

On Onora O’Neill’s Critique of Rawls, and on Rawls’ non-Kantianism, with a little help from Charles W. Mills

Macarena Marey
CONICET

Abstract. In this paper I develop a sympathetic political reading of Onora O’Neill’s Kantian critique of Rawls’ constructivism, using critical tools from Charles Mills’ work too, with the aim of highlighting potential strengths of a modified Kantian political philosophy, tempered by awareness of structural issues relating to racism, sexism, imperialism, and classism. Also, in opposition to a widespread view, I think that Kant’s political philosophy is not constructivist, and that is a good thing because it makes it more able to account for structural injustices and systematic oppression.

Key words: constructivism, interaction, idealisation, justification, structural injustices, racism.

More than thirty years ago, Onora O’Neill published a well-known critique of Rawls: “Constructivism in Ethics”, which originally appeared in *Proceedings of the Aristotelian Society* (89, 1988-1989, Presidential Address, 1-17), and then was included as chapter 11 in her classic work *Constructions of Reason. Explorations of Kant’s Practical Philosophy* (Cambridge University Press, 1989). Together with another influential article by her, “Abstraction, Idealisation, and Ideology in Ethics” (*Royal Institute of Philosophy Lecture Series*, 22, 1987, 55-69), this text is one of the keenest critiques of the Rawlsian constructivist enterprise, which is understood in this framework as “ideal theory”. The terms of this critique were later retaken by Charles Mills in many of his works, such as his classic book *The racial contract* (Ithaca, Cornell University Press, 1997), and the paper “‘Ideal theory’ as ideology” (*Hypatia*, 20, 3, 2005, 165-84).

In this paper I present a political reading of Onora O’Neill’s critique of Rawls’ constructivism (understood simply and roughly as a “method of generating principles of justice by reference to choices made in an original position”, O’Neill 1989, 207), basically of her three major objections to it, i.e., that it is heteronomous, that it deprioritises duty and obligation, and (more importantly) that it is idealising. I wish to strengthen her plausible thesis that Rawls departs from Kant in such a way that his enterprise is deeply non-Kantian. Another aim relates to O’Neill’s task of elaborating a constructivism alternative to Rawls’. In opposition to a widespread view, I think that Kant’s *political* philosophy is not constructivist. I will not address the issue of whether his ethics is constructivist or not; my concern here is only with political philosophy. Not being constructivist in political philosophy does not make Kant’s social contract theory relativist or moral realist. There are other alternatives to these two extremes and Kant’s political philosophy can be a source of inspiration to find them – fundamentally, because it can provide a non-idealising political theorisation without relapsing into relativism. This, in turn, is possible because Kant’s political and legal theorising begins not with individual agents but with interaction and

its normative consequences, and because he sees the social world as structurally unjust, i.e., not as something imperfect that is still not as perfect as the ideal. Moreover, I propose that unlike Rawlsianism and the Rawlsian readings of Kant, Kant's political philosophy is compatible with non-ideal normative approaches, and is, therefore, better suited to avoid the problems of idealisation in political philosophy.

I take O'Neill's critical work here as itself worthy of philosophical attention, not as a simple 33-year-old comment on Rawls and Kant, or as part of an obsolete debate from the late eighties. I also use it as critical guide to analyse if Kant can actually offer us some philosophical theses to develop a non-ideal approach, to see if Kantian critique can be read as non-ideal normativity.

In the first section, I reconstruct O'Neill's critiques of Rawls, as expounded in Chapter 11 of *Constructions of Reason*. I concentrate there on two objections, i.e., that Rawls' constructivism is heteronomous and that it is idealising. These objections shape her own constructivist alternative as sketched in this book. In the second section, I hold that Kant's methodological strategy to elaborate his political model does not depend on the elections of isolated individuals, nor on the hypothetical rational deliberation of (abstract or idealised) agents. Kant's normative justification in political philosophy does not rely on features attributed to an individual who chooses primary goods (such as liberties, income, health) and gives voluntary individual consent to norms and pacts, but on an aspect of human practical reality that is central also for O'Neill: interaction and its normative consequences (which make what I call "the critical-objective perspective on law"). This perspective also implies another radical difference between Rawlsian constructivism and Kantian political and legal philosophy: the priority of obligations and duties not as elements of a natural law that would give a priori norms to individuals, but as the practical consequences of human interaction.

As *clausula salvatoria*, I wish to mention that for the purposes of this particular paper it is not necessary to develop a philological analysis of Rawls' works. My focus is on O'Neill's philosophical analysis as it deals with Rawlsian constructivism, insofar as her Kantian critiques work as a propaedeutic to finding a better constructivist theory.

Rawls considered himself Kantian in *A Theory of Justice* and in the *Dewey Lectures*, and later explicitly distanced himself from (his version of) Kant in "Justice as Fairness: Political, not Metaphysical" (1985). All this prompted a series of works on the question "Is Rawls really Kantian?". In the third section, in dialogue with some of the literature on the topic, I sketch my own negative answer to the question "Is Rawls' Kantian constructivism Kantian?". This is important because constructivism of the Rawlsian sort has a series of flaws (as I will show here with the help of O'Neill and Mills) that render it a theory unable to account for structural injustices, and I think that Kant can provide some methodological and normative theses to build an approach able to do so, although obviously with some limitations.

My main thesis concerning this is that what Rawls intended to do was not what Kant did, that their basic strategies of normative justification in political philosophy and their

overall approaches to society are *essentially* different. Kant uses his social contract theory mainly to show the practical necessity of a particular form of political authority (that of the omnilateral collective will) without which there cannot be legitimacy and justice in human interaction (MS, AA 06: 256; 313-14; 315-16). Within this framework, Kant does not conceive of people, of individual persons and collectives, as ideal agents who pick primary goods or principles of justice. On the contrary, his analysis of the state of nature shows that for principles of justice to exist, a political collective will must exist first. Political authority is the condition of possibility of any principle of justice. It is important to remember this statement when reading Rawls because what he called “principles of justice” are not merely moral principles in general that could apply to non-political interactions; they are political principles whose work is to establish duties corresponding to claim-rights, i.e., they are coercive and regulate institutions and legislation. For Kant, not all moral principles are or should be coercive (famously, ethical principles cannot be coercive for him), and coercion is an essential element in his definition of rights and of law. Because they will be coercively applied, justifying political principles is normatively more demanding than establishing moral abstract principles.

