

The Normative Question and the Rules of Moral Salience

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ABSTRACT: In a series of influential papers, Barbara Herman claims that Kantian agents cannot sufficiently justify an answer to the normative question (What should I do?) without some form of pre-deliberative moral knowledge (the Rules of Moral Salience, or RMS). On this point, I agree. I corroborate her normative claims, and provide some textual support that suggests that Kant is implicitly committed to the RMS. Herman also claims that the Moral Law is sufficient to justify the RMS, thus preserving the unity of the Kantian answer to the normative question. On this point, I disagree. I argue that the RMS must determine the extension of the Moral Law, and that therefore they cannot be justified by the Moral Law. I conclude that Kant's system is not sufficient to justify an answer to the normative question.

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The role of Kant's Categorical Imperative procedure is to provide agents with an answer to the so-called normative question (What should I do?).¹ However, an acceptable interpretation of the precise nature of the procedure has proved elusive. One popular interpretation entails an implausibly rigorous normative philosophy. Another fails to provide determinate guidance. A third, Barbara Herman's, avoids both worries.² However, Herman's account introduces a class of normative rules, the Rules of Moral Salience (RMS), that are not found in Kant's explicit discussion. Here, I will argue (with Herman) that Kantians need the RMS, and then (against her) that appeal to the RMS means that the unity of the Kantian system cannot be preserved. The Moral Law cannot justify the RMS, and therefore Kantian agents do not have sufficient resources to justify an answer to the normative question.

1. The Role of the CI Procedure and the Normative Question

Many moral philosophers have thought that the role of the CI procedure is to derive one's moral duties. Indeed, Kant seems to say as much immediately after introducing the Formula of Universal Law in *Groundwork II*. This passage – "all imperatives of duty can be derived from [the CI]"³ – is taken to imply that, CI in hand, we are poised to generate a list of exceptionless moral prohibitions: one ought not lie, commit suicide, etcetera.⁴ These supposed duties are highly general, so it is unsurprising that they are also often implausible: Kantians are committed to thinking that lying about someone's shoelace being untied is morally wrong, even if this lie

¹ See *KpV* 5:20-2, *MdS* 6:222, and *GMS* 4:414.

² See Herman 1985 (hereafter *PMJ*) and Herman 1993 (hereafter *MDDD*).

³ *GMS* 4:421

⁴ *GMS*, 4:421-3, cf. *MDDD* 133

stops a nuclear weapon from detonating in downtown Atlanta; Kantians are committed to thinking that surprise parties are morally impermissible; and so on.

Luckily, the balance of textual evidence does not support this interpretation. Rather, Kant seems to be suggesting that the CI is a procedural rule regulating moral judgment. On this reading, an individual in a particular set of circumstances with a particular reason for action can test a maxim of action ("I ought to do x in c for the sake of e") for its permissibility. Rather than generating universal duties, the CI provides constraints on moral deliberation in a way that is sensitive to the agent's perception of his circumstances. So understood, the CI procedure disallows certain *maxims* ("I should lie in order to get some ready money"), rather than delivering blanket prohibitions for classes of *action*.

Kant's examples in the *Groundwork* support this reading. In the lying promise case, Kant's man tests the maxim, "when I believe myself to be in need of money I shall borrow money and promise to repay it, even though I know that this will never happen."⁵ What he learns is that it is impermissible to undertake an action *willed in this way*. The discussion does not indicate that he learns anything more general, and there is not much reason to infer anything stronger than what Kant explicitly claims. This reading also helps make sense of the fact that the CI procedure is not used to derive duties in the *Metaphysics of Morals*. If the derivation-of-duties account were true, this would be quite surprising.⁶

Although the deliberative-constraint reading is better, it is still problematic. This is because the same action, described under different but equally accurate maxims, will pass in one instance, fail in the other. For example, "I ought to make a lying promise in order to get some ready money" will fail to universalize, but "I ought to make a lying promise on March 19, 2011 at 2pm" will not. If the latter maxim were a universal law, the institution of promise-keeping would hardly suffer a collapse. The problem is that, because the date and time are morally irrelevant features of the action, the procedure generates a false positive. For this interpretation to work, then, Kantian agents must know how to formulate maxims so as to include all and only the morally relevant features of their proposed actions.

