community nurse specialists who can prescribe medication or apply for social assistance. It is therefore not surprising that the nursing theory of Roper et al. also includes health policy action at the local level.

With an emphasis on resource-orientation, Orem also focuses on the re-empowerment of self-care and health education – through individual guidance, but also through measures at a communal level. It is not based on disease- or age-related impairments and the associated psychological and social consequences, but describes how healthy people look after themselves in terms of biological, psychological, and social functions, and developmental phases over the course of their lives, and what they need to do so. Resource-orientation avoids reducing sick people or people in need of nursing care, such as those with dementia or disabilities, to their health problems. The aim is to specifically tap into existing or reactivatable self-care options.

11.3.2 *Controversial Issues in Nursing and National Health Care Systems*

Over the past 70 years, there have not only been debates within the profession about the aims and scope of nursing care but also health policy debates: In the event of illness, disability, or frailty in old age, what nursing care services are financed on a solidarity basis? This question can be reformulated in terms of ethics in society: What nursing care support is morally owed to a person with impairments, and what welfare state benefits should be guaranteed accordingly?

The following questions arise here (Bobbert 2002, 256–268):

- 1) Should primarily biological-somatic or also psycho-social and existential dimensions of a person in need of nursing care be recorded and accordingly supported by nurses?

- 2) How far should nursing care and support extend? Is the goal to provide “basic care” aimed at maintaining the patient’s condition, or is the goal more comprehensively aimed at improving the patient’s condition or, if possible, even restoring it? In other words, does nursing care include measures for activation, rehabilitation, and self-help?
- 3) When describing the initial condition or making a nursing diagnosis, should nurses focus primarily on the deficits and how to remedy them, or also on resources, i.e., still existing abilities that can possibly mitigate or compensate for problems?
- 4) Should nurses only take curative, rehabilitative, and alleviating action or also preventive action? In other words, is it only important to cure or alleviate manifest illnesses or impairments, or also to prevent secondary illnesses and health risks?
- 5) Should professional nurses not only focus on the problems of the person concerned but also consider their relationships with relatives and the social environment as an area of responsibility in the sense of psycho-social care?

These questions require a normative ethical theory as a binding basis for decision-making to clarify them.

11.4 Criteria for Nursing Care: Gewirth’s Moral Rights and Duties

From an ethical perspective, several problems have become apparent:¹² Firstly, nursing care services, nursing educators, and solidarity-funded payers have so far pursued their own nursing criteria, which include, for instance, acute nursing care, activation, prevention, psychological, spiritual, or social intervention options. For people with impairments, however, it is important which of their “problems” nurses focus on and which support services they can legitimately claim.

Secondly, the choice of criteria for nursing is made pragmatically based on many assumptions and circumstances, some of which may be incorrect or irrelevant, e.g., cultural practices. Overall, the – to a certain extent anthropological – assumptions associated with the respective nursing theory as to what the essential activities of being human consist of are made, and they are not specifically justified. Thirdly – except for Orem – the nursing theories are predominantly related to people in need of nursing care or patients in the sense of recipients of support whose deficits need to be remedied, and less in the sense of subjects whose agency needs to be restored. The identification of deficits and offers of support follows different ideas of what it means to be human, which are set by nursing experts or other agents in the healthcare system. Fourthly, this means that the nursing

criteria, and goals stated in theories, and diagnostic systems are ultimately “arbitrary” and therefore non-binding because there is no ethical justification for them. And fifthly, individual services cannot be hierarchized and prioritized without generalizable normative ethical criteria. Or in other words, for which goal is a nursing care service absolutely necessary in contrast to other nursing services?

From an ethical point of view, we can assume that the subjects are capable of agency in principle but are now restricted: What forms of support from professional nurses do they have a legitimate claim to? Nurses can certainly make decisions based on a tradition or self-definition of the profession. Furthermore, the common denominator of nursing activities identified in this article in relation to theories and diagnostic systems may be very plausible from a professional policy perspective. However, there is not a truly binding criterion, but rather the current competences of a profession with its possibilities and limitations for supporting impaired people.

With the help of Alan Gewirth’s ethical-normative approach, good reasons can be given across professional traditions and national borders as to which of the theoretically and practically developed areas of responsibility or problem indications, and goals must be guaranteed in the sense of a minimum standard of nursing care.

A distinction must be made between problem statements and goals that relate to the moral dimension of the good life. They can be part of the professional understanding of nursing but must be made explicit and handled optionally precisely because of their merely particular claim to validity: Whether and how intensively someone deals with an age-related impairment or near death, for example, is a question of the good life. It is therefore also important to distinguish between these two dimensions of ethics.

11.4.1 *General Necessary Preconditions for Agency*

In his main work, *Reason and Morality*, Gewirth establishes a supreme moral principle of human rights with a sequence of dialectically necessary judgements (Gewirth 1978, 64–65). Through a chain of argumentation,¹³ Gewirth shows that every agent must recognize that he as an agent cannot avoid considering the general abilities and preconditions of agency as fundamentally necessary goods and that all human beings are equally entitled to them. These goods, which are constant across situations and individuals, include the following abilities and preconditions, which are located on three hierarchical levels (Gewirth 1978, 211–212, 230–249):

- 1) *Basic goods* are the necessary preconditions for engaging in purposive action: “Thus life, physical integrity, health and its various

- contributing factors, general freedom, mental equilibrium, and the like are attributes of an individual without which he cannot act, either at all or beyond some minimum relative to his pursuing and achieving purposes” (Gewirth 1978, 211–212).
- 2) A person who has the non-subtractive capabilities of action can act more confidently in pursuit of various purposes (Gewirth 1978, 233). A person’s *non-subtractive goods* are violated “when he is adversely affected in his abilities to plan for the future, to have knowledge of facts relevant to his projected actions, to utilize his resources to fulfill his wants, and so forth” (Gewirth 1982, 56). Examples of ways of being adversely affected include “excessively debilitating conditions of physical labor or housing or other strategic situations of life when resources are available for improvement” (Gewirth 1978, 233).
 - 3) *Additive goods* “enable any person to increase his capabilities of purpose-fulfilling action and hence to achieve more of his goals” (Gewirth 1978, 240). “Central for all additive goods viewed as dispositions or abilities is the prospective agent’s sense of his own worth” (Gewirth 1978, 241). Without self-esteem, his ability to achieve further goals becomes problematic. As a consequence of mutual respect in a society:

each person must refrain from feeling or exhibiting contempt toward others; persons must not be insulted, belittled, or patronized, nor must they be discriminated against on grounds of race, religion, or nationality. Put positively, the duties for such respect require that persons have toward one another an attitude of mutual acceptance and toleration, including the acquiescence in diversity.
(Gewirth 1978, 242)

As long as this is within the limits set by the duties of the principle of human rights, there are also certain more general conditions: “These conditions include freedom, knowledge, education, wealth, and income” (Gewirth 1978, 244).

Gewirth explains that every current and prospective agent has a right to freedom and well-being, i.e. the above-mentioned generally necessary abilities and preconditions for action (Gewirth 1978, 78–82): “The general principle of these obligations and rights may be expressed as the following precept addressed to *every agent*: *Act in accord with the generic rights of your recipients as well as yourself*” (Gewirth 1978, 135, emphasis in original). “They are ‘human rights’ in that they are rights that all humans have as human agents” (Gewirth 1978, 64). These moral rights correspond to a moral obligation to support: “We have duties to help persons to fulfill their generic rights of agency when they cannot do so by their own efforts” (Gewirth 1996, 61, also 1978, 218–219).

In *Community of Rights* (1996), Gewirth took his fundamental moral philosophical justification further in terms of ethics in society: The addresses of the supreme “principle of human rights” are not exclusively individuals, but a welfare state with institutions and professionals is required to ensure the reliable and competent fulfilment of basic moral obligations to support.

11.4.2 *How to Determine the Constitutive Rights and Goods*

With Gewirth, further interpretations are required on several levels (see for this section Steigleder 1992, 293–319; also Bobbert 2000, 427–428): Based on Gewirth’s method of self-reflection of a person capable of agency, a differentiation can first be made, following Steigleder, at the level of the goods necessary for agency:

The fact that the agent must regard the necessary preconditions and abilities for action and successful action in general as necessary goods and consider them to be his due, does in the last instance denote a logical necessity. In determining *what* the necessary prerequisites and abilities are, however, an increase in experience is involved in inverse proportion to the decrease in necessity.

(Steigleder 1992, 293, emphasis in original, translated by M.B.)

Because of the historicity of human experiences and insights, the understanding of constitutive rights cannot be finalized once and for all, although they must be based on intersubjectively comprehensible and verifiable knowledge. By partially varying the “examples” for his three categories of goods, Gewirth implicitly points out that these “do not already entail the certainty of their *completeness*” (Steigleder 1992, 294, emphasis in original, translated by M.B.), but can be extended or deepened under certain circumstances. The fact that the proportion of historically and culturally mediated experiences and insights, and thus the need for interpretation, increases as the necessity of the goods for the ability to act decreases, applies to an even greater extent to the non-subtractive goods, which are therefore also less clearly defined than the basic goods (Gewirth 1996, 14).

Interpretations are also required at a second methodological level: The aim is to identify which actions impair which of the goods necessary for agency. For this purpose, types of actions must be identified that show a general tendency to impair the necessary preconditions for the ability to act. Such general tendencies are subject, on the one hand, to the requirement that they can be determined using empirical methods that are accessible to any person of average ability and, on the other hand, to the requirement

that there is a causal, empirically verifiable relationship between a certain type of action and impairment of the ability to act. Although it is not necessary to prove that certain types of action always have a certain effect (Gewirth 1978, 233–235), it must not merely be a matter of opinions or convictions that relate exclusively to spiritual inspiration or individual intuition.

11.5 Controversial Issues in Professional Care: An Ethical-Normative Review

In view of the controversial issues mentioned under Section 11.3.2, Gewirth believes that the following care-related problems and goals are ethically relevant, that effective nursing care services are morally owed and must be guaranteed by the welfare state. In the following, I am referring to the questions 1-5 raised in Section 11.3.2.

Ad 1) All nursing theories and diagnosis systems name similar biological-somatic care requirements that impair the basic goods of life, physical integrity, and mobility. In addition, the basic goods of “food” and “clothing” can also be impaired as generally necessary prerequisites for action because a person can no longer eat or dress independently. As soon as restrictions in this respect are severe and last longer, the basic goods “mental equilibrium” and the non-subtractive good of “a basic confidence in one’s own ability” can also be impaired. Consider, for example, an accident with a protracted convalescence, a chronic illness, or age-related impairment. The last two goods mentioned are an expression of the psychological state and depend both on psychological coping, adaptation processes, and on the existential interpretation, so that psychological, social, and existential nursing requirements can arise.

Furthermore, it stands to reason that in severe or prolonged cases, the non-subtractive and additive goods, in particular “self-esteem and self-confidence”, “respect from others” as well as the “opportunity to acquire education and assets”, are generally also impaired. Only when health restrictions in minor nursing care situations affect those goods that are influenced by psycho-social factors and existential self-interpretation would corresponding nursing care activities be more likely to be assigned to the level of the good life, although they fall under Juchli’s ADL “finding meaning in being, becoming and passing away” or Krohwinkel’s AEDL “existential experiences”.

Overall, from an ethical-normative perspective, the biological-somatic as well as the psycho-social and existential dimensions of persons in need of nursing care must be recognized and supported through nursing activities. Despite comprehensive support obligations, in the event of a severe shortage of resources, nursing care services could also be prioritized, according

to Gewirth, in view of his hierarchy of goods. For instance, the basic good of physical maintenance through food and rest should be ensured first.

In the case of severe psycho-social or existential impairments, psychotherapy, counselling, or social work may also be necessary, as nurses are usually only competent to a limited extent in this respect due to their professional education.

Ad 2) In addition to acute care, which aims to provide basic nursing care with the bare essentials, professional nursing includes many measures for activation and rehabilitation in order to enable individuals to regain more independence.

According to Gewirth, all nursing activities that enable a person to lead their life without severe dependence on others can be ethically justified. The effectiveness of the nursing activities must be ensured and must relate to restoring the generally necessary conditions for agency as quickly as possible.

If it is already instrumentally clear that professional nursing that integrates activating and rehabilitative elements, for example when positioning and washing a stroke patient or a person who is dependent on a wheelchair, helps to improve the general conditions for agency again or at least maintain them at the existing level, then these nursing care services, which require more professional expertise and time than just a “clean and satiated” level of nursing care, must be guaranteed in terms of health policy.

Ad 3) Nursing diagnosis and support should not only be deficit-oriented but also resource-oriented, as seems to be primarily represented in Orem’s nursing theory. In fact – without reference to Orem – a resource-oriented perspective is often demanded by the disability movement and in the care of people with dementia to avoid social stigmatization and not to reduce those affected to their disability or illness. Regarding Gewirth’s theory of goods, a pure deficit-orientation could impair the basic good of “mental equilibrium” and the additive goods of self-esteem, respect from others, and a social climate that promotes the development of these prerequisites. In this respect, Orem’s theory is not exotic. Rather, resource-orientation and help for self-help are owed from an ethical perspective.

Overall, it can be said that Orem’s theory is particularly compatible with Gewirth’s, as according to Gewirth, the subject’s ability to agency represents the normative ethical basis. However, Orem lacks the reasons for morally binding nursing requirements and goals.

Ad 4) Professional nurses could take preventive action, but the solidarity-based financing of such activities is less self-evident than that of curative, rehabilitative, and palliative measures. Since the constitutive rights are intended to safeguard both the present and future agency, there is also a duty to help avert imminent impairment of the goods necessary for action (Gewirth 1978, 218–229). Gewirth does not only consistently speak

of current and prospective agents but also of the non-subtractive and even more the additive goods directed towards the future. As soon as carers are aware of effective preventive measures that can reliably prevent physical or psycho-social consequential damage or a return to the need for nursing care, these must be taken. This is because the restrictions associated with diseases and the consequences of accidents, disability, or advanced age that led to the need for care represent specific impairments of the basic goods of life, physical integrity, freedom of movement, and mental equilibrium as well as the non-distractive goods.

To safeguard these essential goods in the face of specific dangers or risks, preventive nursing measures – such as prophylactic measures to avert secondary diseases such as pneumonia in bedridden patients, pressure sores in wheelchair users, thrombosis after an operation, or open wounds in diabetics – are essential from an ethical point of view. Effective activation and rehabilitation measures are also required, some of which must be carried out in collaboration with other professional groups. Finally, information and health education measures are effective preventive measures.

In *Reason and Morality*, Gewirth initially sets out the duty to support individual agents to secure the general prerequisites and capabilities not only currently but also prospectively, and introduces the criterion of “assistance at no comparable cost to oneself” in this context (Gewirth 1978, 218). However, the “principle of human rights” addresses institutions as soon as justified claims for assistance exceed the possibilities of individuals. A corresponding welfare state must provide structures and institutions that effectively and reliably guarantee negative and positive moral rights (Gewirth 1996, esp. 4–5, 31–70; see additionally Shue 2020). The relevant structures and institutions also include specialized professional groups in the healthcare system. Regarding professional nursing, it is therefore relevant which negative consequences can result, for example, from a failure to take appropriate or preventive nursing measures, and how likely or frequently they occur.

Ad 5) Should social relationships with relatives and the social environment of the person in need also be part of the scope of nursing?

Orem’s nursing theory and the Gordon-based NANDA classification system, along with the “activities of living” of Juchli and Roper, consider a balance between loneliness and social interaction to be an “object of consideration” in nursing. Gewirth’s theory of goods demonstrates that these are not merely individual-optional questions of the good life but an area of nursing to be covered for universal moral reasons: If basic goods such as life, physical integrity, and mobility are restricted in connection with the need for nursing care due to disease, accident, disability, or old age, this will generally also have an impact on the possibility of social contact and communication. Most people need social interaction; otherwise, the

basic good of “mental equilibrium” will be impaired in the long term. The non-subtractive good of “being able to plan for the future” can also be quickly impaired if relatives or other members of the social environment are absent, as many actions are not possible without the involvement of other people. Finally, according to psychological findings, a lack of social participation and social exchange leads to a reduction in “self-esteem”, an additive good, and generally to a restriction of the possibility to expand purposeful actions (Wolf-Kühn/Morfeld 2016, Chapter 3).

Nevertheless, due to the refinancing of their nursing services and a lack of knowledge about social work or socio-psychological dynamics, nurses can certainly only make up part of these deficits. Often, there are currently no other professional groups or volunteers available to make up for the shortfall. However, with its nursing theories, the professional nursing sector is highlighting a problem that a health and social care system must address from an ethical perspective.

From an ethical-normative perspective, all fields of professional nursing care that are the subject of dispute in the solitarily financed care belong to the realm of moral ought. If nurses cannot do justice to all types of action due to their training or the refinancing of professional nursing, other professional groups must take on these tasks.

There are only “open margins” where the basic, non-subtractive, and additive goods are not or only slightly restricted despite the need for nursing, or where it is difficult to assess when the goods will be restored. This is because the transitions cannot be clearly determined empirically. Apart from this, the end-means relationship is not a simple one when psychological processes are involved. It is not easy to decide which ways and means lead to the recovery of “mental equilibrium” or “self-esteem” and when these goods are available again or even sufficiently available. In addition, the latter two goods must also be consciously and purposefully practised in the sense of rational virtues, maintained, and improved by those affected, because others can only improve framework conditions or support people to help themselves but cannot “create” self-esteem for anyone. Orem’s self-care deficit theory also contains important impulses in this respect.

The same can be said for the aspects of (1): It will not always be clear when restrictions in the generally necessary prerequisites for agency can be considered to have been remedied – or when their improvement passes into the realm of the good life, for example, because life counselling and life coaching provide good support.

11.6 Conclusion

With its theories and diagnostic systems, professional nursing can contribute to focusing on forms of impairment of the generally necessary

prerequisites, and goods for agency. Thereby pointing out the need for specific nursing forms of support that have been little considered to date.

Vice versa, with the help of Gewirth, what nurses – whether articulated in theories, diagnostic systems, or performatively via actual nursing practice – consider to be a need for nursing care in the face of disease, disability, or frailty can be assessed from an ethical-normative perspective. Gewirth's moral philosophy thus offers a criterion for internal professional and health policy debates in a welfare state. However, the extent to which the measures used to achieve a nursing objective are effective can only be clarified within the profession or with the help of nursing experience and well-founded empirical nursing research.

Gewirth's theory of goods cannot be used to determine what constitutes professional nursing or the range of tasks that should characterize professional nursing, but only that support is owed in relation to certain "goods" that are generally necessary for the ability to act. Which professional groups develop which special forms of support and how they divide them up among themselves depends on social developments, professional traditions, social and health policy structures and decisions, and on the resources available. From an ethical perspective, it is not possible to decide which professional groups can effectively fulfil justified claims for support and whether medicine, nursing, physiotherapy, occupational therapy, speech therapy, and other, perhaps even newly emerging professions can provide the most effective support in relation to a problem.

However, from an ethical point of view, the professional group that diagnoses a problem must also be committed to dealing with it competently, even if only through prudent delegation. Appropriately adapted basic and advanced training is required for nurses to be able to react competently to a person's nursing care needs and work together with other disciplines or professional groups in a solution-oriented manner for the sake of the person with impairment.

Notes

- 1 Similar to medical concepts of disease; see Bobbert (2000) for an analysis.
- 2 As far as the description of human activities that must be safeguarded is concerned, there are similarities with the more recent capabilities approach of Nussbaum (2000, 70–101), which is well-known in philosophical ethics. However, Nussbaum's essentialist list of human capabilities and the associated moral requirements is viewed critically from an ethical-normative perspective, e.g., by Düwell (2008, 125–127), because some capabilities can also be assigned to the dimension of the good life and there are no universalizable reasons for the identification of moral rights.
- 3 For an overview of medical concepts of illness, see Bobbert (2000).
- 4 See Doenges (2024, 1561–1594) for the relevant theories and diagnoses in Germany.

- 5 For the USA, Potter (2022, 46) characterizes Orem's theory as commonly used in nursing practice; Meleis (2017, Chapter 6.18) sees her as a nursing pioneer. The UK's standard books for nursing, such as Lister et al. (2020, 17), and Delves-Yates (2018, 165) name Orem as one of the relevant theories. Two books by Orem were translated into German: Orem (1997); Orem (2001); see also in practice, e.g., Immanuel Krankenhaus Berlin (<https://berlin.immanuel.de/abteilungen/bereiche/pflegedienst/ueber-uns/selbstverstaendnis/pflegemodell-nach-orem>)
- 6 See the book structure from Juchli (1997) and continued from Schewior-Popp et al. (2021).
- 7 Cf. translations of Roper et al.'s work into German in 1993 and 1997. The UK's authors Holland et al. (2019) describe it as a successful textbook about one of the most popular models of nursing. The standard textbook by Lister et al. (2020, 17) mentions Roper as one of the relevant nursing theories. In Germany, for example, the nursing service at Klinikum Stuttgart follows Roper et al. (www.klinikum-Stuttgart.de/leistungsspektrum/pflege/Pflegekonzept-und-pflege).
- 8 More details about digital care documentation systems in Bobbert/Rabe (2022).
- 9 Cf. German edition by Herdman and Kamitsuru (2019, 3).
- 10 Cf. International Code of Nurses (2021), Nursing and Midwifery Council (2018, 6–7) and Gesetz zur Reform der Pflegeberufe (2017, 2583); see Bobbert (2002) for a foundation and application of patient autonomy regarding professional nursing; Bobbert (2020) about care for autonomy in nursing.
- 11 In the USA, nurses cover a part of primary care, which in Europe is reserved for doctors. Particularly in the government healthcare programmes, Medicare (senior citizens and people with disabilities) and Medicaid (medicine for the socially disadvantaged), but also in community health centres, nurses sometimes perform medical tasks.
- 12 For valuable comments on this article, I would like to thank Philipp Richter, Bochum.
- 13 See the discussion of the reasoning process by Beyleveld (1991) and Steigleder (1992, 1999).

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12 How Should One Respond to Climate Change?

A Rights-Based Ethical Theory's Approach to the Problem

Robert Heeger

12.1 Introduction

In this chapter, I try to show in what way a rights-based ethical theory can help to answer the question of how one should respond to climate change. The theory asserts that our response should be foundationally viewed as a moral question, delving into the ethical dimensions of how one ought to act in consideration of the moral rights of all those affected by climate change, grounded in the belief that every individual has inherent moral importance. The theory posits that anthropogenic climate change impinges upon the rights of individuals, compelling a scrutiny of the duties owed to those adversely impacted.

Central to the theory's premise is the assertion that mitigating climate change is a moral imperative. It advocates for the urgent reduction of global emissions of greenhouse gases and emphasizes the necessity of achieving net-zero emissions of carbon dioxide. However, the theory grapples with the complexity of this transformative task, recognizing potential conflicts with other imperatives such as combating poverty and overcoming energy poverty.

The theory's exploration extends beyond abstract principles into the practical realities of implementing transformative measures. It introduces tasks like developing exhaustive scenarios for a decarbonized global energy system, accompanied by a set of crucial questions guiding the evaluation of these scenarios. Moreover, it delves into the evaluation of national energy policies, emphasizing their global focus and relevance. As the theory navigates through these complexities, it confronts the pivotal question of energy sources in a decarbonized energy system, with a special focus on renewable sources like wind and solar. Notably, it brings up the contentious question of whether nuclear energy should be integrated into an energy portfolio. The analysis of reasons for and against nuclear energy provides a nuanced exploration, rooted in a rights-based ethical framework that deems the mitigation of anthropogenic climate change a moral duty. The theory underscores the need for a meticulous and impartial evaluation of nuclear

energy's potential role in climate change mitigation, acknowledging it as one of the paramount questions in energy ethics and politics.

By recommending these actions, the theory defends the statement that energy politics is a central question of climate ethics. But this should not be taken to mean that energy politics is the only question of climate ethics. There are also other questions to be asked. One of these questions is what further steps should be taken if one is to reach effective mitigation of climate change. Should one, e.g., reduce energy demand or avoid a further increase in energy consumption in the digital sector? Moreover, there are questions as to what other ecological challenges need to be tackled if one is to be capable of slowing down the ongoing climate change. To mention just one example, what should be done to curb the further deforestation of the rainforest? Thus, it should be noted that climate change also gives rise to such questions. However, the present chapter is focused only on the question of energy ethics.

12.2 A Rights-Based Statement on Climate Change Mitigation

How can a rights-based ethical theory help to answer the question of how one should respond to climate change? Firstly, a rights-based ethical theory points out that the question of how one should respond to climate change should be viewed as a moral question, that is, the question of how one ought to act in light of the moral rights of all persons affected by it. It offers mainly the following reasons for asking this question. It assumes that every person has fundamental moral importance, which grounds an entitlement to have certain fundamental interests, such as physical and psychological integrity, morally respected. These entitlements are the rights the person possesses. Every person has equal rights to the conditions necessary for being able to lead their life. These rights form the basis and rationale for duties all persons have, namely to respect the rights of all persons (Gewirth 1978; Shue 1996; Steigleder 1999). However, anthropogenic climate change violates the rights of persons. Global warming, caused by greenhouse gas emissions, has severe negative consequences for many people. Therefore, there is reason to ask what duties one has toward those who are affected by climate change. The theory answers this question by stating that one's duties depend on the task one should strive to fulfill, that the mitigation of climate change is a task of great moral urgency, and that this task requires the reduction of global greenhouse gas emissions and ultimately reaching net-zero carbon dioxide emissions. Therefore, the theory claims that one has the duty to remove these emissions.

This claim gives rise to the question of how strong the duty to reduce emissions is in comparison with other duties or the pursuit of other aims. The theory answers that the strength of a duty depends on the strength of

the right that underlies the duty. But it also states that rights can differ in strength. How the theory takes these differences into account comes to the fore if one takes a closer look at the above-mentioned argument that each person has equal rights to the conditions necessary for being able to lead her life. The argument implies that these conditions form the object that is to be protected by rights. This statement about rights and their object has implications, too. From it follows a certain hierarchical order of rights, depending on their importance for being able to lead one's life. The more important right can override the less important one. This hierarchy of rights also holds with regard to their urgency. The more urgent right can take precedence over the less urgent one. The theory holds that, given its urgency, the right not to be harmed by anthropogenic climate change overrides less urgent rights. This justifies the great strength of the duty to emission reduction.

For a clear understanding of the claim that one has the duty to reduce the emissions of greenhouse gases, it is also important to pay heed to the theory's critical reflection on this claim. On the one hand, it is an instruction that has far-reaching consequences. It requires the rapid transformation of the present fossil fuel-based global energy systems into fossil fuel-free energy ones.

On the other hand, the theory maintains that mitigation of climate change is not the only urgent task, but that one should also strive for combating poverty and overcoming energy poverty. A rapid transformation of energy systems can conflict with these tasks. It can, e.g., conflict with the development needs of large parts of mankind. In order to address such conflicts, the theory qualifies its claim of mitigation with an additional clause: Climate change ought to be mitigated as far and as fast as possible, and global emissions of greenhouse gases, especially carbon dioxide, ought to be curbed to net-zero as far and as fast as possible. This "as possible" refers not only to what is feasible or practicable, but it also involves profound normative questions, for it also means: as far as it is compatible with the similarly urgent moral rights of all affected persons. Thus, one's duties toward those affected by climate change consist of transforming, i.e., decarbonizing, the energy systems down to net-zero as far and as fast as it is compatible with combating poverty and overcoming energy poverty.

12.3 Duties of Decarbonization in Practical Reality

What does it imply to fulfill the duties of decarbonization? To answer this question correctly, one would actually have to know how to achieve net-zero emissions. But in the real world, one does not have this knowledge yet, or one is not ready to translate the spare knowledge one may happen to have into practicable action programmes. The theory suggests coping

with these difficulties by carrying out some important practical tasks, three of which will be discussed here.

12.4 Developing Scenarios for a Decarbonized Energy System

If one does not know or notice how to decarbonize the global energy systems to achieve net-zero greenhouse gas emissions, it will be a central task to develop scenarios of how a viable and sufficiently decarbonized global energy system could look like. In search of such scenarios, one should be guided by a series of requirements that a suitable candidate scenario should meet. Therefore, one should ask six questions about a candidate scenario and the requirements it should meet.

The first question is whether the scenario is exhaustive. It should comprise all areas of energy use, thus not only electricity generation but also the use of energy in industry, agriculture, buildings, the digital sector, and in all kinds of transportation, including heavy haulage, shipping, and aviation.