As the underlying concern of this paper is to see if Kant’s political thought is compatible with non-ideal approaches to political philosophy, in the concluding section, with the help of Charles Mills’ critique of structural racism in Western political philosophy, I will address the question of racism in Rawlsian constructivism and in political Kantianism, from my own situated reading. By “situated reading” I am not surreptitiously claiming an epistemologically and morally privileged standpoint for myself and the place of the world from where I am writing. I do mean however that it is possible to propose different, equally plausible but more emancipatory readings of the same corpus if we focus on different political concerns, i.e., the ones that have a pressing importance in political contexts that are different from the ones generally assumed as universal in mainstream political philosophy.¹ My concern is: if Rawlsian constructivism cannot account for structural injustices in the national as well as in the international spheres, or for power asymmetries in social relations, could an alternative reading of Kantianism overcome Kant’s own voluntary (or involuntary) ignorance about race, gender, class, and colonialism? I am not completely sure that it can, but I propose a reading of Kant’s political philosophy as an overarching enterprise that is more able than Rawlsianism to overcome structural racism and imperialism. Recently, Helga Varden (2020) has developed a lucid antisexist and trans-inclusive Kantian theory of sex, love, and gender that does not ignore Kant’s own sexism. Here I try to follow her path, that of acknowledging Kant’s biases and offering an alternative reading of his theories.

1] An example of a recent situated reading of Kant is a book by Milla Emilia Vaha. Vaha 2021 studies the moral standing of the state in Kant’s theory, offering her own reading of it as an alternative to current views on the topic. Her reading aims to be useful for “the threatened ‘small island states’”, to which Kant would provide “a powerful normative argument for their continued existence should they lose their territory to rising sea levels” (2021, 6).

From where I am writing (South America), dismantling the Westphalian narrative of the state and international relations is a fundamental intellectual task. The Westphalian vision of history and contemporary politics implies, in the international arena, a supremacist conception of the state by which some nations are considered intrinsically inferior in cultural, social, economic, and development terms, and, within nations, a structurally racist and classist organization of law and state institutions. Concisely, I believe that Kant can provide useful tools for this critical task because even though his work is part of a Eurocentric and racist canon (Mills 2015), there is also a strong critique of the Westphalian system in his political philosophy, instead of the usual rationalisation of it.

I. HETERONOMY AND IDEALIZATION: O'NEILL ON RAWLS

The interest O'Neill finds in a constructivist project is that it could be used to establish principles of justice, justified in such a way that they would avoid relativism (roughly understood as appealing to "our" tradition to support an ideal conception of the moral person employed in the construction of those principles) and moral realism. O'Neill's general critique of Rawls is that his project falls into both. Her two specific objections have been articulated several times against Rawls. They are two *fundamental* objections because they point to the very design of the agents that enter the original position; they attack the bricks of Rawls' construction.² The first one, the *heteronomy objection*, is made from a Kantian perspective. According to O'Neill, even though he later adds reasonability, Rawls' whole construction depends solely on an instrumental conception of rationality (O'Neill 1989, 207). I want to add a further argument under the title of this objection, also from a Kantian perspective. If heteronomy is a serious flaw in the construction of principles of justice, it is necessary to specify where precisely lies the heteronomy of the instrumental-teleological reason and why this heteronomy has a negative impact on the elaboration of political principles. In other words, why, from a Kantian perspective, is instrumental reason heteronomous, and why is heteronormativity something one should avoid in the construction of political principles of justice?

The instrumental rationality associated with rational choice theory deals only with the choice of means, it does not apply to deciding on the ends that give their *raison d'être* to the choice of the means. This is why Kant thinks that agents set their ends by a use of reason that is *practical*, i.e., not instrumental, even if they adopt "heteronomous" ends. Setting our own practical ends is to a considerable extent what gives sense to the notion of external freedom Kant uses in his legal and political theory. The autonomous setting of one's ends is, in Kant's terminology and explicitly in *Religion within the boundaries of mere reason*, a spontaneous act of an agent's free choice [*Willkür*]. This terminology should not lead us to think that we are dealing with a metaphysically robust conception of human autonomy,

2] There is a third objection against the fact that the principles of justice establish entitlements instead of duties. I will return to this later on.

designed in a transcendental-idealistic way, or with an ethical conception of inner freedom. Kant's theory of freedom in the *Religion* text and in the *Metaphysics of Morals* only says that we are free as far as we can choose the ends of our actions. In turn, this does not mean that we act without any consideration of our concrete contexts and interactions; choosing our ends is "spontaneous" in the sense that it is not something our instrumental reason can do, and it is autonomous as far as it is not conditioned by some further end that we all ought to have as human beings (as it is the case in the natural law tradition).

Instrumental reason can be exercised only once one has adopted their own ends and this adoption is what gives human praxis part of its meaning of freedom. Now, if instrumental reason is set as a point of departure for a construction of moral principles it may seem that Rawls' theory is not making claims about the agents' particular ends. By not making substantive claims about what those ends are and must be, a constructivist theory could avoid moral realism. It could also avoid an unjust consequence that would follow from the fact that some particular ends would be privileged and thus those people in the community that have not chosen those ends would get seriously disadvantaged. But from a Kantian perspective, allowing instrumental rationality to do most of the normative work implies allowing some ends, given prior to any procedural limitation, to define the election of the primary goods; it does not matter if the idealised agents are aware that they hold those ends or not. If one is committed to the Kantian aim of protecting the freedom of proposing oneself one's own ends,³ then concealing ends behind a veil of ignorance and establishing a set of primary goods as universally desired is not the proper strategy because it means the precise thing one is trying to avoid, i.e., privileging some ends and not equally acceptable other ones. A different conception of rationality is needed. Let me explain this further.

