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Three Conceptions of Action in Moral Theory

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I. Introduction

Philosophers have long been interested in the relation between the world and the mind which strives to know it. In this paper I argue that there is also a deep question about the relation between the world and the agent who strives to act in it. The question is not primarily about the origin of action (i.e. the nature of the “will”), but rather about the other end of action, its impact. The power to act is the power to make a difference in the world. This feature of the concept is often overlooked, since it is assumed we have a clear understanding of how to conceive of the world as a context of action, and of what it would mean to make a difference in that world. I want to show that we don’t, and that philosophers have held substantively different positions on these matters.

My interest in the impact of action is motivated by an interest in the value of action. It is natural to think that the value of an action depends upon whether or not it makes a difference in the world for the better. One of the strengths of utilitarianism is that it appears to satisfy this intuition. And one of the traditional weaknesses of deontology has been its apparent denial that the right needs to do any good in the world. In this paper I claim that these different orientations toward the value of action are rooted in different conceptions of the nature of action. In particular, I argue that utilitarianism and two different forms of deontology—rational intuitionism and Kantian constructivism—employ distinct conceptions of how the world is to be conceived as a context of action, and of how our agency is to be conceived as making a difference in that world. The utilitarian conception, which I call “action as production,” holds that action is a way of making use of the world, conceived as a causal mechanism. According to the rational intuitionist conception, which I call “action as assertion,” action is a way of acknowledging the value in the world, conceived as a realm of status. On the Kantian constructivist conception, which I call “action

as participation,” action is a way of making the world, *qua* causal mechanism, come to count as a realm of status.

My discussions of the first two conceptions will be rather brief in comparison with my treatment of the third, constructivist view. This is because the constructivist view is more difficult to explicate than the first two. The utilitarian conception was laid out rather explicitly by the seventeenth-century moralist, Richard Cumberland. The rational intuitionist conception was put forth, again rather explicitly, by William Wollaston in the eighteenth-century. However the constructivist conception, which I claim has its home in Kant’s ethics, cannot be read off the surface of that theory. I lay that conception out in stages, drawing first on John Rawls’ account of a special case of action—action falling under practice rules. I then use Rawls’ insights about practice actions to propose and partially defend an interpretation of Kant’s moral theory according to which Kant employs a distinctively constructivist conception of action as such. I do not attempt a full defense of the proposed reading here, nor do I attempt to defend the constructivist conception of action itself. My rather limited aim in this paper is to identify three substantively different answers the question of how action relates an agent to the world, regarded as a context of action.

II. Cumberland and the utilitarian conception

Ever since its inception, utilitarianism has been reinforced if not entailed by a particular picture of action. Stephen Darwall has called this picture the “instrumental conception of agency.”¹ Instrumentalism with regard to agency is not the same as instrumentalism about practical reason, which denies that reason can set ends. Instrumentalism with regard to agency is the view that action is exclusively “consequence-directed.”² In Darwall’s words, it is “the view that choice and agency have only *instrumental* value, that rational deliberation looks completely *through* agency, as it were, to the value of effects (states) it attempts to bring about.”³

This conception starts from the traditional doctrine that a rational being necessarily acts for the sake of an end it conceives as good. Stated as a thesis about action, this is the claim that every action, *qua* action, is necessarily oriented towards realizing some object which the agent takes to be good. Because this doctrine has been uncontroversial in moral philosophy since ancient times, I want to take it as delineating the common *concept* of action from which the more determinate and controversial *conceptions* of action begin.⁴ Action is the action of a rational being, and it is undertaken so as to make a difference for the better. The instrumentalist conception makes this basic concept of action more determinate by interpreting the notion of an “end” naturalistically, as that of an “effect” within the agent’s power. Richard Cumberland, arguably the first utilitarian, is explicit about his substitution of these terms. “All agree,” he writes,

that whoever acts deliberately, must (1) propose an End to himself, then (2) search out, chuse, and apply the Means, by which it may be obtain’d...[but] because the

words, End and Means, are of very doubtful signification, and suppose the free, the mutable, intention of a rational Agent, which can never be certainly known; and because they, consequently, present to our Minds a matter not so proper for Demonstration; I thought it fit, without changing the matter in hand, to consider it under another notion; that is, because the connexion is more conspicuous, and perfectly inseparable, between Efficient Causes, and their Effects; and continual experience and frequent observation plainly discover, what Effects will follow Causes assign'd..."⁵

To act for the sake of an end, Cumberland claims, is just to exercise one's natural power of efficient causality so as to produce an effect, in the form of a state of affairs. The appeal of this way of thinking about action is that it makes action subject to theoretically respectable laws, laws which take the form of empirical generalizations. Such laws become "practical propositions," in Cumberland's terminology, when agents employ them as technical guides in the production of beneficial effects.⁶

Underlying Cumberland's view of ends, which Hutcheson, Hume, and Bentham all embraced, is a standard empiricist moral psychology. "There is nothing which can superinduce a Necessity of doing or forbearing any thing, upon a Human Mind deliberating upon a thing future," writes Cumberland, "except Thoughts or Propositions promising Good or Evil, to ourselves or others, consequent upon what we are about to do."⁷ The claim here is that an agent's ultimate practical concern is for the way she or others will be affected for good or ill by the experience of future events. Against this backdrop, the value of action lies in the fact that it is a means of controlling the events within our power. By purposively exploiting the causal connections written into nature, we use our understanding and power to insure that the course of events will affect us in beneficial ways. Thus action is, in Bernard Williams' phrase, a matter of manipulating "the causal levers" within one's reach.⁸ So conceived, action relates us as purposive efficient causes to the world as a blind causal mechanism. Following Christine Korsgaard, I am going to call this a conception of "action as production."⁹

III. William Wollaston and the rational intuitionist conception

Utilitarianism is often portrayed as one of only two possible types of moral theory, consequentialist and deontological. The distinguishing feature of deontology is its claim that moral value attaches in the first instance to "the actions themselves," rather than to the states of affairs they bring about. But so stated, the distinction is not sufficient to constitute a difference between consequentialism and its purported rival. To see this, consider the perennial charge that deontology is paradoxical.¹⁰ Deontology is thought to be paradoxical because it prohibits agents from minimizing the occurrence of actions which are bad or wrong "in themselves." The charge depicts "the actions themselves" as functioning within deontology just as the consequences do in utilitarianism, namely

as effects to be brought about. The objection thus attributes to deontology the conception of action as production, and portrays it as differing from consequentialism only in its specification of the thing to be produced.

This implies that a theory which purports to be non-consequentialist in a deep way must employ some alternative to the conception of action as production. In an argument designed to defend deontology from the charge of paradox, Francis Kamm hints at one alternative, which I will be associating with the tradition of rational intuitionism. The value of action, according to Kamm's version of deontology, lies not in what it *does* but in what it *says*. Morality, she holds, is a concern for the expressive aspect of action, its capacity to make claims about the value of others (and perhaps also of ourselves).¹¹ For example, Kamm holds that by refraining from violating another person, even for the sake of preventing the occurrence of a greater number of violations overall, an agent can be interpreted as saying to the other, "it's nothing personal, there's nothing between us, but you're really something."¹² Moreover as Kamm sees it, the fact that the person really is something, really has a certain value in virtue of certain unspecified but objective properties, is what makes the person inviolable according to the constraint, and is what makes action in accordance with that inviolable status good.