We must suppose, in other words, that Kantian agents are not morally naive. Kant himself supposes as much. In *Groundwork I*, he claims that "it would be easy to show how common human reason...knows very well how to distinguish...what is good and what is evil," and he is clear that the task of the *Groundwork* is to make explicit to agents what they already know, to make them "attentive to [their] own principle."⁷ The question – which Kant leaves unanswered – is about the nature of agents' pre-procedural moral understanding.

This much is clear. Since moral evaluation is required in advance of the CI, Kantians are committed to the existence of some kind of pre-deliberative normative constraints. These norms of maxim formation are what Barbara Herman calls the Rules of Moral Salience (RMS).⁸ The RMS, Herman says, "structure an agent's perception of his situation so that what he perceives is a

⁵ *GMS*, 4:422

⁶ *MDDD*, 133

⁷ *GMS*, 4:404

⁸ *PMJ*, 418ff; cf. *MDDD*, 151

world with moral features. They enable him to pick out those elements of his circumstances or his proposed actions which require moral attention."⁹ They tell us when moral deliberation is appropriate, and (relatedly) how to formulate our maxims so as to ensure that the morally salient features of our actions are the ones being tested.

Although this suggests that Kant was committed *de jure* to something like the RMS, is there any evidence of a *de facto* commitment? Herman recommends looking at Kant's discussion of moral education,¹⁰ but I do not think that this discussion provides much help. Although Kant is clear that virtue must be acquired,¹¹ this does not imply that there are acquirable RMS.

For Kant, virtue is a kind of strength in opposing natural inclinations.¹² Strength in this capacity is "something [we] must acquire; and the way to acquire it is to enhance the moral incentive."¹³ It seems odd to think that enhancing the moral incentive would be of any use in acquiring RMS. It makes more sense to understand Kant as claiming that we must be taught to *choose* virtuous actions; not that we must be taught which features of actions are morally salient.

Kant's discussions of conscience, I think, are a better place to look for evidence of his commitment to the RMS. Kant describes conscience as "an unavoidable fact," the function of which is to pass judgment on an agent's maxims.¹⁴ Conscience pre-deliberatively flags instances of humiliation, deceit, and so on, with the moral emotions of guilt and shame. When I anticipate feeling guilt, my conscience is indicating that moral deliberation is required. When I feel guilty, my conscience is judging me for failing to deliberate correctly, or for failing to heed the results of my deliberation. Although Kant is less than admirably clear here, it seems reasonable to suppose that in describing conscience as a "fact", he means that it operates on implicit deliberative presumptions. Certainly, he cannot mean that conscience is *lawless* – it is a faculty of judgment, after all, and for Kant, judgments essentially involve the following of rules.¹⁵ The rules in question, I suggest, are the RMS.

Kant comes closest to making this explicit in his lectures in 1784-5, when he claims that "instruction must...bring to fruition that to which nature has already predisposed us; so we must...have prior knowledge of good and evil, if conscience is to judge," and that, "though our understanding may be cultivated, conscience [itself] does not need to be."¹⁶ For an individual conscientious agent, the deliberative presumptions of conscience are a kind of fact, the *understanding* of which must be cultivated.

Interestingly, the *Groundwork* itself provides further corroboration. When Kant introduces the lying promise case, he characterizes the moral agent as one who "would like to make such a promise," but "still has enough *conscience* to ask himself" whether doing so is

⁹ *PMJ*, 418

¹⁰ *PMJ*, 418, 434ff. Herman concludes that "there is not enough evidence to show the implicit presence of anything like rules of more [sic] salience in any of Kant's texts" (*PMJ*, 436).