The heteronomy of instrumental reason is a strong objection for a particularly "Kantian" reason. For Kant, means-ends rationality implies not just any ends but a specific one: one's own happiness. Kant treats this type of rationality under the concept of pragmatic imperatives or imperatives of prudence. The function of these imperatives is to "prescribe the means to the universal end to which all the *subjective* grounds of human willing refer, i.e., happiness, which all creatures need. Here, the imperatives command under the condition of a real end" (V-NR/Feyerabend, AA 27: 1324). Instrumental rationality can be applied only under the condition that we already have an end (this is what a "real end" here denotes), which for Kant we do actually have: happiness. Why is this a problem for Rawls if constructivism is to be Kantian? The problem with happiness is that it has, necessarily, different contents for each agent: the idea of happiness is irreducibly personal and individual and, thus, the principle of happiness, we learn from the second *Critique*,⁴ cannot produce a universal rule valid for everyone.

3] I do not mean that Rawls is committed to every Kantian tenet; I am only claiming that this is one of Kant's central tenets and that Rawls directly contradicts it.

4] See KpV, AA 05: 40ff.

It is worth noticing here that this does not mean that Kant would reject all principles of what we call “well-being”. For example, Kant defends the right of the state to tax the rich in order to support the poor (MS, AA 06: 325-26). Here, well-being is not necessarily understood as happiness (which for Kant is always subjective and individual); it is on the contrary better understood in the objective terms of inequality and injustice. In fact, Kant thinks that rich people are rich generally because “they are favoured by the injustice of the government; this injustice introduces an inequality of richness that makes people dependent on the charity of others” (MS, AA 06: 454). Concisely, here we can approach poverty with ideas of structural inequality instead of using ideas of human flourishing or subjective happiness. For instance, Alice Pinheiro Walla (2019) has developed a Kantian theory of welfare rights based on equity rights and reparative justice.

For Kant, a universal end that everyone would have does not necessarily produce a universal principle, law, or rule, because the characteristic of that end, in the case of happiness, is being essentially individual. If hypothetical imperatives can barely guide, for Kant, the decisions of a single individual in a steady and coherent way (TP, AA 08: 287), they are almost inapplicable to guide collective action. This is why the principle of happiness makes a ruler a despot and the people rebel (TP, AA 08: 302), as it necessarily implies the imposition of a particular conception of happiness to everyone in that political community. If empirical ends are taken as points of departure in the election of normative principles, that is, if principles are selected from them, then those normative principles would be grounded entirely on an empirical condition (V-NR/Feyerabend, AA 27: 1324). The problem is not simply that this procedure would lack formality; its main flaw is that it implies allowing unilateral eudaimonic grounds, which are irreducibly individual and contingent, to enter the field of the omnilateral normative justification of coercive norms and institutions. In Rousseauian terms, agents who chose following an instrumental reason make a *volonté de tous*, not a *volonté générale*. In turn, for Kant this particular *volonté de tous* would be an unjust collective authority, imposing the hegemonic ends of the ones who were able to dominate the actual procedure onto the freedom of everyone else, who would then not have a strong reason to accept the resulting principles.

Kant's original contract creates a practical situation in which the omnilateral exercise of reciprocal normative justification of juridical duties corresponding to acquired rights is possible.⁵ In stark contrast to Rawls' contract theory, the task of a Kantian contract is not the election of goods, but the justification of a normative order, a correlation of rights and duties. Therefore, the instrumental use of reason cannot have a leading role in it. Kant's explicit insistence that ends (whether happiness or even the ends of Kant's ethics)⁶ cannot ground a political constitution is not only a rejection of eudaimonic and ethical justifications of the political, but also a rejection of the idea that instrumental rationality

5] See Marey 2020 for a more detailed analysis of this thesis.

6] See RGV, AA 06: 95-96.

should play a justifying role in the normative realm of right.⁷ In a word, justifying political principles a priori calls for the use of a kind of argumentation that is neither instrumental nor teleological, because it is about reciprocally justifying the sanction of legal, coactive duties corresponding to claim-rights.

The *objection of idealisation* “is not to reasoning that is detached from certain predicates that are true of the objects discussed, but to reasoning that assumes predicates that are false of them” (O’Neill 1989, 209). O’Neill’s differentiation between abstraction and idealisation is useful in political philosophy because it discriminates between non-exclusionist and exclusionist grounds for normative principles. She points out that when justifying political principles one cannot take as starting point, and not even in consideration, every actual and potential choice an agent could or would make, and at the same time, reflecting on any practical situation necessarily involves a theoretical approach mediated by theoretical terms, which are abstract. This is why abstraction is virtually unavoidable in political philosophy. The real challenge for a social contract theory and for a constructivist project is to avoid idealisation.