The second question is whether the energy systems of the scenario are truly decarbonized, i.e., whether they are suitable for achieving net-zero emissions. This requires life cycle analyses of the pertinent technologies and processes, e.g., the production and disposal of battery-driven electric cars, which currently involve huge climate gas emissions. Can this technology and strategy be a viable part of a decarbonized energy system scenario?

The third question to be asked is whether a scenario is sufficiently widescale, i.e., can it adequately cope with the current and future energy needs? Does it provide enough energy to overcome the energy poverty of billions of people who have no access to electricity? In some areas, it can be very difficult to adequately judge whether a scenario is sufficiently widescale because it is difficult to determine what future energy demand is to be expected. For instance, in aviation, it is not clear whether the fuel needs of future air travel should be determined by the pre-pandemic growth rates or by a norm advocating drastically reduced energy consumption in wealthy countries, whose citizens therefore ought to fly less. A choice between these scenarios will have consequences both for aviation fuel and the design of future planes.

The fourth question is whether the envisioned energy systems in a scenario will be viable and reliable. Does the scenario sufficiently guarantee energy security?

The fifth question is whether the components of a scenario are acceptable. How should, e.g., the risks of carbon capture and storage or of nuclear energy be evaluated?

The sixth question is what the chances of implementing a scenario are. Will it be possible to implement the scenario fast enough? What resistance

against the constitutive parts of the scenario might arise, and how can these be addressed?

12.5 Assessing the Global Relevance of National Energy Policies

A second task which the theory affords us to address is to assess national energy policies to determine whether they fulfill the requirement that they must aim for the best possible and feasible global focus and relevance. The reason for this requirement is clear: The transformation of global energy systems is a problem that can only be resolved globally. However, it is difficult to spell out what the requirement amounts to. There will be differences between countries depending on differences in wealth, capabilities, influence, and power. Nonetheless, one can be justified in stating that the requirement for rich countries implies obligations such as the following.

First, a rich country must make sure that its policies actually contribute to a reduction of greenhouse gas emissions, avoiding the mere semblance of reductions through outsourcing emissions to countries with lower emission standards (Helm 2020).

Second, one must pay heed to the question of whether a measure could be a part of a target scenario or only of a viable and justifiable transition scenario. For instance, promoting battery-based e-mobility could not be a part of a viable target scenario of truly decarbonized energy systems. In its present state, it depends on the production and disposal of lithium batteries, which involve high greenhouse gas emissions, but it could be a part of a transition scenario if the technology prepares the way for the decarbonized energy system in due time.

Third, candidate parts of a transition scenario must be carefully evaluated. An example is the proposal to use natural gas as a transition energy to replace coal (Helm 2012, 2015). On the one hand, the burning of gas involves less carbon dioxide than the burning of coal. On the other hand, the production, transport, refining, and distribution of gas are connected with considerable emissions of methane, a much more potent climate gas than carbon dioxide. The warming effects of gas-powered plants may be worse than those of coal-fired plants, and the implementation of gas-powered plants on a grand scale will probably lead to the lock-in of a further fossil fuel-based infrastructure.

Fourth, energy policies must be comprehensive and ambitious, covering all parts of the energy sector and aiming at its decarbonization as soon as possible. This will require the development and implementation of new methods, technologies, and supportive measures to make the new technologies economically competitive (Gates 2021). To be comprehensive and ambitious, an energy policy may require a massive scale up of electricity production in order to use this electricity for the decarbonization of traffic,

for the climate-friendly production of hydrogen, possibly for the production of synthetic fuels, and for heating and industrial processes.

Fifth, the governments of rich countries must invest heavily in research and development concerning the technologies needed for truly decarbonized and otherwise climate-friendly energy systems. They must also create an environment that facilitates the demonstration and possible rollout of pertinent innovations (Gates 2021).

Many countries, however, are not rich but poor. What duties does a poor country have in order to do justice to the requirement of global focus and relevance? If one is to answer this question, one is faced with great difficulty. One must take into account that the duties outlined above presuppose certain conditions, such as a high level of welfare, that poor countries may not meet. Therefore, one must identify duties that poor countries can fulfill, even if these conditions are not met.

To comply with these instructions seems to be very important. However, this raises the question of what these instructions mean for the overall weighing of the duties of rich and poor countries. According to the instructions, one has to take into account that poor countries may not meet certain conditions which rich countries fulfill. Does this appeal imply the judgment that poor countries which do not meet these conditions have fewer or weaker duties than rich countries?

To determine what the instructions mean for assessing the duties of poor countries can require difficult considerations. One prominent consideration concerns whether a poor country has the duty to make sure that its energy policy actually contributes to a reduction of greenhouse gas emissions. Does a poor country have this duty if it is unable to fulfill it, since it lacks low carbon, energy-dense, and power-dense-energy sources?

12.6 Taking Different Low-Carbon Energy Sources into Account

If one tries to carry out the above-mentioned tasks, another challenge arises: Which energy sources should be used in a decarbonized global energy system? If the use of fossil fuels has to be given up, then one needs to consider what other energy sources should be employed in order to meet the global energy needs. This constitutes a third task proposed by the theory. Fulfilling this task is difficult because the required consideration involves dealing with many questions. However, this difficulty may be reduced by focusing on two particularly important questions.

The first question concerns renewable energy sources like wind and solar, which at present are welcomed as promising means to generate electricity. The question one needs to consider is whether one should regard renewable energy sources like wind and solar as sufficient for meeting the

global energy needs. In doing this, one must pay heed to some important objections to the belief that employing these renewables would be sufficient.

One objection is that it is doubtful that the global energy needs can be met by renewables like wind and solar energy. One reason for this doubt is that there is a capacity problem. Wind and solar are sources characterized by low energy density and low power density. It seems impossible that such sources will, in due time, be able to fulfill the enormous and growing global energy demand. A second reason is the intermittency problem: There are periods without wind or sunshine. To overcome these periods, a low-carbon baseload would be required.

Another objection focuses on poor countries. It claims that poor countries cannot develop and overcome energy poverty with wind and solar energy alone. The reason for this is, again, the low energy and power density of these renewables. Building up an energy system based on them would create an enormous need for raw materials (Smil 2020), which are unavailable to poor countries.

If these objections are credible, then one should not regard the use of renewables like wind and solar as sufficient for meeting the global energy needs.

A second question arises: Should other energy sources, beyond wind and solar, be employed? In this context, one has to consider whether nuclear energy should be a part of such an energy portfolio. Considering this, one should take the claims that have been brought forward in the dispute about employing nuclear energy sources into account.

Proponents of nuclear energy emphasize several points. Nuclear energy is both energy- and power-dense while being low in carbon emissions. Thus, it could supplement renewables like wind and solar. This is important for solving the capacity and intermittency problems of wind and solar. One specific capacity problem is that a massive amount of electricity would be needed to meet present and future energy demands, but this amount could probably not be provided by wind and solar (and other renewables). Nuclear energy could help to meet these demands, particularly in industrial heating processes for steel and cement production. Furthermore, nuclear energy could ensure that a poor country's energy needs, connected with climate-friendly economic development, can be met. It has even been argued that one will not be able to manage climate change successfully without nuclear energy (see, e.g., Allison 2015; Shellenberger 2020).

Against the employment of nuclear energy, it has been argued that the global resources of uranium are probably too limited for nuclear energy to serve as a long-term solution. Moreover, it has been argued that nuclear plants lack permanent waste disposal solutions, making them unsuitable for overcoming the intermittency problem of wind and solar. Additionally,

critics claim that the long planning and permission processes and construction times for nuclear plants make them unfit to address the global needs for climate-friendly energy in due time. Still, others claim that nuclear energy is utterly expensive and therefore economically uncompetitive and that the operation of nuclear power plants and the connected infrastructure is technically so demanding that they are unsuitable for the development of poor countries (see, e.g., Shrader-Frechette 2011; Sovacool 2011). The main reasons against employing nuclear energy are the perceived dangers of this energy: It is feared that the radiation connected with nuclear power plants and nuclear waste can cause cancer in their vicinity, and that nuclear accidents kill hundreds of thousands of people. Such fears also exist with regard to so-called advanced nuclear reactor concepts, including the use of breeders that do not need prior enrichment, and with regard to the unsolved problems of nuclear waste storage.

The reasons brought forward in the debates about employing nuclear energy sources indicate that there is also disagreement about whether nuclear energy should be part of an energy portfolio. (This holds true even if some of the reasons put forward need detailed scrutiny, e.g., the reasons of perceived dangers of nuclear energy [see Fox 2014].) But if one considers the question of whether nuclear energy should be part of an energy portfolio, then one has a difficulty. One should take notice of both the reasons in favour of nuclear energy and the reasons against it, but one cannot simultaneously adhere to both because they conflict with each other. Therefore, one must consider whether one of them should be of prime importance. But on what grounds should one do this?

As an answer to this question, a rights-based theory states that mitigation of anthropogenic climate change is a morally urgent task and that it is one's duty to transform, i.e., to decarbonize the global energy system as far and as fast as possible. This leads to a challenge: One should clarify the potential role of nuclear energy in climate change mitigation. This implies that one should strive for answers to questions such as the following. Can the use of nuclear energy contribute to effective management of climate change? Is it unlikely that a climate catastrophe can be avoided without a massive scale up of nuclear energy? These and related questions should be answered as carefully and as impartially as possible. Clarification of the potential role of nuclear energy in climate change mitigation may be regarded as one of the most important questions of energy ethics and energy politics. Reaching careful and impartial answers to the aforementioned questions will require a careful and impartial evaluation of the risks and opportunities of existing and possible new nuclear technologies, an unbiased evaluation of the risks of ionizing radiation, a thorough consideration of the nuclear waste problem, and an evaluation of the risks of nuclear proliferation.

12.7 Concluding Remarks

In this chapter, I tried to show in what way a rights-based ethical theory can help to answer the question of how to respond to climate change. I have focused on two ideas: First, the theory points out that the mitigation of climate change should be viewed as a moral duty owed to those affected by climate change because their moral rights are violated. Second, the theory proposes ways in which one can identify the implications of this duty in practical reality.

Acknowledgments

I am grateful to Klaus Steigleder for inspiring me to discuss important practical implications of a rights-based ethical theory, especially the tasks of developing scenarios for a decarbonized energy system and assessing the global relevance of national energy policies.

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13 Standard Threats and (Mandatory) Human Rights Due Diligence in Global Supply Chains

On the Corporate Responsibility to Address Human Rights Abuses Committed by Third Parties

Johannes Graf Keyserlingk

13.1 Introduction

Since 2020, the regulatory landscape on business and human rights has shifted dramatically. Landmark legislation such as Germany's Supply Chain Due Diligence Law (German Federal Ministry of Justice 2021), the EU's Corporate Sustainability Due Diligence Directive (European Commission 2023), the Forced Labor Regulation (2024a), and the Deforestation Regulation (European Commission 2024b) now legally enshrine corporate due diligence obligations. These developments reflect the assumption that ethical arguments for supply chain accountability should translate into binding legal frameworks. Correspondingly, according to the *United Nations Guiding Principles on Business and Human Rights* (UNGPs), companies have a responsibility to respect human rights, which requires them to (a) avoid causing or contributing to human rights violations themselves, and (b) to prevent and mitigate negative human rights impacts to which they are linked via their operations, products, or services (United Nations 2011, 14).¹ In this article, I will discuss on what moral grounds and to what extent companies are in fact morally responsible to address human rights violations committed by third parties in their supply chains.

While it may be regarded as morally undisputed that companies have a negative duty not to violate human rights in the sense of (a) (Arnold 2010), the normative grounds of preventing or mitigating the negative human rights impacts that a third party (i.e., a supplier) is primarily responsible for are morally less unambiguous. It is this latter type of corporate responsibility that increasingly takes center stage in public debates. What sparks public outrage is the perceived acquiescence of (multinational) companies regarding the pervasive human rights risks in their supply chains, which manifest themselves in such phenomena as child labor, forced labor, health-damaging working conditions, or threats to freedom of association. The insinuation in such public debates is that companies fail to fulfill their

responsibility to carry out due diligence regarding the potentially adverse human rights impacts they have via their supply chains. In fact, it appears that the current corporate practice of human rights due diligence is insufficient to deal with the ubiquitous human rights risk in global supply chains. It is restricted mainly to procedural requirements, which in most countries remain largely voluntary. Meanwhile, the call by NGOs and other public actors to establish a law² that holds companies legally responsible for their suppliers' (and sub-suppliers') human rights abuses arouses stiff opposition from politicians and business associations that stress the moral dubiousness of making a company responsible for the actions of a third party.

They touch a sore point here. In the UNGP, the due diligence processes that a company is supposed to carry out in order to avert such risks of getting involved with a third party's abuses of human rights are framed as part of the duty to respect. However, little is said on why exactly it is – morally speaking – that a company should be regarded as neglecting its duty to respect when it is merely *related to* a third party's violation of human rights. The presumption, indicated only in one short paragraph of the UNGP, is that a company would risk becoming *complicit* with the third party's wrongdoings. However, as I will contend in this article, this complicity-based justification for due diligence remains unsatisfying. At the very least, it demonstrably failed in practice. It failed to provide a widely shared normative basis for a broader societal consensus on the necessity that multinational companies (MNCs) finally tackle the human rights risks in their supply chains in ways that go beyond the publication of lofty codes of conduct or ineffective risk assessments. Departing from this recognition, I will propose an alternative normative rationale in favor of due diligence, including an account of substantive corporate obligations regarding (potential) human rights abuses by third parties in the supply chain. Drawing on the normative thrust of a duty of assistance, this rationale complements (and goes beyond) the conventional complicity-based reasoning both in terms of the urgency and the scope of human rights due diligence.

The argument proceeds in four parts. In Section 13.2, I will conceptualize human rights risks in global supply chains as *standard threats*. In Section 13.3, the corporate responsibility to carry out due diligence processes will, in a first approximation, be depicted as the moral minimum in view of the company's understanding of standard threats and of the competitive disadvantages which it faces when morally urged to address those threats. Against this theoretical backdrop, I will point out in Section 13.4, why the complicity framework is insufficient as a moral basis for human rights due diligence and reconstruct the corporate responsibility to address standard threats (and thus to carry out due diligence) as a derivative of a duty of assistance. In view of the practical inability of most companies to

effectively provide for the remedies demanded by that duty of assistance, I will point out Section 13.5, how the proposed assistance framework ultimately serves to justify a limited form of corporate political engagement. At least in passing, this will allow me to comment on the reasonableness of establishing a law that makes human rights due diligence mandatory.

13.2 Standard Threats in Global Supply Chains

If workers across global supply chains have any rights at all, they have rights at least to the objects of basic rights, which include such substances as security and subsistence. According to Henry Shue, the provision of (basic) rights requires, with analytic necessity, that their objects are protected at least against the major ordinary, predictable, and remediable threats, as opposed to “ineradicable threats like eventual serious illness, accident, or death” (Shue 1996, 32). So when it comes to institutionally protecting people’s rights, inevitable threats are not the (main) concern, as societies simply lack the means to protect against all the improbable, unforeseen, or eventually unpreventable ways in which the enjoyment of basic rights could be interfered with. Instead, the focus is on protection against threats that occur *standardly*. In global supply chains, threats like forced and compulsory labor, child labor, threats to the freedom of association and to the right to collective bargaining, health-damaging working conditions, and negative (environmental or social) external effects on third parties qualify as standard threats in the above sense. With a view to the reality of the global marketplace, they are *ordinary* in large parts of the world, they occur *predictably* in certain industries and regions, and there are means to *remedy* them. By Shue’s account, it is generally states that are tasked with protecting people against those standard threats by providing *social guarantees* against them. This resonates with the view proclaimed in the UNGP that states have a “duty to protect against human rights abuses by third parties, including business enterprises” (United Nations 2011, 3), leaving to companies merely the essentially negative *duty to respect* human rights. In the following, I will call into question this strict division of moral labor between states (protection) and companies (respect).

Going beyond Shue’s theorizing on standard threats, I shall now propose a further conceptual distinction between a *standard threat in general* and any *concrete materialization* or token of that standard threat. That distinction will turn out to be instructive for my normative reconstruction of the corporate responsibility to carry out due diligence. At this stage, it will suffice to illustrate the practical relevance of that distinction: When a company tackles the actual or potential instance of child labor at a particular production site in its own sphere of influence, then that would certainly not count as addressing the standard threat in general. Despite the

individual company's endeavors, child labor would persist as an ordinary threat in the concerned industry. By analogy, despite one's (successful) endeavor to defuse a single mine on a minefield, the minefield as such and the larger threat it imposes remain intact.

When we think of states as having the responsibility to protect against standard threats, what is meant is that they have the responsibility to protect against a given standard threat in general. In fact, it turns out that only states possess the means to provide for such protection effectively. For when a state protects against a given standard threat in general, say the standard threat of child labor, it invariably has to deal with the broader social, political, and economic forces that precede, underlie, and cause that standard threat. And only states have the authority, the legitimacy, and the regulatory instruments to deal with such broader forces in a comprehensive way. Companies, on the other hand, will be shown to have a responsibility to address the particular materializations of standard threats (and the risk of such materializations).

To be sure, while even states can hardly prevent that child labor will *ever* occur under their jurisdiction, what they can do is to protect against that threat from occurring *standardly*: Even in developed countries like Canada or Sweden, individual cases of child labor are in principle conceivable, but that they occur standardly is inconceivable, which means that the state has provided effective social guarantees against the standard threat of child labor. If, conversely, in Bangladesh or Ghana, child labor *does* occur standardly, then this portrays the respective governments' failure to fulfill their duty to protect. So conceptually, protection must consist in tackling these causative constellations, and conversely, the existence of a standard threat by itself implies the state's failure to protect. Regarding the *Guiding Principles*' strict division of labor between states' duty to protect and businesses' duty to respect, the concept of standard threats thus helps disclose the decisive *governance gap* in global supply chains: If the very existence of standard threats to human rights implies the responsible government's failure to provide for effective protection, and if multinational companies only have the duty to respect human rights, then workers under that government's jurisdiction remain inherently vulnerable to the standardly occurring (potential) human rights violations by third parties who fail to fulfill their own negative duty to respect. What are the responsibilities of companies with a view to these (potential) human rights violations of third parties and, more importantly, with a view to the people who are most vulnerable to (and affected by) those violations?

After all, the UNGP's emphasis on the division of labor between states (protection) and companies (respect) is not very instructive for answering that question, as workers exposed to the standard threats in question suffer from the very failure of precisely that division of labor. In this sense,

the state's failure to protect and the fact that a significant number of companies do not fulfill their negative duty to respect are essential parts of the moral problem description that companies are confronted with. So, how should they address the standard threats to human rights that pervade their supply chains?

13.3 Standard Threats and Competitive Disadvantage

Once companies face the realistic problem description of standard threats in their supply chains, they find themselves confronted with a decision problem. On the one hand, there are the demands of workers in the supply chain. The company must assume its exposure to standard threats, which morally urges the company to address that potential situation of danger. On the other hand, the company's operating context is one where such moral behavior is not incentivized. The company operates in a morally deficient regulatory context where its own moral actions would invariably be at risk of getting exploited by less moral competitors. In Karl Homann's words:

It lies in the fact that services, rendered in advance or in addition by a corporation out of moral motives, which lead to additional costs and are not compensated for (or overcompensated for) by the market, give rise to competitive disadvantages and can ultimately threaten the existence of the firm Put briefly, the problem lies in the danger of exploitation of services, performed in advance or in addition for moral reasons, by less moral competitors.

(Homann 2013, 5)

The combination of these two recognitions, (1) that people in one's own *sphere of influence* are in (potential) situations of danger that must be countered, and (2) that any such action to counter that situation implies a competitive disadvantage appears dilemmatic as any way of escaping or dodging it comes with considerable costs. There are at least three options available: (a) Not to take any action in view of the pervasive standard threats to human rights and thus to acquiesce in other people's potential situation of danger despite being in a position to address it, (b) to take comprehensive measures to address the human rights risks in one's supply chains and face the certainty that such morally commendable behavior will get exploited by other market actors, or (c) to abstain from the country in question and thus to dodge the presumed dilemma altogether. While (a) comes with high moral costs and the reputational risk of ending up related to or even being portrayed as benefiting from others' human rights abuses, (b) and (c) generally imply high economic costs.

In this situation, the company must arguably settle for a *compromise* that balances the moral costs and the economic costs, and must remain committed to the moral minimum. It includes, beside the strict prohibition to violate human rights oneself, the aspiration to broaden one's knowledge base: Building on the existing *general understanding* of a certain standard threat in a given operating context, the company must seek a more *specific understanding* regarding the *concrete materializations* of that standard threat in its own particular supply chain (e.g., by means of risk assessments) and then to ward off, on that broadened knowledge base, the most immediate dangers to human rights that one is associated with and that one can influence via one's supply chain. Due diligence represents that moral compromise.

In practice, the company is incentivized to strike that compromise because of a corresponding social expectation (Néron 2010, 342). A failure to show sufficient respect for human rights by carrying out due diligence comes with serious reputational (and thus economic) risk. So although the risk of potential competitive disadvantages persists, it is relaxed and relativized: It is relaxed as all competitors in a given market face the same social expectation to carry out due diligence, which implies that the companies in principle have more leeway for acting morally, and it is relativized in so far as with rising reputational costs of *not acting morally* the competitive disadvantages resulting from *acting morally* will increasingly turn out to be the lesser of two evils. In this sense, the moral minimum of due diligence describes that subset of stakeholders' legitimate demands whose consideration is incentivized even in the absence of formally institutionalized rules.

The company's default position that reflects this compromise is illustrated in the matrix below, at the bottom on the left. Overall, that matrix depicts the possible contents of the duty to address standard threats on the y-axis, and the existence or absence of competitive disadvantages (as likely resulting from due diligence measures) is plotted on the x-axis:

The company's situation (0), on the bottom left, where people are unprotected against standard threats and where the risk of competitive disadvantage is not resolved either, represents the status quo. Here, due diligence by individual companies figures as the described compromise. The other three fields represent morally preferable and potentially complementary alternatives or exit options from the unsatisfying default position (0). In each of the other three fields, the standard threat that underlies the *status quo* is eliminated or at least reduced in degree: (1) A first exit option, at the top on the left, would be to tackle the standard threat head-on, i.e., by addressing the problem of (insufficient state) protection as underlying the standard threat. The situation (1) is achieved when the source country's government, responsible for protecting against standard threats,

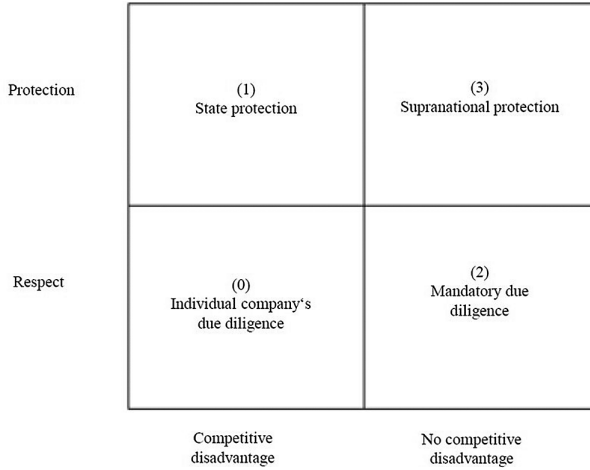


Figure 13.1 Addressing Standard Threats in Global Supply Chain.

finally *does* protect against such threats, which is complicated by the fact that states also face the problem of competitive disadvantages in the sense of social dumping. Once protection is effectuated, however, the risk of competitive disadvantage as faced by the company is reduced (along with the necessity to carry out due diligence measures in the first place). (2) The inversion of that solution, at the bottom on the right, would be that the people remain institutionally unprotected by the responsible government but that the problem of competitive disadvantage gets resolved (or at least relaxed) by ensuring that all companies would (or could be made to) fulfill the moral minimum of respecting human rights and of carrying out due diligence (which in effect would amount to eradicating the standard threat as caused by companies that fail to fulfill that minimum). This solution would require some kind of institution or international regulation of human rights that coordinates and enforces the establishment of due diligence processes of all actors across the supply chains in a given industry. (3) The third solution, at the top on the right, is that *both* the problem of competitive disadvantage and the problem of inadequate protection are solved. In the absence of an overly powerful world government that globally protects people against standard threats without facing any problem of competitive disadvantage (as states normally face it, just as companies do), this third solution could be achieved only through the effective global governance of human rights on the global marketplace. This third (ideal) solution may also be regarded as a function of the first two solutions. Any political progress toward (1) and (2) will, on either of the two axes, mean an approximation to the third solution.

13.4 The Corporate Responsibility to Carry Out Due Diligence

While the company has a general understanding that standard threats occur in its supply chain as a consequence of states' failure to protect against standard threats, what it lacks is specific knowledge of where in its supply chain the standard threats manifest themselves as specific (potentially immediate) risks and as actual (acute) violations. It is arguably this *knowledge gap* that must be bridged by means of due diligence processes. As I will contend, there are two complementary normative rationales that urge the company to bridge that knowledge gap: The duty not to be complicit (which takes center stage in the UNGP and the related discussions), and the duty to assist (which is overlooked). In the case of complicity, the gap must be bridged in order to fend off the charge that the company could be involved in a third party's human rights violations in a blameworthy way. In the case of assistance, it must be bridged because assuming that a company would have a moral duty to help when there is a person in need that the company has the means to help (and I will contend it has that duty), then – by extension – that company also has a duty to *find out if* there is such a person in acute danger. Let's focus on each normative strand in turn, beginning with complicity.

Let's assume a supplier violates human rights and thus fails to fulfill its negative duty to respect. Although downstream companies related to that abuse via their supply chains in principle only have a duty to respect, that duty to respect covers the supplier's wrongdoings by means of the normative concept of complicity. Their relationship to the abuser implies a complicity risk for the downstream company, and complicity is here understood to be an action against rights.³ According to the *United Nations Human Rights Council*, "avoiding complicity is viewed as an essential ingredient in the due diligence carried out to respect rights because it describes a subset of the indirect ways in which companies can have an *adverse effect on rights* through their relationships" (United Nations 2008, 1, my emphasis).

The kind of corporate due diligence measures that such a complicity framework tends to justify invariably remain defensive though: The maxim is to distance oneself from the human rights threat in general rather than to tackle head-on the particular individual risks such standard threats give rise to. Due diligence measures that derive from the complicity framework are essentially rooted in the company's self-interest of proving its own causal unrelatedness with a potential or actual deprivation of human rights. The company's concern with the potential or actual violation is then not a moral one induced by an apprehension of distant (but not unrelated) people's precarious situation. Rather, it is an essentially amoral concern, induced primarily by the worry of being associated and thus potentially complicit with that precarious situation. The measures taken are then a technical necessity, and aiming primarily at the relatedness, the precarious

situation as such remains potentially unaddressed. If one company stops transacting with the abusive supplier in question, other companies that rely on the supplier's production site or that source their products might continue their business relationship. This is practically and morally unsatisfying. The motivation remains inward-looking, concerned with the company's *own risk* of complicity.

As an alternative to the complicity approach, I will now argue in favor of an assistance framework where a duty of assistance figures as the appropriate embodiment of action that responds to the underlying human right of people not to be subject to certain working conditions.⁴ This reasoning is meant to complement rather than replace the complicity framework. In a nutshell, the normative rationale of the assistance framework goes as follows: Once conditions of forced labor, health-damaging working conditions, etc. are understood by the company as *standard threats* that result from the responsible state's incapacity (or unwillingness) to protect, the business enterprise must assume that potentially there are people in need of assistance in one's own supply chains. Against the backdrop of the well-understood reality of standard threats, the possibility that people are in need of assistance then takes the form of a *reasonable suspicion*. This reasonable suspicion of threatened people in one's own sphere of influence morally urges the company to find out whether such situations of acute danger *actually* occur in its own particular supply chains. This is the idea of due diligence.

This reasoning in favor of due diligence and of remedial action to address certain standard threats may be specified in the following way. The argumentation proceeds in four steps: (1) Due to the *foreseeability*⁵ of the standard threat, the multinational enterprise (MNE) has a general understanding that potentially there are people whose basic rights are acutely threatened, and (2) due to the fact that the objects of standard threats, such as forced labor or child labor, are *remediable* in the particular case, it is in principle possible to address the specific risks and actual violations once they are assessed.⁶ Insofar as (3) the company is in a position to influence the (delinquent) actors in its supply chain (Wettstein 2010; Santoro 2010), and provided that the costs of doing so would not be excessive (which would have to be determined case by case),⁷ there arises (4) a *prima facie* duty to use that influence in order to (a) specify if and where acute risks and actual rights violations take place in its supply chain, in order to then (b) mitigate the specific risk that such violations occur in the first place and to provide for remedies where they have already materialized.⁸ It is the latter kind of positive remedial action that the complicity framework cannot justify. It is thus a strength of the proposed assistance framework that it allows to make explicit the corporate responsibility to remedy the affected people's acute deprivations rather than merely to ascertain one's

own unrelatedness to them. So, to the extent that certain human rights threats exist at tiers of the supply chain which the downstream company is able to influence, the presumption is that companies have a duty to use that influence in order to help the affected in their acute situation of danger or deprivation.