¹¹ *MdS*, 6:477

¹² *MdS*, 6:394

¹³ *MdS*, 6:397

¹⁴ *MdS*, 6:400. See also Hill 2002, esp. pp. 301ff.

¹⁵ *KrV*, A/106

¹⁶ *LE*, 27:355-6

forbidden.¹⁷ Here, conscience alerts the agent to the fact that his proposed action has morally salient features.

Kant's discussions of conscience and his claims about ordinary moral consciousness therefore strongly suggest that he is implicitly committed to the idea that conscience acts as a vehicle for an agent's pre-deliberative awareness of something like the RMS.¹⁸ Appeal to the RMS also seems to enable a satisfying normative reconstruction of the role of the CI. This is all very promising. But if Kantians embrace the RMS, new problems arise.

2. *The Moral Law, Systematic Unity, and the RMS*

Here is the worry, in Herman's words: "The RMS may then seem to have – to have to have – an independent source...it does not seem possible for the RMS to be generated by the CI procedure. But if they are independent of the CI, the unity of the Kantian system is compromised."¹⁹ The "unity" at issue here is the sufficiency of the Moral Law in answering the normative question. If the CI is insufficient to answer the normative question, then the Kantian system illicitly relies on an apparently unprincipled set of RMS in its account of the source of normativity. A Kantian answer to the normative question would be justified "partly [by a] formal procedure and partly [by] something like pre-procedural intuition or convention."²⁰

Herman's solution is to remind us that "independence from the CI procedure...does not entail independence from the Moral Law."²¹ The idea is that the RMS depend on the Moral Law in the same way that the CI procedure does: they have their "foundation or source" in it.²² Specifically, Herman thinks, the RMS have their source in our experience of the Moral Law as the Fact of Reason, which both "asserts our susceptibility to moral experience" and "presents us with a conception of ourselves as moral agents."²³

It is helpful to get clear on what we are committed to about this "source" relationship. Since the relationship is posited in order to preserve the unity of the Kantian system, the Moral Law (plus the relevant non-moral facts and commitments; hereafter, "the facts") must be *sufficient* to justify a candidate RMS. If it is not, then our commitment to the RMS will be justifiable in virtue of the Moral Law and some other moral commitment or commitments. These other moral commitments will then have to be justified as well, and unity will be preserved only if the Moral Law and the facts are sufficient to justify them.

The Moral Law is also *necessary* for the justification of the RMS, in at least one specific sense. It is necessary for a rule to justifiably count as a *moral* rule. If it were not, then RMS

¹⁷ *GMS*, 4:422; my emphasis

¹⁸ Kant reiterates in 1793 that "it is the business of the understanding to examine whether an action be right or wrong; conscience presupposes this" (*LE*, 27:619). As late as the *Metaphysics of Morals*, he continues to emphasize that one has a duty to "sharpen one's attentiveness to the voice of the inner judge" (*MdS*, 6:400-1).

¹⁹ *PMJ*, 426

²⁰ *PMJ*, 426

²¹ *PMJ*, 426

²² *PMJ*, 427

²³ *PMJ*, 427

could flag situations as moral and be justified in doing so in virtue of the facts alone, and it is hard to imagine how that would work. So in order to be the "unified" standard of correctness for a RMS, the Moral Law must be necessary and sufficient to justify it. Herman claims that this is possible, since the RMS are just "an interpretation, in rule form, of...respect for persons...which is the object of the Moral Law."²⁴

It seems true that the Moral Law is necessary and sufficient to determine the *subject matter* of the RMS. If we ought morally to respect persons, rules about who counts as a person, and about the conditions of personhood, are morally salient, and the Moral Law explains why.²⁵ However, it is less clear that the Moral Law is sufficient to justify the *content* of these rules.