Let me expand a little more on the problems of idealisation in normative theory. In a 2005 paper, Charles Mills developed O’Neill’s critique of idealisation with more detail. Mills explains that

what distinguishes ideal theory is not merely the use of ideals, since obviously non-ideal theory can and will use ideals also (certainly it will appeal to the moral ideals, if it may be more dubious about the value of invoking idealised human capacities). What distinguishes ideal theory is the reliance on idealisation to the exclusion, or at least marginalisation, of the actual. As O’Neill emphasises, this is not a necessary corollary of the operation of abstraction itself, since one can have abstractions of the ideal-as-descriptive-model type that abstract without idealising. But ideal theory either tacitly represents the actual as a simple deviation from the ideal, not worth theorising in its own right, or claims that starting from the ideal is at least the best way of realising it. (2005, 168)

Mills then lists the primary assumptions made by ideal theorists that produce this “exclusion of the actual”: “An idealised social ontology”, “idealised capacities”, “silence of oppression”, “ideal social institutions”, “an idealised cognitive sphere”, “strict compliance” (2005, 168-169). The fundamental problem with these assumptions is that

In modelling humans, human capacities, human interaction, human institutions, and human society on ideal-as-idealised-models, in never exploring how deeply different this is from ideal-as-descriptive-models, we are abstracting away from realities crucial to our comprehension of the actual workings of injustice in human

⁷] That Kant’s ethical thought is to be distinguished from his legal and political theory is something he himself insists upon all throughout the *Religion* text and the *Metaphysics of Morals*. See also Marey 2018, where I defend the thesis that Kant’s concept of right is normative without being ethical and analyse a juridical, moral but non-ethical, use of the categorical imperative.

interactions and social institutions, and thereby guaranteeing that the ideal-as-idealised-model will never be achieved. (Mills 2005, 170)

One cost of taking an idealised conception of the person as the starting point in the construction instead of beginning, as Kant did, from interaction or, as Marxist, decolonial, queer, and critical race theorists do, from social relations, is that the results of the construction are not applicable to any actual contexts, being as they usually are structured by domination and oppression. It does not matter here if Rawls intended his theory to be applied to actual contexts or not, the point is that the results of *any* construction of principles of justice does not have any meaning whatsoever if it is not meant to be applied to an actual context, and actual societies are structurally unjust. If it is so detached from actual practical contexts and its problems, then what is Rawlsian constructivism about?

An idealised model neither explains nor applies to any human society. Therefore, it is either unnecessary and superfluous, or (which is worse) if one tries to apply it to a social context to detect, explain, and offer solutions to injustices, one will likely end up doing more harm. By not detecting the actual injustices, by silencing and obfuscating them, one is prone to offering guides to action that will most probably deepen those injustices.⁸ As Elizabeth Anderson pointed out, “[t]he epistemic infirmity of ideal theory arises from the fact that if one hasn’t anticipated that an injustice of a certain form may arise, one may fail to represent the ideal state as one that essentially lacks that injustice, and may even allow that injustice to be unwittingly incorporated into the ideal state” (2009, 135). This is what, with O’Neill and Mills, we can impute to the conceptions of personhood with which Rawls works in *A Theory of Justice* and in “Kantian Constructivism in Moral Theory”, i.e., that they are not applicable to any significant actual context, with the potential “infirmity” of incorporating injustices in the very description of the ideal (idealised) model.

Why is Rawlsian constructivism idealising? In *A Theory of Justice*, Rawls claims that his aim is to argue “from widely accepted but weak premises to more specific conclusions” (1971, 18). So, one could say that Rawls abstracts (and does not idealise) in at least three senses. First, because he believes that seeing human behaviour as eminently an instantiation of rational choice, he is not introducing features alien to human rationality. This would help to avoid assuming a metaphysically dense conception of the self, of agency and moral personhood. Second, Rawls says in *A Theory of Justice* and in “The Basic Structure of Society” that the original position is “a procedural interpretation of Kant’s conception of autonomy and the categorical imperative” (1971, 226). By “procedural” Rawls means that he takes these conceptual elements from Kant, but devoid of all the transcendental idealist traits that arouse contemporary philosophical suspicions.⁹ Thirdly, according to Rawls, the principles of justice do not assume an ideal of the moral

8] For a clear contrast between the problems of ideal theory as expounded by Mills 2005 and the virtues of non-ideal approaches to normative theory (“non-ideal standpoint methodology”, as Elizabeth Anderson called it), see also Anderson 2010, 3-7, and Anderson 2009.

9] Rawls falls here into a methodological mistake from a Kantian standpoint: he takes elements from Kant’s ethics and uses them in political philosophy. I will return to this later on.

person but *define* one (1971, 260ff); in other words, the ideal presumably follows from the principles and thus there would not be an idealised vision of human personhood *ex ante*, embedded in the original position.

Now, in “Kantian Constructivism in Moral Theory” the ideal of the moral person is defined by the attribution of the two “moral powers”, i.e., sense of justice and the capacity to have and pursue a conception of the good (Rawls 1980, 547-50). The primary goods are understood as “generally necessary as social conditions and all-purpose means to enable human beings to realise and exercise their moral powers and to pursue their final ends” (Rawls 1980, 526), i.e., as means to carry out and practise the ideal of the moral person. This is why O’Neill indicates that “[t]hese powers define a certain ideal of the moral person and thereby the highest-order interests of actual persons” (1989, 210), which cannot be *simply* attributed to actual people. This moral personhood attributed to ideal agents is an idealisation because it is built into the process of constructing principles of justice, where it plays the role of the basic motivation agents have when choosing those principles, that is: the idea of the moral person is not the result of the procedure but its presupposition. The critiques of idealisation motivated Rawls’ own revisions of his theory in “Political, not Metaphysical”. But as it is clear by the heteronomy objection, for O’Neill (and for Kant), using rational choice theory is an idealising movement that transfers an idealised conception of the moral person to the rest of the procedure. Furthermore, for O’Neill, with the very description of the veil of ignorance, the Rawlsian construction assumes that persons and their desires are mutually independent, which in turn implies a series of false propositions about human agents: this independence cannot be predicated on any real or possible human agent or any real or possible practical context (1989, 209).