To substantiate this view, it is instructive to realize that in the assistance framework, the relationship between the company and the people (potentially) affected by a certain standard threat is conceptualized as a *transaction* – a transaction that is under the company’s control. According to Alan Gewirth, for an agent to be considered in a transaction, “it is not necessary that he initiate the transaction, it is sufficient that he controls its course and thereby crucially affects what happens to the other person, who is hence his recipient” (Gewirth 1978, 224–225). No matter what the company does – leaving the operative context, staying and acquiescing in the possibility of specific harms, or addressing the affected people’s situation of danger – the company invariably *acts on* the (potentially) affected person. Assuming, as I do, that the company generally understands the standard threats to people’s human rights in its supply chains, and given its influence over the relevant tiers of that supply chain, the company cannot but accept this reality of a transaction. Gewirth makes clear that to help the needy person that one is in a transaction with is no generosity, but a strict duty with a clearly identifiable right-bearer and a clearly identifiable bearer of the correlative duty. Not giving to a needy person the object of her right, which would alleviate that need, is disrespectful of her rights and would even amount to harming her. However, as pointed out before, companies simply do not know from the outset whether there is a person in need, so they would not know whether their inaction (and thus their potential failure to help) indeed amounts to harming that other person. But even short of the certainty of harming, the mere acquiescence in the possibility of another person’s harm is already contrary to rights. So, if the failure to ascertain whether or not there are people in need is already disrespectful in its own right, due diligence requirements as a means to prevent such acquiescence become indispensable.

While the complicity framework takes as its analytical starting point the relationship between the company and the perpetrator, the assistance framework is concerned primarily with the relationship between the company and the victim. So while in the complicity framework, a company faces the *charge of complicity* if it fails to carry out due diligence or, more generally, if it acquiesces in its potentially blameworthy relationship with the abuser of human rights, the specific charge the company faces in the assistance framework is a different one: If the company acquiesces in the possibility that a particular worker’s human rights are violated at a given supplier’s production site, it risks the distinct *charge of exploitation*, i.e., of

exploiting unjustly the vulnerable situation of workers in its supply chain. Once a company benefits from people who *are* deprived of certain basic rights as part of their working conditions and who, as a result of one's own (and other parties') inaction, *remain* helpless, it is appropriate to think of that company as exploiting those workers. To be sure, if a company did not contribute to a supplier's workers' helplessness and if the company treated those workers well, offering them more than they could bargain for in view of their helplessness, then the charge of exploitation would be unjustified.⁹ This is often not the case though.

The risk of this distinct charge of exploitation urges the company to take actions that differ from – and indeed go beyond – the actions that would be required to fend off the charge of complicity. To address the former, it is enough that the company carries out due diligence processes and, in case such due diligence processes lead to serious doubts that a specific supplier respects its workers' human rights, it stops transacting with that supplier. However, regarding the assistance framework's concern with the relationship between the company and the victim, it turns out that merely to cancel the business relationship would be morally one-sided and most unsatisfying. While canceling the business relationship would make sure that the company no longer *benefits* from the supplier's aggressions, such a move would leave unaddressed the other necessary condition of the exploitative relationship in question, namely the worker's *vulnerability* to the perpetrator's aggression. Only if that other condition is (also) addressed, namely by reducing the degree of the workers' vulnerability (or helplessness) in view of the perpetrator's aggressions, will the affected people's situation improve. This requires positive actions of a kind that the complicity framework neglects. The call for such positive (remedial) actions to reduce (specific) workers' vulnerability is the normative import of the aforementioned assistance framework.

In sum, the established assistance framework suggests that companies should not be let off the hook as easily as in the complicity framework. According to the UNGP's complicity-based reasoning, where one's operations are found to be linked to a third party's actual human rights violation, it is not required that companies (attempt to) provide remedies (United Nations 2011, 24). From the normative standpoint of the assistance framework, however, it would be morally unsatisfying for a company to simply walk off and leave the affected people to their fate. To the extent that companies find themselves in a transaction with the (potential) victim, and if not helping is already against rights, they must do more than check whether they are involved in adverse human rights impacts and leave the field (or mitigate the underlying risks) in case they are. The assistance framework is thus more demanding. It would suggest that such remedies

should indeed be provided, at least to the extent that the company is in a position to do so.

13.5 Outlook: The Limits of Assistance and the Need for Corporate Political Engagement

Due diligence can prepare the ground for the eventual provision of remedies, but in many cases, the company will struggle to provide them by itself. While it may try to use its influence over the delinquent supplier in order to improve the situation of the affected people, it will often simply lack the authority to effectively hinder the delinquent third party from committing the human rights violation in question. Arguably, to the extent that there is such an eventual lack of power, it urges the company to assume a limited form of political responsibility in the supply chain context. For one thing, one might argue that the company should become politically active by pressurizing the local government to resume its primary responsibility to protect or at least to assist vulnerable people in the face of immediate threats.¹⁰ However, the more promising form of corporate political activity in the here considered supply chain context consists in the promotion of internationally coordinated legislation that makes due diligence mandatory.

In fact, companies that comply with (or that are urged to comply with) their duty to carry out due diligence have a strong interest in making other companies comply as well, as this would reduce the company's costs from having to carry out due diligence. What they need is some legal provisions that ensure more widespread compliance with the moral minimum of due diligence, ideally at the international or supranational level. This would ensure that such regulation covers a large number of powerful multinationals so that real progress on the considered human rights issues can be achieved and associated risks of competitive disadvantages for the responsible company can be alleviated significantly. To substantiate this view, it is important to note that multinational companies normally share parts of their supply chains with other businesses. So the suppliers' (potential) human rights abuses that morally urge the individual company to take action are more likely to be respected when all or most other actors that source from the same (delinquent) suppliers have established human rights due diligence as well. The same respect for other people's rights that initially urges the company to carry out due diligence eventually urges it to get engaged politically: The duty to carry out due diligence, namely to detect and assist the people immediately affected by an actual or potential human rights violation within one's sphere of influence, is likely fulfilled more effectively when other companies transacting with that third party fulfill their due diligence requirements as well. In practice, political

advocacy for such international regulation means that companies privately and publicly support the cause for a regulatory framework that secures more widespread respect for the human rights of workers in the considered supply chains.

However, a truly international regulation among OECD countries is currently not in sight, although there is some momentum at the EU level. The remaining alternative would be regulation at the national level, i.e., at the level of the (national) consumer markets where the companies operate to sell their products or services. To be sure, businesses should also support such mandatory due diligence at the national level, provided the national law is limited to that moral minimum which reflects their moral duty anyway. In fact, it is precisely in the absence of an international solution, morally preferable though it may be, that a national law should be supported. It is crucial for business representatives to realize that they cannot adduce the absence of a truly international regulatory approach as grounds for denying mandatory due diligence at the national level.¹¹ Rather, as pointed out before, due diligence presents a *compromise* that already presupposes this very absence of international regulation. So, referring to that regulatory gap in order to justify one's own rejection of a law whose aim is to promote due diligence remains unpersuasive.

After all, in an international environment where most countries have failed to make due diligence mandatory, passing a mandatory due diligence law at the national level presents a much-needed form of global leadership. It presents the necessary first step toward a more encompassing international approach. To be sure, a piecemeal approach of several national laws will make a relevant moral difference, both for the affected people and for those companies that, against all odds, already comply with their moral minimum and who therefore prefer any slight relaxation of the problem of comparative disadvantages to the costly status quo. They will gain from a law that hinders at least their national competitors from exploiting their own moral compliance; their leeway for fulfilling their moral duties will increase proportionately. At the very least, then, corporations face the moral obligation not to actively oppose a national approach, as such opposition would amount to obstructing other companies' ability to effectively fulfil their moral duty to carry out due diligence.

Notes

- 1 Note that even though the business responsibility to respect in the sense of (b) is a negative one to avoid contributing to rights violations, it has been noted that such a negative responsibility may involve affirmative duties on the side of the company (see Arnold 2010; Wood 2013).
- 2 The legal regulation of supply chains is finally gaining momentum in many OECD countries, with the EU's Corporate Sustainability Due Diligence

Directive (passed in 2024) being the first supranational attempt to establish mandatory human rights due diligence. The advantage of such an EU approach is that at least within the Single European Market it establishes a level playing field and prevents comparative disadvantages for companies that live up to their human rights-related responsibilities.

- 3 Arguably, given the company's general understanding of standard threats in its supply chains, the most suitable form of complicity to be considered here would be complicity by connivance. When companies, even though they know of the possibility that their operations could be linked to human rights violations, fail to do anything, they connive: They ignore the possibility of specific harm and deliberately look away. One might object here that such connivance does not make any causal contribution to the rights violation, as it merely constitutes an omission. But in so far as connivance in the supply chain context relates to a recurring pattern of social interaction, i.e., a human rights violation that occurs standardly, a company's connivance today can contribute to the repeated wrongdoing in the future. The companies' connivance can make the wrongdoer confident that no one will interfere with his rights violations in the future (for an account of complicity by connivance, see Lepora/Goodin 2013, 46).
- 4 Note that Hsieh (2004) also argues that transnational corporations have a duty of assistance. However, his understanding of corporate assistance differs in central respects from the one brought forward here. The central difference is that in Hsieh's view, the corporate duty to assist can take such contents as promoting the well-being of the people in the company's sphere of influence, for example, by sending poor children to school in the developing countries where MNCs operate. In my argument, the assumption of a corporate responsibility to assist has a more modest function. It serves to lend further weight to the corporate responsibility to carry out due diligence, and it grounds the corporate obligation to provide remedies to people acutely deprived of the substance of basic rights, for example, when trapped in conditions of forced labor.
- 5 This foreseeability matters morally, for depending on the extent to which the occurrence of an individual threat is foreseeable, the more feasible it becomes for a company to organize assistance in a more structured way, so that remedies are provided no longer on an ad-hoc basis. Instead, they can be provided in a more structured way where members of an industry coordinate their remedial actions across the supply chain, for example, in the form of multi-stakeholder initiatives that promote certain social or environmental standards. It is important to note that although the latter form of assistance certainly may be said to anticipate rather than merely remedy some of the more acute deprivations, such coordinated efforts should not be misconstrued as the kind of protection that is the content of a duty to protect. In the absence of legal instruments and executive power to enforce such standards across borders, multi-stakeholder initiatives fail to live up to the more demanding standard of effective "social guarantees" that form the content of the duty to protect. So, referring to such industry initiatives as protective measures would be a misnomer. For an instructive account of the potential of multi-stakeholder initiatives as instruments to further social and environmental sustainability across global supply chains, see Soundararajan et al. (2019).
- 6 Note that it is not only the actual victims of a standard threat who no longer enjoy any other right. Instead, this would already be true of people who remain exposed to the constant threat of becoming a victim but somehow (still) escape ending up victimized. In that case, "we would still be forced to devote ourselves to our own self-protection" so that – just as in the case of actual victimization –

“we could not enjoy any other right” (Beitz/Goodin 2011, 4). This is one reason why it is adequate to conceptualize any due diligence measures as the content of a responsibility to assist. For, arguably, such due diligence measures should depart from the recognition that the affected people are, as Beitz and Goodin observe, already unable to enjoy their rights (2011, 4). Consequently, the moral urge to act should be ultimately rooted in the recognition of the affected people’s vulnerability to certain standard threats.

- 7 I am grateful to Henry Shue for pointing out the need to emphasize this qualification.
- 8 In this context, it should be noted that the fact that someone else, namely the state, is originally supposed to help the people in need but fails to do so, does not lessen the degree to which one is duty-bound to help. As Anja Karnein (2015) argues convincingly in this respect, the question of what compliant parties owe to needy third parties ought to be kept separate from the question of how to deal with the unfairness that the noncompliant parties do to the compliant parties. So the injustice done to the compliant party should have no bearing whatsoever on the question of what the compliant party owes to the persons in need.
- 9 I owe this point to Henry Shue’s helpful comments.
- 10 This form of political responsibility relates to those cases where the company *does* identify human rights impacts “linked to its operations, products, or services by its business relationships” (United Nations 2011, 17) but then finds that its own ability to reduce these impacts, let alone to remedy them, is essentially limited. What the company can do itself is to use its market power in order to put pressure on responsible suppliers and possibly to stop transacting with those suppliers. But if that turns out to be ineffective, then – rather than just to stand by idly – the company should get engaged with that authority which, in principle, possesses the power and the means to actually stop the abuses in question. The local government may have failed to *protect* by providing social guarantees against the prevailing standard threats, but once an immediate threat or an acute deprivation is identified by the company’s due diligence processes, the state must at least enter the scene again as the single most effective *helper*. The UNGP appears to confirm the general idea behind this reasoning. It is acknowledged that companies will often need the government as a partner for the effective establishment of certain due diligence measures, for example, for the establishment of grievance mechanisms. According to the UNGP, “the state can play a helpful role in raising awareness of, or otherwise facilitating access to, such options” (United Nations 2011, 31). However, the UNGP fails to point out the morally more fundamental point: The state must play that helpful role when it comes to assisting people in acute danger, and involved companies must remind the state of that core responsibility.
- 11 For example, during the debate about a German supply chain law, business associations constantly warned that German companies could be put at an international disadvantage. So, in their view, regulation at the EU level would make more sense (Solomon 2020). However, there is no sign of business associations *actively* supporting such an EU-level approach.

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14 Rights-Based Risk Ethics

A Family Dispute

Lukas H. Meyer and Harald Stelzer

14.1 On the Rightful Imposition of Risks, a Short Introduction to the Account of Klaus Steigleder

Climate change-induced risks raise fundamental challenges to normative theory. Currently, living people's actions do not necessarily harm future generations but rather impose risks of harm on them. This raises important ethical questions, in particular how to weigh the normative significance of such imposition, not least in comparison to the weight one ought to attribute to the protection of the interests of currently living people in terms of their costs, harms, and forgone benefits by today's climate change policies. The circumstance that we cannot say that our actions will harm future generations but rather impose risks of harm on them is a challenge for any kind of risk ethics, especially for rights-based theories, including the one proposed by Klaus Steigleder. Such theories have a tendency to lead to absurd consequences when it comes to risks. The reason for this is simple. Rights-based theories take rights seriously and use them to evaluate actions, institutional settings, or policies. Persons have rights against all other persons to refrain from harming them in objectionable ways, e.g., as Steigleder puts it, to undermine their ability to lead their own lives (Steigleder 2018a, 481–482). However, risks are ubiquitous and almost any action involves risk impositions (Steigleder 2018a, 472). So, if the right not to be harmed in certain ways strictly implies also the right of not being exposed to the risk of being harmed in such ways and therefore leads to a right against all such risk impositions, this would obviously have absurd consequences as all or most courses of action come with the risk of the violation of such rights (Steigleder 2016, 261). This would lead to a paralysis of social life (Hansson 2013, 36). Even though there are cases in which it seems obvious that imposing a risk on others is impermissible, it often seems permissible or unavoidable to impose even severe risks on others. For Steigleder, this leads to the question: Must persons be prepared to restrict the pursuit of their interests to the point that the fundamental interests of others are preserved and that others are able to lead their lives

at least without fundamental interference? According to Steigleder, there need to be clear limits to such restrictions if the rights of the agents themselves are affected (Steigleder 2016, 254). Rights-based theories therefore need to ask which harms should not be risked and which risks should therefore not be imposed on others, while at the same time leaving room for permissible or rightful risk imposition (Steigleder 2016, 262).

Steigleder's account is built on the equality of rights. Agents possess the same rights as the "recipients", namely those affected by their actions. The rights of the agent might come into conflict with the rights of the recipients. If there is a conflict of rights, Steigleder claims, the same rights of the agent take precedence over the same rights of affected persons. When the actions of an agent would infringe the rights of other people and the agent cannot claim to have reasons based on his or her rights to be justified in imposing such infringement, Steigleder argues in favour of protecting the rights of the potentially affected (Steigleder 2016, 259). According to Steigleder, this is especially relevant when we consider the imposition of risks of rights violations. Even though a permission of all risk impositions would violate the rights of those affected, a prohibition of all risk impositions would severely restrict the ability of agents to lead their lives and therefore would violate their rights (Steigleder 2016, 261–262). For Steigleder, a rights-based ethics must therefore pursue a dual perspective

of both risk toleration, which focuses on the freedom, the plans, and the chances of agents, and risk elimination, which focuses on the dangers to the objects of the rights of the recipients of risky actions. The focus on the equality of rights of both agents and recipients is the key for finding out which risk impositions must be tolerated and which risk impositions must be prohibited.

(Steigleder 2016, 262)

The likely effects of the prohibition of risk impositions must be weighed against the likely effects of permitting the imposition of these risks on others. This will allow us to delineate morally permissible and impermissible risk impositions, and this, in the end, is for Steigleder a question of proportionality (Steigleder 2018a, 472). Based on these assumptions, Steigleder puts forward the differentiation between agent-risks or A-risks and recipient-risks or R-risks:

A-risks are risks that an agent is permitted to impose on others, because a prohibition of these risks would unduly privilege the rights of the recipients against the rights of the agents. To put it another way, A-risks are risks an agent has a right to impose on others. R-risks are risks that an agent is in principle prohibited from imposing on others, because a

permission of these risks would unduly privilege the rights of the agents against the rights of the recipient. R-risks are risks that in principle violate the rights of the recipients, who have therefore a right that these risks are not imposed on them without a sufficient reason.

(Steigleder 2016, 264)

Without imposing certain A-risks on others, agents would not be able to lead autonomous lives or improve on how to go about leading their lives autonomously, Steigleder suggests. If this is at stake, Steigleder claims, the equality of rights needs to be approached from the internal perspective of the agent, and the rights of the agent justifiably take precedence over the rights of the affected person (Steigleder 2016, 259).¹ Steigleder draws a further classification between A_1 -risks that are primarily justified in view of the quality of the possible harms they involve, which means, relatively moderate harms or harms that can be almost completely compensated for should the risks materialize (Steigleder 2016, 264), and residual risks, which he calls A_2 -risks. Even for A_1 -risks, Steigleder gives certain qualifications, e.g., to safeguard against joyful risk imposition – the imposition of risks should not be the reason to perform a certain act – and negligent risk imposition – to avoid risks that could be minimized easily. For A_2 -risks, which come with the possibility of severe harm to others, the agent must take the necessary measures to avoid such harm. This should reduce the risks, so that one may assume that normally the risk will not materialize. Should the risk still materialize, it will most likely affect only single persons or, in rare cases, only a few persons. Furthermore, imposing such risks is the right of the agent if such imposition will “considerably enhance the opportunities of agents to lead their lives” (Steigleder 2016, 262). In summary, one is allowed to impose such risks if their strict avoidance would disproportionately restrict the rights of the agent. With A-risks, Steigleder does believe to be able to account for many everyday activities, especially those that involve technologies.

R-risks – serious risks that cannot be controlled easily – are risks that must be viewed primarily from the perspective of the recipients. Even though agents do not possess the right to impose such risks on others, there are some justifying reasons for their imposition. These reasons are mostly based not only on the equality of rights between persons but also on a hierarchy of rights that can be transferred to risk imposition. In the case of the normative inevitability of R-risks, the imposition of such risks can be normatively acceptable if this contributes to the prevention of greater risks and the action that comes with the R-risks is the only possibility to prevent the greater risks. Further, it is permissible to impose (unavoidable) R-risks when they can be shown to be less serious and the measures will prevent or reduce more serious R-risks. Steigleder refers here to what he calls the

criterion of the situational priority of preventing the risk of greater harm. Justifications of actions aiming at the prevention or reduction of R-risks can also refer to the likelihood of the effects, as more probable R-risks need to be weighed higher than the less probable R-risk of the qualitatively same effect. This Steigleder calls the situational priority of averting the high-probability risk of grave harm (Steigleder 2016, 266). However, these two aspects can also be mixed in a reversed way (lesser harm with higher likelihood or greater harm with lower likelihood). Then it is difficult to evaluate the seriousness of R-risks (Steigleder 2018a, 478). The justifying reasons for the imposition of R-risks are context-dependent and can function as a critical measure (Steigleder 2018a, 490) also in situations in which all options may come with considerable risks as well as the violation of certain rights or the setback of interests.

14.2 Rights-Based Approaches and Basic Needs

With his risk ethics, Steigleder engages with what we also consider to be among the most theoretically and practically challenging questions of climate ethics and justice. In our discussion, we present an alternative account that does not rely on Steigleder's differentiation between A-risks and R-risks. We also outline a different rationale for the justifying reasons for risk imposition. Our needs-based sufficientarianism is a version of rights consequentialism. As both accounts are rights-based approaches, they share the assumption "that persons possess a fundamental moral importance which grounds an entitlement that certain of their fundamental interests be mutually respected" (Steigleder 2018b, 140). Rights – including negative and positive rights – are equal and fundamental claims each person has against every other person. Moral rights typically have corresponding moral duties. There is a fundamental normative equality of the bearers of moral rights: All have the same moral claim rights to the protection of certain fundamental interests (Steigleder 2016, 255). Actions, institutional settings, or policies need therefore to be judged by their consequences on the rights of all those affected.

We also share Steigleder's assumption that the bearers of moral rights claims are primarily individual persons. This is important as we do not only aim to maximize overall well-being but also consider how well-being is distributed, taking the separateness of persons seriously. Notwithstanding substantive differences, we agree with Steigleder that certain moral claim rights of individuals can constrain the permissibility of actions and policies (Steigleder 2016, 255) or, to put it metaphorically, that people may not be sacrificed for increasing the well-being of other people (Steigleder 2018a, 486–487). Still, rights-based theories allow for a hierarchy or ranking of rights as rights claims can be outweighed by rights claims of greater

strength (Steigleder 2016, 259), and our account provides a complex substantive understanding of how one ought to go about weighing and aggregating rights claims, as we will explain below.² Again, notwithstanding substantive differences, we agree with Steigleder that situationally a more basic right of one person can take precedence over a less basic right of another person (Steigleder 2016, 255).

Both of our accounts see basic rights as reflecting fundamental interests all persons have (Raz 1986, 166), and these fundamental interests are understood by Steigleder as well as by us as reflecting basic needs. The fulfilment of their basic needs is a precondition for people to go about their lives in a minimally autonomous way (Meyer/Pözlner 2021, sec. 2.1 and fn. 10; Steigleder 2016, 254). According to David Copp, “[m]atters of basic needs are things anyone would require in some quantity and in some form in order to avoid a blighted or harmed life” (1998, 124). Thus, the fulfilment of basic needs is important enough to justify holding others under the corresponding duties.

And there are further points of agreement. At least for the foreseeable future, basic needs of future people can be expected to be very similar to those had by currently living people (see Meyer/Pözlner 2021, sec. 3.1 and 3.2). As basic needs reflect fundamental interests of people, an interest theory of rights will attribute the same basic rights to currently living and future people (Steigleder 2016, 259), and these rights can function as normative constraints on our actions today (Steigleder 2016, 256). Especially when considering climate ethics, it is reasonable to assume that climate change impacts will massively infringe the basic rights of future people. It can be expected that people in the future will lose their lives or will be threatened in their health or other basic conditions for being able to lead their lives as a consequence of a certain amount of global warming. We also agree with Steigleder that it is not certain that all or most people living in the future will enjoy a higher standard of living. Instead, there are many indications that climate change may erode the environmental and other bases for leading one’s life and for economic development (Steigleder 2016, 260). Both of our accounts are framed in part by these assumptions of intergenerational justice.

14.3 Threshold Conception and Weak Sufficiencyarianism

We think that these are important overlaps between our theories and form the backbone of our approaches. However, the approaches differ in some important dimensions. While both positions agree that rights can be understood as entitlements to certain basic needs, it is not clear to us how Steigleder’s account would allow for a certain order or ranking of rights. Sure, he argues that a more basic right of one person can situationally

take precedence over a less basic right of another person. He also gives the outline of an account for such a hierarchy of rights of persons, based on their indispensability for being able to lead one's life. Indispensability comes in degrees

ranging from being absolutely indispensable – such as life itself – to conditions whose absence is more or less life-threatening, and then further spanning from conditions whose absence makes it (almost) impossible to lead one's life to conditions whose absence severely restricts one's ability to lead one's life and finally to conditions that can, to different degrees, be situationally or temporarily dispensed with.

(Steigleder 2018a, 474)

However, Steigleder stays here on a very general level, keeping it open which rights are indispensable and, if so, to what degree. His reference to basic needs is of little help in this regard. Steigleder, like many other theorists, defines basic needs in an ostensive way, that is, by providing a list of needs that are considered to be basic, such as nutritious food, drinkable water, shelter or housing, health, and the physical integrity of the body (see, e.g., Streeten 1979; Steigleder refers to Stephen Perry's list of fundamental interests, Steigleder 2016, 254). Such lists, even if they include many more supposedly basic needs, are, however, unsatisfactory, as basic needs are always to some extent controversial. What is needed is a substantive definition that specifies the criteria for determining what qualifies as a basic need (Meyer/Pözlner 2021, sec. 2.1).

Such a definition can be based on the notion of harm, in particular, necessary and serious harm. P has a basic need for O, it is argued, if and only if P's not having, being, realizing, etc. O harms P, and this harm occurs necessarily and is serious. Even though such an understanding is close to material needs, it is not restricted to them. It has been argued that the non-satisfaction of P's basic need harms P by impairing P's autonomy or rational agency (Doyal/Gough 1991; Copp 1998; Page 2007); by preventing P from fully functioning in certain "core human activities" such as working, having a family, or playing (Braybrooke 1987; Miller 2012); or by preventing P from flourishing (Anscombe 1958; Kowarsch/Gösele 2012). Basic needs can therefore be defined as those things that are required for persons to avoid being necessarily and seriously harmed in the sense of impairments of their autonomy. Autonomy can be understood to be a scalar concept (Meyer/Pözlner 2021, sec. 3.4).

What is considered a basic need or how we define the threshold for a person, therefore, depends, among other things, on what options the person must have in order to be able to live autonomously. We can therefore identify at least one qualitative level of autonomy, the achievement of

which is of the greatest moral relevance and which should be prioritized in theories of distributive justice. The level of autonomy in question indicates that people can be autonomous, that they can make decisions about what is worth doing and how they can pursue the goals they consider important. Only when people reach this threshold of autonomy can they lead a life that can be shown to be at least minimally good. Reaching this threshold is closely linked to the fulfilment of basic needs. If people must constantly focus on ensuring that their basic needs are met, they do not have the opportunity to be sufficiently autonomous (Meyer 2024).

Our definition of basic needs and how they can justify basic moral rights of people as autonomous agents also allows for a certain order or ranking of these basic rights compared to other rights of persons. We therefore need to systematically work out which rights must be fulfilled to enable a person to live an autonomous life. We do so with our threshold conception of well-being defined by the fulfilment of basic needs protected by moral rights (Meyer/Pözlner 2021, sec. 3.4). Using a basic needs approach entails a qualitative threshold that distinguishes lives that have a certain minimum quality from lives that lack this quality (see Copp 1998, 122; Miller 2012; Gough 2015). Moreover, the specification in terms of basic needs also justifies the normative significance of the threshold as basic needs are “intrinsically morally demanding” (Brock/Reader 2004). That something is a basic need by itself entails that it ought to be met, and that doing so matters more than meeting non-basic needs or mere preferences (Braybrooke 1987; Brock/Reader 2004; Thomson 2005, 175; Miller 2012). Our basic needs threshold allows us to assess actions (or omissions) by considering consequences in terms of well-being, including harmful and beneficial consequences. Harms and benefits are defined as making people worse or better off than they would have been or making them worse off than or as well off as they ought to be regarding the threshold.

Based on this threshold conception, we develop our sufficientarian account, which is characterized by two theses, namely by what scholars have called the “positive thesis” (see especially Casal 2007, 298–299) and a version of the “shift thesis” (Shields 2016, 34–35). The positive thesis captures sufficientarianism’s main intuition, that we have weighty non-instrumental reasons to secure at least enough of some benefit(s). According to the shift thesis, “[o]nce people have secured enough there is a discontinuity in the rate of change of the marginal weight of our reasons to benefit individuals further” (Shields 2017, 211). There are different interpretations of the shift thesis. We argue for the view that the same justice-based reasons hold below and above the threshold, but they undergo a relative change of weight at the sufficiency threshold. In contrast to strong sufficientarianism, we do not attribute lexical priority to the avoidance of below-threshold violations of rights,³ as this would require giving the avoidance of rights

violations below the threshold always more weight than the violation of other claims. In other words, strong sufficientarianism prohibits weighing rights violations below the threshold against rights violations or the setback of other interests above the threshold (Birnbacher 2003, 163–169). As a consequence, we would have to secure these rights for only one person or a small number of people, even if that required violating other rights of many people just above the threshold. Furthermore, reducing the well-being of people above the threshold for the sake of improving the position of people below the threshold would not matter unless such reductions would bring these people below the threshold.

