Imagine if service personnel were told to win a war at any cost; police were told to suppress crime by any means necessary; or interrogators told to get confessions from suspects no matter what. People sometimes commit truly heinous deeds in the pursuit of noble ends. It’s easy to see why: the consequences of one’s actions are morally important. Yet it’s also easy to see why so many ethicists contend that we should consider constraints prior to considering the consequences when deciding what to do. Focusing too much on consequences can lead to a person justifying all kinds of behavior that seems deeply at odds with our moral intuitions. Constraints include, but are not limited to: dignity, autonomy, rights, and justice. As the name suggests, considerations of constraints ought to limit the morally conscientious person’s behavior, curtailing certain options that might otherwise lead to desirable ends. This article will focus more squarely on autonomy and rights, with more cursory investigations of dignity (considered last week) and justice (considered next week).

**Dignity**

Constraints properly limit a person’s actions in deference to the special nature of human beings. Imagine yourself on a hike. A mosquito buzzes by your ear; you swat at it. Some branches block the path; you kick them out of the way. If you are passing through some dense brush, you cut a path with your machete. None of these actions seem controversial. No one will mourn for the kicked sticks. You will not be confronted by an angry mosquito widow clutching a brood of mosquito orphans. As you read last week in “Tribalism, War and Human Worth,” because of an innate, special—even sacred—quality some call dignity, humans cannot simply be pushed away, tricked, overwhelmed, or manipulated in order to achieve another person’s goals.

As the Prussian philosopher Immanuel Kant (1724-1804) writes, “What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.” No one shudders at the notion of exchanging money for bread, brushes, cars, and houses; a nail might be used in place of a screw to connect two pieces of wood; and a man can pay you to make up for damage he caused to your car. Yet we are properly disgusted at the notion of slavery, human trafficking, prostitution, and organ sales. Human beings and their body parts, are just not the sort of thing that should be bought, sold, or rented.

**Equality**

People have probably always thought that at least some people were special. As Elizabeth Stuart, Queen of Bohemia (1596-1662), muses in the historical novel Tyll,

This was the way of the world. There were a few real people, and then there were the rest: a shadowy army, a host of figures in the background, a swarm of ants, having in common with each other, the fact that they were lacking something.
They were born, then died….If one disappeared, you hardly noticed it. The people who mattered were few.¹

By real people, the queen means members of the royal families of Europe. Everyone else—all the servants, courtiers, merchants, and peasants—need not be considered. Their thoughts, hopes, interests—if they had any—did not matter. These “unreal” people were just raw material for the benefit of the “real” people.

Before we pat ourselves on the back too much about having moved past the absurd medieval idea of royal blood, consider whether or not it is the case that our culture implicitly endorses the idea that some people—politicians, CEOs, celebrities, the ultra-wealthy, professional athletes—count more than other people. Quick quiz:

- Can you name the richest two or three people in the US?
- Can you name the CEO of Facebook or Amazon?
- Do you have an opinion about the greatest contemporary basketball player?
- Can you name two of Brad Pitt’s former girlfriends/wives?

Now, in the other column,
- Can you name the best-published American chemist?
- Can you name the last poet laureate of the United States?
- Do you know who has volunteered the most hours in soup kitchens in the US or given the most money to charity?
- Can you name the 2019 teacher of the year?

The fact is, that our culture, like every culture, values certain things more than others, and the leaders in those fields are honored in such a way that it is easy to start thinking that their thoughts, interests, and agendas count more than those of everyone else.

Maybe you think this isn’t a fair comparison. Yes, celebrities and the ultra-wealthy are like the royalty of the modern era; people pay attention to Brad Pitt’s love life like people once did King Henry VIII’s (six wives for him). Maybe you don’t think famous people count more than others, even secretly. Let us press this idea a little farther. Even out of the national spotlight, in every town and city, there are doctors, lawyers, accountants, engineers, computer programmers, etc., who perform “important” jobs; who have more education than some others; who make more money than some others; and who maybe have a better understanding of how the system works than others. They have more of what some people call “social capital” than the people who clean their houses; mow their lawns; pick, prepare, and sell their food; and work in the stores they patronize. Some of the white-collar professionals might reflect that these people probably don’t have employer-provided health insurance, don’t make much money, don’t live in the “nice” part of town, and don’t have the option of sending their children to private school. They can’t go on vacation and would probably be wiped out by a serious illness or lawsuit. Some of the professionals might see this inequality as a problem. Others might gently blame those people for their situation or shrug and say, “that’s just the way it is.” Is this last idea so different than the

Queen of Bohemia’s idea that the inequity of medieval society was simply “the way of the world”?

Alongside these *inegalitarian* elements in our culture, there also moral currents of thought encouraging all to see everyone as equally special, moral currents that lead conscientious people to constrain their plans and interests in deference to other people’s plans and interests. After all, it is written in one of America’s founding documents, “all men are created equal.” Thomas Jefferson cribbed many of the ideas in the *Declaration of Independence* from the English philosopher, John Locke (1632-1704). Enlightenment-era European philosophers (17th-18th century) like Locke argued that all men (any modern writer would now certainly consider women as well) were *equally* special. One person might be more beautiful, stronger, faster, more creative, or have more marketable skills than another, but everyone—by virtue of being equally members of the species or equally children of God—counted in a moral sense, the same. Their thoughts, hopes, interests, and plans mattered equally.