Kamm is not alone in appealing to an expressive theory of action as an alternative to action as production. The idea that at least some actions can have an expressive or symbolic function is often appealed to in arguments attempting to show the shortcomings of instrumentalist explanations of certain types of conduct, like voting and punishing.¹³ My aim here is to clarify the assumptions behind Kamm's more general form of expressivism by examining its historical roots. Those roots lie, I think, in the work of William Wollaston, an eighteenth-century rational intuitionist in the tradition of Samuel Clarke. Wollaston was sympathetic with the traditional rationalist claim that actions can conform or fail to conform to the "nature of things" independently of their consequences. But he found this and other characteristic rationalist locutions to be unnecessarily obscure. In an attempt to give a more perspicuous account of the standard of right and wrong, Wollaston in 1722 put forth a general theory of the nature of action.¹⁴ According to this theory, actions are like words, except that they speak louder. "*Words*," Wollaston writes,

are but *arbitrary signs* of our ideas, or indications of our thoughts...but *facts* may be taken as the effects of them, or rather as the *thoughts themselves produced into act*; as the very conceptions of the mind brought forth and grown to maturity; and therefore as the most natural and express representations of them.¹⁵

The thoughts which Wollaston takes to be expressed in action are essentially propositional in nature. For example, by firing on an approaching army, a body of soldiers offers "the salute of an enemy," a salute which declares that the two armies are indeed foes. If the actual relation which holds between them is one

of friendship, then the proposition embodied in this act is false.¹⁶ Similarly, by using and disposing of an object in his possession, a man declares it to be his own. If he does not in fact stand to the object as an owner to his property, then the declaration is false.¹⁷ Wollaston writes,

I lay this down then as a fundamental maxim, *that whoever acts as if things were so, or not so, doth by his acts declare, that they are so, or not so*; as plainly as he could by words, and with more reality.

Action, on this account, is a form of assertion, a mode of expression in which we purport to represent things as they really are. And this, Wollaston claims, is the sense in which actions can be or fail to be “in conformity with the nature of things,” independently of their consequences.

Kamm’s view of action, though less explicit and developed, shares this propositional orientation. An action in accordance with moral constraints, Kamm claims, states that another person has or lacks value as a matter of fact. And since there is such a fact of the matter, actions can succeed or fail to express the truth.¹⁸ And yet on both Wollaston’s and Kamm’s accounts, the world to which action relates us descriptively is not the utilitarian’s world of natural causes and effects. The claim that “you’re really something” is not a claim about a person’s empirical or psychological state; rather it is a claim about his status.¹⁹ Similarly, the examples Wollaston invokes to illustrate his theory of action all involve claims about the status of an agent in relation to others. Thus Wollaston’s view, echoed by Kamm, seems to be that action “tracks” certain practical facts—facts about “where we stand” in relation to one another as members of a social world.

Wollaston’s conception of action seems to presuppose a moral psychology which is different from Cumberland’s. While Wollaston would not deny that every action involves an exercise of efficient causality, his view suggests that our ultimate practical concern is not for the effects we can produce. Indeed his conception implies that in addition to a causal element, action contains a reflexive element. The exercise of human agency, according to Wollaston, involves a reflective awareness of ourselves in relation to others.²⁰ Action expresses a conception of “where we stand” in relation to the other constituents of the world, conceived as a realm of status relations. Moreover, this awareness determines an ultimate end of action which is not an effect to be brought about. That end is the faithful representation of the interpersonal order of which we are members.

The conception of action as assertion thus constitutes a genuine alternative to the utilitarian conception. Action as production relates us, as purposive efficient causes, to the world conceived as a mechanism structured by descriptive, causal laws. Action as assertion, by contrast, relates us as observers to the world conceived as a realm of status structured by normative, interpersonal laws. Put a little less precisely, production relates us practically to a theoretical world, whereas assertion relates us theoretically to a practical world.

Despite this difference, there is a rather deep similarity between these two conceptions. Notice that both conceptions take action to be a composite of two elements, one straightforwardly actional and the other non-actional. According to utilitarianism, an action is an intentionally produced event. Its being intentionally produced makes it an action, while its being an event does not. According to rational intuitionism, an action is an asserted belief. Its being asserted makes it an action, while its being a belief does not. The deep similarity is that both theories identify the value of action with its non-actional component. Action as production has value if, *qua* event, it causes beneficial effects. Action as assertion has value if, *qua* belief, it is true. But neither utility nor truth is a property of action *per se*.

To see this, consider one of Hume's arguments against rational intuitionist ethics. Hume maintains that actions, strictly speaking, cannot be true or false, and that it is a sort of category mistake to speak as if they could.²¹ To say that an expressive action is true or false is simply to say that something other than the action itself, namely the belief it asserts, is true or false; it makes no sense to say that the act of asserting that belief is itself either true or false. A parallel point applies to action as production. To say that an instance of productive action is beneficial or harmful is just to say that as an event it is beneficial or harmful, because its occurrence leads to good or bad effects. The intentional, regulated aspect of productive action is not in itself an object of utilitarian evaluation. Thus on both views, the property which gives action its actional character is not constitutive of its value.

This observation need not amount to a criticism. Advocates of both theories could perhaps deny that "the actions themselves" admit of any more direct form of evaluation (though the rationalist could only do so by abandoning the traditional claim that it does). I am going to argue, though, that there is implicit in Kant's moral theory a third conception according to which action does admit of evaluation in virtue of its actional character. On this conception, action relates us practically to a practical world; the conception thus posits a fully active relation between the agent and the world, excluding any element of passivity which would determine a standard of value external to action itself.

IV. Kant and the constructivist conception of action

Kant's conception of action is in certain respects very close to Wollaston's, but the ways in which it differs are crucial. I said earlier that the Wollastonian conception presupposes that action contains both a causal and a reflexive element. As agents we are producers of effects, but we are also aware of ourselves as members of an interpersonal order. Kant likewise holds that actions have both a causal and a reflexive element. He maintains, on the one hand, that every action has an end, a purpose it is designed to achieve and which the agent conceives as good.²² But he also claims that every action can be identified with a maxim, a principle on the basis of which the agent chooses to realize an end

by some specified means.²³ Maxims involve reflective self-awareness because they are the representations we make to ourselves of our own volitional activity. Such representations are necessary, according to Kant, because agency is a self-conscious form of causality.²⁴ Since every cause necessarily operates according to a law, every agent must determine herself to act according to some principle of choice or other. But since an agent is a self-conscious cause, she can only act on such a principle by representing it to herself.

Kantian maxims are like Wollastonian propositions not only in that they are the product of reflection, but also in that they express an awareness of ourselves as belonging to a larger, law-governed order. In Kant's theory, this is so because of the connection Kant makes between volitional and causal laws. A causal law represents the activity of a cause by showing how that activity is related systematically to a larger universe of causal activity. Similarly, maxims represent our volitional activity in relation to a larger universe of volitional activity. They purport to be universal, action-guiding principles which specify how the agent, conceived abstractly as one subject to practical laws, ought to act.

Thus Kantian action, like Wollastonian action, can be interpreted as making reference to an interpersonal order. But it does so without positing the prior existence of such an order, and without casting the agent as an observer of it. To act on a maxim, in Kant's view, is act as if one were laying down laws to govern human conduct, including one's own. By reflectively regulating ourselves according to maxims, we are to see ourselves as constituting, rather than "tracking," an order of status relations within which we must ourselves must act. In this respect, Kantian action seems to bear a closer resemblance to action as production than to action as assertion. Legislation, like production, is presumably a way of making a difference in the world, whereas assertion is not.

This highlights a general tension between two claims, both of which seem intuitive. The first claim is that what matters about an action is not what it brings about, but the way it is willed. The second claim is that action is something which makes a difference in the world, and that its value must in some way depend upon the value of the difference it makes. The Wollastonian conception attempts to uphold the first intuition by identifying the value of an action with its reflexive rather than its productive element. But it does so only by assimilating action to belief, thereby giving action a purely representative function. So conceived, action doesn't really *do* anything. Whatever difference a Wollastonian assertion makes in the world is merely incidental to its value, which depends wholly on the truth of the proposition it asserts. In this sense the conception of action as assertion isn't really adequate to the basic concept of action, according to which action necessarily makes an impact. The model of action as production, on the other hand, satisfies the intuition that action makes a difference in the world, and that its value depends upon the difference it makes. But it fails to acknowledge the reflexive, relational element of action. And this element is the source of the intuition that the value of action *qua* action depends upon the way it is willed, rather than what it brings about.