Especially when it comes to risk imposition, strong sufficientarianism runs into deep problems. If people have a *prima facie* claim against us that we do not harm them by performing actions that threaten the fulfilment of their basic needs, then imposing such threats can be understood as harming people by violating their rights. As strong sufficientarianism categorically prohibits the pursuance of any action that comes with any probability of causing people to fall below the threshold, this understanding would not allow us to choose among actions, measures or policies when all options open to us imply such risks. Realistically speaking, this is often the situation in which presently living people find themselves (Meyer/Stelzer 2018).

In contrast to this, weak sufficientarianism gives some, but not absolute, priority to those who are below the threshold. When considering different options for action, we compare the expected average value of all possible outcomes of each option for those below and above the threshold according to the priority approach, i.e., taking into account the number of people whose rights would be violated, the probability of such damage and by giving weight to the severity of the damage in question. The option with the highest positive (net) value determined in this way is to be preferred. Both below and above the threshold, it matters more to benefit persons (a) the worse off the persons, (b) the more persons are being benefited, and (c) the larger the weighted benefit at issue. Benefits differ in their quality in the sense that their realization or non-realization will have different consequences in terms of realizing a sufficient level of well-being. Benefits that enable basic needs satisfaction matter most (as they are necessary to move people up to and/or above the threshold). But other benefits can matter too. Weak sufficientarianism allows for trade-offs between enabling basic needs satisfaction and other ways of increasing well-being. Moreover, it also allows for trade-offs between persons above and below the threshold.

When assessing the options for action, the consequences of all possible violations of rights must be taken into account in the same way (i.e. aggregative, according to the weak sufficiency view with priority below the threshold and according to the expected value theory). Our form of weak sufficientarianism belongs to the family of rights-consequentialist

views that combine special weight to certain rights claims (reflecting the sufficientarian threshold) with an aggregative understanding of the claims of people both below and above the basic-needs threshold and an understanding of how to weigh risks of rights violations versus certain infringements of rights. The priority of the threshold would allow us to see at least some options as likely non-starters, while at the same time being able to deal with situations where all options come with the possibility that some people will fall under the sufficientarian threshold or further below the threshold (but in different numbers or to different degrees).

14.4 Aggregating All Risks of Rights Violations over All Positions

One of the main advantages of our account is the possibility to allow for aggregating all risks of rights violations across all positions, while still giving priority to certain rights. And this is a second major difference between our account and Steigleder's approach. For him, the use of (weighted) maximizing is very limited. First, in giving priority to the question of permissible and impermissible risk imposition, such maximizing is not applicable to cases of the creation of new or additional possibilities of harm that fall under his "imposition paradigm" (Steigleder 2018a, 475). As pointed out above, these new risks need to be viewed from the perspective of the potential contributors to the risk and must be based on a comparison of the different effects of permission and prohibition on both the agents and the recipients. With this, Steigleder does not refer only to the simplest case of risk imposition, in which a new or additional risk is created for one or more persons through a single actor's action (or sequence of actions). Risk can also be created by the cumulative effects of the actions of many people, by collective actions, by the implementation or alteration of policies, by institutional or structural change, or by technologies. However, in all these cases, Steigleder is convinced that his criteria for assessing which risk impositions are justified and which are not will, in principle, be the same (Steigleder 2018a, 475).

When we deal with existing risks or risk constellations, things are significantly different for Steigleder. The question of the genesis of such risks is of secondary importance at best. For him, the important questions are which constellations or problem situations should be given priority, as different risk constellations tend to exist simultaneously, and which party needs to respond to the risks. As the rights of the actors (and/or decision makers) themselves are supposedly not affected, at least no more than those of others who are also affected, and as the actors are often not responsible for the risk in the first place, or if so, only to a limited degree, they can take on a neutral or external perspective, from which there are no special obligations to anyone affected by a certain policy. Maximizing strategies

can be the “right prioritization criterion” in such situations, according to Steigleder (2018a, 476). The reason for maximizing stays, however, within his demand for equal rights. If more people can be helped, all else being equal, not doing so would show a neglect of or disrespect to the moral status of all affected (Steigleder 2018b, 144–145).

There are some problems with Steigleder’s position. In many real-world cases, the differentiation between new risks and existing risks does not hold up. Even Steigleder must admit that his differentiation is not strict. “Strategies to reduce or eliminate risks will usually involve the creation of new risks. Thus, the imposition of risks often cannot be evaluated in isolation but must be evaluated as an attempt to reduce existing risks” (Steigleder 2018a, 477). Especially in the case of climate change policies, we cannot easily distinguish between the creation of new risks and the response to existing or emerging risks. One could critically ask if his differentiation is of real importance once we are not solely concerned with criteria for rightful risk imposition on a theoretical level, but rather deal with the evaluation of options, where each of them responds to existing or emerging risks and comes with considerable severe risks of their own. Our needs-based sufficientarianism is directed towards such decision-making situations. Our primary question is, therefore, not the rightfulness of a risk imposition by an agent, which leads Steigleder to his justification of imposing A-risks (see above). Rather, what matters is the weighing of the risks of different policy options, all of which come with certain risks. Steigleder seems to consider these issues when providing justifying reasons for the imposition of R-risks. However, even with his R-risk justifications, his account is not able to really weigh the different risk impositions regarding different persons and their different rights. Sure, as pointed out above, his account is meant to distinguish between the severity of different risks, their probability, and in cases in which we are allowed to rely on maximizing strategies to take into account even the number of affected people (see above). These suggestions for how to go about evaluating risks, however, are not developed in a systematic way. When we must consider several risks, things get very complicated, as indicated by Steigleder himself (Steigleder 2018a, 478).

Furthermore, Steigleder’s account of R-risks is too restricted as well. Let us recall that the imposition of R-risks is justified when it comes to the prevention of greater risks for all affected and if the greater risks can only be prevented by the imposition of the R-risks in question (or of comparable R-risks). Here, Steigleder claims that the assessment of R-risks is limited to those cases where “the rights of the actors themselves are not affected” (2016, 259). This runs parallel to his account of existing risks and the possibility of adopting an external perspective, as indicated above. We hold, however, that there is no good reason to distinguish between

the assessment of risks when the rights of the actors (or of the potential helpers) themselves are affected and when such rights are not affected. Unfortunately, in many cases, the rights of those who have to choose among options with R-risks will be affected. The risks to the actors' rights will be among those which need to be assessed from an external perspective. For us, restricting maximization to cases where this is not the case is not justified, and we were not able to identify a justification for this claim in Steigleder's work. We agree with Steigleder that R-risks are prohibited in principle and that we need certain justifying reasons to impose such risks. However, we also think that his justifying reasons (especially concerning the situational priority of preventing risks of greater harm and the aversion of an acute emergency) should not be taken in isolation but need to be integrated into an account that clarifies what "normative inevitability of R-risks" means and how we can determine when such risks are inevitable. Steigleder does not give such an account and introduces unnecessary restrictions for maximizing strategies.

Steigleder's account also seems to have difficulties incorporating distributive aspects when it comes to residual risks (A_2 -risks in his terminology). For him, the possible imbalance between the rich and the poor regarding these risks – which are mainly connected with the use of technical devices – is unproblematic. Even though he accounts for a severe imbalance between these groups and the related injustice, as the poor are exposed to the residual risks mainly produced by the rich, for him, this does not affect the validity of his argument that it is in principle permissible to impose such residual risks on others. For Steigleder, his argument is not based on reciprocity, but rather that the permission of actions that are connected with residual risks in principle expands the abilities to act of each agent without restricting the abilities of others in a systematic way (Steigleder 2016, 263).

We have a different take on residual risks of the use of technologies, e.g., the private use of cars by people living today. The question is whether, among the options for the mobility of people living today (these options can be complex sets of several mobility options), there is an option that is preferable according to the sufficiency view with priority below the threshold value and according to expected value theory. Our assessment strives to include all the different possibilities of using these options, including the different possibilities of rich and poor people. What matters is how the probable use of the options impacts all those affected, not how people's mobility options or freedom of choice can be maximized under idealized conditions. Even though we agree with Steigleder that rights-based theories must not prohibit all risk impositions (Steigleder 2016, 264), we do not need to refer to residual risks or the rightfulness of certain forms of risk impositions. If all options are associated with risks of rights violations, then the one that is associated with fewer such risks (aggregatively judged

in the way we have identified) is preferable. This also includes the possible opportunity cost for omissions of actions, which are not to be understood in a purely economic way but can also refer to the interests of agents that would not be fulfilled or fulfilled only to a limited degree if we would not allow for certain risk-laden actions. We should not set out to justify a right to impose risks but rather assess how to reduce the imposition of risks when such imposition is unavoidable. Furthermore, much of our actions might include different forms of risks. Driving your car puts forward residual risks in the sense of A_2 -risks for other participants or bystanders. However, it also contributes to climate change risks and therefore to R-risks. Even if the imposition of A_2 -risks could be justified in isolation, based on the small likelihood of harms to others, including the agent, their imposition is still in need of justification if the activities also entail R-risks.

Many of the differences between our view and Steigleder's view have to do with the significance he attributes to distinguishing between the rights of the recipients of actions and the rights of the agents themselves. As explained above, Steigleder claims that in certain situations when the rights of the agent come into conflict with the rights of the recipients, the same rights of the agent take precedence over the same rights of the recipients (Steigleder 2016, 259). We disagree. We do not see the need for distinguishing between A-risks and R-risks, as we analyse all actions by the benefits and negative consequences they might have for all affected (by relying on weak sufficientarianism and the priority view as explained above). In our approach, the agent's perspective is always taken into account, but it does not take precedence, as it seems to do in Steigleder's approach, for at least some forms of risk imposition. Sure, there will be cases where, after weighing risks, benefits, and costs, the interests of an agent take precedence. However, Steigleder seems to advocate absolute constraints on obligations without considering the number of people potentially affected, the number of possible rights violations, their degree, and the probabilities of these. His Kantian equality of rights seems to justify that the assessment of the severity of rights violations must not be made in an aggregative manner, at least in many cases in which the agents' rights are involved. Accordingly, the violation of fundamental rights of a duty bearer in the fulfilment of her duties would be sufficient to justify the non-fulfilment and the associated imposition of risks of violating the fundamental rights of very many others. We will come back to this point in our discussion on overdemandingness.

14.5 Likelihood and Risks Aversion

Questions of the epistemic conditions of agency are also relevant for a third major difference. For us, it is not clear how Steigleder wants to account for likelihoods or probabilities in many of the most important real-world cases

in the context of climate change. Let us first look at his understanding of risks. Steigleder does distinguish between realistic possibilities – as possibilities which we have epistemic reasons to assume – from real possibilities which exist in the event that something is objectively open or undetermined (Steigleder 2016, 261). This is important because, due to our limited epistemic perspective, we must act based on what we have reasons to hold possible. A realistic possibility is based on the presence of indications that objective dangers may relate to certain actions. And this must have some normative relevance, as persons have a right against all other persons to refrain as far as possible from creating a realistic possibility of infringing their rights (Steigleder 2018a, 477). Steigleder, therefore, understands risks primarily from their epistemic nature as involving realistic possibilities of harm (Steigleder 2018a, 473).

Like many other accounts, his generic understanding of risks also includes probability numbers to measure the possibility of outcomes as more or less likely or probable. This is also part of his criterion of aversion to a severe emergency for R-risks of the same level of severe harm (e.g., death or severe injuries) in the case that one risk is highly probable and the other is less probable or even improbable. The example that he gives is on the individual level. If a person can be saved from certain death only by imposing a small risk of death on other persons, then this risk imposition is justified for Steigleder (2018a, 479). However, as he points out, the difficulty with this criterion is based on the demarcation of the probabilities and the corresponding knowledge requirements of how sure we can be of our estimations (Steigleder 2016, 267).

When it comes to climate change, these difficulties become so serious that he doubts that we have a good basis to assign probabilities. Therefore, in this context, he most often identifies risks with uncertainties. Based on his rejection of all forms of discounting, he questions whether it is normatively adequate to treat the possible harms connected with climate change as risks in the strict sense, that is, as probability-weighted harms. He thinks that our probability numbers concerning climate change and climate change policies might not be reliable. It seems, therefore, questionable to weigh (discount) harms by our probability estimates, as their importance may depend on the quality of the potential harms (Steigleder 2016, 260). Probability weights for Steigleder rest on probability numbers that are not reliable and, in the context of climate change, this is even worse, as we cannot expect that global warming will develop in a linear way. “In short, potential catastrophes are lurking and ultimately, we must treat them as uncertainties” (Steigleder 2018b, 152).

We agree with Steigleder that our assumptions about the probability of certain outcomes of actions are always more or less problematic. While we know that climate change implies severe risks for the basic well-being

of future people, we lack certainty as to what the consequences of our actions and policies today will be in the future and what risks will materialize (Meyer/Stelzer 2018, 447–448). We also agree that we should not discount potential catastrophic events by probability numbers in the strict sense. The real possibility that climate change could lead to catastrophic outcomes should be a major or even the most important aspect we should be worried about (Weitzmann 2009). However, this conclusion is not in opposition to expected value theory, but rather it results from it, as shown by John Broome:

Expected value theory tells us that, in assessing the badness of climate change, we have to think in terms of expectations. The expectation of harm caused by a catastrophe is the badness of the catastrophe multiplied by the very small probability that it will happen.

(Broome 2012, 131)

The most likely result of our assessment of options does not necessarily need to be the most important result: “An unlikely possibility may be so bad that the small chance that it will happen, its badness is much more important than what is likely to happen” (Broome 2012, 129–130).

We also disagree with Steigleder’s scepticism against treating the possible non-catastrophic harms connected with climate change as risks in the strict sense, as this is what expected value theory tells us to do. To calculate the expected value, two things are required: The probability and the value for each of the possible results. Even if we don’t know probabilities and values, we must do our best to estimate them as well as we can. The quality of the potential harms is part of this evaluative process, and if these harms are severe, weighing them by our probability estimates does not necessarily diminish them, as Steigleder’s argument against discounting seems to imply. If no probability values can be assigned to particular risks, we could not compare the only possible violation of a fundamental right of a person living in the future with the certain violation of a less fundamental right of a person living in the present, a task that is of utmost importance not only for Steigleder’s risk ethics but also for dealing with climate change and related policies. Moreover, expected value theory is part of the answer to how to escape the deadlock of rights-based approaches as described above with regard to risks. So, rather than giving up, faced with climate change-induced uncertainties, we need to do our best to estimate the values and probabilities at stake by all the evidence that we can muster. The lack of firm probabilities is not a reason to drop the expected value theory.⁴ We should stick to it, as it is not only very well founded but the correct – or at least better than any of the alternative approaches – theory of how we

should take uncertainty into account in our moral actions (Broome 2012, 127–129).

Our approach is therefore based on the inclusion of probabilities in the evaluations of different options and understanding risks as probability-weighted harms. As a consequence, we have developed our weak sufficientarianism in the direction of a risk-averse version, based on the assumption that we should avoid risks with respect to the basic interests of well-being (Meyer/Stelzer 2018). We want to avoid outcomes that lead people to fall below the threshold or to stay there. The higher the likelihood of such a negative outcome, the less desirable it is. A higher likelihood of negative outcomes (defined by the threshold) counts against an option. Of course, the higher the likelihood of a positive outcome, the more desirable it is. That means we want policies with the least likelihood of causing people to fall below the threshold, but we prefer a higher likelihood of an outcome if we evaluate it to be positive. A risk-averse interpretation of weak sufficientarianism is therefore based on an asymmetry between potential losses and potential gains with respect to the well-being of persons. Potential losses weigh more heavily than potential gains.

Therefore, probabilities are important in order to draw the line between acceptable and unacceptable risk impositions by assigning decreasing weight to rights infringements as their likelihoods decrease. It also allows us to include the epistemic limits in our decision-making processes.

14.6 Overdemandingness and Our Duties to Future Living People

Future living people, Steigleder explains, have the same basic rights as presently living people who can stand under corresponding duties vis-à-vis them. We agree (see Meyer 2021, sec. 2 and 3). If we consider the very large number of future generations and if we were to stand under the duty to perform actions that can improve people's well-being, currently living people would stand under duties that could imply very significant decreases in their own well-being (Meyer/Pözlner 2021, sec. 4.2). The acceptance of the rights of future people could be extremely demanding on currently living people, as the much larger number of future rights bearers could dwarf the importance of the rights of people living today. Steigleder attempts to get around this by, on the one hand, invoking the equal rights of present and future humans and, on the other hand, emphasizing the need to consider this from the internal perspective of today's agents, which, as explained above, leads him to claim that the equal rights of the agents in some situations take precedence over the equal rights of the recipients (Steigleder 2016, 259). Parallel to his account of A-risks above, Steigleder wants to protect currently living people from overdemanding claims of future generations by pointing out that people living today have

equal rights when it comes to fulfilling their obligations towards the rights of future recipients. As we cannot be asked to refrain from actions that are necessary for us to live our lives, we cannot be asked to give up our equal rights for future people.

It is difficult to see how prioritizing the agent's perspective can be seen as compatible with the equal rights of all humans at all times. Even if the demands on currently living humans are high, what currently living humans ought to do morally to protect the fundamental interests of future humans will appear less than implausible when we view them from the perspective of the recipients. Future people are the recipients of the consequences of the actions of currently living agents, and if their lifetimes do not overlap, the currently living agents will never be in the position of being recipients of the actions of the then-living future agents – at least in accordance with conceptions of well-being, for which well-being is only reduced or improved if the effects are experienced by the people affected themselves. This permanent asymmetry in the power relations between living people and those in the future, whose lifetimes do not overlap with theirs, is a fact (Barry 1977, 243–244). However, according to the interest theory of moral rights, it cannot be considered morally significant to what people currently living owe to future people as a matter of their rights (Meyer 2021, sec. 1). What they owe should be assessed in a way that is impartial between the perspectives of agents and recipients (Lazari-Radek/Singer 2014, 327–328), even if they will never change their position as agents and recipients. It is difficult to see why this should be controversial among ethicists who are more Kantian or more consequentialist with respect to what is owed to future people, unless one denies that people can have rights when they cannot claim their rights against those who stand under the corresponding duties. Steigleder's prioritization of the internal perspective of currently living agents, therefore, seems unjustified.

In our view, the determination of the normative weight of a risk of a rights violation depends on basic criteria such as the quality of the right (where we assume that we can come up with a ranking between such rights), the degree of the rights violation (assuming that some rights might not only be met or not met but might be met only to a certain degree), the quantity of the rights violation (i.e., the kind and number of rights that will possibly be violated both below and above the threshold), as well as the number of people affected by the risk of a rights violation, where they stand relative to the sufficiency threshold, and how high the risk of the rights violation is. If we cannot avoid the imposition of the risk of violating people's rights as specified by the sufficientarian threshold, avoiding risking people's sufficiency rights matters more the worse off the person would be, the more people are likely to be wronged, and the greater the weighted sum of the considered rights violations. After all, numbers count,

and even our sufficiency rights are not absolute when we need to weigh the consequences for current and future living people.

In principle, we cannot therefore rule out the possibility of very demanding claims from future people against us. Our account does not speak in favour of a certain principled limit of what can be morally asked of currently living people in order to secure the conditions necessary for future people to reach the threshold of sufficiency. In highly non-ideal circumstances, we would have to weigh the current living people's threshold claims against the threshold claims of future people. Also, our version of weak sufficientarianism requires weighing up the claims of people below and above the threshold as we attribute rights claims to people above the sufficientarian threshold (though much weaker ones than those who have not reached the threshold). Thus, we cannot exclude the possibility that under highly bizarre conditions, currently living people would stand under duties to forgo their sufficiency rights for the sake of the above-threshold rights of future people. And the other way around: Under different bizarre conditions, an agent would stand under the duty to increase the above-threshold rights claims of many currently living individuals at the cost of infringing the below-threshold rights of only one (or very few) future individuals. However, we do not think that these implications of our view provide grounds for an objection to our view.

Of course, as a matter of their actual capacities, people may not be able to fulfil their moral duties (e.g., their supposed duty to give up realizing their sufficiency rights). Claims on people can be understood to be over-demanding when they ask more than people in fact can do. This does not imply, however, that these so understood over-demanding claims are morally invalid. These claims may still correctly identify what people ought to do. A different question is whether, under these circumstances, people can be blamed for failing to do what they ought to do. If people's wrongdoing can be blameless, the actual capacities of people can be understood to be relevant for what they can be morally blamed for, not for what they ought to do (Parfit 1984, sec. 14).

However, under the given conditions, basic needs sufficientarianism is highly unlikely to be over-demanding in the sense of asking currently living people more than they can do. In particular, it seems unlikely that currently living people need to reduce their well-being anywhere close to the threshold, to be able to fulfil the sufficiency rights claims of currently living and future people.⁵ According to our version of needs-based weak sufficientarianism, the primary obligation of present living people is to enable future generations to meet their basic needs. What our account proposes is that both present and future persons should have "enough" (in terms of the satisfaction of their basic needs) – that their well-being should be above a certain threshold of sufficiency. Arguably, providing a large or

very large number of future persons with the satisfiers to fulfil their needs for water, food, shelter, clothing, basic health, and education does not put too heavy burdens on the shoulders of those who live today. As Wolf notes in his discussion of intergenerational climate justice, “we have more than enough stuff to meet the basic needs of everyone, and needs provision is shockingly inexpensive” (2009, 362). It seems justified to ask that much of currently living people, as the fulfilment of basic needs is a prerequisite for a minimally good life, which we owe to all people (Meyer/Pözlner 2021). To fulfil their duties vis-à-vis future people, many currently living people will likely have to change their ways of life in many aspects to contribute to conditions that are sustainable for all over the long term. Indirectly, Steigleder seems to agree as he argues that securing the basic conditions for future people to be able to lead their lives outweighs in importance a loss in income and productivity that might reduce the standard of living of the presently living without threatening the basic conditions for them to be able to lead their lives (Steigleder 2016, 259). However, his justification for this particular conclusion significantly differs from ours.

14.7 Conclusion

In this essay, we revisited and further developed our position of risk-averse basic needs sufficientarianism by contrasting it with the approach of Klaus Steigleder. We believe that our accounts belong to the same family of views: They share important features but also differ in significant aspects. Both approaches are rights-based positions that refer to the interests and basic needs of individuals, as well as the value of living an autonomous life. The approaches thus share an understanding of the currency of well-being. Both approaches oppose a utilitarian understanding not only in terms of the currency but also in terms of the principle of right action. Importantly, the approaches differ in how they understand the principle of determining what actions are permissible or morally required. Steigleder develops a Kantian approach to risk ethics and, in doing so, comes up with a distinction between the agent and recipient perspectives combined with different types of risks. We develop a risk-averse rights-consequentialist approach by combining weak sufficientarianism with the priority view below the threshold value. We hold that it is an advantage of our approach that we don't rely on Steigleder's distinctions, which we find less than fully convincing. As our discussion shows, some of the problems of Steigleder's approach reflect the limits he places on consequentialist aggregation. In our understanding, these limits are not systematically justified. We believe that consequentialist aggregation, when carried out within our complex approach, delivers valid results for all, including the most challenging cases of risk imposition. Further, we find that the expected value theory provides

answers to Steigleder's scepticism towards probability assessments in the context of climate change. His rejection of probability assessments undermines the possibility of weighing options in response to climate change. Finally, we disagree with how Steigleder responds to the problem of over-demandingness by claiming that we should give priority to the rights of the agents from their own perspective, with the resulting principled limit of what they owe. Our approach can be shown to respond to the problem in a way that takes into account all affected people's rights equally. The demands on currently living people are limited by our substantive understanding of what is owed to both currently living and future people alike, namely, first and foremost, the protection of their opportunities to fulfil their basic needs. To fulfil these duties, however, many currently living people will likely have to change their ways of life in many aspects to contribute to conditions that are sustainable for all in the long term.

Notes

- 1 As will become clear in our discussion below, we take issue with this claim: If this claim presupposes that the protection of the autonomy of the agent takes precedence over the protection of the autonomy of the recipient, the claim is incompatible with the idea of equal rights of agents and recipients. In our understanding, the important issue of over-demandingness should be addressed differently.
- 2 Both Steigleder and we allow for the aggregation of the protection and violation of rights claims across individuals. See below for how the approaches differ in that regard.
- 3 In this article, we use violations and infringements interchangeably. We do not discuss in any detail when rights infringements are morally objectionable.
- 4 Still, there will always be important epistemic limits to our decision-making processes concerning climate change policies. One possibility to deal with them is the use of confidence levels by the IPCC, which combines a frequency interpretation of probability with an intersubjective Bayesian understanding (IPCC 2010). In the future, we would like to search for ways to include such confidence levels into our account by adding an additional aspect for the assessment of different options. If the confidence level concerning the possible consequences of an action based on the type, amount, quality, and consistency of evidence is low, we take this as a reason to abstain from carrying it out. Already, our lack of (sufficient) knowledge speaks against an action. This means we want to avoid options where we are less confident about their outcomes or the likelihood of certain outcomes. Still, in some cases, we ought to take actions even when we are not very confident about their outcomes, because avoiding them could lead to very high risks—especially if there are no other options that come with similar estimations of achievable levels of well-being and more confidence.
- 5 In contrast to our weak basic needs sufficientarianism, the priority view by itself (not as an element of a complex account like ours) and (even more so) utilitarianism are notorious for being extremely demanding, especially in an intergenerational context. Present actions or omissions can improve the well-being of many future generations, at least to some extent. Moreover, the number of future generations is likely to be very large. Therefore, those living now

should reduce present welfare for the sake of future generations, and possibly much more than seems plausible: Those living now have to bear significant costs for very small future benefits for the very many future people according to utilitarianism and also according to the priority view when the aggregative weighted sum of the benefits speaks in favour of it (Meyer/Pözlner 2021).

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15 Balancing Rights While Protecting the Climate

Stearns Broadhead and Adriana Placani

15.1 Introduction

Transitioning from fossil-fuel-based economies brings into relief, among other things, the deep complexities surrounding rights and rights protection in a world with a changing climate. This conclusion underscores an array of considerations to which philosophers, legal scholars, and others have devoted much thought. Consider, for example, Klaus Steigleder's words when writing of needed changes in fossil fuel consumption and economies and their effects on rights:

if done properly and backed by measures that aim at institutional protections of the rights of those affected, they [the changes] will not compare to the (possible) rights infringements that are, will or could be a consequence of climate change.

(2016, 267)

In other, more general terms, when it comes to climate change reduction measures, limitations of some rights may stave off the more serious infringement of other rights, especially in the near and distant future. Such infringements would arise if climate change continues unabated.

This work supports the view that future people's rights ought to be protected, but it argues that this need not and should not come at the expense of the rights of current people from developing countries. This is because if different climate reduction measures can safeguard the rights of future generations, but some of these are also better at protecting the rights of current people from developing countries, then the latter are preferable. To this end, this chapter argues that negative emissions technologies (NETs),¹ despite various complications and objections, can help safeguard the rights of future generations, as well as have a positive effect on the rights of present people from developing countries because they provide a viable, if currently unevenly available, option for climate change reduction. Furthermore, their relative expense and complexity offer an opportunity

to shift more costs to wealthy countries to research, develop, and distribute them. This chapter does not envisage a current or future scenario in which NETs do or should supplant other classic greenhouse gas (GHG) mitigation measures; rather, the implementation of NETs should occur in conjunction with other such measures.

To succeed in making and defending its claims, Section 15.2 offers a preliminary overview of various fundamental considerations of justice and rights associated with climate change. Section 15.3 describes NETs in greater detail and introduces some notable complications associated with them. Section 15.4 argues in favor of NETs from a rights-based perspective. It identifies the right to development as a legal and moral ground that supports NET deployment by developing countries. Subsequently, this section also examines some objections leveled against NETs and how these criticisms may affect the chapter's central claim. Ultimately, this work shows that NETs ought to be considered as a valuable option for reducing climate change at least inasmuch as they can help to preserve a balance of present and future rights. Finally, a short conclusion ends this work.