Admittedly, the Moral Law can provide some guidance in determining their content. It follows from the Moral Law that rational and free agents are to be accorded moral respect, so "if the RMS...fail to acknowledge the moral status of some group known to possess the relevant capacities, then it will be appropriate to criticize the RMS as faulty on these grounds."²⁶ A RMS can be wrong if it is *inconsistent* with the Moral Law or its associated guiding conception of moral persons.²⁷ For example, the Moral Law can rule out RMS that flag persons as occasions for murder on this count. A RMS can also be wrong on a *factual* basis. The Moral Law is sufficient to rule out RMS based on a factual mistake about whether some group satisfies Kant's criteria for personhood.²⁸

I think that a RMS can also be wrong in a third and more interesting way, one that Herman does not consider. In order to preserve the unity of the Kantian system, the Moral Law must be necessary for a given rule to count as a RMS and be the sufficient moral commitment for the justification of its content. Therefore, I think, a RMS can be wrong if the Moral Law is not necessary and sufficient to justify it in this way. In this case, the RMS is wrong in the sense that it does not stand in the right kind of relationship to the Moral Law. Not standing in this relationship means that it is a bad RMS in the sense that it should not be considered a *moral* rule.

For example, imagine a rule that flagged drawing triangles correctly as morally salient. This would be a bad RMS, and we can explain this by appeal to the fact that the Moral Law does not require that we take drawing triangles correctly to be morally salient. Similarly, consider a rule that flags instances of using "one's sexual attribute unpurposively"²⁹ as morally salient. It is plausible to think that the Moral Law is necessary for such a rule to count as morally salient, but insufficient for the justification of its content. Justifying the content of this rule would require the Moral Law plus another moral norm (perhaps a moral-teleological norm relating the value of individual humans to their role in the species). So Kantians can claim that this rule is a bad RMS, that it mistakenly takes the aimless use of the sexual attribute to be morally salient. This claim can be justified in terms of the fact that the Moral Law is insufficient to justify the rule.

²⁴ *PMJ*, 428-9

²⁵ *PMJ*, 428

²⁶ *PMJ*, 429

²⁷ I follow Kant (*GMS* 4:428) in referring to rational and free agents as *persons*.

²⁸ cf. *PMJ*, 430

²⁹ *MdS*, 6:425

If this is right, though, it poses a problem. The Moral Law commands us to respect persons – rational beings with the capacity to determine themselves by acting in conformity with the representation of laws.³⁰ Now consider a RMS that flags humans in persistent vegetative states as persons. Suppose that the occasion arises to deliberate about whether this RMS is justifiable. What we want to know is whether these beings should count as persons. Since they show no signs of the capacity to determine themselves according to laws, it is plausible to think that they are cut off from their personhood as a matter of fact, and so a rule that flags them as persons is wrong. But now consider a RMS that flags humans in fleeting but wholly debilitating pain as persons. Once again, these individuals are as a matter of fact cut off from their personhood; so, apparently, a rule that flags them as persons is wrong on an identical count.

Obviously, this is implausible. What we want to say is that humans in fleeting but wholly debilitating pain stand in the appropriate kind of modal relationship to personhood, and so should count as persons. But in what sense is a modal relationship "appropriate" here? Suppose we think that we should construe the class of beings with capacity *x* to include both beings that can exercise *x* immediately and beings that will have the ability to immediately exercise *x* in the near future. What justifies this particular modal configuration? Why not also include those who have had the ability to immediately exercise *x* in the past? How broadly should we construe the "near future"? Why not the distant future? And so on.

I want to suggest that these questions are best understood not as hard factual questions, but as irreducibly moral ones. To see this, ask yourself what kind of evidence we could possibly have for thinking that standing in a certain modal relationship to rational autonomy is sufficient to confer moral status on a being. Imagine that you are presented with the opportunity to steal from someone in fleeting, debilitating pain. What stops you? If you are a Kantian, what should stop you is your belief that this is a person, and thus a being deserving of respect. Although the facts seem to contradict this belief, many of us still want to insist that the belief is justified. This is relatively easy to explain if personhood is a moral status – a status conferred by our implicit deliberative moral presumptions, the RMS – and very hard to explain if personhood is a fact about a certain class of beings.