On the face of it, the Kantian conception is an attempt to avoid both of these pitfalls. Like Wollaston, Kant holds that the reflexive element of action determines our ultimate practical concern. The value of an action, according to Kant, depends upon the value of its maxim. And since a maxim is nothing other than a representation of the agent's volitional activity, the activity which gives the action its actional character, Kantian evaluation can be said to apply directly to action itself. And yet Kant's metaphor of legislation suggests that this volitional activity itself matters only in virtue of the difference it makes in the world, at least ideally if not actually. If an act of will is somehow properly characterized as an act of lawmaking, then its goodness will presumably depend upon the impact the establishment of the law makes or would make on the world. The question is whether Kant's conception of action amounts to a distinctive "third way" which somehow satisfies both of the seemingly opposed intuitions, or whether upon closer scrutiny it collapses into one of the other two models.

V. Rawls on making a move in a practice

In the remainder of this paper, I am going to offer a more detailed, though somewhat speculative account of Kant's conception of action in which I attempt to show how it might constitute a distinctively constructivist alternative to the utilitarian and rational intuitionist conceptions. My strategy is to draw on structural similarities between Kantian action and a model of a special case of action put forth by a contemporary constructivist, John Rawls. By reading Kant through Rawls, anachronistic as this method may be, we arrive at an account of action according to which its value lies simultaneously in the way it is willed and the difference it makes.

In his early article, "Two Concepts of Rules," Rawls sets out to limit the scope of the utilitarian principle by arguing that it is inapplicable to actions of a certain type.²⁵ His claim is that actions which fall under practice rules, for example actions governed by the rules of games and social institutions, have a structure which is different from the structure of action presupposed by utilitarianism. Such actions are not, therefore, directly subject to utilitarian evaluation. Whereas a practice as a whole can be judged in terms of its overall consequences, Rawls claims, a particular move within a practice can only be judged in relation to the practice rules.

Rawls' argument turns on a conceptual point about the relation between the rules of a practice and the cases to which they are applied. Practice rules, he claims, are "logically prior" to particular cases.

In a practice there are rules setting up offices, specifying certain forms of action appropriate to various offices, establishing penalties for the breach of rules, and so on. We may think of the rules of a practice as defining offices, moves, and offenses. Now what is meant by saying that the practice is logically prior to particular cases is this: given any rule which specifies a form of action (a move), a particular

action which would be taken as falling under this rule given that there is the practice would not be *described as* that sort of action unless there was the practice.²⁶

Rawls illustrates the logical priority of practice rules over actions with reference to moves in the game of American baseball.²⁷ Outside the “stage-setting” of the game, it is certainly possible to “throw a ball, run, or swing a peculiarly shaped piece of wood.” But it is impossible to “steal base, or strike out, or draw a walk, or make an error, or balk.”²⁸ Where the rules of baseball are in force, movements come to constitute moves of particular kinds, and conversely in the absence of such rules, actions which might appear to be moves are properly described as mere movements.

In this respect, Rawls claims, practice rules differ from another general class of rules called “summary rules.” Summary rules are “rules of thumb.” Their role is to allow us to approximate the results of applying some more precise but perhaps more unwieldy principle to particular cases. As such, summary rules are arrived at by generalizing the results of the prior procedure. They are “reports” of these results, presented as guides for deliberating about what to do in cases which are relevantly similar to those used to generate the reports. Summary rules are therefore logically posterior to the cases to which they apply. For in order to specify a summary rule, it is necessary to generalize over some range of cases, and the relevant descriptions of these cases must be given in advance if generalization over them is to be possible.

Whereas summary rules presuppose the existence of a well-defined context of application, the establishment of a practice imposes a new conceptual and normative structure on the context to which they are to apply. In this sense, a practice amounts to “the specification of a new form of activity,” along with a new order of status relations in which that activity makes sense.²⁹ From the point of view of a participant, the establishment of a practice transforms an expanse of grass into “playing field,” bags on the ground into “bases,” and individuals into occupants of determinate “positions.” Universal laws come to hold *a priori*, for example that “three strikes make an out,” and that “every inning has a top and a bottom.” And within that new order people come to have special powers, such as the power to “strike out,” or to “steal a base.”

The salient point for Rawls’ purposes is that there are *constitutive* constraints on the exercise of these new powers, constraints by which any participant must abide in order to make her movements count as the moves she intends them to be.³⁰ For example, in order for a judge to “punish” a defendant, she must abide by the deliberative constraints of our legal practice. According to those constraints, a punishment can only be meted out as a response to the judgment that a defendant is guilty. As such, if a judge were to decide to punish a person for the sake of promoting overall utility, her action would have to be described as something other than punishment—either as an “offense” of a certain kind, or as a “move” in a rather different practice (e.g. a practice of “telishment”). By the same token, Rawls claims, it is not logically possible to “keep a promise”

for the reason that doing so would be best on the whole. Promise-keeping is a move in a practice, and it can only be done for reasons which follow from the rules of the institution of promising.

Now this characterization of moves in a practice may just seem false, because there appear to be cases where the proper description of an action falling under a practice does not depend in any way upon the whether the agent conforms to *deliberative* constraints. Suppose, for example, that a tennis player hits a hard shot right at her opponent's head, and that she does so not out of a desire internal to the practice (i.e. to play competitively), but out of a personal, vengeful desire to physically injure the other player. From the point of view of an umpire, the shot will count just as it would if it followed the exact same trajectory but was chosen on the basis of the practice-dependent desire. Similarly if, in her external actions, the utilitarian judge conforms to the procedural rules associated with punishing, she will succeed in doing something which, from a legal point of view, counts as "punishing" the defendant.³¹

However Rawls' claim is not about what counts as a move in this external, legalistic sense. His claim is that at a philosophical level, there are deliberative conditions which have to be met in order for an agent to count as "making a move" of a particular kind within a practice. This makes sense, I think, if we read Rawls as relying on an unstated assumption. The assumption is that making a move in a practice is a way of participating in it, a way of engaging in it as a form of activity. Corresponding to this notion of "participation" is an ideal of full participation or full engagement in the activity defined by the practice rules. That ideal is one according to which the agent regards her will, and not merely her external actions, as subject to the action-guiding authority of the practice rules. To fully participate in a practice is to identify oneself and others in terms of the concepts defined by the practice rules, and to regulate oneself in terms of its principles. Thus one who fully participates in a game of tennis relates herself *as* a player to others conceived as players. By contrast, one who settles a personal score on the court merely uses the practice rules to promote a practice-independent end. In this sense she does not fully participate in the activity defined by the rules. She acts *like* a player, but not *as* one.³² If Rawls has this sort of ideal in mind, then his claim is that every action which falls under practice rules is to be regarded as a form of participation, and that the concept of participation is what determines its standard. A participant fully participates, and hence fully "makes a move," only when she makes the practice rules and their associated concepts determinative of her will.

On this interpretation, Rawls' claim is that a move is some determinate form of participation, and an action's being a move consists in its being undertaken in conformity with the practice rules under which it falls. Since practice rules are constitutive of the actions falling under them, it is not possible to evaluate an action falling under a given practice from a perspective independent of that practice. To do so, Rawls concludes, is to evaluate the action as something it is not.

One implication of this view is that the justification of a move in a practice does not go very deep. "One doesn't so much justify one's particular action," Rawls observes, "as explain, or show, that it is in accordance with the practice."³³ To show that a move is good, *qua* move, is simply to show that it is "well-made," properly constituted by the agent to be the form of participation that it is. In this sense moves are subject to an internal standard of evaluation. The property of being well-constructed according to the practice rules both makes a move what it is and makes it good as a form of participation.