15.2 Preliminaries: Climate Change, Justice, and Rights

Climate change may affect everyone, but it does not affect everyone equally. A basic, if fraught distinction is between (1) the advantaged – individuals or entities, such as countries or organizations, who benefit or have benefited from climate change, including having emitted or industrialized in ways that have greatly contributed to climate change – and (2) the disadvantaged – individuals or entities, such as countries or organizations, who are more greatly burdened by climate change and who have not benefited from industrialization (Caney 2011; Islam/Winkel 2017). Even though there are a great number of complications and challenges, some of which will be talked about in greater detail below, this work assumes that something like this distinction is viable and roughly describes rich, developed countries as advantaged and developing or poorer countries as disadvantaged.

The distinction between (1) and (2) above draws out a point about the consequences of climate change; namely, advantages and disadvantages are unevenly distributed across persons and places (Shue 2022, 31–34; Chinowsky et al. 2011). The causes of advantages or disadvantages are manifold. For example, some countries have historically engaged in practices and activities that produced massive emissions and sped up climatic changes but nevertheless yielded economic gains. Some individuals had or have more access to or greater success in the exploitation of resources because of the effects of climate change. Conversely, some countries and individuals will bear greater burdens of resource depletion because of

climate change. Some individuals will experience loss of property and/or displacement because of climate change.

The distinction above is hardly inert, economically and morally. It points to the roles that industrialization, colonialism, and other historic developments play in the distribution of advantages and disadvantages associated with climate change, among other things. It also points to the role that geography plays in economic productivity and development (Desmet et al. 2018; Henderson et al. 2001) and the differential losses and gains that climate change can produce (Kahn et al. 2019; Fankhauser/Tol 2005). Consider, for example, small island developing states with fewer resources to mitigate or adapt to sea level rise (Martyr-Koller et al. 2021). Against these disparities, matters of equity, justice, and responsibility, among others, come into relief (Hayward 2007, 445). Much scholarship takes up these matters, proposing various forms of compensation and redistribution, among other things, to correct for uneven benefits and burdens (Schrader-Frechette 2002; Cripps 2022).

When correcting for disparities, rights are central. This is because rights are entitlements or justified claims to fundamental interests. Furthermore, rights restrict as well as permit actions, which include the extent to which emissions can continue or to which claims against emitters can proceed or, more generally, to which benefits and burdens may be distributed. One effective way of capturing the preceding is, as Steigleider puts it (but others have said in various ways as well), “all persons ultimately constitute strict normative limits to each other and must not be sacrificed for the well-being of others” (2018, 141).

To recast Steigleider’s words, the extent to which emissions or other climate-change-contributing actions may be taken is bound by the rights of others. Here, the “others” that stand out are future generations who are threatened with serious harm as a result of climatic change. Thus, both those historically and/or currently advantaged by climate change, as well as those historically and/or currently disadvantaged by climate change, must act in ways that do not infringe upon the rights of future people.

One concern is whether we can speak of the rights of future people in the face of their non-existence, as well as the non-identity problem. Regarding this, Steigleider (2016, 256) writes that it is a “truism that people who do not yet exist do not have rights”. Steigleider posits the existence of current duties toward future people, which are grounded in the rights that future people will have (2016, 256).

Steigleider argues that people living in the future will have an interest in ensuring that the conditions necessary for leading their lives according to their wishes are present. Having knowledge of such fundamental future

interests is normatively relevant for us if their fulfillment depends on our actions. However, this does not mean that we owe duties to particular persons living in the future. This is because such persons do not yet exist, and because our actions today will influence the number and identity of future persons.² Rather, our current duties are *related* to the persons who will live in the future (Steigleider 2016, 256). Such duties concern the fundamental interests that are prerequisites for autonomous living.

The preceding presents one obvious rub. That the historically advantaged have duties to combat climate change that are grounded in the rights of future people seems plausible, but that those historically disadvantaged do, too, seems more problematic. Part of the reason for this is that the historically disadvantaged, which are poor countries often with a colonial past, may not be afforded the same latitude that the advantaged have had to improve their economic situation. Such constraints arise from a contemporary world in which the preservation of the environment for current and future generations requires concerted action that disallows unfettered development, even if development is a right to be enjoyed by all.

The underlying reason for possibly preventing or limiting some development, following Steigleider (2017, 128), is that certain rights are more fundamental to persons leading their lives than other rights, which creates a hierarchy of rights and a challenge for balancing rights. That is, some rights, say the right to life, may ultimately outweigh others, say the right to property (Steigleider 2017, 128), and may be overridden (Gewirth 1981, 1160). In this vein, reducing climate change requires balancing the rights of future people and the rights of current people, which is a particularly challenging endeavor. However, if some arrangement of reduction measures existed that could protect the rights of future people, as well as advance the rights of the currently worst-off, then the balance between these rights could be improved regardless of the weight or importance assigned to each.

The preceding is admittedly only a brief peek into the wider complexities surrounding climate change, rights, and how to correct instances of climate injustice. We take it to be a broadly accurate depiction of some of the fundamental challenges and issues that, when cast in terms of climate change and more particularly the means by which its consequences may be guarded against, need to be accounted for when considering measures to protect against or reduce further climate-change-inducing activities. In the end, the climate-change-reducing measures to be preferred are those that are better at protecting the rights of present people while also protecting future people's rights. The next section, which details one type of measure, continues to build a case for this perspective.

15.3 NETs, Mitigating Climate Change, and Some Complications

As sketched so far, there are those who have been advantaged and disadvantaged by climate change. The effects of climate change seem to impact everyone, but these effects may be unequally burdensome. Rights weigh heavily on how benefits and burdens ought to be distributed. Rights and rights protection in a climate-constrained world have quite a bit to do with the measures taken to reduce GHGs, given the legal frameworks and obligations associated with reduction measures (Attapatu 2016) and, of course, the risks and consequences of climate change (UNCCS 2019). The measures considered here are primarily NETs.

NETs are measures that reduce (hopefully) the consequences of climate change, or at least reduce GHGs in the atmosphere through the removal of CO₂ emissions. Given their conceptual similarity, some groups consider NETs within the wider rubric of mitigation (Minx 2018, 5).³ Mitigation is “a human intervention to reduce the sources or enhance the sinks of greenhouse gases” (IPCC 2014, 1266). Emissions mitigation measures include a variety of options and applications. Following Minx et al.’s (2018, 3) definition, negative emissions are “intentional human efforts to remove CO₂ emissions from the atmosphere”. This definition subsumes a wide swath of technologies, understood here as a means to an end, and they include “both devices or hardware but also practices and behavior” (Minx et al. 2018, 5). As such, given definitional guideposts and again following Minx et. al (2018), NETs currently include afforestation and reforestation (AR), soil carbon sequestration (SCS), biochar (BC), bioenergy with carbon capture and storage (BECCS), direct air capture (DACCS), enhanced weathering and ocean alkalinization (EW), and ocean fertilization (OF).

Specific NETs vary with respect to earth systems (e.g., ocean- versus land-based) and capture processes, among other things, but the central point in this context is that all these technologies aim to reduce climate change through the removal of carbon dioxide emissions (Minx et al. 2018). Consider the role of NETs in achieving net zero-carbon emission targets of nation-states or companies: NETs factor as one option for emissions reductions and net-zero achievement (Bacilieri et al. 2023, 8). At risk of eliding crucial details, the basket of technologies will be treated here together, rather than examined separately at length. By way of contrast to NETs, “classic mitigation strategies” or similar phrasing describe such things as reducing carbon emissions by, for example, increasing renewable energy sources, eliminating or limiting the use of non-renewable ones, increasing the energy efficiency of products, land management to increase efficiency and decrease waste, and so forth.

Decarbonization scenarios bring into sharp relief the choice between relying on NETs or phasing out (or drastically reducing reliance on) fossil fuels – that is, between increasing carbon sink capacity (through primarily

technological innovations while continuing to rely on fossil fuels) or reducing GHG emissions, following classic mitigation strategies (Heyward 2019). Many scenarios and scholars (if not most at this point) do not, however, present a stark dichotomy as they envisage decarbonization through a hybrid approach, relying on both NETs and classic reduction strategies (Riahi et al. 2022, 305; Lecocq et al. 2022, 435).

Still, some scholars take a less ecumenical approach (e.g., Smith et al. 2016; Anderson/Peters, 2016). Take, for example, Voget-Kleschin et al. (2024, 8), who argue that emissions reductions through lifestyle changes and low population growth, at least when very widely adopted (i.e., worldwide and in accordance with scenarios proposed in their study), “constitute permissible, perhaps even preferable, alternative options for contributing to the 1.5 °C goal” of climate change. The preferability of lifestyle changes and low population growth, according to Voget-Kleschin et al. (2024, 8), is due to co-benefits (e.g., rise in general education) that such changes would herald in addition to the achievement of emissions reductions.

According to Voget-Kleschin et al., in order for NETs (carbon dioxide removal or CDR, using their terminology) to:

be on par or preferable to such lifestyle changes therefore requires presenting other arguments against measures that enable, support, or demand lifestyle changes and/or showing that large-scale CDR [carbon dioxide removal] measures can bring about a similar extent of co-benefits than those associated with less GHG-intensive lifestyles.

(2024, 8)

This claim seems dubious inasmuch as implementing policies and technologies for GHG reductions need not be tied to a single-pronged strategy. Rather, lifestyle changes and NETs can reinforce emissions goals, and NETs can be a part of a multi-pronged strategy for reduction. Furthermore, the next section will argue that the techno-optimistic approach that NETs represent can also deliver co-benefits, such as the affirmation of rights.

A possible advantage of NETs, understandably viewed by some for various reasons as a disadvantage (Smith et al. 2016, 48–49; Gardiner 2011) is that the technology could enable carbon dioxide emissions to continue at specified, non-negligible levels without further contributing to overall emissions (i.e., emitters can continue to emit, and NETs will remove those emissions). To the extent that NETs can deliver on such promises, they could arguably produce fewer inter- and intra-generational trade-offs and rights infringements to which Steigleider (2016, 267) alluded. Jackson and Salzman made a similar, if more optimistic point in 2010 with their view of technologies like NETs, delivering atmospheric restoration – that is, returning “the atmosphere to a less degraded or damaged state and

ultimately to its preindustrial condition” (72) (this view of atmospheric restoration is not one that we share).

Such optimism surrounding NETs should be tempered by the current impact of NETs on GHG emissions, which is relatively minimal (Smith et al. 2023, 65–70). Even in decarbonization scenarios in which NETs play a minor, supplementary role to classic emissions reduction approaches, upscaling of NETs is necessary to achieve major GHG removal (Bacilieri et al. 2023). We are aware of these complications and will return to them in more detail below. They are flagged before our argument to avoid the appearance of them being ignored. Furthermore, and more importantly, such complications are essential to delimiting the extent and breadth of this chapter’s main claim.

15.4 The Case for NETs from a Rights-Based Perspective and Complications

15.4.1 *The Case for NETs*

This section argues in favor of NETs from a rights-based perspective. Like all reduction measures, NETs can be justified as a way to safeguard the rights of future people not to suffer setbacks to fundamental interests as a result of climate change. Climate change threatens human rights, so measures to reduce it are a way to protect such rights. However, such a justification is not specific to NETs. Here, the right to development is identified as offering legal and moral grounds that provide additional support for the specific use of NETs by developing countries.

The right to development (RTD) was formally recognized as an international human right in 1986 in the UN Declaration on the Right to Development (DRTD). Article 1 of the Declaration defines RTD as

an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

As Schrijver (2020, 92) notes of RTD, it functions as a cluster of rights (e.g., right to work, right to organization) that together form a human right to development. Furthermore, it is integrative in that it links three categories of human rights – civil and political rights, economic, social, and cultural rights, as well as the rights of people (Schrijver 2020, 92). In addition, in Schrijver’s words, “it connects rights of individuals (citizens) with those of groups and peoples ... [and thereby] connects individual and collective human rights” (2020, 92).

Although the RTD is universal, the economic and social development of developing countries is a primary concern (Bunn 2012). Article 4 (2) of the DRTD states that:

sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

Indeed, the right to development is particularly morally pressing in the developing world, since it points to a moral demand to address longstanding inequity, inequality, and injustice. Furthermore, the RTD has been central in the international relations of developing countries, raising expectations of a brighter social and economic future, especially for countries emerging from colonial rule, heralding a new political order based on universal rules with an emphasis on human rights, self-determination, solidarity, and equality among countries (Cheru 2016).

In addition to the DRTD, the UN Framework Convention on Climate Change (UNFCCC 1992) underscores that the global nature of climate change requires the widest possible cooperation by all countries, as well as their participation in an effective and appropriate international response in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions.

Together, the UNFCCC and the RTD help to draw out a major challenge that arises with limiting the impacts of climate change; namely, requirements to reduce emissions or achieve climate goals (e.g., IPCC desired 2°C maximum) may conflict with the exercise of rights for economic and social betterment. While such a conflict potentially affects developed countries or individuals within them, it is nevertheless the case that developed countries ought to take on a much greater burden in reduction efforts given their capabilities and responsibilities (Macey 2018, 115–116). Such capabilities have in no small part arisen from industrialization and benefits accrued therefrom. That is, these capabilities have come about through activities that majorly contributed to or precipitated climate change. In this vein, responsibilities associated with contributions toward reducing climate change may be considered in terms of principles of justice such as, *inter alia*, the polluter pays principle, the beneficiary pays principle, or the ability to pay principle. Finally, requirements to limit emissions may also conflict with the aim of eradicating poverty, which is expressly stipulated in Article 4, Paragraph 1 of the United Nations' 2015 Paris Agreement.

Thus, developing countries have justice-based claims not to be as burdened with the costs of climate change reduction as developed countries,

given the responsibilities and capabilities of the latter, as well as the aim of poverty reduction. From a rights-focused perspective, this might be recast in the following way. There is no doubt that reduction measures are needed in order to safeguard the rights of present people and, especially, the rights of future people; however, distributing the costs of reduction must be constrained by the rights of those people who bear little to no responsibility for climate change, who have not benefited from it, and who do not possess the capabilities to address it.

In spite of the preceding, reduction measures that focus on limiting national emissions can significantly set back the developmental interests of poorer nations, and, in this way, may infringe upon their right to development. Such measures, such as nationally determined contributions (NDCs), are, in fact, the backbone of the 2015 Paris Agreement, which requires developing countries to significantly abate their domestic carbon dioxide emission levels so that the objective of limiting global warming may be achieved.

The challenge is that limiting emissions too much and too soon raises significant problems in many developing regions of the world. For example, Mintz-Woo (2023) argues that, in places like developing Asia, prematurely retiring fossil-fuel-intensive infrastructure in order to fulfill 2015 Paris Agreement commitments can impede developmental goals in these regions given lock-in. This is because in many poor regions of the world, carbon-intensive infrastructure, such as fossil-fuel power plants and production facilities for smelting or concrete mixing, have already been built (Mintz-Woo 2023, 3). Eliminating such facilities before alternatives can be rolled out can be a significant economic and social loss for countries that are already impoverished.

Furthermore, there are substantial economic benefits that flow from specific industries that are very hard to decarbonize, such as the iron, steel, cement, and chemical industries (Andrade et al. 2024). These hard-to-abate industries are drivers of economic growth because they are often key sectors of the economy, produce essential commodities for national and international trade, are a substantial part of infrastructure development, and are also a source of employment.

Given the above, the challenge for developing countries to reduce emissions *and* lift themselves out of poverty is significant. For example, the steel and cement sectors together account for 15–20% of India's total emissions (Sharma et al. 2023). Emissions from such industries are very difficult to reduce because, in addition to emissions associated with energy use, a significant part of industrial emissions come from the process itself (Paltsev et al. 2022). For example, in the cement industry, about half of the emissions come from the decomposition of limestone into lime and CO₂ (Paltsev et al. 2022). So, while in the power sector or for other energy needs, it is

relatively straightforward to switch to zero-carbon energy sources such as solar or wind-powered electricity, there are no such seemingly easy substitutes for emissions-intensive industrial processes (Paltsev et al. 2022).

Nevertheless, there could be a partial solution to the above challenges facing developing countries, and this comes in the form of NETs. NETs could deliver GHG emissions goals whilst maintaining operations and output in, at least, select industries (Grieg/Uden 2021, 6). If developing countries gained access and were able to use NETs to neutralize their emissions, then they could both continue to pursue their developmental goals, as well as contribute to carbon reduction targets (Mintz-Woo 2023, 3). In this way, NETs could aid in meeting emission targets, but the developing world, which is least responsible for climate change, would not be harmed any further in the process.

NETs could safeguard the right to development of poorer countries because the emissions that they currently need could be offset until elimination or phase-out becomes feasible. Furthermore, if NETs were researched, developed, and made available by developed countries, then they could also represent a pathway for achieving greater distributive justice by transferring these benefits to poorer countries and those greatly disadvantaged by climate change. The idea is that many social and economic developmental goals of the developing world are imperiled by requirements to meet carbon emission targets, but by making NETs available to them, such targets could be met, and greater distributive justice achieved.

The above notwithstanding, the right to development does not, on its face, give carte blanche to individuals or collectives to increase GHGs in order to pursue economic growth. GHGs are causally linked to harm, and their emission would impinge on other rights. Thus, carbon-rich infrastructures and industries ought to be eventually eliminated or revamped so that clean energy is used. What the above aims to signal is that it is important that such steps not come prematurely at the cost of developing countries' rights to economic and social development. Furthermore, by recognizing the importance of the RTD, developing countries can be empowered to benefit from industrialization just as developed nations have been for centuries.

15.4.2 Some Objections to NETs

Our argument for and the potential benefit of NETs can be tempered with recognition of various objections, by which is meant facts and normative evaluations related to NETs, their implementation, consequences for current and future generations, and so forth. These objections may not damage the chapter's main claim and argument, but they do indicate some practical impediments to NETs. This subsection points out some of them.

A major objection to NETs (and geoengineering) is that they pose a moral hazard⁴ (Anderson/Peters, 2016, 183). Heyward (2019, 644) summarizes the precise issue in the following way:

Research and development of NETs and SRMs [solar radiation management] risks disincentivizing emission reduction strategies and, accordingly, puts people at risk of greater climate impacts than would otherwise have been the case. Some people regard it as an “unjust and high-stakes gamble” with the well-being of others.

This now longstanding objection has a deep literature associated with it, and without attempting to address all of its intricacies or refute it *tout court*, there are some noteworthy points that blunt it vis-à-vis our perspective. The moral hazard argument has largely been recognized as having merit insofar as avoiding the high-stakes gamble Heyward describes has been integrated into climate policy, granting classic mitigation strategies a central place in the achievement of climate goals (IPCC 2023). This chapter also recognizes the need for classic mitigation to counter climate change consequences, even as it argues that NETs can deliver benefits, especially for poorer countries. Whether this hybrid position still affords too much to NETs is open for discussion and depends on facts about how NETs and their benefits, from research to implementation, are funded, weighed against other alternatives, and distributed, among other things. Even so, promising economic and climate effects of NETs have been shown (Fajardy et al. 2021); furthermore, as mentioned, NETs are viewed by many as necessary to reducing the consequences of climate change (Riahi et al. 2022, 305).

Another major issue of NETs is that they impart deleterious side effects, particularly if they are widely or comprehensively adopted. Depending on the specific technology deployed, side effects may include increased land take from other activities, increased water use, or the creation of other negative environmental consequences from specific NETs, such as dangers associated with underground storage of captured CO₂ (Smith et al. 2016; Stephens 2014). Side effects may be differentiated according to which NET is deployed, but the general point is that these side effects raise challenges to widespread NET usage. Thus, if comprehensive use is the aim, then technological and practical challenges become more pertinent, if not pernicious, due to amplifying side effects and sharpening moral hazard objections.

This mark against NETs is one that can be sustained in that it underscores what balancing rights amounts to: Giving priority to those rights that are more fundamental. In this regard, as has been discussed in the above subsection, more narrowly confined deployment of NETs (e.g., to

select industries) may yield the appropriate result in terms of balancing rights, side effects, and other challenges.

Even if minimal in absolute terms or in comparison to reductions through (co-occurring) classic mitigation strategies, removal of emissions through NETs will nevertheless remove GHGs from the atmosphere. If NET deployment is tied to principles – for example, designed to avoid moral hazard – such emissions removal could yield dual benefits: Economic and environmental. Although comprehensive NET use involves many risks (Shue 2017, 208–209), this may not entirely rule out NETs if they are taken to be just “one measure from a bundle of options” (Steigleder 2017, 143).

A narrower implementation of NETs could potentially limit the scope of the applicability of this chapter’s argument; however, this outcome might merely affirm the “uneasy relationship ... between ‘factual’ and normative appraisals” of NETs, their effects on rights, and their realization (Steigleder 2017, 140). It is a cold reality, however, that the side effects associated with comprehensive NET use may come to fruition if this technology is required to achieve climate goals.

15.5 Conclusion

Measures for reducing climate change require balancing the rights of current and future generations. On the one hand, such measures are necessary in order to prevent the violation of future peoples’ fundamental rights. On the other hand, these measures can also undermine the right to development of poor countries. This work has presented NETs as well positioned to achieve a more just balance between the rights of the current poor and future generations. Even though there are challenges regarding the use of NETs, such as issues of scale and moral hazard, if NETs are one among multiple reduction measures, then such problems can be mitigated. In light of this, the deployment of NETs should be considered a worthwhile option for protecting the right to development of poorer countries whilst maintaining the aims of limiting climate change.

Notes

- 1 Section 2 of this work more extensively examines NETs (a.k.a., greenhouse gas removal technologies [GGRTs] or carbon dioxide removal [CDR]), but it suffices at the outset to define NETs as measures and/or technologies designed to remove carbon dioxide emissions from the atmosphere.
- 2 For more on Steigleder’s views on the non-identity problem, *see* Steigleder (1998, 105–114).
- 3 As Minx et al. (2018, 3) point out, NETs that aim for natural sink enhancement – e.g., afforestation and reforestation (AR) – fit within the definition of mitigation. Others, such as direct air capture with carbon capture and storage

(DACCS), which do not enhance natural sinks and remove emissions after they have been produced, do not fit within the definition. For clarity, we distinguish between mitigation and NETs but recognize their similarities and areas of overlap.

- 4 Krugman (2009, 63) defines moral hazard as “any situation in which one person makes the decision about how much risk to take, while someone else bears the cost if things go badly”.

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16 Too Big to Fail Banks, Private Credit Creation, and Systemic Risks: Challenges of a Modern Ethics of Risk

Vandad Sohrabi

16.1 Introduction

Trust is crumbling, the share price is plummeting, funds are being hastily withdrawn – in March 2023, the major Swiss bank Credit Suisse is teetering dangerously. It threatens to take down the global banking system. Intense negotiations take place over the weekend, and the results are announced on Sunday evening: Credit Suisse will be sold to rival UBS – with liquidity assistance of up to 200 billion Swiss francs from the Swiss National Bank and guarantees of 9 billion Swiss francs from the federal government (SRF News). The Swiss state is thus assuming a large part of the risks of the deal. The fire sale results in a bank with assets nearly double the gross domestic product of Switzerland. The too big to fail problem has not been solved but has become much worse.

This article analyzes systemic financial risks from a risk ethics perspective. It focuses on the risk impositions by too big to fail banks – using Lehman Brothers as an example. Too big to fail banks are credit institutions whose uncontrolled collapse is assumed to be more expensive for an economy than their rescue. However, a state rescue (bailout) does not mean that no costs will be incurred. It only means that they are not distributed according to market principles. But who will be rescued? Who must fail? And who must pay the price? These are economically, politically, and ethically relevant questions.

These issues are particularly critical because, while a bailout may address the immediate crisis, an implicit state rescue guarantee can pose significant long-term challenges. These include disrupting competition by distorting capital allocation in favor of big banks, incentivizing those banks to take on even greater risks, and accelerating the general buildup of systemic risks in the financial system. If these risks ultimately materialize, the rights of millions of people worldwide are in danger.

The global financial crisis in 2008 has cost millions of people around the world their jobs, savings, and medical care. Governments are still fighting

the consequences today: Banks have been rescued, economic stimulus packages launched, and companies supported. However, these measures have driven many European countries so deep into debt that the European Union was at a breaking point. In countries such as Greece and Spain, which were hit particularly hard by the crisis, there was talk of a “lost generation” (Creutzburg 2012). The financial crisis and the subsequent sovereign debt crisis have shown that banking and financial market risks can violate fundamental human rights. Rights of people who were neither involved in the decisions on the financial markets nor aware of them. Risks in the financial system, therefore, not only have an economic *dimension* but also an *ethical one*.

16.2 Two Central Hurdles of Risk Ethics

So far, risk ethics has not been able to contribute much to the discussion on financial market risks – with a few notable exceptions (Heinemann 2014). One important reason is that ethics as an academic discipline has largely been developed for a deterministic world, as Hansson (2013, 1) explains: “moral philosophy has paid surprisingly little attention to risk and uncertainty. Moral philosophers have been predominantly concerned with problems that would fit into a deterministic world where the morally relevant properties of human actions are both well-determined and knowable”.

Thus, risk ethics is still struggling with fundamental issues. Steigleder notes:

There are mainly two obstacles to an adequate ethics of financial risks. First, the standard moral theories have great difficulties with justifying convincing criteria for acceptable risks. We still do not possess a suitable ethics of risks. Secondly, hitherto, the focus of financial ethics has been mainly on questions concerning the micro and meso-level of economic interactions.

(Steigleder 2013, 1)

The first challenge, according to Steigleder, is that there are yet no normative criteria for acceptable risk impositions. Both utilitarian and rights-based ethics have problems integrating risk into their analyses. Utilitarianism, for example, finds it difficult to assess the various risk distributions in terms of their fairness, which is a key challenge when it comes to the risk exposure of too big to fail banks. This has to do with the theoretical orientation toward aggregated results, which is characteristic of utilitarian theories.

Rights-based ethics, on the other hand, seem to reject any form of risk imposition at first glance. They are faced with the so-called exemption problem. As Hansson explains:

It is a *prima facie* moral right not to be exposed to risk of negative impact, such as damage to one's health or one's property, through the actions of others. What are the conditions under which this right is overridden, so that someone is allowed to expose other persons to risk?
(Hansson 2003, 303)

A strict ban on all risk impositions would make social life impossible, as would unrestricted authorization. But under what conditions are risk impositions morally justified? Steigleder (2016b) shows that rights-based ethics can elegantly integrate risk and justify risk impositions by mediating between the protection and freedom rights of agents. In cases of conflict, more fundamental rights (e.g., to life) outweigh less fundamental rights (e.g., to property).

The second challenge is that the few studies that deal with financial markets from a normative perspective often take a micro- or meso-ethical approach (e.g., Boatright 2008). They analyze how individual agents or companies should behave in critical decision-making situations. Although this approach is important, it is not sufficient. In view of the financial crisis and its consequences, it is more urgent than ever to take a macro perspective on financial markets and discuss the risk architecture with its credit dynamics and the associated asset price bubbles from an ethical perspective.

A central premise of this article is that a sustainably functioning social market economy has a high moral value. The model of the German social market economy, as developed by Alfred Müller-Armack and Walter Eucken (1946), among others, combines economic freedom with social balance. Despite some challenges in its implementation, this regulatory concept has been so successful that it has enabled the Federal Republic of Germany to enjoy decades of stability and prosperity. Based on this prosperity, the rights of millions of citizens have been effectively protected.

At the same time, however, the market economy is a risky system. High productivity always goes hand in hand with risks for people's life plans. Fragile financial markets have emerged as a major source of risk. They are characterized by systemically relevant banks and, in some cases, excessive credit creation. This article therefore analyzes whether too big to fail banks are part of the tolerable risks of a market economy or whether they are associated with such enormous, unacceptable systemic risks that they urgently require stricter regulation. This is discussed using the collapse of the investment bank Lehman Brothers as an example.

16.3 Economic Dimension: Too Big to Fail as a Systemic Risk to the Financial System

Before the global financial crisis, neoclassical economics mainly focused on micro- and meso-risks in the context of portfolio decisions. Even in this

limited area of investigation, most economists systematically underestimated the risks (Sohrabi 2020, 44–85). A key reason for this is the assumption of normal distribution, on which the fundamental risk concepts of economics continue to be based. These are characterized by the “ludic fallacy”, i.e., the tendency of economists to take the mild, domesticated probabilities in casinos as the basis for measuring wild probabilities in financial markets (Taleb 2007, 127–128). Contrary to empirical evidence, which clearly shows that profits and losses in financial markets are not normally distributed (Mandelbrot/Hudson 2004, 4).

