

Korsgaard and the *Wille/Willkür* Distinction: Radical Constructivism and the Imputability of Immoral Actions

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Introduction

Perhaps one of the most famous problems in Kant's ethics concerns the imputability of immoral actions. At first glance, Kant appears to equate freedom with autonomy and autonomy with morality, leaving it unclear how there could be any such thing as free immoral action. And if immoral action is not free, the objection goes, we cannot hold people responsible for their immoral actions. Thus, the problem of the imputability of immoral actions seems to be reducible to explanations that concern how immoral actions could be freely undertaken. But Kant scholars also frequently assume that both of these alleged "problems" are easily solved by appealing to a distinction between the legislative and executive aspects of the will: *Wille* and *Willkür*.¹ Interestingly, Christine Korsgaard is an exception.

¹ Gordon Michalson tellingly grants that there are difficulties with the *Wille/Willkür* distinction, but nonetheless maintains that 'it is often the case with Kant's writing that a strained or awkward claim is best decoded, not with a view to resolving its tensions, but with a view to the argumentative dividends that it pays. In the case of the distinction between *Wille* and *Willkür*, the dividends are readily evident, especially if we view the distinction in the context of the problem of moral evil. For by discriminating in this way between aspects of an ultimately single and unified will, Kant is more able to explain how it is that we remain rational (and thus free, responsible, and accountable) even when we act immorally' (Michalson1990: 36).

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In her discussion of the problem of free immoral actions, Korsgaard makes no mention of the distinction between *Wille* and *Willkür*.² She maintains, instead, that this problem is solved by appealing to the distinction between the theoretical and practical standpoints. In this paper, I will argue that when the problem is formulated in terms of the imputability of immoral actions – rather than in terms of the possibility of free immoral actions – it thwarts the solution proposed by Korsgaard. In fact, I maintain that the distinction between the theoretical and practical standpoints, as Korsgaard describes it, in fact strengthens the worry that Kant will not be able to explain the imputability of immoral actions. I begin by outlining the distinction between *Wille* and *Willkür* and explaining how it is supposed to help Kant. I then present Korsgaard’s account of how the theoretical and practical standpoints solve the problem of free immoral action. After looking more closely at the distinction between the theoretical and practical standpoints, I proceed to show how that distinction only confirms the concern that Kant cannot make sense of the imputability of immoral actions, given Korsgaard’s interpretation of Kant’s thought.

The *Wille/Willkür* Distinction

The widespread acceptance of the idea that the *Wille/Willkür* distinction solves the problem of imputable immoral action for Kant is somewhat surprising when you consider the lack of consensus as to *how* it solves the problem. Lewis White Beck, for example, believes that there are two distinct kinds of freedom, each associated with a different aspect of the will. Spontaneity is associated with

² Korsgaard does mention the *Wille/Willkür* distinction in *The Sources of Normativity*, but only as it relates to her own thought. She does not discuss it in her interpretative work on Kant and his attempt to make sense of immoral action.

Willkür, autonomy with *Wille*. Armed with these distinctions, Beck thinks that ‘it is very easy to see how the clear separation of *Wille* from *Willkür* provides a secure place for imputable evil’ (Beck 1960: 205), since *Willkür* retains the freedom of spontaneity even when it departs from the autonomous legislation of *Wille*. Nelson Potter, however, contends that this is no solution at all.

According to Potter, the problem with Beck’s proposed solution is that we do not know what the relationship is between the two kinds of freedom. Is an action imputable to an agent when it exhibits one kind of freedom but not the other? Or, in failing to exhibit one kind of freedom, is the action simply not free? Beck himself suggests that the two kinds of freedom are linked, as when he claims that ‘*Willkür* is fully spontaneous only when its action is governed by a rule given by pure practical reason, which is its legislative office’ (Beck 1960: 180).³ But in that case, it seems like appealing to the distinction between *Wille* and *Willkür* in the way that Beck does just moves the problem around: instead of focusing on the relationship between the two kinds of freedom, we find ourselves in need of an explanation of the relationship between the two aspects of the will (Potter 1978: 593).

Potter insists, instead, that Kant has only one account of freedom: Freedom is ‘the *ability* of pure reason to be of itself practical’ (Kant 1996: 13; *MS* 6.213). But simply because pure reason has the ability to be *of itself* practical, it does not follow that pure reason never fails to exhibit that ability, that is, that it never allows itself to be influenced by external factors, such as

³ Certain passages in Beck further support this worry. At one point, Beck explains, ‘The *Willkür* ... can fail to exercise its freedom or realize its potentiality of being free in a negative sense. Then it gives way to the importunities of sense and is a will in name only, really being an *arbitrium brutum*’ (Beck 1960: 203). Beck’s choice of words here is alarming, given that Kant defines an *arbitrium brutum* as a will that ‘cannot be determined otherwise than through sensible impulses’ (Kant 1998a: 675; *KrV*, A802/B830, emphasis added).