But this claim may seem counterintuitive for the following reason. If a move is good only insofar as it is really a move, then it looks as though nothing left for a bad move to be.³⁴ Since on the proposed view, bad moves are not well-constituted moves, it seems they ought not to be regarded as moves at all. Rawls does not confront this objection, but we can try to construct a response on his behalf. The objection presupposes that the distinction between being a well-constituted move and not being a move has to be all-or-nothing. But it is possible to allow for an intermediate category of defective moves. Defective moves are moves the function of which cannot be properly understood without reference to the practice rules, but which nevertheless fail to be well-constructed according to those rules. There are several types of defective moves.³⁵ The first type I'll call "simulation." This is the case of Rawls' utilitarian judge, who goes through all the motions of punishing but does so for practice-independent reasons. Rawls states that this sort of move has to be understood either as a violation or as a move in a different practice. If there is a reason for considering it a violation rather than a non-move (relative to this practice), I claim it is that the action is the functional analog of the move of punishing; within the larger legal system, it purports to play the role of an act of punishing even though it is ill-constituted to be one. A clearer case of simulation is one involving intentional deception. The shoplifter tries to look as though she is participating in a system of commercial exchange, but she is really stealing. By contrast, the armed robber, once she has pulled her gun and revealed her intentions, is clearly playing a different game and is attempting to force others to go along with her.³⁶ The reason to call this a violation is that the practice of commercial exchange is embedded within a more fundamental practice of citizenship. The rules of that more fundamental practice make it the case that the agent doing the robbing has neither the prerogative to decide whether or not she will participate in the practice of commercial exchange (insofar as she seeks to acquire commercial goods), nor the prerogative to determine others' participation by force. I'll call this way of going wrong "culpable non-participation."

In addition to simulation and culpable non-participation, there is a third type of deviation which might seem to pose special problems for the Rawlsian account. It is natural to say that a player makes a "bad move" when she makes a purely strategic mistake. There are certain circumstances in baseball, for example, under which it is wise for a fielder to try to "turn a double-play".³⁷ The rule that one ought to try for a double-play in these situations is a rule of thumb,

a guide to choosing the best available means to promote one's end—in this case, the practice-dependent end of preventing the other team from scoring. Since the choice in question is choice among alternative legal moves (one who instead tries for a “single-play” does not make an illegal move³⁸), it looks as though the practice of baseball is in fact a composite of constitutive practice rules and non-constitutive, strategic rules of thumb. If this were the case, then a move could be “bad” without being ill-constituted as a form of participation, since its defect could consist in its failing to be in accord with the relevant strategic rules.

I think Rawls could respond by arguing that strategic rules are not really distinct from practice rules, but this argument would depend upon a further claim about what is involved in willing a particular end. The argument would go like this. When a player is criticized for making a move which is strategically bad, she is not criticized for violating the strategic rule *per se*. That rule only has the authority of a rule of thumb. She is criticized for failing to choose the best available means, within the constraints of the practice, for promoting her practice-dependent end on this particular occasion. But on one view of instrumental reasoning, this sort of failure is at bottom a failure to apply the practice rules well. The view of instrumental reasoning I have in mind holds that the instrumental principle is constitutive of the act of willing an end.³⁹ On this view, to will some particular end is to commit oneself to taking the necessary and available means to promote it (and, other things being equal, to choose the most efficient among these). In the case we are considering, the practice rules require the player to make it her end to prevent the other team from scoring. But even though she sets this end for herself, she has not mastered the game sufficiently to live up to the demands that are constitutive of that commitment. In this sense the player who makes a strategic mistake can be regarded as not fully conforming to the practice rules, and hence as not participating in the game as fully as would a player possessed of the requisite virtues of judgment.⁴⁰ I'll call this type of defective move “amateurism.”

Thus although the actions we would ordinarily call “bad” or “wrong” moves are defective, *qua* moves, they are not properly construed as non-moves. Not all ill-constituted moves are simply nonsense from the point of view of the practice. There is a place for the category of an “offense,” and for distinctions within this category corresponding to different types of failure.

Because Rawls' conception of a move makes it answerable to an internal, constitutive standard, it provides a model of how an action can have intrinsic value. A move in a practice is good when it is well-constituted to be what it purports to be, namely a form of participation, and this in turn depends upon the way it is willed. At the same time, however, the value of a move in a practice can be seen as deriving from the difference it makes in the world of the practice. Rawls does not make this claim, but I believe it follows from his view. Every specific move is designed to promote some specific, practice-dependent end or set of ends, and this is one sense in which every move can be regarded as making a difference. But every well-made move can be regarded as making a difference in a more fundamental way, in virtue of its reflexive element. By

regulating herself according to the rules of the practice, an agent can be regarded as “upholding” those rules. To uphold rules is to sustain the normative structure they impose on the world. By making choices on the basis of the practice rules, an agent, along with other rule-abiding participants, contributes to making the context in which she acts such that it is properly described in terms of concepts and principles of the practice.

To illustrate: a judge who adheres to legal procedures in the face of widespread corruption makes her movements count as legal moves, and by the same token she does what is in her power to determine the normative character of the social order. That order may be very unstably constituted as a legal order, but the judge, by subjecting her own will to the rule of law, thereby does what she can to make the social world count as one in which the rule of law has real force.⁴¹ By making the law determinative of her own will as a citizen, she does her part to establish its authority over citizens as such. If this is so, then action on the basis of practice rules achieves something, it promotes an end. But the end it promotes is nothing other than itself. For to uphold the rules of a given practice is to contribute to making the world count as a place in which the only way to make a difference is to participate in that practice. In this sense, participation is its own end.⁴²

If these implications do follow, then the distinctive virtue of the practice conception is that it provides a way of satisfying the intuition that actions have value independently of their consequences, along with the intuition that actions have value in virtue of the difference they make in the world. On the practice conception, the property in virtue of which a move has intrinsic value is likewise the property in virtue of which it makes a difference for the better. That property is the property of being willed in accordance with the practice rules. Being willed in this way makes a move well-constituted as a form of participation, and therefore intrinsically good. And being willed in this way makes a move an instantiation of an authoritative principle and therefore determinative of a good world.

However the sense of “good” being invoked here is strictly practice-relative; the goodness of a move, while intrinsic to it, counts for nothing outside the world of the practice of which it is a part. And by the same token, the goodness of upholding a practice rule can only be acknowledged from within, from a perspective which already recognizes the authority of that rule. Hence the practice conception may be of limited philosophical interest. Because a move is a special case of action, its structure does not necessarily reveal anything about the nature and value of action as such. Rawls is explicitly aware of this. He writes,

It is my feeling that relatively few actions of the moral life are defined by practices and that the practice conception is more relevant to understanding legal and legal-like arguments than it is to the more complex sort of moral arguments.⁴³

This feeling notwithstanding, I want to show that there is a way to generalize the practice conception. Indeed I want to suggest that a generalized version of

it underlies Kant's practical philosophy. The suggestion is that Kant conceives of action *as such* as a form of participation.

VI. Freedom as a practice

I mentioned earlier that Kant often draws an explicit analogy between action and legislation. But the discussion of practices indicates that there may be a more precise analogy between action and participation. This comes out most clearly in Kant's discussion of the Formula of Universal Law. In asking whether or not a proposed action can be willed as a universal law, it is necessary to think of the action as instantiating a rule. Moreover the rule is to be conceived as having the kind of universal necessity characteristic of practice rules, rather than the mere generality of rules of thumb. In addition, the question implies that our relation to our maxims, like that of the participant to the practice rules, is analogous the dual relation of a subject/legislator. We are to conceive of our actions as instances of rule-following which have the effect of rule-making. These observations provide initial reasons for thinking that the conception of action as a move in a practice is operative in Kant. In what follows, I am going to offer some deeper reasons for thinking this is so. But first a caveat about this section: here I can only sketch the interpretation I have in mind, and to point to some places in Kant's text which lend it plausibility. A full defense of this interpretation would of course require another paper.⁴⁴ What I hope to achieve by merely suggesting this reading is to raise the possibility that Kant's moral theory employs a distinctively constructivist conception of action, one which combines elements of the utilitarian and rational intuitionist conceptions but which does not collapse into either one of those models.