While investor risks were thus underestimated, neoclassical economists were largely blind to an even more significant type of risk before the global financial crisis: Systemic risk. The belief in the efficiency and self-stabilizing forces of the markets was simply too dominant. This was mainly due to two foundational premises that continue to dominate the discipline: The *efficient market hypothesis* and the *neutrality of money hypothesis*. The efficient market hypothesis was the reason that the efficiency and self-stabilizing forces of markets were greatly overestimated, leading to systemic risks being classified as unimportant. The neutrality of money hypothesis, in turn, contributed to money being regarded as a neutral medium of exchange and thus considered irrelevant for economic analyses. As a result, banks and their credit dynamics were ignored in the central macroeconomic models (Sohrabi 2020, 113–153). The notion that financial markets could destabilize through their normal functioning seemed largely implausible to most economists. Until the financial crisis.

The global financial crisis caught neoclassical economists unprepared and clearly showed that large banks are critical parts of the financial system and that size is no guarantee of stability. Consequently, intensive work was carried out to better understand too big to fail banks and their risks. The methodology of the *Basel Committee on Banking Supervision (BCBS)* became important, which makes it possible to assess banks according to five categories: Size, interconnectedness, complexity, international activity, and substitutability (BCBS 2011). The more pronounced these factors are, the greater the systemic relevance.

Overall, the BCBS methodology represents important progress because it does not reduce systemic relevance solely to size but helps to understand it as a multidimensional challenge. However, one weakness of the methodology is that it tends to be limited to the meso-level. The focus is on individual institutions and their characteristics. But size, complexity, and interconnectedness cannot in themselves explain why governments have spent such large sums to rescue banks. After all, banks are not bailed out *because* they are large or complex. These are not characteristics worth preserving. Banks are saved because of their *systemically important functions*. These are closely linked to bank lending. But how does it work?

Textbooks often portray banks as intermediaries that lend depositors' savings to investors. However, the Bank of England labeled this idea a "popular misconception" in a groundbreaking article (McLeay et al. 2014). It emphasized that banks are *creators of credit and money*. This also means that three systemically important functions are closely linked:

- 1) *Production of credit and money*: Banks create money and credit *out of thin air* (Binswanger 2015). This makes them unique as private sector companies. In the European Union, it is commercial banks that create around 90% of the money and debt in circulation by extending their balance sheets. Without the constant supply of new credit, the economic engine would grind to a halt.
- 2) *Allocation of credit and money*: In addition to the credit and money creation function of banks, the allocation function is also extremely important. *What* private banks create these loans *for* is crucial (Binswanger 2015). With productive loans for factories and machinery, banks can make a major contribution to economic growth. However, if many unproductive loans are granted for the purchase of existing assets, this can lead to the formation of bubbles and thus to a build-up of systemic risks. Adair Turner, an economist and former chairman of the UK Financial Services Authority (FSA), warns particularly against credit-driven property bubbles. Turner (2016, 6) notes that, "At the core of financial instability in modern economies ... lies the interaction between the infinite capacity of banks to create new credit, money, and purchasing power, and the scarce supply of irreproducible urban land. Self-reinforcing credit and asset price cycles of boom and bust are the inevitable result".
- 3) *Management of savings deposits as part of the bank balance sheet*: Citizens' savings deposits are managed by banks as part of their balance sheets and thus constitute a part of the insolvency estate. This distinguishes banks from financial intermediaries such as investment funds. These manage investors' money as special assets. If a fund is insolvent, investors therefore receive their units back or the current equivalent value. If, on the other hand, a bank is insolvent, depositors risk losing their money, at least the part that exceeds the state deposit guarantee. This also explains the phenomenon of bank runs, in which depositors panic and try to withdraw their money while the bank is still able to pay out deposits.

The credit phases and cycles within the banking and financial system are closely linked to the three systematically relevant functions of banks previously mentioned. Few economists have analyzed these functions as extensively as Hyman Minsky (1982). Although his financial instability

hypothesis reads like the blueprint for the events of the global financial crisis, Minsky's groundbreaking work had been ignored by neoclassical economics for decades. It was only after the financial crisis that his important work was rediscovered.

Minsky distinguishes between three phases: From hedge financing to speculative financing to Ponzi financing – with each credit phase, the quality of credit declines and the systemic risks increase. This dynamic is driven by too big to fail banks. They are the largest banks and grant the most loans. At the same time, they are the most vulnerable entities because they hold the greatest volume of outstanding loans. If their borrowers default in large numbers, too big to fail banks threaten to collapse and take the entire banking system with them. However, no government can allow the systemically important functions of the banking system to fail and millions of citizens to lose their savings. This is why large banks are often bailed out. This significantly increases government debt and incentivizes banks to take on even greater risks.

Following a financial crisis, interest rates are typically lowered, and, in some cases, quantitative easing is implemented. This approach, aimed at preventing depression, often sparks a new, profitable credit cycle for banks and investors. They can buy assets at rock-bottom prices with cheap loans and benefit from the price increases of the new cycle. This raises a crucial question, *are too big to fail banks the tolerable price of an efficient market economy, or are they associated with unacceptable risk impositions?* To answer this, we first must outline the normative argument of the article.

16.4 Normative Dimension: Too Big to Fail As a Challenge for Risk Ethics

Based on Alan Gewirth's moral theory, it is argued that all people have equal rights to the necessary prerequisites in order (1) to be able to act at all and (2) to be able to act successfully (Gewirth 1978; Steigleder 1999). Necessary conditions are well-being and freedom. However, both necessary conditions are always at risk. Against the background of general vulnerability, everyone capable of acting is logically compelled to assume that they have a right to these necessary preconditions and that others have a corresponding duty not to violate these rights. Due to the fundamental equality of the rights of all people, there is a simultaneous obligation to grant them the same rights and to take into account the constitutive rights of all other agents to well-being and freedom in their actions.

Gewirth's moral theory has two key strengths compared to other rights-based approaches: Firstly, Gewirth ranks rights in order of priority. It is this weighting that allows him to convincingly resolve conflicts between different rights. Secondly, his approach recognizes not only negative duties

of non-harm but also positive duties of assistance. At the microlevel, the latter are linked to strict conditions to avoid overburdening the individual. At the macro-level, they also make it possible to justify welfare state institutions in favor of those whose rights are threatened.

Gewirth's moral theory, therefore, has great strengths, but also a decisive weakness: It does not take *risk* as a phenomenon into account. However, risks are characteristic of modern societies and arise from their functional logic. In a way, they are the price of modernity (Beck 1986, 25). Highly complex and networked societies cannot simply decide against risks. They merely have the choice between different forms of risk. But which risks do societies want to take and which do they want to forego in favor of other risks? Who is authorized to make these decisions and according to what criteria? Who benefits from the gains of risk exposure, and who must bear the losses? Social negotiations about risks raise several difficult empirical and normative questions. If ethics is to remain relevant as a scientific discipline in the 21st century, it must be able to help answer these questions. To do so, however, it must first learn to integrate risk into its analyses.

With his moral theory, Gewirth has convincingly explained why all people have equal and inalienable rights. Steigleder expands Gewirth's theory to include the dimension of risk:

If the equality of the rights of the agent and those affected is taken into account, then a rights-based ethics of risk does not lead to a prohibition of all risk exposures, but rather to a distinction between permissible and impermissible risks, based on the balancing of the respective rights. (Steigleder 2016b, 440–441, my translation)¹

A rights-based risk ethic does not have to prohibit every exposure to risk. Nor should it do so, because a general ban would violate the freedom rights of agents, as Steigleder explains:

Just as the rights of a recipient of the actions of others are violated by the impositions of certain risks, the rights of an agent are violated when she is not allowed to impose certain risks on others. For risks are ubiquitous and almost any action involves risk impositions. If an agent were not allowed to impose any risks on others, this would gravely restrict her ability to lead her life. Therefore, the potential effects of the prohibition of risk impositions must be weighed up with the potential effects of the imposition of these risks on others. This will allow to delineate morally permissible and impermissible risk impositions.

(Steigleder 2018, 471–472)

An appropriate risk ethics theory should be able to weigh up people's rights to freedom and their rights to protection. Against this background, a major strength of Gewirth's moral theory is that it explicitly prioritizes people's rights – weighted according to how essential they are for their ability to act. Steigleder emphasizes:

I assume that all persons have equal rights to the necessary preconditions for self-fulfillment and that these preconditions are ranked according to how indispensable they are for self-fulfillment. Accordingly, depending on the situation, a more fundamental right, such as the right to life, of one agent can outweigh a less fundamental right, such as the right to (non-essential) property, of another agent.²

(Steigleder 2016b, 441, my translation)

This situational weighting of rights makes it possible to mediate between different forms of risk exposure in the event of conflict. In some situations, the rights affected by the risk are so fundamental and so important for a person's ability to act that the recipient's protective rights prevail. In other situations, the potential harm to those affected is so small or so unlikely that the freedom rights of the agent take center stage.

Against this background, Steigleder (2016b, 441) differentiates between agent risks (A-risks) and recipient risks (R-risks) in his normative classification of risk exposures:

A-risks are risks for which it applies that an agent is morally permitted to expose other persons to these risks because a prohibition would inappropriately privilege the rights of those affected. R-risks are risks for which it is generally forbidden for an agent to expose other persons (the affected persons, recipients) to these risks because authorisation would inappropriately privilege the rights of the agent. One might want to object to this classification that it does not lead anywhere because it only reproduces the distinction between authorised and prohibited risks. However, this is not the case because R risks are only fundamentally prohibited risks, i.e., there are also permitted R risks. Above all, however, the classification asserts reasons for the authorisation or prohibition of certain risks. A risk ethics based on rights must pursue a dual perspective, namely on the one hand the perspective of risk tolerance, which takes the freedom, plans and opportunities of agents seriously, and on the other hand the perspective of risk elimination, which emphasises dangers to the rights of those affected by risky actions.³

(Steigleder 2016b, 441, my translation)

Steigleder distinguishes between two forms of A-risks and four forms of R-risks. He does not claim to be exhaustive, but his classification can already describe a large part of the risk exposures relevant to risk ethics. This categorization can be applied to both individual and institutional risk exposures, which is very relevant to the questions posed in this article.

Based on Steigleder's work, it is proposed that institutional risk impositions that threaten people's rights and cannot be prevented without considerable effort can be considered justified in terms of risk ethics if they fulfill at least two of the following three justification conditions.

1. **Functional condition:** Risk exposures must be part of a functioning context of action that helps to protect people's rights in the long term – even if certain rights are temporarily exposed to the risk of being violated. This functional condition must be fulfilled. In the context of the question addressed in this paper, this means that although too big to fail banks pose significant risks, a strong argument in favor of their existence could be made if they demonstrably contribute to sustained economic growth. After all, with more prosperity, the rights of people can be protected more effectively – assuming a minimally fair distribution.
2. **Distributive condition:** Risk exposure should not systematically discriminate against any social group or individual. After all, all people have the same rights.
3. **Procedural condition:** Especially in situations where the second criterion cannot be met, it becomes even more crucial that those affected have the opportunity to either consent to or reject the risk imposition.

Risk ethics criteria are assigned to each of these three conditions: Efficiency test, defense against major risks, reversibility, compensability, insurability, and consent. These criteria are applied in detail to the Lehman Brothers case study in *Risk Ethics of Banks* (Sohrabi 2020, 200–302). Here, only a brief outline is possible.

16.5 Case Study: The Collapse of Lehmann Brothers

On September 15 2008, Lehman Brothers, the fourth largest investment bank in the United States, collapsed. At the time, it had over 25,000 employees worldwide and total assets of around 600 billion US dollars. Lehman was by far the largest corporate bankruptcy in history and a key moment in the global financial crisis. Shortly afterward, Merrill Lynch was urgently sold to Bank of America, while American International Group Inc. (AIG), one of the world's largest insurers, teetered on the brink of collapse. The failure of AIG, in turn, would have caused other investment

banks that were dependent on the payment of AIG's insurance sums to falter. In short, global capitalism was on the brink of collapse.

Minsky's financial instability hypothesis helps to better understand the credit dynamics of the banking system and the associated destabilization mechanisms of the global financial crisis. In his theory, he distinguishes between three phases: From hedge financing to speculative financing to Ponzi financing – indebtedness and fragility in the economic system increase, and massive systemic risks are piled up. The probability of crises at too big to fail banks increases enormously over the course of a complete credit cycle.

16.5.1 1st Phase of the Credit Cycle – Hedge Financing

A new credit cycle usually begins shortly after an economic crisis. The memories of corporate insolvencies and harsh write-downs are still very vivid for all market participants. Against this backdrop, banks are extremely reluctant to grant loans. Only customers (companies and private individuals) with excellent credit ratings can obtain loans in this phase. These high-income borrowers, in turn, can easily service the interest costs from their current income and at the same time pay off a large proportion of the loan debt. Minsky called this form of prudent and risk-conscious financing hedge financing.

However, the longer this phase lasts, the more optimistic bankers and investors become. They grant more loans. The credit dynamic is often accelerated in this phase by a so-called displacement event. Displacement refers to an innovation or a shock that opens new profit opportunities for investors. These can be major technical innovations such as the discovery of the steam engine, electricity, or the internet. But it can also be more everyday events, such as deregulation or new consumer trends. The specific nature of the innovation or shock is essentially of secondary importance. The decisive factor is that investors sense new profit opportunities and are prepared to take on debt to profit from the changes.

Such a credit cycle began in the United States at the end of 2002. Shortly before this, the credit-fueled dotcom bubble on the US stock markets had burst, causing considerable economic upheaval. Alan Greenspan, then head of the Federal Reserve, lowered interest rates to combat the recession. Banks responded to the more attractive interest rates by gradually expanding their lending and offering more favorable conditions. Customers with good credit ratings took out more loans, and the banks began to earn good money again thanks to the regular interest payments from customers. Their confidence slowly increased. Minsky (1982, 65) notes that “[a]s the period over which the economy does well lengthens, two things become

evident in board rooms. Existing debts are easily validated and units that were heavily in debt prospered; it paid to lever”.

The longer this phase lasted, the more confident the bankers became. The realization prevailed that the crisis was over and that it was worth lending more again. In the early 2000s, the expansion of credit was catalyzed by a decisive displacement event – the securitization of home loans, as Kindleberger and Aliba (2015, 40) explain:

The shock in the US housing market in 2002 was “securitization”, which involved the packaging of mortgages with similar attributes into bundles that provided the basis for issuing collateralized mortgage obligations (CMOs) and collateralized debt obligations (CDOs). The amount of money available for home mortgages increased sharply because of these innovations.

(Kindleberger and Aliba 2015, 40)

Initially, securitizations seemed to offer only advantages to all market players. Investors hoped that these structured products would enable them to better diversify their risk. After all, with the purchase of a single financial product, it was possible to acquire the rights to payment flows on home loans from very different regions of the United States. In addition, conservative investors hoped to reduce their risk by purchasing the tranches of loan pools that were serviced first by the cash flows. More risk-tolerant investors, on the other hand, could purchase the subordinated tranches, which had a higher probability of default but also promised a higher return. In this way, everyone could choose the right risk/return ratio for themselves – at least in theory.

In turn, banks were able to realize the proceeds from the lending business immediately by selling the securitizations without having to wait years for the loans to be repaid. At the same time, they got rid of the credit risks, which from then on mainly affected the buyers of the products. The resale of the loans also had the decisive advantage for the banks that they had to hold less equity.

Securitization was also a lucrative business for mortgage brokers and credit brokers. As these financial products were in high demand among investors, investment banks securitized more and more loans. This, in turn, meant that there was a constant demand for new loan agreements, which benefited the brokers.

Overall, these structured products were so lucrative that, within a short period of time, they strongly shaped the risk dynamics of the global financial markets. They also accelerated the transition from hedge financing to speculative financing.

16.5.2 *2nd Phase of the Credit Cycle – Speculative Financing*

According to Minsky, bankers' confidence increases in the speculative financing phase. This is characterized by the fact that more and more loans are being granted where the debtors can still service the interest on the loan from current income, but effective repayment of the debt is no longer possible. Nevertheless, bankers are not worried about repayment. After all, a lot of money is circulating in the economy, and companies are making good profits. Experts are extrapolating this development linearly in their forecasts and are assuming constant economic growth. The general climate is optimistic. Banks gain additional security with property loans from the assurance that they can foreclose on the houses if necessary.

Undertakings previously deemed too risky now appear highly lucrative in this new business climate. Minsky (1982, 121) notes:

Those that supply financial resources live in the same expectational climate as those that demand them. In the several financial markets, once a change in expectations occurs, demanders, with liability structures that previously would in the view of the suppliers have made them ineligible for accommodations, become quite acceptable.

(Minsky 1982, 121)

The easy availability of credit and money intensified the boom in the asset markets around 2004, which was characterized by self-reinforcing effects. The credit-driven competition between citizens for scarce land intensified (Turner 2016, 6).

Securitization accelerated this dynamic considerably, causing prices to rise astronomically in metropolitan areas. With every property that was sold at record prices, not only did the market value of the house in question increase, but generally also that of the houses in the neighborhood. This, in turn, improved the financial situation of the neighboring homeowners, who in turn found it easier to obtain loans.

In view of rising property prices, some investors used loans to acquire additional properties, which further drove up prices. Home sellers who benefited from the price increases were inclined to diversify their assets. The stock market started to look like a profitable alternative to the real estate market. As a result, a lot of money flowed into stocks, causing prices to rise there too. The profits, in turn, attracted new investors who wanted to benefit from the positive momentum. Some of them took on debt to buy even more shares and maximize their return on equity through the leverage effect. Successful equity investors looking for diversification opportunities bought property. This in turn drove up prices in the property markets further, which is a typical dynamic, as Kindleberger and Aliber (2015,

136) note, “Many bubbles in stock markets are related to bubbles in real estate”.

A significant decline in credit quality has been observed in the United States since 2004 at the latest. The global demand for securitizations was so great that investment banks needed a constant supply of loan agreements to be able to bundle them into loan pools. As borrowers with good credit ratings were largely serviced, there was an increased focus on subprime borrowers, i.e., customers with lower credit ratings. Giving economically less privileged groups in society easier access to credit was also politically desirable. At a time of stagnating incomes, this was one of the few ways to allow citizens to continue to participate in the “American Dream”. More homeowners meant more satisfied voters.

The banks were not concerned about their repayment. After all, they were able to sell the securitizations to investors and thus also transfer a considerable part of the default risk to third parties. Investors were also not worried because they were far removed from the action and often did not understand exactly what risks they were taking. The enormous risks were further masked by the fact that the constant supply of credit and money meant that house prices rose steadily, and the economy appeared robust. As a result, few people realized that a huge bubble was forming that could burst at any time and drag the entire banking and economic system into the abyss. The time with the greatest objective risk was also the time with the lowest volatility and the lowest subjective risk awareness.

Like other investment banks, Lehman was very active in the securitization market. The more lucrative this area became, the more Lehman wanted to increase its profits. The investment bank therefore bought five mortgage lenders between 2003 and 2004 in order to secure direct access to the profits of an upstream part of the value chain (Wiggins et al. 2019, 5). One disadvantage of this step, however, was that Lehman would be even more directly affected by the losses if the mortgage lenders became insolvent. During the property boom, this prospect did not seem to concern Lehman’s top managers. On the contrary, the rising property prices and the positive performance of Lehman’s stock appeared to validate their strategy. Lehman quickly became one of the most aggressive players in the securitization market.

16.5.3 3rd Phase of the Credit Cycle – Ponzi Financing

The boom finally turns into euphoria. Minsky (1982, 121–122) explains that, “Once euphoria sets in, they accept liability structures – their own and those of borrowers – that, in a more sober expectational climate, they would have rejected”. In their exuberance, bankers demand less and less equity and allow investors ever higher leverage. Minsky describes financing

in the euphoric phase as Ponzi financing. At this point, borrowers can no longer even service the interest on the loans from their current income. They speculate exclusively on the rise in house prices. However, this is only possible if new money is constantly flowing into the asset markets through loans.

The euphoric phase in the United States before the financial crisis was characterized by massive credit fraud. Lewis (2010, 97) describes this process very impressively: “In Bakersfield, California, a Mexican strawberry picker with an income of \$14,000 and no English was lent every penny he needed to buy a house for \$724,000”. This was possible because, for example, simple harvest laborers were referred to as “field engineers” and their income was significantly increased in the loan agreements. This lending practice was no exception during the euphoric phase, but part of the so-called “NINJA loans”. Credit brokers and bankers labeled those customers who had “no income, no job and no assets” as NINJA (Connon 2007).

Deputy FBI Director Swecker recognized the problems in 2004 and tried to warn Fed Chairman Greenspan (Frieden 2004). Regulators like Greenspan and heads of major banks must therefore have known what was going on. At this point, however, a fatal logic was already widespread. As the former CEO of Citigroup, Chuck Prince, put it: “When the music stops, in terms of liquidity, things will be complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing” (Nakamoto/Wighton 2007).

The investment bank Lehman Brothers was particularly active on the “dance floor”. To further increase profits, the top management decided around 2006 to increase house and land acquisitions for its own account (proprietary trading). The idea behind this: Buy premium properties, hold them for a while, and then resell them at a higher price. This was a bet by Lehman on rising property prices. A bet that led to the accumulation of massive risks on Lehman’s balance sheet, as Wiggins et al. (2019, 5) explain:

The firm aggressively bought real estate related assets throughout 2006, and by mid 2007, Lehman held significant positions in commercial real estate. This made it difficult for it to raise cash, hedge risks, and sell assets to reduce leverage in its balance sheet, all critical to its health in a difficult financial environment. Even though the U.S. housing prices began to decline in mid 2006, Lehman continued to originate subprime mortgages and increase its real estate holdings as other parties exited the market.

(Wiggins et al. 2019, 5)

Ex post, the decision-makers at Lehman misjudged the development of the property bubble. Ex ante, however, the price falls looked like a lucrative investment opportunity to them (Ball 2018, 29). Even in 2007, when other competitors were already withdrawing from the business, Lehman continued to invest in property. This was soon to make it very difficult for the investment bank to remain liquid.

At the peak of the bubble, there are several triggers that can bring the music to a halt: A sharp rise in the interest rate; savvy speculators selling a large amount of their shares at peak prices and triggering panic; or even exogenous shocks caused by political changes. The specific crisis triggers cannot be predicted, but one thing is certain: The bubble will burst. The greater the credit expansion beforehand, the more devastating the crash.

During the global financial crisis, it was ultimately the favorable teaser rates of the loan agreements that expired and were replaced by higher variable interest rates. Numerous subprime borrowers could no longer afford the higher loan installments. Their homes were foreclosed. The increased supply of houses depressed property prices. Fear developed in the market. At this point, however, Lehman still had property and property-related financial products worth several billions on its books. "When the market started to slow, Lehman suddenly found itself with a huge volume of commitments on its books and a risk profile that was well above its high yield business's risk appetite limits" (Valukas 2010, 95).

Lehman came under pressure and had to revalue some of its property assets because of the price falls, which eroded its equity. The financial market situation worsened significantly when two Bear Stearns hedge funds filed for insolvency at the end of July 2007. These funds were heavily involved in the market for securitizing home loans. As borrower defaults increased, demand for these securities plummeted, since their value was directly tied to the underlying loan payments. Consequently, the income of the hedge funds fell sharply, leaving them unable to cover their liabilities and risks.

Bear Stearns, as the parent company, injected funds into the struggling hedge funds, but this was insufficient to prevent the crisis. Rumors of a liquidity crisis at Bear Stearns quickly spread, leading investors to speculate on the firm's collapse. The situation escalated over the following months, prompting Fed Chairman Ben Bernanke to intervene and facilitate an emergency sale of Bear Stearns to JPMorgan Chase in March 2008.

The takeover of Bear Stearns by JPMorgan Chase averted the uncontrolled collapse of the investment bank. However, the crisis did not end there. Investors soon realized that many of the financial products in their portfolios were far riskier than they had previously understood. As a result, demand for securitizations based on real estate loans plummeted.

Lehman Brothers was not only heavily invested in real estate and securitizations but also relied extensively on short-term funding. The bank had to borrow billions of US dollars daily on the capital markets to service its long-term debt and sustain its operations. As mistrust among lenders grew, they reduced the amount of money they were willing to lend to each other or charged higher premiums. This situation particularly impacted Lehman, which struggled to secure the necessary short-term loans or could only obtain them at prohibitively high costs.

Lehman Brothers was in such dire straits that the infamous “meeting of the families” was convened. Treasury Secretary Henry Paulson and New York Fed Chairman Timothy Geithner summoned the most important CEOs of the Wall Street banks to the Federal Reserve building in New York on the weekend of 12 to 14 September 2008 to negotiate the future of Lehman. The most powerful bosses on Wall Street were all present. Only one was missing: Richard Fuld, CEO of Lehman. He was not invited.

Treasury Secretary Henry Paulson is said to have opened the meeting with a clear message. Under no circumstances would there be state aid for Lehman (Stewart 2009). Instead, a private sector solution would have to be found. At the time, there were two banks interested in taking over Lehman: Bank of America (BoA) and the British Barclays Bank. However, after scrutinizing the figures, BoA decided against the takeover. Instead, its CEO Kenneth Lewis agreed to a side deal with John Thain, CEO of the ailing investment bank Merrill Lynch, to take over Merrill. This announcement left only Barclays as a possible buyer for Lehman. The takeover attempt failed at the last minute due to technical complications (Ball 2018, 39). By Sunday evening, one thing was clear: Lehman would go bankrupt. This news sent shockwaves through the global financial system, causing economic pain and hardship across the globe.

All in all, Lehman’s failure was due to a combination of high cluster risks in the property market, low equity, heavy reliance on short-term funding, the complexity and lack of transparency of the products, the failure of regulators, and the hope of a state bailout due to its too big to fail status. However, Lehman was no exception among the big Wall Street banks. This is one of the core findings of the official investigation report on the Lehman insolvency: “Lehman’s business model was not unique; all of the major investment banks that existed at the time followed some variation of a high-risk, high-leverage model that required the confidence of counterparties to sustain” (Valukas 2010, 3). A second key finding of the report is that “Lehman was more the consequence than the cause of a deteriorating economic climate” (Valukas 2010, 2). The collapse of Lehman can therefore best be understood as a crystallization point that provides insights into the systemic fragility of the banking system, at the heart of which lies the too big to fail problem.

16.6 Too Big to Fail Banks Are the Main Drivers of the Credit Cycle

Too big to fail banks such as Lehman grant the most loans and thus drive the credit phases and cycles of the economy. However, most of these newly created loans do not go to the real economy, but flow directly into the property markets as unproductive loans (Jorda et al. 2016). The banks benefit from the bubble formation – both through the securitization of property loans and through the purchase and sale of properties for their own account (proprietary trading). A major downside of this credit dynamic is astronomical property prices and the build-up of systemic risks caused by credit-driven competition between citizens for scarce land (Turner 2016).

Banks attempt to time price bubbles in the property and stock markets, while also playing a significant role in creating these bubbles through their own lending actions. But if they miss the right time to exit, they get into big trouble. This is exactly what happened to Lehman. Two factors played a role: one was the hope among Lehman's top managers that the boom would continue for a few more years. Secondly, the trust in the implicit state rescue guarantee. Both assumptions turned out to be wrong in Lehman's case. It is noteworthy that the Fed provided emergency loans to numerous financial institutions in similar distress but refused to extend this assistance to Lehman.⁴

The global financial crisis did not resolve the issue of too big to fail but rather intensified it. For instance, major banks like JPMorgan Chase seized the opportunity to acquire struggling competitors at advantageous prices. As a result, the largest banks are now larger than ever. Additionally, the central banks' policies of low interest rates and quantitative easing have sparked a new, highly profitable credit cycle. However, this cycle may have already set the stage for the next significant asset price bubble and subsequent crash.

16.7 Risk Ethics Perspective on Too Big to Fail Banks: Key Conclusions

The brief outline in this article already indicates that too big to fail banks do not meet any of the three justification conditions.⁵ Too big to fail banks fail the efficiency test because there is strong evidence that banks above a certain size are a burden on economic growth. This has a lot to do with the increasingly unproductive use of credit and the systemic build-up of risks. Moreover, there is no solid evidence that too big to fail banks serve as a defense against greater risks. Therefore, the essential functional condition is not met.

Regarding the distribution condition, it is crucial to note that the effects of the Lehman collapse and the ensuing financial crisis were distributed very unevenly, disproportionately impacting the economically vulnerable segments of the population. The damage was often irreversible, uncompensated, and uninsurable. Such an uneven distribution cannot be ruled out for future collapses, indicating that the distributive condition remains unmet. Additionally, the absence of direct or indirect consent means that the procedural condition is also not satisfied.