Contemporary Europeans, who sometimes have some negative impressions of Americans, do tend to note the *egalitarian* streak in the US as a positive aspect of its culture. A quick anecdote illustrating this point follows.

In 2011, a Naval Academy professor struck up a conversation with a British businessman on a flight to London. The businessman mentioned that President Obama had just visited the UK for the first time and made a positive impression.

“Why was that?”

“Well he visited our Prime Minister in 10 Downing street and as you’ve probably seen, there are policemen on either side of the door….”

“Yes?”

The man paused, eyes widening. “Obama shook both of their hands! The President of the United States shook the policemen’s hands! It was the talk of London for days. The policemen were interviewed by all the papers and TV stations. One of them is a little bit famous now….”

At first, the professor did not understand the point the businessman was making. It would be outrageous if an American president *didn’t* shake everyone’s hands—policemen’s, cooks’, factory workers’—on some public visit. Can you imagine the scandal if a president blew past some citizen and didn’t acknowledge him, especially a first responder? Yet this sort of humility, this sort of egalitarian notion that “I’m no better than you, no matter my profession” shocked London.

**Autonomy**

*Why* is everyone morally equal? In what sense are they morally equal? What is the moral basis for the claim that humans (and not mosquitos) possess dignity? There is no uncontroversial answer to this question; indeed, every proposed answer has met sustained and reasoned disagreement (reasoned disagreement is the substance of philosophy). One prominent answer, according to ancient Greco-Roman thinkers, medieval Catholic theologians (operating in a natural law idiom), and Enlightenment philosophers, has something to do with human rationality.
Rationality seems to distinguish people from non-human animals and gives people the ability to make choices. Specifically, according to Kant, the Enlightenment thinker who worked out these ideas in the greatest detail, human beings and other rational beings (like angels, Kant speculates) are **autonomous**. Autonomy literally means “self-legislating.” To put the point succinctly, most adult humans are full-fledged moral agents; they are free; they are able to make their own decisions, to lead their own lives, and to be morally responsible for those decisions.  

**Autonomy consists of three elements.**

1. In principle, humans are able to control the desires they share with non-human animals in order...
2. to impose a “law” of behavior on themselves, and...
3. to choose a specific action consistent with that law.

For example, you go to a bakery to buy bread with the exact amount of necessary cash (they only accept cash). The counter is covered with plates of delicious-looking cookies, doughnuts, and cupcakes. The clerk is busy with another customer. The following points correspond to the three above-mentioned elements of autonomy.

1. You feel an impulse to stuff a cookie in your mouth. You suppress that instinct (whereas a dog, a rhesus monkey, or a four-year-old might eat the cookie), because...
2. you think “it would be wrong to take something I haven’t paid for yet. The cookies belong to the baker. He had to get up at 3:00 am to bake those cookies. He bought the ingredients and paid the store’s rent. It would be unjust to take the fruit of his labor without compensation. Further, if many people stole food from the bakery, no one would be able to buy (or even) steal food because the baker would probably close his business.” (You probably do not actively think about all this, but you could articulate these reasons if, say, your larcenous four-year-old nephew asked why he couldn’t take a cookie.) Further, you think that you won’t even **buy** a cookie because you are trying to lose weight (BMI test coming up) and you know the cookie is not your friend in this endeavor.
3. You leave the bakery after buying the bread you had planned to buy.

Note, regarding the first step, **self-control of desires is a pre-condition for freedom.** You went to the bakery with a plan: to buy bread. You suppressed your raw animal instinct to eat the cookie. You imposed two “laws” on yourself: “don’t steal” and “don’t eat unhealthy food.” You formed a

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2 As mentioned above, philosophers do not necessarily agree on the foundation of moral equality. One can immediately see a difficulty with basing equal moral treatment on autonomy: many human beings are not autonomous, since being autonomous requires that they possess cognitive capacities that they lack. Infants, people with Down Syndrome, people with dementia, those in irreversible comas—there are many constraints that apply to them and that apply to them merely by virtue of their being human beings, but this cannot be by virtue of their being autonomous. Some scholars root equal moral treatment in dignity or human nature, while others still focus on autonomy, despite these objections, extending constraints to the above-mentioned group because of a capacity for autonomy, a history of autonomy, or a species association with other autonomous beings.
plan for action in the store “buy the bread rather than sweets” based on your pre-existing plan to buy bread and your adherence to these two self-imposed laws. Note that if, like a dog, you were unable to control your instinct to eat, and buried your face in the plate of cookies, you would fail at your original plan to buy bread because the baker might throw you out or call the police. Alternatively, if you succumbed to temptation and bought cookies instead of bread, you wouldn’t have money left to buy bread.