One of the main conclusions of Kant's first *Critique* is that the concept of freedom has no application from the theoretical point of view. Theoretical reason in its speculative use leads us to form a negative concept of freedom, as a causality which operates independently of natural necessity. However reason provides us with no warrant to employ this concept positively in cognizing the world as an order of experience. But Kant goes on to argue in his practical philosophy that the concept of freedom acquires a legitimate positive use from the point of view of agency. My suggestion is that Kant finds a way of applying the concept of freedom to the world only by conceiving of it as the specification of a practice. Something will have to be said, of course, about how the practice of freedom is different from ordinary practices like baseball and promising. But first let me show how the analogy is supposed to work.

Kant states straightforwardly that the "vacant place" left by the lack of a positive concept of freedom is filled by "a determinate law of causality in an intelligible world..."⁴⁵ Freedom is in the first instance a volitional law, a rule commanding us to determine our causality in a certain way. We are conscious of this law and its authority, Kant maintains, when we are conscious of being required and therefore able to act from the motive of duty regardless of all inclination, including the inclination to preserve our lives. The law of freedom

thus addresses us as beings in a position to exercise a distinctive power, the power to determine our causality independently of nature. In this way, the awareness of freedom as a law makes us aware of freedom as a capacity which we possess. In addition, Kant maintains that our awareness of freedom as a law makes us aware of ourselves as members of an “intelligible world,” a totality ordered by the law of freedom. Thus freedom is represented from the practical point of view as a law, as a capacity, and as a world.

The important point for my purposes is that Kant does not present these as separate concepts. Freedom as unconditional law and freedom as a capacity to be determined independently of nature are, he states, concepts which “reciprocally imply one another.” And he suggests that instead of being “in fact different” concepts, the former may be merely the “self-consciousness” of a being possessed of the latter.⁴⁶ Similarly, Kant regularly identifies the law of freedom by referring to the world it governs, calling it a “law of causality in an intelligible world,” or a “law of the possibility of a supersensible nature.”⁴⁷ All of this suggests that from the practical point of view, freedom is no more a law than it is a capacity or a world. These are all aspects under which the concept gains significance from the perspective of agency.

Now Kant maintains that freedom in all three of its aspects—as law, capacity, and world—is not to be thought of as something cognizable according to theoretical reason. As a law, freedom is a “synthetic a priori proposition that is not based on any intuition, either pure or empirical...”⁴⁸ Freedom as a law is in this sense unlike a technical rule of thumb, which is necessarily arrived at by a process of empirical generalization. Cumberland called such empirically-based rules “practical propositions” and Rawls called them “summary rules.” In Kant’s terminology they are “rules of skill”, and they are inadequate to the concept of a law because the necessity they carry is conditional on the agent’s wanting to produce the specified effect. Like any practice rule, freedom as a law is defined *a priori* and applies unconditionally to all agents within its domain.

Similarly, Kant maintains that freedom as a capacity is not to be thought of as a property pertaining to us as objects of cognition. A rational being is conscious of this capacity, he states, “not, indeed, by a special intuition of itself but according to certain dynamic laws that can determine its causality...”⁴⁹ I take it that the sense of “can” here is not meant to refer to physical possibility or to anything analogous to physical possibility. Kant is adamant that the question whether or not I “can” act on the moral law is distinct from the question whether it is within my natural power to bring about some effect. And yet he states that the thought that I “can” act according to certain laws is constitutive of my capacity for freedom. The way to read this, I suggest, is on analogy with the capacities defined by practice rules. To say that a judge has a capacity to punish a defendant is to say that she is possessed of a power which is not natural but acquired. The judge is in a position, normatively speaking, to act on rules which are constitutive of the power to punish. Similarly, we might interpret the claim that rational beings have a capacity for freedom as a claim that such beings are in a position, normatively speaking, to act on rules which are

constitutive of the power of freedom. On this reading, freedom as a capacity is an acquired power which attaches to us in virtue of our subjection to the law of freedom, and not a natural power with which we might be endowed independently of that law. (I will have more to say about this later.)

This way of thinking about freedom as a capacity fits in with the way Kant talks about of freedom as an intelligible or supersensible order. Freedom as a world, like freedom as a law and freedom as a capacity, is not to be conceived as an object of experience. To think of it theoretically would be to think of it as a state of affairs, something which could either exist already as a matter of fact or which could be brought about in the future as a result of our striving.⁵⁰ Instead, Kant speaks of our relation to the intelligible world in a way which recalls the dual subject/legislator relation of a participant in a practice. On the one hand, Kant states that the consciousness of our subjection to the law of freedom “puts” or “transfers” us into a “sphere quite different from the empirical,” an “intelligible order of things” which is governed by practical rather than natural necessity.⁵¹ On the other hand, Kant indicates that the same awareness of our subjection to law carries with it an idea of ourselves as capable of creating that order simply by acting on its law. He writes, “we are conscious through reason of a law to which all our maxims are subject, as if a natural order must at the same time arise from our will.”⁵² It makes sense, I think, to conceive of this relation on analogy with the relation between the conscientious judge and the fragile legal order she strives to uphold. The thought of our subjection to a law of freedom is the thought of our allegiance to an ideal practical order, an order with which we identify ourselves. And we can be regarded as making that ideal real simply by living up to it, by making it determinative of our wills, regardless of the actual results of our conduct.⁵³

My exegetical claim, then, is that it may be possible to interpret Kant’s account of pure practical reason as the specification of a practice of freedom. Our consciousness of the law of freedom is a consciousness of a practice rule which applies to us unconditionally, and which is constitutive of our powers insofar as we are subject to it. In acting on that law, we see ourselves simultaneously as living up to an ideal conception of the world with which we identify, and as doing what we can to make that ideal descriptive of the world within which we must act.

Now suppose Kant does think of freedom as a kind of practice. How is this practice specified? The distinguishing feature of the law of freedom, according to Kant, is its formality. This law commands us to do nothing more than to act on the basis of principles which could serve as universal laws for a world which has the scope of an order of nature. If it is right to think of universal laws on the model of practice rules, then the law of freedom can be thought of as an indeterminate practice rule, one which simply requires us to make every movement as if it were to count as a move in some possible global practice. But why should this abstract, formal practice count as a conception *freedom*? What is the point of identifying the notion of freedom with this seemingly indeterminate practice?

VII. Action as the exercise of authorial power

Rawls states that a practice amounts to “the specification of a new form of activity.”⁵⁴ I want to suggest that on Kant’s view, the new form of activity specified by the practice of freedom is action itself. This no doubt sounds odd, since the notion of a practice as Rawls uses it presupposes the notion of an action. According to Rawls, a move is a special case of an action, and this is why insights about the nature of moves may be of very limited significance. However I think it is fruitful to read Kant in light of a broader notion of a practice, one according to which an action is a special case of a move. To make a move in this broader sense is simply to determine yourself as a cause according to some principle or other. The view I am attributing to Kant is that only some such determinations are fit to count as exercises of the power of *free* causality, and hence as action proper.