Why is Rawlsian constructivism non-Kantian? Simply because Kant did not derive principles of justice from a conception of private autonomy (if there is such a thing as a “private” autonomy), be it procedural or metaphysical, or from the ethical application of the categorical imperative. Eminently, Kant did not derive the idea of the state, the principle of right, or the idea of a republic from (what Rawls understands as) an ethical categorical imperative. Moreover, as Arthur Ripstein 2009 held, Kant’s political philosophy is not grounded upon transcendental idealism, even when Rawls affirms it is as response to the numerous objections that he received because of the idealising tendencies of his own theory. (But nowhere in his work does Rawls actually show how Kant’s political and juridical concept of external freedom is metaphysically robust. He just claims it is). So: if Rawls idealises, he does this not because he is Kantian – in fact, Kant would have helped him not to make that mistake. My point, in sum, is that Rawls did not take important aspects of Kant’s political philosophy, not even marginal ones; he only took a few isolated aspects of Kant’s ethics, interpreted, moreover, according to a certain reading of it that can be easily challenged. Would we call someone Hegelian if they rejected dialectics? Then why call someone Kantian if their methodology and primary normative assumptions directly oppose Kant’s?

In sum, for O'Neill the failure of the Rawlsian project of a Kantian constructivism is double: it fails in its intention of avoiding realism and relativism and is not Kantian. The main reason of this failure is the use of instrumental reason to justify principles of justice and the relation of dependence of these with the (contingent) desires of (idealised) agents. This inaugurates a sequence of inconveniences whose solutions lead from heteronomy to relativism, through idealisation. The sequence can be summarised as follows. According to O'Neill, (i) the risk of heteronomy triggered by instrumental reason (ii) makes it necessary to unfold the veil of ignorance to filter out contingent desires. (iii) Now the risk we face is indeterminacy because we are still operating with instrumental reason, which necessarily operates in the realm of the means, and (iv) this indeterminacy is overcome by selectively piercing the veil of ignorance. This step, in turn, calls for (v) an explanation as to how to make the veil, and how and where to pierce it. As criteria for making the veil, (vi) Rawls uses a specific ideal of the moral person. But this ideal has to be normatively justified (not merely assumed to be empirically correct, which by the way is not). To justify this ideal, and as (vii) Rawls wishes to avoid metaphysics (and metaethics altogether, perhaps?), he appeals to "our" tradition to support the ideal of the moral person (O'Neill 1989, 212). For O'Neill, this amounts to a relapse into relativism, and finally frustrates the very aim of constructivism. The accumulation of non-Kantian steps frustrates, in turn, the aim of elaborating a Kantian interpretation of justice as fairness.

II. INTERACTION AND NORMATIVE JUSTIFICATION

For my part, I think that the objection of heteronomy is radical in the sense that it is not possible to overcome it. It is not possible to overcome the assumptions of instrumental reason with a tailor that would adjust the veil to adapt it to an agent idealised according to "our" tradition. For Kantians, the basic methodological mistake here is starting from instrumental reason. The very structure of this reason determines that the results of the procedure reflect empirically given desires of some individuals – and not all individuals, only the desires of those who fit the ideal. That the outcome merely reflects some desires whose desirability is not, in the end, normatively justified to those who do not share those desires but have to share the same normative space in a context of interaction makes the procedure undesirable to these people. This is why the objection of idealisation is ultimately an objection to the unjustly exclusionary character of a theory.

In contrast to what happens with this constructivist framework (and perhaps in contrast to all constructivist approaches to normative justification), I claim that Kant's normative justification does not rely on the subjective motivation of pre-political individuals, or on the rational deliberation of (whether abstract or idealised) agents. As mentioned, Kantian normative political justification hinges on an aspect of human praxis that is philosophically central for O'Neill also: (the consequences of) interaction. The basic juridical-political question is, here, the validity of the normative orders that are

necessary to regulate that interaction to prevent the wrongs that occur when humans interact with each other and with the environment.

A virtue of the Kantian social contract theory is that it is not *grounded* on claims about a pre-political nature of human agency. Kant surely has such a conception, but in his political theory his starting point is that practical external interaction among human beings which generates the normative need to acquire rights that correspond to juridical duties. Human interaction is analysed under the hypothesis of a non-judicial condition that shows, in the *Doctrine of Right*, that reciprocal justification is unavoidable because coexistence is unavoidable (we share the same place of residence, a finite earth)¹⁰ and can only exist within a juridical-political condition. This is why Kant's social contract argument aims at showing the a priori character of the united will. I think that the apriority of the united omnilateral will entails a conceptual priority of the political subject over the rest of the political principles (principles "of justice", of institutional design, of legitimacy, and of political authority). It also means that principles of justice are not, *pace* Rawls, chosen by an aggregation of individual pre-political agents who decide according to a conception of the good or their desires, but by a collective political agent whose internal normative logic is the reciprocal justification of juridical *duties*.

A third critique O'Neill makes to Rawlsian constructivism is that its principles of justice create entitlements rather than obligations (1989, 214). Her argument is centred around the indeterminacy of the distribution of entitlements and goods, a difficulty Rawls tried to surmount by using a metric of maximisation. O'Neill points out that freedom is not an object of metrics, and she is right. This is why Rawls would resort to the individuals' desires to determine the set of maximal rights (titles on goods). Besides the mistake of thinking of rights as goods instead of them as necessarily attached to duties (a normative web of rights and duties),¹¹ this move also makes Rawls vulnerable to the two previous objections of idealisation and heteronomy, because the theory relies on the (idealised) agent's actual desires to determine the set of rights / goods.

Two recent texts contribute interesting insights to these points. In a text in which he deals with the question "Can Kantian constructivism avoid realist commitments?", Michael Lyons (2020) proposed that "constructivism is more plausible when interpreted as a form of moral realism (and as a result, in order to defend moral constructivism, one must commit to at least some form of moral realism)" (2020, 19). Kant's would make a

10] Even if humans (high income countries with space programs such as the NASA) could colonise other planets, the Kantian point would be that such endeavours necessarily imply cooperation and collective, international, even cosmopolitan action, not to mention the externalities they would carry with them, with material and normative consequences for almost everyone on Earth. In a few words: who builds the rocket to Mars? Where do its materials come from? Et cetera.