We’ve all done things we regret when we succumb to our desires, meet some bad consequence, and then wonder “why did I do that? How did I wind up here?” As St. Paul writes “I don’t do the good I want to do, I do the evil I don’t want to do.” (Rmns 7:19) It is almost like we were temporarily enslaved. In a sense, we were: we sacrificed our freedom by allowing our desires to take the reins and lead us against our better judgment.

Regarding the second element mentioned above, the self-imposition of a law, notice first, that these laws are of a moral nature (relating to lives, property, rights, and character). Kant’s insight is that humans do not simply act on instincts like most non-human animals and are not merely driven by external forces like pebbles bouncing down a hill, but by imposing laws on themselves. In a sense, one’s character and personality are composed of these laws. This ability to self-impose moral laws is what makes us capable of acting morally at all. You are probably the kind of person who would not dream of stealing food from a bakery, murdering a baker, fondling a fellow customer, or screaming obscenities if the bakery is out of sourdough. You may be the kind of person who can resist buying sweets when you had not planned on buying them.

Also, note that you imposed this rule on yourself in the bakery. The clerk in the bakery was not watching you. You probably could have gotten away with stealing a cookie. Yet you restrained your own impulses and chose to refrain from theft both in deference to the baker and in order to be consistent with your plan to buy bread and be consistent with your own character. (You might be ashamed of yourself if you did steal.)

Universal Law (Not making an exception for yourself)

So what constraints do we place upon ourselves? This third aspect of Kant’s conception of autonomy, regarding how to choose actions consistent with what he takes to be the self-imposed universal moral law, is quite complex. In short, Kant’s contention is that any self-imposed law for action that will successfully enable any person to achieve her goals consistently over time also yields morally permissible actions.
Any successful maxim, or general guiding plan for action, has to pass an internally-imposed test called the **Categorical Imperative**.

Act only according to that maxim whereby you can at the same time will that it should become a universal law.

(This is the first formulation of the Categorical Imperative.)

Since one’s actions take place among others’ actions in the world, a successful plan for action has to take into account, and, in a sense, make room, for other people’s plans and action. It is this “making room” for others that *aligns self-interested behavior in pursuit of autonomously selected goals with equal moral concern for other people*.

To engage in the universalization test, the actor must ask himself: would my action be successful even if everyone in the world had the same “maxim,” or plan for action, I have? For example, if everyone was open to lying to get their way—if everyone just had that in their character, that they routinely lied to get what they want—then lies wouldn't work. Liars depend on their audience expecting the truth in order for their lies to be effective. For example, if Archer is a habitual liar and he knows that everyone else is also a liar, then Archer would not believe anything anyone says. Everyone else would make the same calculation so no one would believe Archer. Communication would break down.

As another example, part of the rationale for not stealing is reflected in the following chain of reasoning:

- a. “If I was willing to steal—if I had as a **maxim** a standing law for my actions ‘I will steal if I want to or can get away with it’—
- b. and everyone else had that rule,
- c. then theft would eventually become impossible, because merchants would close their stores.”

Theft cannot be a rational plan for people to get the things they need—it cannot be the way people are supposed to get the things they need—because the action fails to achieve the desired results if everyone does it. Theft can only be a kind of aberration, a cheat against the system. Yes, some people can steal and commerce can continue (in the US, stores lose on average 2% of their stock to theft annually). Yet we cannot say that everyone has a right to steal—that stealing is a permissible behavior—because theft would become impossible if everyone was willing to do it and vendors had to look at every customer as a thief.4

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3 Maxims are general laws covering lots of specific actions. They are categorical: either sometimes permitting the relevant action or never permitting it. For example, one might have the maxim “If, when hungry, I am willing to steal to ease my hunger” or “I will never steal,” “I am willing to lie” or “I will never lie.”

4 Critics sometimes argue that Kant is being too rigorous with this test. Most people are willing to lie, at least in some circumstances, and know this about others, and yet communication still proceeds reasonably well. Yet Kant is not asking if most people could not get on with their lives, provided a certain amount of immoral activity in the world. As a matter of fact, people do. (On the other hand, in the US, there are people who just do not believe politicians or do not believe journalists, because of the high rates of the first group lying and the perception of bias in the second
Morally permissible actions are ones the plans for which can be universalized without this kind of breakdown. For example, everyone can plan to tell the truth and still be successful at telling the truth—even if they know that everyone else plans to tell the truth. Everyone can plan to pay for items they wish to buy and still be successful at shopping. Indeed, every shopper goes to a store with the understanding that other shoppers are there to purchase goods as well.

Of course, not everyone is consistent about imposing a universalizable law on themselves. Many people in fact, succumb to temptation, act selfishly or proceed thoughtlessly and violate constraints. (We discuss how to respond to immoral actions next week.) Some people are also reluctant to make their own decisions, preferring to obey some authority. Yet the notion is that people, unlike non-human animals, are equally special because they all have the capacity for autonomy and moral self-government. Kant writes,

Two things fill the mind with ever-increasing wonder and awe, the more often and the more intensely the mind of thought is drawn to them: the starry heavens above me and the moral law within me.