The intuitive idea is this: as Kant sees it, to act on the basis of heteronomous principles is to play nature’s game, to act as if its laws counted as practice rules for you. But nature’s game does not put you in a position, normatively speaking, to make the kind of difference in the world which is constitutive of action proper. By playing nature’s game, you put yourself in the role of a mediate cause in a nexus of mediate causes, and you thereby acquire only the limited powers associated with that role. By contrast, to act on the basis of autonomous principles is to take up the role of a first cause a realm of first and mediate causes. By subjecting yourself to this practice and assuming this role, you acquire the power of freedom, a power to affect the world in a way that only an agent can.⁵⁵

Let me briefly sketch how this interpretation might go. Kant holds that human beings are characterized by faculties of cognition and desire. The faculty of desire, he writes, “is the faculty to be, by means of one’s representations, the cause of the objects of these representations.”⁵⁶ Kant maintains, moreover, that we necessarily exercise this faculty of causality in accordance with some principle or other, a principle which we implicitly or explicitly take as having law-like authority over us as causes. Candidate principles fall into two categories, material and formal. To will according to a material practical principle is to act purely on the basis of the desirability of some intended consequence. Kant writes,

By “the matter of the faculty of desire” I understand an object whose reality is desired. Now, when desire for this object precedes the practical rule and is the condition of its becoming a principle, then I say (*first*) that this principle is in that case always empirical. For, the determining ground of choice is then the representation of an object and that relation of the representation to the subject by which the faculty of desire is determined to realize the object.⁵⁷

Material willing is volition which is exclusively instrumental, or “consequence-directed.” Kant calls material practical principles “empirical” because he believes their authority over an agent in any given case depends upon a relation between the agent and the represented object which can only be established *a*

posteriori. This is so, Kant claims, because one who acts purely for the sake of bringing about a desired object is necessarily motivated by “the feeling of agreeableness that the subject expects from the reality of [the] object...”⁵⁸ Kant’s assumption here seems to be that one who wills instrumentally is ultimately motivated by the feeling of “gratification expected from the object.”⁵⁹ He claims this is so, moreover, regardless of whether the representation of the object has its source in the senses or in the understanding. An instance of instrumental willing which is aimed at helping the poor is in this respect on par with one which is aimed at eating one’s favorite food; both are ultimately motivated by a feeling the agent happens to have, an expectation of agreeableness which is based upon nothing more than an empirical relation between a certain type of cause and a certain type of effect.

Kant believes that as biological beings, we have an instinctive tendency to will in this way, to treat our empirically-conditioned desires for objects as if they in themselves constituted sufficient reasons for action.⁶⁰ This moral psychology is no doubt open to challenge, but any attempt to defend it here would draw me too far afield.⁶¹ The important point for my purpose is that as Kant sees it, an agent who allows a material practical principle to govern her will thereby allows natural necessity to be the ultimate determinant of her faculty of desire. She does not, therefore, determine herself *as* a free being, a being which has the capacity to act on the basis of rational necessity independently of nature. Instead she acts as a merely natural cause, as a being whose causality counts only as a species of natural causality.

So stated, Kant’s claim seems to be that one who acts on material principles does not really *act*, does not exercise free will, because she subjects her will to natural necessity. But unless the agent in question behaves wantonly in the extreme, this characterization can seem inappropriate. To the extent that action on material principles is calculated and controlled, it is hard to see why it couldn’t properly be regarded as an exercise of agency. A sophisticated act-utilitarian, for example, does not obviously surrender to the forces of nature. Her ultimate practical concern is indeed governed by natural necessity in the sense that it is determined by the way she and others are affected by natural forces. But she views herself as one who is in sufficient control of herself and the causal levers to count as active in the promotion of empirically-determined ends.

However I think the Kantian position is indeed that action on material principles, including the action of the sophisticated act-utilitarian, is a degenerate form of action proper. Kant would maintain, I think, that the act-utilitarian’s conception of how we are active in relation to the world is not adequate to the concept of agency proper. This is because the act-utilitarian identifies her freedom with her empirical power to produce effects. Kant’s view, I take it, is that it is open to us to apply a more radical conception of freedom to ourselves.⁶² The analogy with practice rules suggests that freedom is analogous to the power which participants in a practice acquire by subjecting themselves to practice rules. I am going to call this “authorial power.” Whereas empirical power is the

power to make things *happen*, authorial power is the power to make things *count*. As natural beings, participants have the power to make movements; but as participants, they have the power to impose on their movements the status of moves. This power is neither supernatural nor straightforwardly natural. Instead it is artificial, in Hume's sense.⁶³ A judge acquires the power to punish only by participating in a background convention. That convention is an artifice, in the sense that it is constituted by nothing more than the convergence of mutually shared and reciprocally recognized attitudes. So the power to give the world a supersensible nature is ours only "from a practical point of view," in virtue of a complex of shared attitudes and intentions.⁶⁴

On the reading I am proposing, Kant identifies agency with the power to make things count. Since the power to make things count is artificial, it can only be attributed to us on the basis of a conception of ourselves as participants in some background practice. But the background practice which makes us agents *per se* has to be special; it cannot be on par with any of the specific practices I have been referring to as models. This is so because specific practices can only put us in a position to wield specific determinations of authorial power (like the power to "punish," or to "steal a base"). To be an agent, by contrast, is to be in a position to wield authorial power as such. Kant's view, I take it, is that the purely formal practice of freedom is the correlate of this conception of agency. Just as the idea of authorial power as such is arrived at by abstracting from the specific content of any particular exercise of authorial power, so the content of that practice of freedom is arrived at simply by abstracting from the content of any specific practice. The role this practice assigns to every individual is simply that of a being who shares in the collective power to uphold or to undermine the normative structure of the world (regarded as a context of action) simply by willing in accordance with that necessity. A participant in the practice of freedom is therefore nothing more or less than an agent, a being in the position to wield authorial power as such.

Kant's language suggests such a picture. Every agent conceives of herself in a "twofold way," namely as an "object affected through the senses" and as "an intelligence...independent of sensible impressions in the use of reason."⁶⁵ It is with this latter representation that an agent identifies her will, and so subjects herself to the moral law. And in so doing, she conceives of herself as a member of a "world of understanding," a world which is governed independently of natural law but which "contains the ground of the world of sense and so too of its laws."⁶⁶ Because she must act within a sensible order, the free agent is in a position to exercise empirical causality. But because she identifies herself with her freedom, she sees herself as making things happen within a normatively structured world of which she is a co-author. The proper effect of free action, Kant writes, is "to furnish the sensible world, as a sensible nature (in what concerns rational beings), with the form of a world of the understanding, that is, of a supersensible nature, though without infringing upon the mechanism of the former."⁶⁷ Thus from the perspective of the autonomous agent, the world is not

at bottom a more or less useful mechanism, something she can work. It is more fundamentally the embodiment of a practical normative structure, something she can uphold.

Recall the two previous conceptions of action. On the utilitarian model, action is an exercise of empirical causality. It is the purposive use of our power to alter the course of events according to natural laws. On the Wollastonian model, action is not really an exercise of causality at all. Instead it is an exercise of our cognitive capacity to represent things as they are. The Kantian conception is distinct from both of these because it holds that action is an exercise of authorial causality. Authorial causality, like Aristotelian formal causality, is the constitutive power to organize given materials in such a way as to make them describable as a unified substance governed by its own law. Action, on Kant's view, is the power to organize our movements in such a way as to make them constitute moves, and in so doing, to organize our natural world in such a way as to make it constitute a realm of freedom. To the rational intuitionist, Kant would say that our authorial power is what originally gives the world the character of a normative order to which our wills could conceivably conform or fail to conform. To the utilitarian, he would say that it is only in virtue of our authorial power that we can be truly active in relation to the world in which we find ourselves.⁶⁸

VIII. Conclusion

The constructivist conception of action, though not as straightforward as the previous two, has the virtue of combining characteristically consequentialist and deontological intuitions. On this account, an action's value is determined both by the way it is willed and by the difference it makes, because these end up amounting to the same thing. By determining our wills in accordance with the practice of freedom, we make our behavior count as an intrinsically good instance of action proper. And by so determining our wills, we contribute to making the world a good place, a place in which the only way to make a difference is to act. But Rawls' lesson was that the sense of "good" here is unavoidably practice-relative. So it is fair to ask whether this practice-relative sense of the "good" is identifiable with *moral* goodness. Even if the Categorical Imperative is the constitutive principle of action, why should it count as the supreme principle of morality?

To answer this on Kant's behalf it would be necessary to show that the practice of freedom has the features of unconditionality and overridingness which are characteristic of morality, and that it yields determinate principles which are recognizably moral in content. I will not attempt to do this here. Instead I will conclude by noting several of the objections which have to be met if the constructivist conception of action is to be defended:

1) The conception of action as participation holds that every determination of will has to conform to a formal ideal of participation in order to count as

action proper rather than as some degenerate form of action (i.e. mere behavior). But this runs against the intuition that there are purely private actions, like tying one's shoe or switching on the light. The constructivist has to explain how a social conception of autonomy can be the constitutive standard of these seemingly private actions.