11] Compare to Kant's idea of subjective rights: "To every duty there corresponds a right in the sense of an *authorization* to do something (*facultas moralis generatim*); but it is not the case that to every duty there correspond *rights* of another to coerce someone (*facultas iuridica*). Instead, such duties are called, specifically, *duties of Right*" (MS, AA 06: 383).

good constructivism as far as “it can and should be reconciled with a conception of moral realism” (Lyons 2020, 17). Lyons deals with ethics as treated in the *Groundwork of the metaphysics of morals* (1784), and not with Kant’s ethics of virtue from the *Doctrine of virtue* (1798) or with Kant’s political philosophy, which, I hold, is not constructivist. Nevertheless, what is interesting about this paper is that its author emphasises that in order for any sort of plausible moral constructivism to work without falling prey to radical relativism, one needs a moral realist commitment to some moral truths (I would say normative principles), “which are neither dependent on, nor true or false in virtue of, any opinions or attitudes about them, or any entailment therefrom” (Lyons 2020, 24). This point is true of all constructivist theories, whether their authors embrace this unavoidable commitment or not, and even if they are not aware of it. A constructivist procedure is always applied within a certain practical (abstract or real) context and theoretical framework, both of which give the procedure several limitations that help to avoid absolute relativism. The issue with Rawls is, I believe, that he did not embrace his realist commitments, and that these were particularly heavy ones. I am not saying one should embrace realism, I am just pointing out that Rawls did have realist commitments which he failed to acknowledge as such.

In the same compilation by Alice Pinheiro Walla and Mehmet Ruhi Demiray where Lyon’s paper is published, Sorin Baiasu’s text (“Staying philosophically on the surface: constitutivist and naturalist quests for normativity”) analyses the problems Rawlsianism gains by trying to avoid metaphysics at all costs. He rightly proposes that, in order to “clarify the mystery of normativity, the tendency to stay philosophically on the surface would need to be critically overcome, and here Kant’s philosophical example is particularly helpful” (Baiasu 2020, 54). Kant can help with this because, he suggests, instead of simply avoiding non-dogmatic metaphysics, he investigated its limits and its content (Baiasu 2020, 41). What I want to highlight with this insight is that Rawlsian constructivism has a lot of self-imposed expectations to live up to, up to which it does not live because the mere claim that one is not doing metaphysics does not amount to not having strong metaphysical assumptions. The problem with Rawlsian constructivism, from what we have been analysing here following O’Neill and Mills, is that it does not have the theoretical tools to conduct a critical assessment of its own tacit idealising assumptions. Dealing with its own metaphysics would have proven a much more successful strategy in order to avoid extreme moral realism and radical relativism. His own metaphysics was, of course, his idealised conception of human agency; a better way to proceed would have been realising that he had such a flawed conception.

Kant’s social contract is *not* a formal procedure to setting principles of justice by reference to some agents’ choices. On the contrary, it helps shape the practical context within which a political community can legislate their own norms. Kant’s original contract also creates the political agent whose task is to legislate those norms because it creates the universal (omnilateral) legislative will, which does not exist before the contract takes place. Thus, it is not a hypothetical situation where abstract people chose

principles and goods according to their desires and by answering questions about the universal-reasonable acceptability of possible principles. So, we cannot claim that Kant was a constructivist in political philosophy, neither in the Rawlsian nor in the Oneillian versions, if by “constructivism” one understands eminently a “method of generating principles of justice by reference to choices made in an original position” (O’Neill 1989, 207), by individual (as opposed to collective) agents, even when the conception of these agents fits the methodological requisites set by O’Neill.¹²

O’Neill holds that her version of constructivism is different from Rawls’ because in it “abstraction from determinate desires of agents is complete: Hence no special ingenuity is needed to avoid either heteronomy or cruder forms of relativism” (1989, 218). This abstraction of (idealised) motivations and desires is achieved by focusing on interaction, not on the practical reasoning of (idealised) moral persons. With this, O’Neill is closer to a non-ideal approach to political philosophy because it is precisely in interaction, in social relations, where injustices and domination occur. Another desirable trait of this complete abstraction (whether it is possible to achieve it or not) is that “as a consequence, it is impossible to answer questions about the hypothetical choices of abstract agents” (O’Neill 1989, 218). With this latter trait, O’Neill leaves room for the actual choices of actual agents, not determining a priori what they will choose. To avoid relying on hypothetical decisions, “the construction has to fall back on modal questions about the possible choices of abstract agents, and construct an answer to the question ‘What principles must a plurality of abstractly characterised agents reject?’” (1989, 218). The construction should not ask, then, “what principles *would* a plurality of *ideally* characterised agents reject?”. With this, in turn,

Finally, rejection of non-universalizable principles can guide action by requiring that we ensure that the agents actually affected, with their particular identities and vulnerabilities, can genuinely choose or refuse those principles. If this sketch can be filled out, there is at least some space between realism and relativism. (O’Neill, 1989, 218)

My claim is that the aim of guiding action mentioned by O’Neill in this quotation can be achieved by a theory that, instead of aiming at designing abstract procedures to reach principles that the affected agents would/can/must choose/refuse, would aim at being sensible to structural injustices in concrete social settings, so as to achieve decisions about principles of justice that would counter those concrete injustices. By focusing too much on what (abstract, idealised, actual) agents would/can/must decide, we lose sight of the way social relations influence not only those putative, possible, necessary, and actual decisions, but also the way in which decision-making procedures reproduce social injustices.

12] Which are: rejection of idealised-idealising vision of agents, their rationality, and their mutual independence; complete abstraction of actual desires; absence of moral realist claims. We can further ask: How does one reject an idealised version of agents and abstract from actual desires? Is it possible? And is the absence of moral realist claims completely desirable?