_The Critique of Pure Reason_

Rational beings have the machinery for independent living, respectful of other people—so they should use it! People should “have the courage to use their own reason.” (_Metaphysics of Morals_)

Laziness and cowardice are the reasons why so great a portion of mankind, after nature has long since discharged them from external direction (naturaliter maiorennnes), nevertheless remains under lifelong tutelage, and why it is so easy for others to set themselves up as their guardians. It is so easy not to be of age. If I have a book which understands for me, a pastor who has a conscience for me, a physician who decides my diet, and so forth, I need not trouble myself. I need not think, if I can only pay others will easily undertake the irksome work for me. “What is Enlightenment?”

_Rights_

How should autonomous people (or people with the capacity for or history of autonomy) be treated? Before acting on one’s desire, in one’s interest, or in response to one’s orders, one must also consider whether any of the actions potentially leading to the desired outcome would violate other people’s _natural rights_. _Rights can be thought of expressions of autonomy in specific areas of thought, speech, or action_. If autonomy is, broadly speaking, freedom, rights protect specific areas of freedom like the freedom to worship as one wants, the freedom to marry whom one wants, the freedom to think what one wants, the freedom to use one’s property as one sees fit, and so on.

Rather, he is trying to identify the objective grounds of common moral ideas—like the idea that lying is wrong—in order to rebut skeptics who think that morality is just a matter of subjective preferences, sentiment, and/or culture. He is trying to see if there are laws of nature behind common moral ideas like there are Newtonian laws of nature governing the behavior of physical objects. The universalization test in a sense, shows “what’s really going on” with morality, like _f=m*a_ explains what is “really going on” when one throws a ball against a wall.
Rights theories function quite differently than other moral theories that have rich accounts of the good life or what is good. For example, Aristotle and natural law thinkers like St. Thomas Aquinas would advocate many specific lifestyle choices and prohibit certain actions because the thinkers have a specific idea of human perfection all should pursue. Certain actions facilitate this goal and other actions lead one away from it. A hedonistic Utilitarian like Jeremy Bentham would advocate choosing actions that maximize physical pleasure or minimize physical pain. A Protestant thinker like Martin Luther would advocate doing exactly what certain portions of Scripture tell Christians to do. Rights theories are less prescriptive than other theories, having been developed as an answer to the question of how people with different specific notions of the good life (e.g. European Protestants and Catholics) could live together without conflict. The basic answer a rights theorist might give to one asking, “how should I live?” would be as follows. People ought to autonomously choose what they think is best, so long as they do not violate other people’s rights.

In some respects, rights are the international moral language of the modern world. Leaders often use rights language when they criticize actions in other countries and write treaties. Rights lend themselves to being an international standard (though some certainly criticize rights as a Western construct) because rights regimes can accommodate most decent lifestyles. For example, rights theorists do not prescribe what religion one must belong to, what books one must read, what political system one must endorse, what one must believe, etc. Instead, rights theories permit one to worship as one wishes; read what one wants; vote how one desires; and believe what one finds compelling, while insisting that one extends to all other (fully autonomous) people the same deference to make their own decisions in these arenas. Rights theories demand that people effectively leave each other alone to chart their own path in life, that all “live and let live.” Many people are comfortable with this arrangement. Even those whose religions or ideologies suggest forcing others to adopt a specific lifestyle can reason that they do not want others forcing them to change their lifestyles, and so, in exchange, will not try to change their neighbors’ lifestyles.

This autonomy-based conception of rights, like all moral theories, has its critics, some of whom would go as far as to regard the attempt to ground rights on autonomy as a recipe for social dysfunction were it to be championed to the exclusion of all other moral considerations. Think about it: if rights theories demand that people leave each other alone to chart their own path in life, what comes of our duties to others...other than our duty to leave others alone? Human beings are social creatures who cannot flourish without participating in communities that shape them, that provide for them, that take care of them when they lose their autonomy. Each of us enters the world utterly dependent on the good will of others (our parents) and most of us will leave it that way as well. While rights are a central--for some the central-- element of the moral constraints on our actions, they cannot be the only element--even within this one moral factor of constraints. Rights are useful ways to articulate why we ought not to kill, hurt, abuse, manipulate, deceive, slander, and trick people who are not bothering us, even if we do not love their life choices.

In many ways, negative rights (defined below) express the moral minimum for interacting with strangers. Rights theories do not have much to say about what we should do to be excellent people; how to help others; and how to build thriving communities. Again, rights theories were promulgated in the Enlightenment period because people in Europe adhering to different rich,

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5 People with diminished capacities for self-government like children and adults with mental illness and intellectual disabilities might properly have certain decisions made for them by care-givers.
full moral systems prescribing most life choices could not agree which of these rich and full moral systems (Catholicism, Protestantism, or Sunni Islam) the state should universally impose. A positive feature of rights theories is that they can accommodate most of these full, rich moral systems within a peaceful framework. Parker can be Catholic; Porter can be Protestant; and Packer can be Muslim, and all can live in the same community enjoying free religious exercise if they respect the others’ rights to worship as they want.