Overall, too big to fail banks fail to meet *any* of the three justification conditions. Therefore, they cannot be considered a tolerable cost in either a market economy or a social market economy. Instead, they pose enormous systemic risks that require urgent regulation. This is particularly pressing given that the likelihood of a systemic collapse increases significantly over the course of a credit cycle. The potential damage from the collapse of a too big to fail bank could be catastrophic. Therefore, preventing such a collapse is of utmost normative importance.

16.8 Proposals for Effective Regulation

After the financial crisis, the EU attempted to address the too big to fail problem. Its aim was to reduce the probability of a collapse of too big to fail banks, introduce effective resolution mechanisms, and improve supervision. Some progress has been made, but there are still major problems: Capital requirements are still too low even after Basel III, the Single Resolution Mechanism (SRM) has already failed the first test in Italy, and the ECB has yet to show whether it can deal with the conflicting objectives resulting from its new tasks under the Single Supervisory Mechanism (SSM). The too big to fail problem is therefore far from being solved.

Sensible regulation should be based on three effective heuristics. Firstly, reduce fragility instead of relying on seemingly accurate forecasts. Secondly, ensure an appropriate level of *skin in the game*. Thirdly, introduce simple and transparent rules that are also effective in complex systems (simplify). Finally, the criterion of proportionality must be upheld. This means that the freedoms of market participants should not be restricted any more than is absolutely necessary to protect the rights of those affected.

Higher capital requirements for all banks are recommended as concrete measures: A balance sheet equity ratio of 20–30% would make each individual bank and the entire banking system more robust (Admati/Hellwig 2013, 79–166). At the same time, skin in the game would be ensured, as the owners of the banks would be liable for the risks that their institutions pile up. Moreover, the rule is so simple that it cannot be easily circumvented. Proportionality is also ensured, as the rights of millions of people can be protected while the freedom of market participants is preserved.

Secondly, it is recommended to impose indirect restrictions on the size of banks through capital surcharges for institutions deemed too big to fail (see also Federal Reserve Bank 2017). These surcharges enhance competition among banks by offsetting the inefficient subsidies provided to too big to fail banks through implicit state rescue guarantees. At the same time, they incentivize these large banks to reduce their size.

Thirdly, it is recommended that an independent, interdisciplinary commission be established at the EU level to explore fundamental reforms in credit and money creation, including the Chicago Plan, Positive Money, limited-purpose banking, narrow banking, and others. The aim is to address the credit-driven boom-bust cycles. This process should focus on answering four key questions: First, which credit reform is most effective in reducing the fragility of the banking and financial system? Second, which one ensures that market participants have enough “skin in the game” (Taleb 2007)? Third, which reform is the simplest and most transparent to implement within the complex global banking and financial system? Finally, which reform proposal best balances the freedom rights of market participants with the protection rights of those affected?

These three measures are all grounded in the idea of voice—that is, the possibility of reforming the existing financial system from within by raising concerns, improving regulation, and addressing systemic flaws. However, as Balaji Srinivasan (2013) emphasizes in his distinction between voice and exit, it is equally important to have the option of exit when meaningful reform proves unattainable. Therefore, my fourth recommendation is to study Bitcoin. Bitcoin promises a decentralized alternative outside the traditional banking system. The anonymous creator, Satoshi Nakamoto, embedded a message in Bitcoin’s genesis block—“The Times 03/Jan/2009 Chancellor on brink of second bailout for banks”—a direct reference to the failures of the legacy financial system during the global financial crisis. In this sense, Bitcoin is not only a technological innovation but also a clear critique and response to the fragility and moral hazard of too big to fail banks. It represents an attempt to build a parallel system—one that cannot be captured, bailed out, or corrupted in the same way.

16.9 Summary

Too big to fail banks, such as Lehman Brothers, fail to meet any of the three key risk ethics justification conditions: Functional, distributive, and procedural. As a result, they impose unacceptable risks on billions of people, making stricter regulation necessary. Implementing higher capital requirements for all banks and introducing capital surcharges for those deemed too big to fail are promising approaches. Additionally, it is crucial to thoroughly address the boom-bust cycles driven by excessive credit

creation by private banks, which exacerbate the too big to fail problem. The situation in Switzerland exemplifies the severity of the issue: The emergency sale of Credit Suisse to UBS has created a colossal bank whose size is twice that of Switzerland's gross domestic product. The potential collapse of such a bank could result in catastrophic damage. Switzerland's case is not unique; over 15 years after the financial crisis, the largest banks are larger, global debt is higher, and the financial system is more fragile than ever. It is crucial to address the too big to fail problem with urgency, considering both economic and ethical analyses.

In this context, Bitcoin represents a distinctive response to the too big to fail problem—offering not just an alternative asset, but an entirely different approach to monetary and financial infrastructure. By removing reliance on centralized institutions, Bitcoin seeks to mitigate systemic risk at the architectural level. Studying Bitcoin is therefore very important.

Notes

- 1 “Wenn also die Gleichheit der Rechte des Handelnden und der Betroffenen berücksichtigt wird, dann führt eine von Rechten ausgehende Risikoethik nicht zu einem Verbot aller Risikoaussetzungen, sondern zu einer an der Abwägung der jeweiligen Rechte orientierten Unterscheidung zwischen erlaubten und unerlaubten Risiken”.
- 2 Ich gehe davon aus, dass alle Personen gleiche Rechte auf die notwendigen Voraussetzungen handelnder Selbstverwirklichung haben und dass diese Voraussetzungen, je nachdem wie unentbehrlich sie für handelnde Selbstverwirklichung sind, untereinander eine Rangordnung aufweisen. Entsprechend kann situativ ein grundlegendes Recht, wie etwa das Recht auf Leben, des einen Handelnden ein weniger basales Recht, wie etwa das Recht auf (nicht lebensnotwendiges) Eigentum, eines anderen Handelnden überwiegen”.
- 3 “A-Risiken sind Risiken, für die gilt, dass es einem Handelnden moralisch erlaubt ist, andere Personen diesen Risiken auszusetzen, weil ein Verbot die Rechte der Betroffenen unangemessen privilegieren würde. R-Risiken sind Risiken, für die gilt, dass es einem Handelnden grundsätzlich verboten ist, andere Personen (die Betroffenen, Rezipienten) diesen Risiken auszusetzen, weil eine Erlaubnis die Rechte der Handelnden unangemessen privilegieren würde. Man mag gegen diese Klassifikation einwenden wollen, dass sie nicht weiterführt, weil sie nur die Unterscheidung zwischen erlaubten und unerlaubten Risiken reproduziert. Dies ist jedoch nicht der Fall, weil R-Risiken nur grundsätzlich verbotene Risiken sind, es also auch erlaubte R-Risiken gibt. Vor allem aber macht die Klassifikation Gründe für die Erlaubnis oder das Verbot bestimmter Risiken geltend. Eine von Rechten ausgehende Risikoethik muss eine doppelte Perspektive verfolgen, nämlich einerseits die Perspektive der Risikotoleranz, die die Freiheit, die Pläne und die Chancen von Handelnden ernst nimmt, und andererseits die Perspektive der Risikoelimination, die Gefahren für die Rechte der von riskanten Handlungen Betroffenen zur Geltung bringt”.
- 4 Ball (2018, 209–223) discusses the likely reasons.
- 5 A much more detailed analysis can be found in “Risk Ethics of Banks” (Sohrabi 2020).

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Part 5

Outlook



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17 On the Foundations and Implications of Moral Rights

Klaus Steigleder

In memory of Christoph Bambauer (1974–2024)

17.1 Introduction

Morality is, directly or indirectly, concerned with the question of whether we, as agents, have sufficient reasons to restrict the pursuit of our considered self-interest in view of the interests or properties of other people or beings, and if so, why and how.¹ I suppose that an eminently plausible (though partial) answer to these questions is that we must affirm the singular normative importance of other people, who are no less valuable than we are. Therefore, we are all equally entitled (possessing mutual claim rights) to lead our lives and to have the necessary conditions to do so. These conditions include freedom, life, physical and psychological integrity, only to name the most basic conditions at this point. Thus, I assume that we have genuine moral reasons to be prepared to restrict the pursuit of our own self-interest in view of the important interests of other persons.

One of the main aims of this article is to show that what I consider to be eminently plausible assumptions can also be conclusively justified by combining the foundations of normative ethics developed by Immanuel Kant and Alan Gewirth. Both approaches have staggering strengths and certain problems, and I will argue that it is possible to overcome the problems of one approach with the help of the strengths of the other. Eventually, I will refine Gewirth's approach with important Kantian improvements. For this project to succeed, some preparation will be necessary. We will need a good understanding of the difference between instrumental and non-instrumental reasons and norms, as well as the challenges posed by the possibility of "freestanding instrumental reason". Additionally, we will need a good understanding of the difference between *sentences* and *judgments*. A second aim of this article is to highlight certain important normative features of justified moral rights and rights-based ethics.

17.2 Foundations

17.2.1 *The Challenge Posed by the Possibility of Freestanding Instrumental Reasons and Norms*

To assume that we have genuine moral reasons differs from the view that the only reason for restricting the pursuit of our own self-interest is our considered self-interest itself. According to this view, first expounded in the speech of Glaukon and Adeimantos in Book 2 of Plato's *Politeia*, the norms of living together, like not killing or injuring each other, are basically in our considered self-interest. For sure, from time to time, we might be tempted to injure or even kill another person. However, we do not want to be injured or killed by other people. That others do not injure or kill us is basically more important to us than injuring or killing others. Thus, we are all better off if we mutually agree to certain restrictions on the pursuit of our self-interest and ensure that these restrictions are effectively enforced.

According to this view, we have no reason – and are not able – to transcend the pursuit of our considered self-interest. All of our reasons for action are conditional or instrumental and are thus confined to the pursuit of our self-interest. We may not like this view; we may find it plainly unconvincing or even outrageous. However, we cannot avoid dealing with it and must overcome it if we want to justify a theory of genuine morality.

Kant's theory of conditional practical norms (he speaks of “hypothetical imperatives”) quite likely represents the best – but unfortunately neglected and not well understood – theory of instrumental reason and instrumental norms so far (see Kant 1785, 69–71 = 417–419). According to him, our end of being or becoming happy results from interests rooted in our sensual nature. “Interests”, according to Kant, are potential reasons for action. We have desires to achieve and preserve pleasant states and to avoid or end unpleasant states. However, according to Kant, these desires do not simply function as uncontrolled impulses, such that we act on the strongest desire or the combination of competing desires in a given situation. Instead, we are able, by way of our reason, to relate ourselves to our desires, weigh and suspend them. We may fear the dentist, but the fear of toothaches may be even greater, so that we *decide* to go to the dental checkup. However, we may also have plenty of reasons to postpone the checkup. Nevertheless, the reasons for weighing our desires could all ultimately be based on our desires.

According to Kant, out of our desires for pleasant states and our aversions to unpleasant states, we inevitably develop, with the help of our reason, the idea and end of a maximum of pleasantness and a minimum of unpleasantness, i.e., of our own happiness. This is an end we always already have, which we never explicitly decided to adopt, and which is

inevitably vague (Kant 1785, 71 = 418f.). Thus, we must decide which overarching ends (say, a partnership and family, an interesting job, wealth) we consider essential for our happiness.

The gist of the theory is that in doing this, we must employ means-ends considerations and decide to pursue these overarching ends as *means* to our existing end of becoming happy. Thus, instrumental reason is inevitably involved here, and a *progressus ad infinitum* is avoided.² We might, for example, aim to found a family *because* we want to be happy. Out of necessity, we are concerned with our own happiness. The ever-existing end of one's own happiness functions as a sort of vanishing point of our decisions here.

Now, the question is whether instrumental reasons and norms – deciding and being bound to pursue the means to certain ends ultimately justified by the end of our own happiness – are the only practical reasons and norms we are capable of following and being bound by. This would be the case if our own happiness were unavoidably our guiding end, and our reasons for action were inevitably based on our sensual nature or desires. Then, we could only be concerned about, say, the happiness of our children because, and insofar as, their happiness affects our own. We would and could only help an injured person if we believed that helping her is, in one way or another, in our considered self-interest. It would ultimately and inevitably be our interests that count, not the interests of other people.

We can gain a better understanding of (the challenge posed by) the view that we cannot act on reasons not based on our desires and self-interest if we contrast it with the alternative view. According to this view, we can hold that there are things or beings that are even more important than our own happiness, and that other people, and possibly we ourselves, may constitute reasons to set aside the pursuit of our own happiness, at least temporarily. This ties into the (special kind of) intrinsic value of others (and of ourselves). Let us develop this view somewhat further.

Something can be *both* intrinsically *and* instrumentally valuable. I hold that something is intrinsically valuable if, and insofar as, it is in itself valuable or “good in itself”. Thus, its value does *not* amount to anything more than being a means to another end or being “good for” something else, i.e., being instrumentally valuable. That something can be both intrinsically and instrumentally valuable holds even for persons. A person may possess certain skills, which may be the reason why he or she is employed or why we seek certain services from him or her.

Moreover, intrinsic value (like instrumental value) may come in degrees. Something may be intrinsically less valuable than something else, and a being may possess maximum or unsurpassable intrinsic value.

A being that possesses intrinsic value or is (to a certain degree) good in itself – think of an old tree or mammal – provides normative reasons for

action or refraining from action in certain ways toward it. Thus, intrinsic value sets standards or criteria of *moral* rightness or wrongness. Basically, acknowledging intrinsic value must involve the acknowledgment of certain demands, such as not destroying, damaging, or (if applicable) harming the being without sufficient justifying reason and, under certain circumstances, protecting or (if applicable) assisting or supporting it. Therefore, we will only be able to acknowledge the intrinsic value of a being if we are able to acknowledge reasons different from those based on our own self-interest.

Can states like happiness be intrinsically valuable? Bentham (1996[1789], 11) holds that nothing other than pleasure can be intrinsically valuable, because everything is *and ought to be* done to achieve it. Thus, for Bentham, pleasure is a necessary end, which, due to its intrinsic quality, is to be preserved and to be brought about. As such, he understands it as an “impersonal” end. To be sure, only sentient beings can experience pleasure, but, according to Bentham, it is the pleasure of sentient beings that is intrinsically good, not the sentient beings themselves. Furthermore, as the acknowledgment of the intrinsic value of a state involves reasons to bring it about, more of it is better than less. Therefore, the intrinsic value of a state provides reason to maximize it.³

I do not want to go deeper into this (and more generally into the minefield of value theory) here. What is important to recognize is that, for Kant, the “natural end” (cf. Kant 1797, 68, 81 = 415, 430) of our own happiness is not, in this sense, a necessary end or an intrinsic value. (Intrinsic value is not a possible concept in a theory of sole instrumental reason.) It is an end we necessarily have, but not one we must choose or pursue. As such, it does not generate reasons other than instrumental reasons.⁴ This is what makes a theory of freestanding instrumental reason possible, i.e., a theory that claims that we may only act on instrumental reasons. The theory is consistent and outlines a possibility that poses a challenge to any theory that assumes that agents are able to act on reasons beyond or other than instrumental reasons.

A Short Look at Kant's Two-Step Approach of Justifying a Moral Principle

For Kant, there are two possibilities of how our reason can be practical. First, we can decide which means we want to employ to achieve the ends we happen to have, ultimately the end of our own happiness.⁵ Kant assumes that this is unproblematic because we know this from experience (KrV B830/A802). However, in this context, the ends are ultimately going back to our desires. Our reason does only “administer the interests of our inclinations” here (cf. Kant 1785, 61, 90 = 406, 441).

Second, it is at least conceivable that we are also able to act on non-instrumental reasons. In this case, our reason can also be genuinely

practical. Our reason or, better said, we with our reason, are then able to set and pursue ends independent from our desires. Now, these ends, rooted in (our) reason itself, would be necessary ends and necessarily good (necessity and universality are the characteristics of reason, according to Kant; see KrV B4). The criteria for these ends must lie within our reason itself or within us due to our reason. As we are the source of these ends due to our reason, we must consider ourselves to be unconditionally necessary ends and to possess an absolute value or dignity. This absolute value, which we must attribute to ourselves and to any other person possessing genuine practical reason, must constitute the basic norm for our actions and for setting and pursuing ends (cf. Kant 1785, 78–79, 81, 84 = 428f., 430f., 434). This imposes limits on what we are permitted to do to each other and ourselves, and it demands that we consider both the other persons and ourselves as tasks for our action (Kant 1797, 525 = 395).

However, the possibility of genuine practical reason is so far only an “idea” (Kant 1785, 93 = 445). The question is whether our reason can indeed be genuinely practical and whether we are able to set and pursue ends independently from our sensual desires, i.e., whether we possess the ability of “pure practical reason”. Ultimately, this amounts to the question of how free we are, whether we are only relatively free in weighing and suspending our desires or genuinely free to set ends. As the basic moral norm can only be valid for us if we have sufficient reason to hold ourselves to be genuinely free, a second step is needed for the justification of the moral principle. In the *Groundwork for the Metaphysics of Morals*, Kant argues that even though it is impossible to (theoretically) show or prove that we are free (a central claim of the *Critique of Pure Reason*), it can nonetheless be shown that we must hold ourselves to be free (Kant 1785, 94–101 = 447–91). Thus, we must hold that we and all other persons possess an absolute value or dignity and that we must always respect both our own dignity and the dignity of all other persons in our actions. I will come back to the method used here by Kant and will later use a version of the specific argument. In the *Critique of Practical Reason*, Kant takes a step further. We know, he argues, the demands of strict obligations. As these demands are quite different from the demands of instrumental reason, they are only explainable if we possess the capacity for pure practical reason. They can only be understood as (the result of) a deed (Latin *factum*) of pure practical reason (Kant 1788, 173–175, 177–178 = 42f., 47). Thus, Kant holds here that freedom can be proven practically, even if it cannot be proven theoretically, through the practical judgments we must make.

It is a strength of Kant’s argument(s) that he is always aware that the ability to act morally presupposes freedom in a demanding sense. I find it attractive that he argues, in a way, directly for the dignity of *all* persons. To be sure, according to Kant, we first must hold that we are free and possess

dignity, but this does directly lead to the acknowledgment that other people are relevantly similar to us and possess the same dignity. At the same time, the isolated focus on pure practical reason, on reasonable persons per se, whether human or non-human (if there are such persons), is a disadvantage. This focus requires mediating, in a second step, the demands of the dignity of persons with the reality of our existence as sensual and vulnerable embodied human beings.

Another disadvantage is, I suppose, that Kant does consider the dignity of persons as at most a limited basis for their rights. According to Kant, if A is morally obligated to perform action x to B, it does not necessarily follow that B possesses a moral right that A performs x to him. A reason for this is that Kant sees a right connected with the authority of the rights-holder to (physically) enforce compliance with the right on the part of the addressees of the right (Kant 1797, 388 = 231). Therefore, he holds that the content of a right must in principle be beyond dispute. Hence, he denies the existence of original positive rights, i.e., rights to the assistance of others. The pertinence of positive rights is always situationally conditional and thus may be uncertain.

However, in connection with the claim that the normative reasons deriving from a valid right claim outweigh the reasons to obey a potential simple obligation, this may have implausible normative consequences. Suppose you promised to deliver a presentation on time and in flawless business attire to secure a big contract for your firm. On the way to the firm, you come across one of Peter Singer's (1972) famous shallow ponds and see once again a small child falling into it, face down. The child's survival will depend on your resolute action, with the consequence that your clothes will become wet. You will also be considerably held up because, for whatever reason, no one is in sight, and you must make sure that the child receives sufficient care. Claiming that the reasons of obligation deriving from the rights of the promisees outweigh the reasons for helping the child seems to be grotesque. I do not want to deny that solutions could be found within the Kantian framework to avoid such a consequence. Nevertheless, I believe it is wrong to deny that the child has moral rights to be saved and to be taken care of.

Gewirth's Project of Justification, Reflexive Arguments, and the Need to Combine Kant and Gewirth

In contrast to Kant, Gewirth (1978) attempts to show that human agents must acknowledge that they possess equal moral rights to the necessary conditions for action, both in terms of being able to act at all and to act successfully at all. He also attempts to show that agents must hold that they possess equal dignity and that their rights follow from or are based

on their dignity. Gewirth's focus on rights to the necessary conditions of agency, like freedom, life, and physical and psychological integrity, shows that he understands these are not safe possessions and that vulnerability is part of the human condition. In a way, the argument unfolds within this human condition. The necessity of morality does not consist in being held in all possible worlds, but in our world, the world we live in as human beings (Gewirth 1978, 45).

In order to justify the principle of morality as a principle of equal rights of agents, Gewirth attempts to show that all rational agents must acknowledge a sequence of "dialectically necessary judgments" and that this sequence leads to the principle of morality. Gewirth distinguishes between *assertoric* judgments and *dialectical* judgments.⁶ Within dialectical judgments, he further distinguishes between *dialectically contingent* and *dialectically necessary* judgments. While an assertoric judgment has the form "*p*", a dialectical judgment has the form "X believes (holds, acknowledges etc.), that *p*" (Gewirth 1978, 43–45, 152).

Compare the assertoric judgment "Pleasure is good" with the dialectical judgment "Steigleder believes that pleasure is good". The focus of the assertoric judgment is on the object of the judgment (pleasure) and claims something to be true of this object, namely its being good. The focus of the corresponding dialectical judgment is on the subject of the judgment (Steigleder) and on what this subject thinks or holds to be true. The dialectical judgment may be true, while the corresponding assertoric judgment may be false, or one does not know whether it is true or false.

Steigleder's judgment is a dialectically contingent judgment. Steigleder does (after having studied Epicurus) believe that pleasure is good, but he is not logically forced to believe it. He may revise his judgment after studying Kant. In contrast to a dialectically contingent judgment, a dialectically necessary judgment has the form "X logically must believe (hold, acknowledge etc.), that *p*" (Gewirth 1978, 152).

These days, I suppose, the most difficult thing to understand is the difference between a (syntactically well-formed) *sentence* and its meaning and a *judgment*. A judgment is necessarily related to a subject. Kant's entire philosophy is a theory of judgments, as is, e.g., the philosophy of David Hume (cf. Waxman 2005 and 2019; Longuenesse 1998; Steigleder 2002 and 2023). For a theory of judgment in theoretical philosophy, a basic question is where a concept we have or use comes from. What gives us sufficient reason to bring the features we think of as a subject term (say, a body) under the features of a predicate term (say, extension or weight)? Thus, an analytic judgment, in Kant's understanding, is *not* what it is today commonly held to be, namely a *semantic* relation, in which "unmarried man" is already semantically implied by "bachelor". On this understanding, "analytical practical judgments" would be an impossibility, and

Kant is criticized for not seeing this. However, critics fail to understand what a practical *judgment* is in the first place (and why Kant holds norms, which he speaks of “imperatives”, to be practical judgments). Practical judgments in Kant’s understanding are judgments like “I want to achieve end E” and “Because I want to achieve end E, it is necessary for me to want to employ this means M, the employment of which is necessary for achieving E”.

Understanding the difference between *judgments* and *sentences* is a precondition for understanding the difference between “reflexive arguments” and “semantically deductive arguments” (and a precondition for understanding the justificatory arguments of Kant and Gewirth). Semantically deductive arguments can show what is semantically already contained in certain premises. While this may indeed be instructive, these arguments must take the premises, at least for the time being, as given. As the premises can, if we follow the semantic or sentence paradigm, deductively only be justified by higher premises which must be taken, at least for the time being, as given, semantically deductive arguments do not allow for conclusive justifications. This is often addressed as *the* problem of justification because it is assumed that the only possible justifications are semantically deductive justifications.

Reflexive arguments (and reflexive justifications) pertain to the relation of the content and the subject of the judgment. They make explicit what the subject of judgment cannot (without self-contradiction) avoid holding and what further judgments the subject must therefore make. Thus, the decisive relation is the relation between the subject and the content of his or her judgments and not the semantic relation between the content of the successive judgments. Therefore, in a sequence of reflexive judgments, the content of the judgments can become successively richer. It may contain something not already contained in the initial judgment – in part as a consequence of reflecting on what (one as) the subject of the judgments does, and in part by integrating her knowledge of elementary facts into her thinking or judging.⁷ If the subject of the initial judgment cannot avoid (without self-contradiction) making the initial judgment, and if the subject cannot avoid (without self-contradiction) making further judgments, then the new content of these further judgments is reflexively and conclusively justified for all the subjects who must make these judgments.⁸

The start of the sequence of necessary judgments of agents can serve as an example here. However, this requires taking a closer look at action and agents first. Action is the voluntary and intentional doing or not doing of something in order to achieve or retain something (Gewirth 1978, 25–37). For example, one might go to a supermarket in order to buy butter. Occasionally, the end of doing something may be the doing itself, such as when one goes for a walk because one enjoys walking. Someone acts if

he or she does something voluntarily with the knowledge of the immediate circumstances in order to achieve some end.⁹ An agent is someone who normally is at least dispositionally able to act and to control her behavior by her unforced choice.

Now, agency as the ability to act is presupposed by any norm. A norm presupposes that it can guide the behavior of people who do not automatically behave in accordance with the norm and who must thus be able to control their behavior and to follow the norm. Besides, as even the intentional non-doing of something, thus inaction, is a form of action, an agent is intentionally not able to not act; she can only act in one way or another. (This does not mean that an agent always acts. For example, she may fall asleep.) Thus, being an agent is not a role one may take discretionarily on or off. Therefore, it will be an achievement of the utmost importance if it can be shown that all potential addressees of moral norms cannot, by way of a reflexive argument, avoid acknowledging a certain contentful moral principle, i.e., a supreme moral norm.

The sequence of dialectically necessary judgments starts with the following two judgments:

- (1) "Whenever I act I do so to achieve certain ends E".¹⁰
- (2) "The ends E of my actions are good".

Judgment (1) is a dialectically necessary judgment for an agent because an agent cannot deny this without denying that she is an agent. Now, the interesting claim is that any agent who must make judgment (1) must also make judgment (2). As a dialectically necessary judgment, it does not mean that the ends of her actions are objectively good, but that whenever she acts, she must hold that the actual ends of her actions are good according to some criterion which she considers to be decisive while she acts. The criterion does not need to be moral, and the criteria may differ in different actions. Think of a contract killer who, from time to time, attempts to shoot a person designated by her customers. The same agent may also lovingly care for her child and her aging parents.¹¹ An agent may also become critical of her evaluation after an action and revise it. Seeing the little crying boy running to the front door where his dead father lies, whom she just shot, the contract killer may realize that shooting the man was not good (certainly not an overly realistic assumption in view of a die-hard contract killer).

The point is, nevertheless, that an agent must positively evaluate her respective actual ends. She must do so because she must realize that she acts because she holds her respective ends to be worth achieving and deserving of the effort involved. Notice that even inaction may require some effort. Think of a student sitting in a boring lecture and wanting to

leave it, sooner rather than later. As she wants to remain in good standing with the lecturer, she decides to stay. (The example also shows that the end to be “achieved” can be the preservation of a status quo or of something the agent already has. This does not speak against the positive evaluation of the end.)

Thus, reflecting on what it means to pursue an end by one’s own action, an agent must make judgment (2), which is *not semantically* implied by judgment (1). Judgment (2) formulates a new insight and thereby new content.

It is important to realize that the sequence of necessary judgments in order to reflexively justify a moral principle presupposes that agents are able to follow moral reasons, i.e., to transcend reasons based on their considered self-interests. We make such presuppositions constantly if we morally criticize the behavior of others or our own. However, as we have seen in connection with the possibility of freestanding instrumental reason, such presuppositions or assumptions are not trivial. In a project of justifying the criteria of moral norms, we need to have sufficient reason for such assumptions. Do we have it?

The need to ask such a question shows how close Kant’s and Gewirth’s projects are and that the respective strengths of the projects can help to overcome their respective weaknesses. As already mentioned, Gewirth develops the content of morality starting from the conditions of finite, vulnerable agents. This leads to a moral principle that is much more specific than Kant’s Categorical Imperative. The content of the moral principle all agents have to acknowledge is not in opposition to the Categorical Imperative, but it fills in important content. It is in this respect better founded and is ontologically less demanding, as it can do without the idea of a standalone pure practical reason. Nevertheless, it cannot forego an argument *like* the one developed by Kant in *Groundwork* III, for the pertinence of any genuine moral norm presupposes freedom in a demanding sense, as it presupposes that an agent is able to transcend her self-interest or to act for reasons not based on the pursuit of her own happiness.