Alternatively, for those among us who do not deliberate in such situations, it seems plausible to think that what stops us from stealing is *conscience*, and so, again, the RMS.

When we ask, "Should we consider thus-and-such beings persons?", then, we are asking a moral question. But if that's right, the Moral Law must be sufficient to justify an answer to the question, and I cannot see any way that the injunction to respect beings with a certain capacity can help us decide who we ought to think of as possessing that capacity. In this case, the relevant RMS are tasked to *determine* the meaning and extension of the Moral Law. And the Moral Law cannot provide any justification for the content of rules that determine its own content.

One might object that the RMS are best understood not as constitutive of the content of the Moral Law, but as rules for regulating our behavior in accordance with it. I do not see how this helps. In order to provide a satisfying answer to the normative question, the Moral Law must

³⁰ cf. *KpV*, 5:32; *GMS* 4:427-8

provide a sufficient standard of correctness for RMS regardless of whether they are conceived as regulative rules or as constitutive rules, and, for the reasons given above, it is unable to do so.

Finally, one may object that since Kant derives the Moral Law from the nature of the rational will, it is implausible that he would also think that the Moral Law could exhaustively spell out who counts as having a rational will. I may appear to be criticizing Kant for failing to do something that he isn't trying to do. But what I have tried to show is that Kantians are *committed* to the RMS, that the Moral Law *determines* that rules about who counts as a person are RMS, and that the systematic unity criterion *requires* that the Moral Law is sufficient to justify the RMS. It is a problematic set of commitments, I agree, but nevertheless, it appears to me that Kantians are so committed.

3. *Concluding Remark*

Appeal to the RMS provides Kantians with the ability to sidestep worries about the viability of the CI procedure as a way of answering the normative question. However, in appealing to the RMS, the unity of the Kantian system is compromised. This is because the RMS determine the meaning and extension of the Moral Law, and so the Moral Law cannot provide normative guidance in picking between them. If the unity of the system cannot be preserved, then Kantian agents cannot sufficiently justify an answer to the normative question.

Finally, there is also a deeper worry to consider. One of the important upshots of Kant's Fact of Reason argument is that rational agents conceive of themselves, pre-procedurally, as moral agents. Since being a moral agent entails standing under the Moral Law, the Moral Law provides us with a kind of pre-reflective norm by which the RMS can be justified. Assume now that the Moral Law could justify the RMS. What justifies the Moral Law? What reason do we have to think that we *ought* to conceive of ourselves in this way? Surely the fact that we *do* pre-reflectively conceive of ourselves as moral agents will not suffice. The question about whether the Moral Law can justify the RMS is thus parasitic on the question of whether it can justify itself, and Kantians do not obviously have a satisfactory answer to this question, either.

In any case, it seems clear that Kantians need some additional account of the justification of the RMS. If they cannot give one, they are left without a sufficient answer to the normative question.³¹

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³¹ Thanks to Eric Wilson for many helpful comments on this paper.

References

To Works by Kant

References to Kant's works on moral philosophy are given using an abbreviation for the title followed by the volume and page numbers of the *Akademie* edition. References to the first critique are given using an abbreviation followed by the standard A/B edition pagination. The abbreviations and editions are as follows.

KrV: *Critique of Pure Reason*, Norman Kemp Smith, trans., (New York: St. Martin's, 1965).

KpV: *Critique of Practical Reason*, Mary Gregor, trans., ed., (Cambridge: Cambridge UP, 1997).

GMS: *Groundwork of the Metaphysics of Morals*, Mary Gregor, trans., ed., (Cambridge: Cambridge UP, 1998).

MdS: *The Metaphysics of Morals*, Mary Gregor, trans., ed., (Cambridge: Cambridge UP, 1996).

LE: *Lectures on Ethics*, J.B. Schneewind, trans., ed., and Peter Heath, trans. (Cambridge: Cambridge UP, 1997).

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