The Nature of Rights - All the major Enlightenment thinkers articulate theories of rights. Again, we will focus on Kant’s influential account. Kant called rights “titles to coerce others.” He means a title like a car title, a certificate of ownership and permission. If one has a right to something, one may permissibly force others to respect that right. More specifically, rights have these features:

- The rights-holder is free to act as she wishes within the scope of the right, e.g. a freedom to conscience means a freedom to believe whatever one wishes, even controversial or wrongheaded ideas. A right to marry means a right to choose one’s own consenting adult partner, even if one’s mother disapproves.
- People ought to respect one’s rights, deferring to one’s freedom in the area the right covers, and asking one’s permission if their plan will affect one in that area.
- One can demand that others respect one’s right if they are failing to do so.
- One can use proportionate means to forcibly protect one’s right (more on this in the reading next week).
- One can ask for, and expect, assistance from third parties to protect one’s right.
- A rights violator cannot fight back if one or others use proportionate means to protect one’s right(s).
- One deserves sympathy if one’s right is violated.
- The violator owes one restitution for a violated right.

Rights are powerful moral items, equalizing the natural imbalance of power between individuals. For example,

- Harper is strong enough to physically grab Hopper’s bike away from him, but Harper is not morally permitted to steal Hopper’s bike because Hopper has a right to it.
- Tanner is a wealthy property developer and wants to buy Tucker’s modest cottage in order to demolish it and build a hotel on the property. Tucker does not have to sell if he does not want to sell.
- President Dyer wants to erode her opponent, Decker’s, poll numbers. With her vast campaign war chest, she could buy many deceitful ads on Facebook and Twitter.
Dyer may not make up disparaging stories about Decker, because Decker has a right not to be slandered.

- Miller wants to sell her products to Mailer. Miller may not lie about the products’ features because Mailer has a right to honest-dealing.

Extent of Rights – According to most rights theories, all human beings, no matter their race, culture, or citizenship, have the same set of natural rights, to the same extent. That is the moral theory; as a matter of fact, some governments might fail to respect their citizens’ or non-citizens’ rights (the rights that governments recognize are legal rights, so to be clear, legal rights might not match up with human rights). Some states, cultures, or religions might teach that women, homosexuals, transsexuals, or members of certain races, classes, professions, nationalities, or religions lack the same rights as others. People in oppressed groups may internalize these ideas and fail to believe they deserve equal treatment. In her book *Sex and Social Justice*, the philosopher Martha Nussbaum recounts an interview with a domestic abuse survivor in India who said, of her husband’s violence, “What can I expect? That’s a woman’s lot in life.” In the view of rights theories, these inegalitarian views and practices are wrong. Racism, sexism, classism, homophobia, transphobia, or religious chauvinism, etc. are morally wrong because they deny the natural equal dignity, capacity for autonomy, and rights expression that all people enjoy.

How far does one’s rights extend? The proper extent of rights exercise is the maximum extent one can exercise that is consistent with universal exercise. Imagine this scene as a guide. You have the right to swing your arms back and forth across your chest. Feels good. You can do so while you are standing close to someone else. She has the same right. Yet you cannot stand so close that you will hit the other person as you swing your arms. Everyone must stay at such a distance where he or she can swing his or her arms without hitting some else. If everyone adheres to their duties to respect every other persons’ space, then everyone can happily swing away without interference. If everyone tries to hit their neighbor with his or her swinging arms, then no one will be able to freely swing his or her arms.

On Kant’s view, one has to universalize a maxim that serves as the general rule or law for a given right’s exercise to see if it is logically possible for all to exercise their rights in this way (more below). If it is possible to universalize the maxim, the relevant action is a permissible exercise of one’s right. If universalization of the maxim is logically impossible, then one does not have a right to perform this action, but rather, a duty to refrain from this action. Breaching one’s duty usually leads to a rights violation or the threat of a rights violation.

For example, one has a right to private property: one can buy, sell, give, destroy, and use one’s property as one wishes—to an extent. So, for example, one can buy a baseball bat and play baseball with it or give it as a gift to one’s brother or coat it in bronze and make it part of a “found object” sculpture. However, one may not use one’s baseball bat to beat an insurance agent to death. That is not a legitimate use of one’s property; one would be breaching the duty

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6 The legal rights a government recognizes might fail to match natural rights by being too restrictive or too permissive. For example, a government might be too restrictive by improperly banning certain religions and might be morally too permissive in granting a legal right to deceive, humiliate, demean, and disrespect people.
not to murder. If everyone had the maxim covering this action “I am willing to murder,” (and everyone knew that everyone had this maxim) no one would likely be able to murder, since potential victims would hide or pre-emptively attack (knowing every other person is a possible lethal threat). Murderers typically depend on their victims not expecting to be murdered. As fans of *John Wick* know, it is hard for assassins to murder other assassins!