2) Relatedly, the constructivist seems to be claiming that while action proper really makes a difference in the world, degenerate action only does so in a degenerate way. Action proper gives the world the character of an order of reasons, whereas degenerate action deprives the world of that character. But intuitively it seems that degenerate (i.e. heteronomous) action can contribute to making the world a place in which *bad* reasons are authoritative. Isn't defective action as much an exercise of authorial power as action proper?

3) Our capacity to participate seems to depend in part upon what others actually do; if others cannot or will not participate, the background conditions necessary for our own participation will be lacking. But our capacity to act does not seem to depend in the same way upon what others actually do. The constructivist must account for this disanalogy.

There are, no doubt, many other worries about the constructivist conception of action. But regardless of whether that account is ultimately defensible, I hope to have shown here that there is a substantive issue about how to conceive of the way action relates an agent to the world as a context of action. Different ways of conceiving of this relation account for deep structural differences between the main types of moral theory. By attending to these differences, we gain a better sense of what is at stake in endorsing one type of moral theory over another.

Notes

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¹Stephen Darwall, *The British Moralists and the Internal 'Ought': 1640–1740* (Cambridge: Cambridge University Press, 1995), p. 285.

²Darwall, *British Moralists*, p. 96.

³Darwall, *British Moralists*, p. 97.

⁴John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 5.

⁵Richard Cumberland, *A Treatise of the Laws of Nature*, originally published in Latin in 1672. Citations here are from the English translation by John Maxwell (London: R. Phillips, 1727). This passage is found on p. 196.

⁶Cumberland, *Treatise*, p. 18.

⁷Cumberland, *Treatise*, p. 233.

⁸Bernard Williams, "A Critique of Utilitarianism," in Smart and Williams, eds., *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), p. 115.

⁹Christine Korsgaard, "From Duty and For the Sake of the Noble: Kant and Aristotle on Morally Good Action," in Engstrom and Whiting, eds., *Aristotle, Kant, and the Stoics: Rethinking Happiness and Duty* (Cambridge: Cambridge University Press, 1996), p. 217.

¹⁰The phrase is from Samuel Scheffler's *The Rejection of Consequentialism*, revised edition (Oxford: Clarendon Press, 1994), p. 112. See also his "Agent-Centered Restrictions, Rationality, and the Virtues," first published in *Mind* 94 (1985): 409–19 and reprinted as an appendix to *The Rejection of Consequentialism*, pp. 133–51. For an earlier statement of the problem, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., 1974), pp. 28–30. For other discussions, see Thomas Nagel, *The View From Nowhere* (New York: Oxford University Press, 1986), pp. 175–85; Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989), pp. 24–39; Christopher McMahon, "The Paradox of Deontology," in *Philosophy and Public Affairs* 20 (1991): 350–77; and Arthur Applbaum, "Are Violations of Rights Ever Right?" in *Ethics*, vol. 8, no. 2 (January, 1998): 340–66.

¹¹Francis Kamm, "Non-consequentialism, the Person as an End-in-Itself, and the Significance of Status," *Philosophy and Public Affairs* 21, no. 4 (fall 1992): 354–89. Kamm writes, "It is not our duty to bring about...agent-neutral value, but only to respect the constraints that express its presence." (p. 386)

¹²Kamm, "Non-consequentialism," p. 386.

¹³On punishment see, for example, Jean Hampton's contributions to Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988), esp. pp. 35–87 and pp. 111–61, and Joel Feinberg, "The Expressive Function of Punishment," *Monist* (1965) 49: 397–423. On voting, see Robert P. Abelson, "The Secret Existence of Expressive Behavior," *Critical Review* 1995: 9(1–2), 25–36. For a more general expressivist theory of action which differs from Kamm's, see Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, MA: Harvard University Press, 1993), chapter 2. On Anderson's view, the standard of action *qua* expression is not truth but rather "adequate expression." She writes, "practical reason demands that one's actions adequately express one's rational attitudes toward the people and things one cares about." (p. 18) This criterion of "adequate expression" is something like a standard of sincerity or articulateness, and thus it would strike Kamm as being objectionably agent- or convention-relative. For Anderson's response to this worry, see pp. 18–19.

¹⁴William Wollaston, *The Religion of Nature Delineated* (1722), excerpted in *British Moralists: 1650–1800*. vol. I, ed. D.D. Raphael (Indianapolis: Hackett Publishing Co., 1991), pp. 239–58.

¹⁵Wollaston, *Religion of Nature*, p. 243.

¹⁶Wollaston, *Religion of Nature*, p. 240.

¹⁷Wollaston, *Religion of Nature*, p. 242.

¹⁸Kamm states that action in conformity with deontological constraints "reveals what it is permissible to do, that is, what the status of any person is." (p. 386, my emphasis) That status, moreover, is something which Kamm claims pertains to us as a matter of fact: "What makes us as inviolable as we in fact are?" she asks. "It is simply certain properties that we have as individuals." (p. 383)

¹⁹Kamm is not precise about the relation between such normative facts and empirical facts, though she indicates that the former in some way depend upon the latter.(p. 383)

²⁰"These propositions, which are true, and express things as they are, express the *relation* between the subject and the attribute as it is: that is, this is either affirmed or denied of that according to the nature of *that relation*." (Wollaston, *Religion of Nature*, p. 244)

²¹David Hume, *A Treatise of Human Nature*, 2nd ed., L.A. Selby-Bigge, ed. (Oxford: Oxford University Press, 1978), pp. 458–59: "But perhaps it may be said, that tho' no will or action can be immediately contradictory to reason, yet we may find such a contradiction in some of the attendants of the action, that is, in its causes or effects. The action may cause a judgment, or may be *obliquely* caus'd by one, when the judgment concurs with a passion; and by an abusive way of speaking, which philosophy will scarce allow of, the same contrariety may, upon that account, be ascribe'd to the action."

²²G 4 : 427; C2 5 : 58; MPV 6 : 381, 6 : 384–85; R 4. All citations are from *The Cambridge Edition of the Works of Immanuel Kant*, Allen Wood and Paul Guyer, eds. (Cambridge: Cambridge University Press, 1996). Academy volume number and pages are cited. Abbreviations are as follows:

- G Groundwork of the Metaphysics of Morals (1785)
- C2 Critique of Practical Reason (1788)
- MPV Metaphysical First Principles of the Doctrine of Virtue (part II of the Metaphysics of Morals [1797])
- R Religion Within the Limits of Reason Alone (1793)

²³G 4 : 399–400; C2 5 : 19.

²⁴G 4 : 446.

²⁵John Rawls, “Two Concepts of Rules,” *The Philosophical Review* 64 (1955): 3–32. Reprinted in Samuel Freeman, ed., *John Rawls: Collected Papers* (Cambridge, MA: Harvard University Press, 1999), pp. 20–46. Page numbers are from the 1955 article.

²⁶Rawls, “Two Concepts,” p. 25.

²⁷The references assume a background of cultural knowledge which is, unfortunately, specific to the U.S.A. I apologize to readers unfamiliar with the Great American Pastime.

²⁸Rawls, “Two Concepts,” p. 25.

²⁹Rawls, “Two Concepts,” p. 24. Rawls claims that a practice sets up a new form of activity, and I am adding to this the idea that a practice sets up a new (practical) world. Rawls does not use this language himself, but I think it is helpful and in keeping with his notion of a practice.

³⁰For a comparable discussion of constitutive rules, see John Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969), sec. 2.5. John Hauge-land offers a critique of both Rawls and Searle in “Truth and Rule-Following,” in his collection, *Having Thought* (Cambridge: Harvard University Press, 1998), pp. 318ff.

³¹I am grateful to Thomas Scanlon for urging me to address this objection.