III. OMNILATERAL WILL: POLITICAL, NOT ETHICAL

I think that Rawlsian constructivism is not political enough to be called “Kantian”, and that a Kantian theory is too political to be considered constructivist. In fact, there is a general problem both in Rawls’ and O’Neill’s readings of constructivism: we cannot talk about ethics if the object of the construction are principles of justice. We are talking, in any case, about normativity. This Kantian correction is not trivial. That ethics and law are two different realms of morals has a series of normative and methodological consequences, among them, that in the juridical realm, normative justification is not centred around an (individual) agent deliberating on their reasons to act (as it is the case with Kantian ethics in the *Groundwork*). Kant’s juridical-political perspective is centred around practical external interaction and the exigencies of reciprocal justification this interaction generates. Moreover, Kant’s aim when reflecting on interaction is to show the a priori character of the omnilateral united will, and most of this work is done by an analysis of juridical duties and obligations instead of by postulating entitlements. This is consistent with O’Neill’s thesis that principles of justice must determine obligations and not merely rights without paying attention to the corresponding duties. But most importantly, Kant’s social contract theory cannot be defined as constructivist because, as I mentioned, it is not a “method of generating principles of justice by reference to choices made in an original position”, of establishing moral principles and settling moral conflicts between individual agents while doing so (paraphrasing O’Neill’s definition of constructivism in 1989, 207). The reason for this is that it is not a methodology to finding those principles but the *act by which a political collective agent (the omnilateral will) is constituted*. Briefly, Kant’s methodology in legal and political philosophy is not a formal-procedural method to assessing the moral correctness of principles of justice.

Rawls considered himself Kantian in *A Theory of Justice* and in the *Dewey Lectures*, and later explicitly distanced himself from (his version of) Kant in “Justice as Fairness: Political, not Metaphysical” (1985). All this prompted the question “Is Rawls (or Rawlsian constructivism) really Kantian?”. The topic has been the object of many texts from the very publication of *A Theory of Justice*. For instance, in his review of this work, Allan Bloom was blunt in his negative answer: Rawls “attempts to lend his ‘original position’ the glow of Kantian moral nobility” (Bloom 1975, 656). This is a constant, according to Bloom, in Rawls’ work. Rawls picks isolated elements of classical works, but “never really caught up in the necessity of their arguments, sure that he looks down on them from a higher plateau” (1975, 656). Of course, this is a normal strategy in philosophy (all “great” philosophers do it), but for Bloom, and he is right in this, Rawls *inverts* Kantian morality by giving it a eudaimonic motivation and by downplaying the significance of universality. Analysing the well-known § 40 of *A Theory of Justice*, Johnson 1974 and 1977 (in this latter paper responding to Darwall’s 1976 defence of Rawls) affirms that there is no Kantian interpretation of justice as fairness because Rawls’ and Kant’s ideas of the human being as a moral being are straightforwardly incompatible. Krasnoff

1999 holds that constructivism cannot be Kantian because its main methodological characteristics are opposite to the methodology of the ethical categorical imperative. Heyd 1980, also compares Rawls' constructivism with Kant's ethics. His analysis is more Rawlsian than Kantian, since he assumes the false premise (taken from Rawls himself) that Kant's practical philosophy is explicitly derived from a conception of human nature. It is remarkable that not only Rawls but also most of the works on Rawls' Kantianism make the same mistake of assuming that if there is an *ethical* general theory of the moral person (of course there is one in Kant), this necessarily grounds his political philosophy. But this is not the case in the proper Kantian sources. We can attribute this flaw to the fact that Rawls and many of the authors discussing his work do not refer to the only work in which Kant systematically developed his political philosophy and his practical metaphysics as a whole, i.e., the *Metaphysics of Morals*, but almost exclusively to the *Groundwork*.

In the literature on the topic "was Rawls really Kantian?" it is usual to compare the Rawlsian intention to establish principles of justice with Kant's ethics, instead of comparing it with Kant's legal and political philosophy. In my opinion, the most accurate work on Rawls' alleged Kantianism is a paper by Otfried Höffe (1984). Höffe makes the comparison in relation to Kant's political philosophy, not to his ethics, and notes that an ethical constructivism cannot be used if one wants to elaborate juridical and political principles. I agree with both Höffe's strategy of comparing Rawls' constructivism with Kant's political philosophy and not his ethics, and that an ethical constructivism cannot be used to build juridical and political principles. Höffe denies the Kantian filiation of Rawls' theory by showing that his premises completely diverge from Kant's *political* premises and theses. Kant thought that it was necessary to show, in the first place, why external interaction can only be fair within a certain kind of political arrangement. As I read Kant's political philosophy, his arguments for the formation of a united legislating will of the people take precedence over the establishment of the principles of justice because it is their condition of possibility.

The main reason Rawlsian constructivism was not Kantian is that it contradicts Kant's juridical-political methodology by applying allegedly Kantian ethical concepts to a political theory. Rawls does not turn to Kant's political and legal philosophy. He calls his constructivism "Kantian" because he takes elements from Kant's ethics, interpreted in a particular way. In the case of "Kantian Constructivism", Rawls' reading of Kant's ethics is strongly influenced (sometimes verbatim) by Silber's (1974) pure proceduralist reading of the categorical imperative. Kant simply did not take his conception of the moral agent from the *Groundwork* and put it as the basis of his *Doctrine of Right*. One would not believe that Rawls was Rousseauian if he would have picked a couple of isolated elements from *Émile, ou de l'éducation* (and not from the *Contrat social*) to elaborate his original position. Why think he was Kantian if what he did with Kant's corpus is analogous to this example?

IV. JUST A FEW WORDS ON RAWLSIAN AND KANTIAN RACISM

In several works,¹³ Charles Mills argued that Rawlsian constructivism, as an exponent of Western political philosophy, is racist and imperialist. In those works, Mills also showed how Kant's moral (ethical and legal) *theory* is racist, i.e., that racism is not simply reducible to a couple of offensive statements here and there in his works. From *The racial contract*, as well as from Frantz Fanon's works among many others, we learn that racism is a system of domination, "a system in its own right" (Mills 2003, xvii): "White supremacy is the unnamed political system that has made the modern world what it is today" (Mills 1997, 1). As a political system of its own right, racism is a "form of domination" (Mills 1997, 1); being unnamed in mainstream political philosophy is precisely part of its being a political system of domination. Ideal social contract theories such as Rawls', noted Mills, obfuscate "the ugly realities of group and power domination" (1997, 3).