People sometimes erroneously think they have the right to do whatever they want to do. A young woman was recently seen at an anti-Covid closure rally holding a sign with a picture of a mask with an X over it and the words “My body, my choice.” Running Kant’s universalization test can both expose what is and what is not a right as well as the limits of one’s rights. It also reveals one’s **duties**: how *one ought to autonomously choose* to limit one’s own behavior in deference to others’ rights. For example:

- One has a right to dispose of one’s property, but not to burn one’s pressure-treated scrap lumber on one’s land if the toxic smoke blows over one’s neighbors’ property.
- One has a right to worship as one wishes but not to gather to worship with others if doing so may spread an epidemic to others outside of the congregation.
- One largely has the right to choose how one dresses, but one lacks a right to refuse mask-wearing if this is necessary to curtail the spread of a disease. (One does not have the right to sicken or poison others.)
- One may listen to the music of one’s choice at a volume of one’s choice, but not so loud that one’s apartment neighbors can hear it.
- One has a right to speak freely but not to threaten others or use (inherently threatening) racial or religious slurs.7

**Scope of Rights** - Philosophers debate what is to be included on the list of rights. Some consider what key aspects of human life are crucial to protect or what actions or mental states are key to the development, protection, and expression of autonomy. As just mentioned, others consider

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7 **Methodological questions** - Some philosophers read Kant as saying that the universalization test should ask if a generic rational person *would* consent to the universalization of her maxim or *should* consent to universalization of her maxim. Some philosophers also have the view that these latter formulations are simply better ones since they seem more plausible. For example, maybe it seems a stretch to say that Mr. Brewer would not be able to burn his pressure treated lumber if all his neighbors simultaneously did the same, on account of Brewer being overcome with poisonous fumes (it might depend on the wind direction). It seems easier to say that Brewer should not rationally consent to all his neighbors burning toxic substances because he is likely to suffer on account of their actions.

Whereas Kant uses the universalization test to derive duties, and from duties, rights, many other rights thinkers think it is preferable to simply stipulate the list of rights people have (based on the powers that are necessary for a good life or an autonomous life) and then ask whether certain actions would violate those rights. Taking this path, one might say, in reference to the above scenarios, people have a right not to be poisoned by toxic fumes or viruses (when the latter is preventable), they have right to listen to their own music or no music without disturbance from their neighbors, and they have a right not to be threatened or humiliated.
whether a contested right, say, the “right to be forgotten,”—the idea that one should be able to have negative information about oneself purged from internet search engines—is a genuine right by considering if such a right meets the universalization test and plausibly meets the features of a right mentioned above.

There is broad consensus about many rights protecting important aspects of thought, speech, and action. Such rights might include the rights to life, bodily integrity (and so a right against assault, mutilation, torture, and rape), liberty (and so, a right against enslavement), privacy, and conscience. There are rights that allow for unimpeded social interaction: rights to security, sexual expression, marriage, speech, free religious exercise, assembly, political participation, freedom of movement. There are rights relevant to people’s relationship to government: the right to be treated equally under the law, the right to immigrate and emigrate, and the right for communal representation. There are also rights specific to the criminal justice system: a right against arbitrary detention, the right to a fair trial, to see evidence arrayed against one, to have an attorney, and to not be forced to testify against oneself. There are also, somewhat more controversially, positive rights (more below) such as the right to basic sustenance, education, and healthcare.

Observance of Rights - Most rights are “negative rights;” they permit the rights-holder to demand deference from others—freedom to act without impediment. Some rights are “positive rights,” entitling the rights holder to demand the delivery of some service. For example, some argue that children have a right to an education and that all have a right to security, basic sustenance, and medical care—at least emergency care. For example, intuitively, if a hiker who had been lost in the woods for a week came to your cabin door and asked for some food and ointment for his cuts (perhaps offering to pay for it when he got back to civilization)—and you had plenty of both—you would be wronging him if you said no. Others could legitimately criticize you and feel bad for the man.

Everyone has a duty to meet everyone else’s negative rights. One can meet this duty simply by refraining from rights violations like murder, assault, rape, enslavement, deception, manipulation, cheating, kidnapping, slander, humiliation, etc. You are probably already doing a great job at this! The duties to meet positive rights are more restricted. People in close proximity to those whose positive rights are under immediate threat are under the strongest duty to meet those rights when they have the special ability to meet them at little cost to themselves. For example, any able-bodied adult has a very strong duty to save a drowning infant from a shallow wading pool. Yet a paralyzed person in a wheelchair or an able-bodied person in another country does not have a strong duty to directly rescue the infant. A doctor has a very strong duty to deliver first aid to an injured person when, especially when there is no one else around.