To show that this is simply true would amount to a proof of the agent’s freedom. The presupposition that an agent has relevant or binding reasons to act differently from the pursuit of her own self-interest has itself (morally) normative impact. We must therefore be careful not to make the whole argument circular by just introducing a presupposition merely because we consider it to be desirable or plausible. These two problems can be avoided if it can be shown that an agent must hold that she is (also) able to act for reasons different from the pursuit of her own happiness. It must be shown that an agent who must make judgment (1) must also hold (and make judgments accordingly) that she is able to act on non-instrumental reasons. If so, we can speak of dual necessitations by judgment or,

better, of the two strands of the sequence of necessary judgments. There are indeed two such strands, and I will develop them consecutively, trying to show that at a certain point of the first or main strand, the second strand merges with the first.

The Two Strands of the Sequence of Necessary Judgments of Agents

The second strand¹²

An agent has to perform the following judgment, since she is an agent:

(a) = (1) “Whenever I act, I do so to achieve certain ends E”.

Then, she also must make the following judgment:

(b) “Whenever I act, I do so to achieve certain ends E I have chosen and set”.

In the second strand of the sequence, the focus is on the authorship of the agent’s decision to pursue certain ends and the *freedom* involved in setting and pursuing those ends. Kant pointed out that there is a difference between the view from the outside of an action and the inner view of an agent on her action (Kant 1785, 95–96 = 447f.). For instance, an agent may believe that she helps an injured person because the person cannot help herself and that there is a danger that things may worsen for the person in need. Viewed from the outside, however, one may suspect hidden motives of the agent based on her self-interest, say to impress others, to avoid the criticism of others, etc.

The suspicion that may guide the view from the outside implies a very narrow range of the reasons an agent may have, limited to her considered self-interest. In contrast, from her internal view, an agent is not restricted to reasons pertaining to means-ends considerations. She has a much wider range of reasons at hand, has different criteria for the adequacy of reasons, and can criticize and correct the reasons guiding her actions. The view from the outside may treat such a presumed richness as a delusion. However, this is not a standpoint an agent can consistently take and sustain from within her own perspective as an agent (Kant 1785, 100–101 = 443–455, see also Steigleder 2023, 200–205). From her internal viewpoint, the agent not only holds herself to be able to act on reasons she considers to be adequate, but she also must consider herself to be able to do so. As an agent, she must consider herself to be the author of her decisions to set and pursue ends for reasons she holds to be adequate, and must hence consider herself to be able to transcend her sensual desires and the pursuit of her own happiness if she thinks that it is necessary to do so.

Thus, an agent must make the following judgment:

- (b) “Whenever I act, I do so to achieve certain ends E I have chosen and set”.

Therefore, she must also make the following sequence of judgments:

- (c) “The ends E of my actions are set by me for reasons I consider to be adequate”.
 (d) “I am able to criticize and correct the reasons for which I set ends of my action”.
 (e) “I am able to act for reasons in opposition to what my immediate desires and my considered self-interest recommend”.

Thus, an agent must hold that she is not only able to decide to do what is instrumentally good for her own happiness, but also what she considers to be good in itself or necessarily good. Hence, she must hold that she is able to set and pursue necessary ends and that she is therefore a source of necessary ends and thus possesses absolute value or dignity.

- (f) “I am able to set and pursue necessary ends, i.e., to pursue what is necessarily good”.
 (g) “I am the possible source of necessary ends and thus of what is necessarily good”.
 (h) “As such a source, I am myself unconditionally valuable, possessing absolute value or dignity”.

The First Strand of Necessary Judgments

Let us now (re)turn to the first strand of the sequence of necessary judgments. The transition from judgment (1) “Whenever I act, I do so to achieve certain ends E” to judgment (2) “The ends E of my actions are good” is an important first step in the justificatory argument, namely the demonstration that action possesses, what Gewirth calls an *evaluative structure*. The second step consists in showing that action also possesses a *normative structure*. In this second step, the first or main strand of the argumentative sequence will have to take up or merge with the second strand.¹³

Judgment (2) may be reformulated into:

- (2’) “The ends E of my actions are goods”.

This is only unproblematic if the meaning of judgment (2) is preserved, i.e., if “a good” means “something I positively evaluate according to some criterion which I consider to be decisive in my respective

action". Using "a good" as a shorthand expression allows one to formulate part of the following judgments or to point out their connectedness more naturally.

Now, an agent is aware that her actions are not always successful. This may be due to conditions both internal and external to the agent. Part of the external conditions is the behavior of other agents. However, an agent who acts in order to achieve certain ends and holds her actual ends to be good must want her actions to be successful and must hold her ability to act to be a good. Thus, she must make the following two further judgments:

- (3) "I want my actions to be successful".
- (4) "My ability to act (successfully) is a good".

Now, concerning this last judgment, an agent must distinguish between two different manifestations of her "ability to act". On the one hand, "ability to act" can refer to the specific abilities and situational preconditions necessary for her to pursue specific ends and the related specific actions. For example, if she wants to play Bach's Solo Partita No. 3 in E major, she will not only need a violin but also considerable skills in playing the violin. On the other hand, "ability to act" can refer to the necessary conditions for being able to act at all and to act successfully at all.

As Gewirth (1978, 48–61) has shown, these necessary conditions are the same for any agent. They comprise *freedom* to act and three further kinds of goods, namely, first, *basic goods* like life and physical and psychological integrity, which are necessary for being able to act at all. For being able to act successfully at all, one must both be able to retain what one has already achieved and be able to achieve further ends. This makes certain second-order goods necessary, which enable one both to retain and to extend one's "level of purpose-fulfillment". Thus, second, an agent needs necessary *non-subtractive goods* like not being defamed, not being lied to, not being stolen from, and, third, necessary *additive goods* such as self-esteem and education.

These necessary conditions an agent must consider to be *necessary goods* for her. Thus, she must make the further judgment:

- (5) "My freedom and the other necessary conditions for being able to act at all and to act successfully at all are necessary goods".

Gewirth (1978, 60–61) summarizes the basic goods, the necessary nonsubtractive, and the necessary additive goods under the heading "well-being" as he considers these goods as comprising the most important part of an agent's well-being. However, it is important to note that "well-being" functions as a *terminus technicus* in this

context. It does not include everything we might be inclined to associate with our well-being, which is why I place “well-being” in quotation marks. Thus, judgment (5) can be reformulated (and simplified) as judgment:

- (6) “My freedom and ‘well-being’ are necessary goods”.

Now, an agent must not only hold that action has an “evaluative structure” but must also hold that action has, beyond that, a “normative structure”. This means that an agent who must hold that she possesses dignity must also hold that she possesses moral rights to her freedom and “well-being”. Likewise, she must hold that all other agents who possess the same dignity as her also possess the same rights.

An important point to pay attention to is that for an agent, the necessary goods cannot be *just* necessary means, like a violin is a means for playing the partita, an end that an agent may have or not, and may give up. As an agent needs the necessary goods for (successfully) pursuing any of her ends over time, the necessity of the necessary goods must also pertain to *how* an agent *wants* these goods.

Here, it is of the utmost importance that the necessary goods are not a safe possession for the agent. An agent may not have them in full (and thus may only be able to act successfully to a limited extent), and may lose them due to external circumstances like an earthquake or a storm, or due to the actions of others.

The necessity of wanting the necessary goods involves that an agent unconditionally and without exception does not want her necessary goods to be impaired by external circumstances. However, given that other agents can decide to impair her necessary goods and are able to control their actions by their unforced choice, the unconditionally not wanting to be impaired in her necessary goods becomes a normative claim. The agent must hold that the necessary goods are due to her and that her dependence on the necessary goods must be a sufficient reason for other agents to at least not interfere with her necessary goods.

At this point, the two strands of the necessary judgments of agents come together. Three relevant aspects or conditions are inevitably pertinent here to the agent: first, her irresolvable dependence on and her unconditional wanting of the necessary goods that she needs to be able to act at all and to act successfully; second, her worth or dignity that she must attribute to herself due to her ability to act in certain ways; and third, the dependence of the possession of her necessary goods on the actions of other agents, who are equally able to control their actions by their unforced choices and can acknowledge the absolute

value or dignity of the agent, just as they, as agents themselves, must acknowledge their own absolute value or dignity.

Taken together, this must prompt the agent to hold herself as being entitled to the necessary goods in view of all other agents. She must hold that she has claim rights to the necessary goods against all other agents. At the same time, she must also acknowledge that the same conditions that justify her own rights also apply to other agents. Thus, she must also acknowledge that all other agents possess the same and equal claim rights to the necessary conditions of their own agency. Therefore, due to the correspondence of claim rights and strict duties, all agents have, on the basis of their own rights, a strict duty to always act in accordance with the rights of the agents affected by their actions.

Thus, the sequence of necessary judgments is to be continued in the following way:

- (7) "I need my freedom and 'well-being' (insofar as they are necessary conditions of my ability to act and to act successfully at all) inevitably and I want to have them (as in the described quality) unconditionally and without any exception".
- (8) "Unconditionally and without any exceptions, I do not want my freedom and 'well-being' (insofar as they are necessary conditions of my ability to act and to act successfully at all) to be interfered with by other agents".
- (9, cf. (h)) "As a possible source of necessary ends I am unconditionally valuable, possessing worth or dignity. At the same time, I inevitably need and unconditionally want my freedom and 'well-being' (insofar as they are necessary conditions of my ability to act and to act successfully at all)".
- (10) "Due to this I am entitled to my freedom and 'well-being' (insofar as they are necessary conditions of my ability to act and to act successfully at all) against all other agents who as agents are both able to interfere with my freedom and 'well-being' and to acknowledge my dignity and to act accordingly".
- (11) "I have a right to my freedom and 'well-being' (insofar as they are necessary conditions of my ability to act and to act successfully at all)".

Gewirth (1978, 64) aptly calls the rights to freedom and "well-being" constitutive or generic rights.

- (12) “For the same reasons, all other agents are entitled to their freedom and ‘well-being’ (insofar as they are necessary conditions of their ability to act and to act successfully at all)”.
- (13) “All other agents have the rights to the necessary conditions of their ability to act and to act successfully at all”.
- (14) “All agents have equal rights to the necessary conditions of their ability to act and to act successfully at all”.
- (15) “All agents have a strict duty always to act on the basis of their own generic rights, in accordance with the generic rights of the agents affected by their actions”.

Judgment (15) formulates a principle of morality. It says why and how agents must be prepared to restrict the pursuit of their own interests in view of the justified interests or generic rights of all other agents.

2 Implications

Four Core Tenets of Rights-Based Ethics

The principle of morality justifies four core tenets of rights-based ethics. First, all agents have equal rights to the necessary conditions of being able to act at all and to act successfully at all and thus of being able to lead their lives. Via the necessary goods, these necessary conditions and consequently the moral rights of agents are determinable in a non-arbitrary way.

Second, the moral rights of agents are not all on the same level but form a hierarchy depending on differences in their situational indispensability. For example, the right to life of a starving person may situationally take precedence over the right to nonessential property of another person who has food in abundance.

Third, the moral rights of agents are *both* negative rights, i.e., rights to the forbearance of others, *and* positive rights, i.e., rights to the assistance of others, if certain conditions are fulfilled. As shown by Gewirth, these conditions are that an agent cannot help herself, and another agent is able to help her at no comparable cost. If I am drowning and you can only attempt to save me by risking your own life, you are not obligated to help. However, if there is a rope you could throw to me or you can call competent help, you are strictly obligated to do so. Both conditions follow from the equality of rights. If one had to help another person, even if this person could help herself, this person would have more rights than oneself. If one had to try to save a person even at the risk of one’s own life, this person would have a higher right than oneself. The rights of agents can only be positive rights if there is a hierarchy of rights, for this is a precondition for the ability to help at no comparable cost. Therefore, theorists who do not acknowledge a hierarchy of rights, e.g., Robert Nozick (1974), cannot

acknowledge positive rights. Note that positive rights are not additional or special rights. Instead, the rights of agents are both negative and positive.

That the rights of agents are also positive follows both from the necessary advocacy of these rights to themselves by any agent and from the required mutual acknowledgment of the dignity of agents. Due to their dignity, agents constitute for each other both limits and tasks for their actions.

Fourth, the rights of agents include a right to their effective protection. This makes certain institutions necessary, first and foremost, the institutions of territorial states, but also international and global institutions. Concerning the tasks, design, and realization of the required international and global institutions, many questions are still open. However, these institutions can only supplement and not supplant the institutions of territorial states, for only on a limited territory can institutions of the state be built and sustained which reliably protect the rights of the citizens or inhabitants of a territorial state. As the rights of agents are both negative and positive, the state must be organized as a social or welfare state. This also follows from the limitations of individual help. While individuals may be able to help at no comparable cost in situations of acute emergencies, they are easily overburdened in cases of chronic needs or in the face of the needs of whole groups. However, help can be provided at a lower cost collectively and in an institutionalized way. Individuals then have the obligation to support these institutions, mainly by paying taxes according to their abilities.

The Relevance of the Consequences of Action and the Distinction Between the Internal and External Perspective on the Rights of Agents

The rights-based moral theory is concerned with the consequences of actions and the framework conditions of actions. The moral rightness or wrongness of actions, as well as of organized institutions and other (influenceable) framework conditions of actions, depends on how they affect others in their rights, whether they respect or protect these rights or not. However, while utilitarianism is concerned with the overall collective consequences, the rights-based theory evaluates the consequences distributively concerning each agent individually. That an action violates, i.e., unjustifiably infringes, the right to life of an innocent person will normally make the action morally wrong, irrespective of the possible positive consequences of the action overall.

This does not mean that a rights-based moral theory does not prescribe maximizing positive consequences under certain circumstances. To see why and when this is so, we must look at the distinction between the internal and external perspectives on the moral rights of agents.

The primary perspective of a rights-based moral theory on the moral rights of agents is what one may call the *internal perspective*. This means that agents normally look at or approach the rights of other agents from the perspective of their own rights. This is evident in the case of the obligations to assist others. To take up the example mentioned above, a potential helper looks at the right to life of a drowning person from the perspective of her own right to life. There is a sort of legitimate partiality of an agent toward her own rights. If an agent can only save the life of another person by risking her own, she is not required to do so. This is different from the external perspective of an impartial observer who may perhaps compare the difference in importance between the drowning person (say, a young potential Nobel laureate in medicine) and the potential helper (say, an elderly philosopher whose best days are long gone) and who may thus demand that she attempt to save the drowning person, given the probable better overall consequences.

However, under certain conditions, a rights-based moral theory does prescribe taking an *external perspective*. This is the case if the rights of a potential helper are not relevantly involved, there is a plurality or multitude of people in need of assistance, none of whom has a special right to be helped against the potential helper, and it is not possible to help all. Under such circumstances, the potential helper must try to help as many people as possible.

As no one has a special right against the helper, the equal rights of the people in need are, as such, not relevant. What is relevant in such situations is the anchorage of the rights in intrinsic value, the dignity of the people.

Note, there is an asymmetry in the face of the intrinsic value of beings or people. In view of the intrinsic value of beings or people, there is, as such, no demand to bring additional beings or people about. In contrast, with regard to the intrinsic value of the already existing people, the world will not become better by adding future people (and not increasingly better the more future people are added). This is different from the diminution of the already existing people. In view of the intrinsic value of each existing person, each person is someone to be protected and someone whose death constitutes a loss. Such losses can be additive. It is a bad and possibly avoidable event if a person who possesses intrinsic value dies due to an accident. It is even worse if two or more people die due to an accident.

Note the importance of distinguishing between the internal and the external perspective here.¹⁴ From the internal perspective of an agent, her own death does not become less bad because more other people are saved. However, from the external perspective of the “uninvolved” outsider, it must be worse if more people die. If, in this external perspective, the actions of an agent determine whether more or fewer people die, an agent

is obligated to act in such a way that the deaths of people are minimized or that the number of people saved is maximized.

The group of people who will not be saved may depend on circumstances that are completely incidental (say, the place one happens to be in or the specific means of help available in a specific situation). It is imperative to accept these circumstances if it is imperative to save as many people as possible. This is not unfair to the people who will not be saved. The equal rights of all people involved are not denied, but they are not pertinent in such a situation. It would be wrong if the potential helper went back to the internal perspective of the people involved or started to assign special relevance to the internal perspective of some of the people involved due to their incidentally unfortunate circumstances. Anything that prevents the potential helper or helpers from saving as many people as possible (e.g., by throwing lots) in this example would be morally wrong. Given certain circumstances, triage is not only morally permissible but morally required.

The distinction between the internal and external perspectives is also pertinent to the actions of states or governments. In view of their own citizens or inhabitants,¹⁵ states must adopt an external, impartial perspective. Under normal circumstances, this perspective will require equal protection of the rights of its citizens and special protection for those with chronic or special needs. In the face of the rights of people living outside the state or in other states, a state must take an internal perspective. Its primary obligation is the effective protection of the rights of its own citizens. Thus, all else being equal, there is only a duty to help people living in other states if these people are not able to help themselves, and a state is able to help at no comparable cost, i.e., without endangering its ability to effectively protect the rights of its own people. Even (groups of) refugees do not have a right to be taken up by a state if this does endanger the functioning of the receiving state. The potential death of refugees does not diminish the limitations of the duties to assist states, just as the potential death of a drowning person does not speak against the limits of the duty to help her.

However, this cannot be the final word. We face restrictions similar to the restricted ability of individuals to help in the face of chronic needs or the needs of whole groups of people. In the case of individuals, the limitations can be partly overcome by a collective solution. Such collective solutions must also be sought at the level of the cooperation of states in order to build up a higher ability to help and to offer assistance that is suitable to help prevent calamities in the first place. One should be aware that past experiences with development aid give reason to doubt that one knows (well) how such assistance can be brought about. The initial focus ought to be on becoming aware of and abolishing policies and rules that in effect harm poor countries (like enormous tariffs on already roasted coffee or other refined goods, the export of subsidized excess agricultural products

from the rich into poor countries, or, possibly, the production of green hydrogen in energy-poor and arid countries for use in the rich countries).

Thus, many questions need to be solved, and much research has to be done here. Nevertheless, the distinction between the internal and external perspectives on the level of states seems important. The universality of rights does not justify a cosmopolitanism of a world without borders based on the external perspective of an impartial observer. There is a real danger that a superficial and unsophisticated argument with moral rights will destroy the fledgling human rights regimes in the end.

Rights-Based Risk Ethics

Often actions, the implementation of measures or technologies do not involve direct or definite harm to others, but only possible harm. However, the evaluation of harm that is merely possible, i.e., risks, is still an underdeveloped field in normative ethics. We know that normally we are not allowed to use a car to run a person over. However, there is a realistic possibility that we will run a person over by using a car. By driving a car, the driver is imposing risks on other drivers or pedestrians. This leads to the question of whether, if any, risk impositions are justified, and which are not.

The development of a convincing rights-based risk ethics has been impeded by a one-sided fixation on the recipients of action. If a recipient of actions has a right not to be harmed in a certain way, does she not also have a right not to be exposed to the risk of being harmed in such a way? However, it is important to note that the possibilities of harm, i.e., risks, are ubiquitous and that it is therefore much more difficult to avoid imposing a mere risk of harm than a certain harm on others. A prohibition of risk impositions may therefore severely restrict an agent in her ability to act and to lead her life, thus violating her rights. We are all agents and recipients of others' actions. As recipients, we are interested in being protected from possible harm; as agents, we are interested in being able to execute actions that involve certain risks to others. This is a question of proportionality. The importance of the prevention of possible harm to a recipient must be weighed against the effects of the prohibition of certain risk impositions on an agent's ability to act. This allows a basic distinction between two kinds of risks. On the one hand, there are risks whose prohibition would unproportionately and unjustifiably restrict an agent in her ability to act and to lead her life. These are risks an *agent* has a right to impose on others. I propose to call these risks *A-risks*. On the other hand, there are risks whose permission would normally unproportionately and unjustifiedly endanger a *recipient* in her rights. These are risks that a

recipient normally has a right not to have imposed on her. I propose to call these risks *R-risks*.

There are two kinds of A-risks. The first kind of A-risks, let us call them *A₁-risks*, is comparatively trivial. The possible harm, say a minor scratch, caused by these risks is much less significant than the effect it would have on our ability to act if we had to avoid imposing such risks. The second kind of A-risks, let us call them *A₂-risks*, has the potential for serious harm like death or severe physical injury, but these risks can be sufficiently controlled. Let us start with a perhaps astonishing example: the use of a stair. Stairs involve serious dangers. One may stumble and fall to death or break one's spine and be paraplegic for the rest of one's life. What is more relevant here is that the stumbling person may fall on others and severely injure or even kill them. However, it is possible to use a staircase carefully so that one can be sure that one will not normally stumble and injure others. Nevertheless, there remains a residual risk. Maybe one suffers from a heart attack or becomes uncontrollably frightened by something.

Another and, of course, more interesting example is the accident risks involved in using a car. Given certain traffic rules and certain technical standards of cars, it is possible to use a car carefully and in such a way that one may be sufficiently sure that one will not be the primary cause of an accident. Again, there remains a residual risk of losing control of the car.

My claim is that such residual risks do not make the actions connected with them impermissible if the necessary precautions are taken in the first place. Being able to act in a risk-controlling way, while accepting the remaining residual risks, massively broadens the ability to act for every agent. At the same time, no single person or group of people who could be identified beforehand is disadvantaged by the permissibility of *A₂-risks* (for a more detailed justification, see Steigleder 2016, 264–265).

There are several kinds of R-risks. The most important kind of R-risks is risks which involve considerable possible harm, such as death or severe physical injury, and cannot be sufficiently controlled. These are risks that it can be justifiedly demanded that an agent not impose them on others. However, there can be several exceptions to this rule (see Steigleder 2018). Perhaps the most important and interesting one is what one may call the *normative inevitability of the imposition of R-risks*. The imposition of R-risks is permissible if they are connected with organizational structures or technologies which are connected with R-risks but help to avoid even greater R-risks to all affected people and cannot be (as reliably or effectively) avoided by other means. An example is financial markets. If a market economy, given certain regulations, restrictions, and institutions like the welfare state, is an important means for the protection of the rights of people, and if developed market economies cannot sustainably function without sustainably functioning financial markets, the unavoidable

systemic R-risks connected with financial markets are justified. Note that this justification of a financial market with its instruments and institutions is purely instrumental here. The market, the instruments, and institutions must be conducive to the sustainable functioning of a market economy. Many financial instruments and the reality of many financial institutions are not conducive to that aim. The R-risks involved and thus the instruments and the design of the institutions are therefore morally impermissible. Another example involves the use of technology. If a global energy transition is necessary to avoid a climate catastrophe, and if a (1) functioning (2) decarbonized (3) global energy transition can probably not be achieved without the massive use of nuclear energy, the R-risks connected with the use of nuclear energy may be justified.

Let me make three final remarks on risks. It is not the claim that the distinction between A- and R-risks is always possible. There may be unclear or vague cases that allow for opposing viewpoints that may be socially or culturally influenced. This does not speak against the proposed theory. The important point is that the theory is able to identify clear cases and is able to considerably reduce possible unclear cases. Besides, it is hoped that the theory can be further developed and refined.

When speaking of *risks* here, I am using risk as a generic term comprising both risks in the technical sense, where the potential harm is (tried to be) weighed with probability numbers and uncertainty, where this is not possible. I assume that precise and reliable probability numbers are rarely available in real life, so that we are often dealing with uncertainty. Instead of precise probability numbers, we frequently rely on vague estimations, such as being highly probable, quite improbable, or more likely than not.

It is important to distinguish between *risk creation* and *risk choice*. In risk creation, new realistic possibilities of harm are being brought about or imposed on others, and the question is whether such impositions are morally justified or not. In risk choice, we are referring to already existing risks, and the question is which of the existing risks ought to be reduced or eliminated first. Ought, for instance, the amount of arsenic in drinking water, certain road-related or certain rail-related accident risks receive priority? In this context, measures of efficiency like the value of preventing a fatality (VPF) or risk cost-benefit analysis (RCBA) can have their place. Considerations of efficiency may be supplemented or even overruled by considerations of fairness in the face of affected disadvantaged groups of people and so on (Wolff 2006). However, we must realize that this is a different discourse guided in part by criteria not pertinent to the primary questions of risk ethics, which is basically concerned with risk creation and the evaluation of justified or unjustified risk impositions.

Concluding Remarks

In this article, I tried to show how moral rights can be justified and potentially be used for dealing with intricate normative problems of our time. The principle of morality and the connected normative criteria do not figure as something like a magic wand that allows for easy solutions to all moral problems. Nevertheless, it offers the prospect that difficult moral questions can be seriously studied to find reliable, good, or progressively better answers if one is prepared to engage in intensive research.

Looking back at this article, I would like to identify three tasks for further research on a rights-based approach in ethics. First, what I have called the “second strand” of the justificatory sequence needs further development and a more detailed argument. I suppose that this can find considerable help in the argument Kant offers in the final part of the *Groundwork of the Metaphysics of Morals* (for this, see Steigleder 2023). Second, the institutional needs beyond and above the institutions of territorial states must be further developed, and the collective duties of functioning territorial states to assist (the people of) poor states must be further developed. Third, the theory of rights-based risk ethics needs further development by studying the many pressing problems of our times, e.g., the evaluation of infection risks and risks involved in the existing conflicts of goals in fighting climate change and in bringing about the required global energy transition. A further important task, not dealt with in this article, pertains to bringing together the required factual knowledge involved in the moral challenges of our time; think again of the required energy transition, without being able to resort to a kind of hyper-knowledge that would allow us to integrate the multitude of divergent disciplinary perspectives and methods. Solving the great problems of our times will possibly need new forms of the organization of scientific and normative research. However, this is something I must leave for investigation in further articles (Steigleder/Heeger 2024; Steigleder et al. 2024).¹⁶

A Note on the Quotation of Immanuel Kant

Kant’s works are quoted by the year of the original publication. The first page number refers to the Cambridge Edition, and the second page number after “=” refers to the Akademieausgabe. Departing from this, the Critique of Pure Reason (Kritik der reinen Vernunft) is abbreviated as KrV and quoted with the original page numbers of the first (A) and second (B) editions (1781 and 1787).

Notes

- 1 Work on this article was part of the subproject on the ethical conflicts of goals in the Corona-Pandemics of the project COMPLiANCE funded by the German Research Foundation, project number 458338078.
- 2 We need not ask why we want to be happy (what the end is to which our happiness is the means), because we already want to be happy.
- 3 I believe that such reasoning is also at the heart of Mill's "proof" in *Utilitarianism*, Chapter 4.
- 4 Overlooking this or denying that this is a consistent position or theory is at the heart of Korsgaard's critique of Kant's theory of conditional norms and of the possibility of (freestanding) instrumental reason (see Korsgaard 1997, and my critique Steigleder 2002, 54–58).
- 5 To determine which means are suitable or necessary to take to achieve a certain end is a theoretical task. To *decide* to employ a certain means because one *wants* to achieve a certain end is a practical decision.
- 6 A judgment is called "dialectical" if it consists predominantly of an *opinion* or *belief* of the subject of this judgment, while the focus of an "assertoric" (asserting) judgment is on the object of its judgment.
- 7 The ability of such integrations Gewirth designates as the ability to follow the demands of "inductive logic" (Gewirth 1978, 22).
- 8 The adherents of a "theory of communicative action" and of a "discourse ethics" criticize the focus on (the judgments of) single subjects of judgments. This focus is seen as an unfortunate offshoot of an overcome philosophy of consciousness. Instead, it is claimed that the philosophy of the subject must be substituted by a philosophy or theory of intersubjectivity (cf. Benhabib 1986; Habermas 1990). However, an intersubjective genesis or constitution of subjects as such does not speak against the relevance of the judgments these subjects can and must make.
- 9 To simplify matters, I will from now on speak of the agent as "she" and "her". By this, I do not want to exclude any gender.
- 10 Gewirth starts the sequence with a judgment in which the agent refers to a single actual action: "I do action A for end E". As will become clear, starting with the more general view of an agent on her actions has certain advantages.
- 11 A contract killer is certainly an extreme example of an agent, but it demonstrates quite well that the criteria for holding the respective actual ends of her actions to be good do not need to be moral criteria.
- 12 I can only give a rough outline of the argument here.
- 13 I think that this makes Gewirth's third step, the universalization of the rights claims, superfluous. The rights claims, as based on the dignity of persons, are *moral* rights claims from the start.
- 14 Not doing this sufficiently is exactly the mistake of Taurek (1977) and his defenders like Timmermann (2004), Meyer (2005), and Lübbe (2008).
- 15 In the following, I will use "citizens" as a shorthand for "citizens and inhabitants".
- 16 I am deeply grateful to my colleagues and friends for their contributions to this volume. Against my initial intention, I decided against commenting on their chapters in this chapter, for it would have been impossible to do justice to the arguments with a few comments.

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