³²Correspondingly we might say that instead of “making the move,” she merely “goes through the motions.” The relation here is analogous, I think, to the relation of “homonymy” which Aristotle claims holds between functioning and nonfunctioning organic parts of the same name. In *Metaphysics Z*, Aristotle states that a dead finger is “a finger in name only,” and thus no more a finger than one painted in a picture or made out of wood (1035b24–25). Similarly, I want to suggest, the act of Rawls’ utilitarian judge is an act of “punishment” in name only. For further references on this use of “homonymy” in Aristotle, see Mary Louise Gill, *Aristotle on Substance: The Paradox of Unity* (Princeton: Princeton University Press, 1989), p. 129, n. 39.

³³Rawls, “Two Concepts,” p. 27.

³⁴Christine Korsgaard puts the problem this way in her article, “Self-Constitution in the Ethics of Plato and Kant,” *The Journal of Ethics* 3: 1–29, 1999. Peter Railton takes this problem to be fatal to any argument which make conceptual necessity the source of practical normativity, claiming that such arguments invoke principles which as a matter of conceptual fact cannot be violated. (Railton, “Normative Force and Normative Freedom: Hume and Kant but not Hume *versus* Kant,” paper presented to the Harvard University Philosophy Department, October 1999. The paper will appear in *Ratio*, special number, Jonathan Dancy, ed.). My brief defense of Rawls is informed by Korsgaard’s discussion of “defective action” in the “Self-Constitution” article.

³⁵I am extremely grateful to Luca Ferrero for urging me to clarify this point.

³⁶Actually, there is a further issue here about whether or not the robber’s game is properly construed as a practice. I think it would be consistent with Rawls’ position to argue that there are internal standards a social activity must meet if it is to count as a practice, and that social activities can be defective relative to this standard. The Kantian extension of Rawls’ ideas which I offer in the last sections of this paper suggests that such standards are nothing other than the principles of morality.

³⁷For readers unfamiliar with the rules of American baseball, the operative idea here is that of “killing two birds with one stone.”

³⁸In principle, actions which violate practice rules cannot promote practice ends. This may appear counterintuitive, since the familiar offense of “cheating” seems to presuppose that they can. But strictly speaking, cheaters don’t strive to win; they strive to simulate winning, and thereby to reap the rewards of the victor. A student cannot “earn a perfect score” on a test by copying her neighbor’s paper. All she can achieve by this means is to generate the appearance of having earned a perfect score.

³⁹Here I am helping myself to the conclusion of Christine Korsgaard’s article, “The Normativity of Instrumental Reason,” in *Ethics and Practical Reason*, Garrett Cullity and Berys Gaut, eds. (Oxford: Clarendon Press, 1997), pp. 244ff. There she argues that the instrumental principle is constitutive of any act of willing an end. Other accounts of the normativity of instrumental reason might also be compatible with the claim I make here.

⁴⁰Hence there is a tendency to say of a team that plays the game extremely well: “they really *know how to play*.”

⁴¹The power to uphold a rule simply by following it is subject to limitations. Where the background conditions necessary for the meaningful establishment of the practice have been undermined (due to adverse natural conditions or to the noncompliance of others), it may be impossible to give rules force simply by acting on the basis of them. This is the problem of “nonideal conditions.” See Rawls, *A Theory of Justice*, sec. 39.

⁴²Christine Korsgaard traces the action/production distinction to Aristotle’s distinction between *techné*, which is undertaken for the sake of some further end, and *praxis*, which is its own end. See her “From Duty and For the Sake of the Noble,” p. 217. Here I am offering a different but entirely compatible way of understanding how action can be its own end.

⁴³Rawls, “Two Concepts,” p. 32, nt. 27.

⁴⁴One way of supplementing the argument I present here would be to show in much more detail how the conception of action as participation bears on “the problem of relevant act descriptions.” (See Onora Nell [O’Neill], *Acting on Principle: An Essay on Kantian Ethics* [New York: Columbia University Press, 1975].) The problem is to determine which of several possible ways of describing a particular action is the right one to use for the purpose of evaluating an action under one or another formulation of the Categorical Imperative test. The claim that within Kant’s theory an action is properly conceived as a move might function as a constraint on relevant act descriptions.

⁴⁵C2 5 : 49.

⁴⁶C2 5 : 29.

⁴⁷C2 5 : 49; C2 5 : 48.

⁴⁸C2 5 : 31.

⁴⁹C2 5 : 42.

⁵⁰C2 5 : 45.

⁵¹C2 5 : 34 ; C2 5 : 42–43.

⁵²C2 5 : 44 .

⁵³I believe this is part of what Korsgaard has in mind when she distinguishes between an “ideal” and a “goal.” See especially “The Right to Lie: Kant on Dealing with Evil,” in her collection, *Creating the Kingdom of Ends* (New York: Cambridge University Press, 1996), p. 150. An ideal is something to be upheld, whereas a goal is something to be brought about. This is because an ideal is a conception of the world as a totality which embodies or should embody a certain normative structure, whereas a goal is a conception of something of value within a world the normative structure of which is already constituted.

⁵⁴Rawls, “Two Concepts,” p. 24.

⁵⁵There is of course a question of circularity here. If this original act is conceived as an act of choice, it seems to presuppose freedom. But then freedom can’t be a capacity which is acquired as a result of the choice. Kant regards this circularity as an unavoidable “contradiction” which arises from the attempt to arrive at an *explanation* of freedom: “To look for the temporal origin of free actions as free (as though they were natural effects) is therefore a contradiction; and hence also a contradiction to look for the temporal origin of the moral constitution of the human being, so far as

this constitution is considered as contingent, for constitution here means the ground of the *exercise* of freedom which (just like the determining ground of the free power of choice in general) must be sought in the representations of reason alone” (R 6: 39–40). To explain freedom as the product of a process, Kant maintains, is inevitably to describe it as something it is not. The characterization of freedom which I offer here, namely as an acquired capacity on the model of practice powers, is not intended to explain how freedom is possible.

⁵⁶MM 6 : 211.

⁵⁷C2 5 : 21.

⁵⁸C2 5 : 22.

⁵⁹C2 5 : 23

⁶⁰C2 5 : 74.

⁶¹For one such defense, see Christine Korsgaard, “Motivation, Metaphysics, and the Value of the Self: A Reply to Ginsborg, Guyer, and Schneewind,” in *Ethics* 109 (October 1998): 49–66.

⁶²Had he lived later, Kant might have characterized heteronomous action as a form of alienated labor.

⁶³David Hume, *Treatise*, “Of the origin of justice and property” (III.ii.2) and “Of the obligation of promises” (III.ii.5). John Searle discusses the “counting as” relation in connection with social practices in his book, *The Construction of Reality* (New York: The Free Press, 1995), pp. 43–51. For an argument that the notion of “counting-as” is not the right one to use in this context, see Haugeland, “Truth and Rule-Following,” pp. 325–29, who suggests as an alternative the idea of “finding” or “letting be.” I side with Rawls and Searle on this issue.

⁶⁴By the same token, authorial power is essentially collective. This helps to answer the question of why Kant conceives of autonomy in social terms. For a treatment of this issue which is very close to mine, see Andrews Reath, “Legislating for a Realm of Ends: The Social Dimension of Autonomy” in Reath, Herman, and Korsgaard, eds., *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge: Cambridge University Press, 1997), pp. 214–39.

⁶⁵G 4 : 457.

⁶⁶G 4 : 453.

⁶⁷C2 5 : 43.

⁶⁸Kant suggests that the will is only truly active, only properly a cause of objects, when its own volitional laws are in some sense the source of the laws of the world in which it acts: “...the difference between the laws of a nature to which the will is subject and of a nature which is subject to a will (as far as the relation of the will to its free actions is concerned) rests on this: that in the former the objects must be the causes of the representations that determine the will, whereas in the latter the will is to be the cause of the objects...” (C2 5 : 44)