Rights are powerful moral items. They can nullify the natural power of large numbers of people. This follows, in a technical sense, because rights, unlike interests or preferences, are often thought to be non-cumulative: a group of people does not have more rights than a single person. Regarding interests, if Tailor, an administrative assistant, wanted to order pens for the office supply closet, he might poll office employees about preferred colors (he will only order one color). It makes sense to order whichever color the majority wants since one does not have a right to have a particular color pen in one’s office (pen color is not a morally important sort of thing to which one might have a right). Tailor effectively adds up all the employees’ preferences for a particular color, weighing each vote equally, buying the color pen which best meets the
preferences of the most employees. By contrast, if employees *did* have a right to their preferred color of pen in the office, Tailor would be wrong to treat the decision like a math problem. *The rights of the majority do not add up to outweigh the rights of the minority.* Positively, this feature means that rights protect minorities from the tyranny of the majority. Negatively, rights permit people to say, write, and believe hateful, annoying, or false things as well as do things that some people might find disgusting or immoral (but not rights-violating). So, for example:

- A community of people belonging to religion X might not want a small number of people from religion Y building a house of worship in the town or teaching their children in religion Y’s tenets, yet members of Y have a moral right to practice their religion.
- A majority of people in a town might think a book being written by Ms. Potter is obscene or blasphemous and should be burned, yet she has a moral right to write it.
- A majority of people might object to interracial or gay marriage, but (adults) Rider and Sawyer from different races have a right to marry each other if they wish.
- A majority of people in town might think that members of political party X have foolish ideas and should be prevented from voting, but they have a right to express their political views in the ballot box.

### Three Tests for Rights Violations

There are three tests to use to judge if one’s contemplated action would violate a person’s rights. It is good to use all three tests as some tests are easier than others to apply to certain actions.

1) **The universalization test** – Morally permissible actions are ones the plans for which can be universalized without this kind of breakdown. For example, everyone can plan to tell the truth and still be successful at telling the truth—even if they know that everyone else plans to tell the truth. Deceptive practices, including all forms of lying, manipulation, cheating, and trickery, cannot survive a universalization test. Actions that involve coercion (i.e. force), like assault, rape, murder, kidnapping, and theft, depend for their success for the victims expecting to be left alone by others. If they knew that everyone in the world was open to, or planned to, assault, rape, murder, etc., then everyone would constantly hide from others, be on his or her guard, or preemptively attack others, thereby depriving offenders of potential victims. For example, forward-deployed service personnel are harder to kill or kidnap than civilians because deployed service members expect danger at every turn and take precautions against it. While not every violation of the universal law test results in a rights violation, those violations that share the features highlighted in the section the Nature of Rights do.

2) **The mere means test**: The actor must ask herself if her contemplated action would treat affected parties as a mere means to an end. Kant writes, in his second formulation of the Categorical Imperative, “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.” In other words, is the other person being treated as a thing, a tool, or a stepping-stone to the actor’s, or other’s goal? While it will often be intuitively clear if one is treating another like a thing, a farm
animal, etc., sometimes it can help clarify if one is treating someone as a *mere* means by considering if the recipient of the action could in principle consent to the action being done to him. For example, if Baker is treating Carter as a mere means, Baker is treating Carter in such a way where Carter is not even given a chance to consent to Baker doing what she is doing. For example, if Baker steals Carter’s watch, Baker does not give Carter a chance to freely give her the watch. If Baker tasers Carter and stuffs him in the back of her car, she does not give Carter a chance to consent to joining her on a journey.  

To be clear, the test does not rely on the recipient of the action explicitly consenting to an action (e.g. saying “it’s OK for you to do this to me.”). Rather, the actor considers the hypothetical question, “am I acting in a way where the person *has a chance* to consent or dissent to my behavior?” One frequently, and permissibly, employs agents to do things on one’s behalf, using them *in a sense*, as a means to one’s own goal. Maids, accountants, police, doctors, service members, etc. do things on behalf of others, yet this service is permissible—and the person is not used as a *mere* means—because the person consents to act in this service role. While every violation of the mere means or the universal law test will not result in a rights violation, those that share the features highlighted in the section the *Nature of Rights* do.

3) The Due Respect Test: Gladiators. Think about them. Imagine a modern day, ethical version. Very different than the old Roman system you have seen in the Russell Crowe *Gladiator* movie, which was rife with coercion, slavery, and other gross injustices. In our modern, up-to-date version, all the gladiators volunteer to train and fight -- and many are motivated to do so because they believe that face-to-face combat is at the very heart of a meaningful life. Think of the Roman Emperor Commodus who agrees to engage Russell Crowe in a fight to the death: like Commodus, our modern gladiators willingly agree to fight to the death. And their competitions are marketed and broadcast to a worldwide audience who voluntarily pay a fee to watch the bloodletting. I think that we can all agree that this would be an incredibly lucrative business.

However that might be, is there anything wrong with such a system? Anything *morally* wrong? Do any moral constraints prohibit a person from becoming a gladiator, or from watching the bloody proceedings, or from investing in the company? Well, consider the deliberative tools we have discussed up to this point. Can we universalize a decision to join in a gladiatorial contest to the death? It seems obvious that we can: there is no incoherence in a world in which some small number of volunteers participate in death matches with one another just as in our current world, there is no incoherence in some people volunteering to box with each other. Does such a practice involve treating others merely as

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8 Some ethicists working in the Kantian tradition use a less rigorous formulation of this test, asking if a generic rational person *would* consent to this kind of behavior. In some cases, what would be a rights violation on account of treating someone as a mere means can be made permissible because of the “victim’s” waiver (more on waivers next week). For example, (true story), Booker, Binder, and Butcher “kidnapped” a newly engaged mutual friend, Cutter, and took him to his bachelor party. They put on masks; grabbed him as he was leaving his apartment; shoved a realistic looking prop gun in his face; hooded him and bundled him into a car. They did not give him a chance to consent, but reasoned, correctly, that he would appreciate a surprise bachelor party as well as their creative approach—they were all theater people. The “mere means” test still reveals what would, in most cases, absent a presumed waiver, be a rights violation. (Still, one sees how Cutter might have refused to “forgive” that action retrospectively and felt wronged.
means? Clearly not: all who participate consent to their participation, as do those who pay to watch the carnage.