The concern I want to address can be stated as follows. If ideal theories like Rawlsian constructivism cannot account for structural injustices such as racism and sexism, could a Kantian approach to political issues avoid this serious theoretical and practical shortcoming?

We cannot make Kant answer questions he did not ask himself, of course, but neither can we just abstract his racism, Eurocentrism, sexism, and classism away from his political philosophy. It could be argued that one should just situate Kant's works in their historical context and then extract the racist (sexist, imperialist) features in them as mere obsolete residues from the past. But this is not so reasonable an approach as it appears to be, since (apart from the fact that there were abolitionist and feminist struggles when Kant wrote) the point is that the very way modern political and moral philosophies were developed served to build a racist (and sexist and imperialist) vision of the world. Among the growing literature on Kant's racism, Inés Valdez (2017) and Huaping Lu-Adler (2022) have recently made strong cases against the possibility of just abstracting those undesirable features away from Kant's practical philosophy. So why insist on studying Kant's political philosophy other than for a merely philological interest, or for anything other than a denunciatory purpose?

Another way of phrasing this question is: What does Kant's voluntary political ignorance about different dimensions of inequality mean for political philosophers interested in understanding structural injustices?¹⁴ Awareness of racism, classism, and sexism in Kant's thought is now widespread even among Kantian scholars who are politically conservative or at least not radical. But what do they do with this information?

13] Mills 1997, 2005, 2015, 2018, for example.

14] With "voluntary ignorance" I mean that he himself was culpably immature (to use the terms of his Enlightenment text) about slavery and that he contributed to the development of philosophical racism and sexism, that is: he was not just a "child of his time" unaware of certain facts of the world. Chattel slavery, for instance, was not a minor detail of the development of the modern state and of capitalism, but a central aspect of them. Again I recommend Lu-Adler 2022 for a critique of Kant's treatment of slavery.

Does it change anything in the practices of Kantian academia? Does it decolonise practices; that is, do those practices become less racist, colonial, less Eurocentric? Does awareness of Kant's racism change the way we conceptualise the state, the social contract, cosmopolitanism, international relations, sovereign equality, subjective rights? When Kant scholars point out that Kant made racist and sexist remarks, does this help with countering structural racism and sexism in academia? Or, on the contrary, does it just serve to performatively take away responsibility for current structural injustices, in academia and outside of it?¹⁵

One of the aims that make it so important to illuminate a racist past is casting light unto today's racism. So, what matters about the question of Kant and racism is asking "what does Kant's racism mean for us?". Of course, "for us" is the key here and the answer will depend on who is asking the question. Then, we can face the question of what to do with this awareness of the fact that Kant's moral, ethical, legal, and political *theories* have racist tenets. This is, to my eyes, more important today than trying to show that Kant's political theory is not racist or Eurocentric at all. Asking these questions in the "Third Word", where I live and work, carries a specific weight and, from here, it is important to analyse whether there can still be critical, emancipatory versions of Kant's political philosophy. Denunciatory readings are fundamental for a better comprehension not only of the past but of the theoretical assumptions of the present. This notwithstanding, another fundamental task is to contest mainstream readings (apologetic or denunciatory) of the canon, which are typically neither critical nor self-critical.

Charles Mills emphasized the importance of taking oppression seriously.¹⁶ Oppression, I add, organizes our own political epistemologies as readers of Kant. Racism, sexism, imperialism, and classism are not the exception in Western political philosophy, broadly construed, and this is also true of mainstream *readings of the history of political philosophy*. Now, oppression and domination organize political ontologies and epistemologies, but this is also true of resistance to them.

In this latter sense, I believe we can elaborate emancipatory (although limited) readings of Kant's political philosophy if we follow the orientations of a situated study, guided by questions that arise in contexts other than the ones usually taken for granted in mainstream academia. It is in this sense that a reading of Kant as a strong critic of the

15] For a keen critique of attachments to innocence in academia, see Ravecca and Dauphinee 2021. These authors observe, for instance, the following: "As critical theory is increasingly equated to morally charged indictments (of racism, homophobia, sexism and so on) against others, the response we expect is the immediate parsing and hierarchization of violence, and the separation of the self from the worst of the violence's implications: I benefit from settler colonialism, but I am not a genocidaire. I benefit from white supremacy, but I am not a racist. I have access to life preserving technologies while others die in modern camps, but I am not a eugenicist. I am fighting for my liberation, so I cannot be oppressing others" (Ravecca and Dauphinee 2021, p. 45).

16] "Why should anyone think that abstaining from theorizing about oppression and its consequences is the best way to bring about an end to oppression? Isn't this, on the face of it, just completely implausible?" (Mills 2005, 171).

Westphalian order can be useful today. Also, because the constructivist reading of Kant is implausible and because his starting point in political philosophy was interaction and its consequences, one gets a more suitable framework to account for social relations and the injustices they produce. If the starting point of a political theory is interaction and its normative consequences, then one is in a better position to theoretically avoid obfuscating social relations, their asymmetries, and injustices. I think this is essentially why that Kant can be a good ally to new, successor critical theories (anti-racist, anti-colonialist).

In this paper I have claimed that Kant did not derive his political principles from an idealised notion of the individual but from his treatment of external interaction and its consequences. Of course, this does not imply he did not have a racist, Eurocentric, classist, and sexist idea of humanity, of what it means to be a full moral agent. My point is rather that this radicalising reading of Kant I propose is better equipped than Rawlsian constructivism to overcome Kant's own voluntary ignorance on inequality and his epistemological deficit when perceiving structural injustices.

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e-mail

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