Even so, you might still believe that it is wrong to associate yourself with this practice. There are things that human beings ought not consent to do, even if doing those things is at the heart of what makes life meaningful for them. What this means is that there must be some further moral test that you must apply in order to discern the constraints that apply to you. Here is one that is suggested by our reflections up to this point -- we might call it the "due respect" test. The test requires us to answer the following question: am I responding to others in a way that gives due weight to their worth as human beings? As we noted at the beginning of this essay, as well as in the reading for last week, human beings have great worth and dignity. We must respect that worth in our beliefs, in our actions, in our emotions, in our intentions ... in every aspect of our lives. And there are some clear ways in which we can fail to do so. So, for example, we can fail the due respect test by affirming certain propositions: if I deny that your worth ... if I think that you have the moral status of a piece of excrement ... then I cannot thereby respect your worth as a human being. If I tell you that you have the moral status of a piece of excrement ... I just can't keep my assessment of you a secret ... then I have thereby failed to accord you the worth that you do in fact have and so I have wronged you. If I act on that belief ... if my conviction that you have the moral status of a piece of excrement motivates or justifies the way that I treat you ... then I have thereby failed to accord you the worth that you do in fact have and so I have wronged you. Each of these ways of failing the due respect test are fairly straightforward: in each case, the content of my thoughts, statements, or motivations explicitly denies one of the most important moral facts about you, viz., that you are a sacred being, possessed of great worth the equal of my own.

There are many other applications of this "due respect" test. In some cases, the assumptions that make sense of our actions fail to respect the worth of our fellow human beings. Imagine that I observe another human being brutalized by another -- recall the example related by Eugene Sledge from last week's reading in which one Marine uses his kabar to extract gold teeth from a paralyzed Japanese soldier. I really like what I see -- I hate the Japanese for what they have done to my friends. So, I sit down on a nearby rock and watch the action. I love it. Is there anything wrong with my merely observing the action? Just sitting there and enjoying the suffering of that paralyzed Japanese soldier? Well, my fellow Marine treats the Japanese soldier as a mere means. He therefore does something horribly wrong. But I don't do anything at all and so I do not treat him as a mere means. I am a passive observer. Even so, my passive enjoyment is wrong: I have a duty to do something to prevent the atrocity. It might be wrong because of my beliefs: I think that the Japanese soldier has the moral status of excrement and so may be treated in any way we please. Or I might not think that. But I am still treating him as if I believe that: my passive enjoyment of his suffering is no different from the way that I would treat him if I actually did think him to be human scum. This too is a failure of due respect.

There are still further applications of the due respect test. In a deliberative context, to respect a moral fact is to give that fact its proper weight in your deliberations. Its "proper weight" is specified by a number of principles, many of which you can discern just by reflection. For example, if a human being has great worth, dignity or sacredness, then you do not destroy it for no good reason. If you own one of the few remaining paintings by Leonardo DaVinci, and you regard such works of art as sacred, then you don't use it to wipe up the mess left behind by your puppy. This is to destroy a sacred thing for an utterly trivial reason. If for a Da Vinci, then
certainly for a human being! Again, if human beings have great worth, then you must take their well-being into account when your actions affect their well-being. Their well-being matters because they matter. Therefore, you don't inflict massive suffering on them in order to acquire a trivial good. You do not kill another human being merely to satisfy a preference ... yours or theirs. Human beings are worth too much for that. Therefore, you may not kill another one another even if both of you agree to do so. (This is why the modern, ethically 'cleansed,' consensual gladiatorial practice is in fact a moral outrage.) Again, if human beings have great worth, then you must take into deliberative account the kind of being they are -- their nature. We have already seen this: human beings are autonomous, due respect for their worth requires us to give due weight in our deliberations to their autonomy, and so we may not treat them as mere means. It turns out that the mere means test is just a particular application of the more comprehensive due respect test.

At the end of the day, then, we must ask ourselves: does this way of responding to my fellow human being give due deliberative weight to the worth that she possesses as a human being? This is required on the battlefield, it is required when we join a pay-per-view event, and it is required in Bancroft Hall.

**Constraints**

Dignity, autonomy, rights, and justice are very powerful constraints on morally conscientious people’s behavior. Before pursuing a personal project or even a project with benefits for others, one must carefully consider whether one’s actions would violate another’s rights; constitute an assault on human dignity; or perpetrate an injustice. In many cases, the moral reasons associated with constraints are strong enough to exclude the potential action, though one should also consider the consequences of action or inaction.