inclinations. As early as the first *Critique*, Kant (1998a: 533; *KrV*, A534/B562)⁴ explicitly asserts that the human will is pathologically *affected* but not pathologically determined. Likewise, when Kant says that the free will is under the moral law, it does not mean that the free will automatically follows the moral law. Rather, it means that the free will has the ability to act from the motive of duty rather than being pathologically determined. Indeed, Potter points out that Kant explicitly rejects the idea that the freedom of *Willkür* is an ability to choose for or against morality. In *The Metaphysics of Morals*, Kant writes:

But freedom of choice [*Willkür*] cannot be defined – as some have tried to define it – as the ability to make a choice for or against the law (*libertas indifferentiae*), even though choice as a *phenomenon* provides frequent examples of this in experience. For we know freedom ... only as a *negative* property in us, namely that of not being *necessitated* to act through any sensible determining grounds. But we cannot present *theoretically* freedom as a *noumenon*, that is, freedom regarded as the ability of man merely as an intelligence ... Only freedom in relation to the internal lawgiving of freedom is really an ability; the possibility of deviating from it is an inability. How can the former be defined by the latter?

(1996: 18-19; *MS*, 6.226-227)

Notice, however, that Potter's account of freedom is still dependent on the *Wille/Willkür* distinction. His interpretation of Kant's position is based on a text that clearly restricts freedom

⁴ Throughout this article, *The Critique of Pure Reason* will be abbreviated as *KrV*. Other abbreviations include: *The Critique of Practical Reason* (*KpV*), *The Groundwork of the Metaphysics of Morals* (*G*), and *The Metaphysics of Morals* (*MS*).

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to *Willkür*: ‘In man the latter [*Willkür*] is a free choice; the will [*Wille*], which is directed to nothing beyond the law itself, cannot be called either free or unfree, since it is not directed to actions but immediately to giving laws for the maxims of actions (and is, therefore, practical reason itself)’ (Kant 1996: 18; *MS*, 6.226). If Potter is right, Kant does not provide us with two accounts of freedom: he isolates the aspect of the will that is free [*Willkür*] from the aspect of the will that is not [*Wille*]. And *Willkür* is free insofar as it has the capacity to act in accordance with the dictates of *Wille*. As Potter has pointed out, this does not mean that a free *Willkür* will actualize this capacity, rendering free immoral action possible.

However, there is a problem with this account, because for Kant, all action is principled. If an agent departs from the principles of autonomous legislation, what principle grounds the action? Kant seems insistent that there are only two sorts of principles: free principles given by *Wille* and principles that are empirically determined (Hudson 1991: 183-185). Thus, it still seems that any action that departs from the dictates of *Wille*’s autonomous legislation cannot be free.⁵ Hudson addresses this problem by introducing still more distinctions. In addition to distinguishing between *Wille* and *Willkür*, Hudson believes Kant’s distinction between positive and negative conceptions of freedom applies to the freedom characteristic of both *Wille* and *Willkür*. Thus, Kant has two concepts of the will and four kinds of freedom: the positive freedom of *Willkür* (WK +), the negative freedom of *Willkür* (WK –), the positive freedom of *Wille* (W +), and the negative freedom of *Wille* (W –).

WK + is spontaneity, or the ability to ‘both choose a maxim and execute the appropriate action’ (Hudson 1991: 189), while

⁵ Hudson does not raise this issue as an objection to Potter’s view, though he takes himself to be responding to Potter in other ways. It seems clear to me, however, that it is a problem for Potter’s account.

WK – is merely freedom from being empirically necessitated (independence). W + is the ability of *Wille* to legislate the moral law (autonomy), while Hudson (1991: 189-191) refers to W – as ‘empirical practical reason.’⁶ Hudson writes:

If the human being decides to act on the desires presented to him through his sensuous nature, then *Wille* as empirical practical reason is called upon to discover various means to that end which has been formulated by a being who, possessed of specific desires, is able to act in the hopes of attaining the object of those desires according to a conception of causal laws relating means to ends.

(Hudson 1991: 186)

This last type of freedom is identified with heteronomy of the will (Hudson 1991: 191). And it is this last type of freedom that enables Kant to make sense of the imputability of immoral actions since immoral actions can be grounded in principles legislated in accordance with W –.

There are, of course, some obvious concerns about Hudson’s position as I have outlined it: If Kant insists that only *Willkür* is free, how can there be two types of freedom associated with *Wille*? Is it accurate to think of heteronomy as a type of freedom? Hudson addresses these concerns in his paper, but my objective is not to critique or adjudicate between the different accounts of the relationships between *Wille*, *Willkür*, and freedom. Rather, I want to call attention to what these different accounts share in common. Despite the disparate accounts of *how* the *Wille/Willkür* distinction helps Kant explain the imputability of immoral actions, perhaps the widespread accept-

⁶ Hudson borrows R. Meerbote’s (1982) distinction between pure practical reason and empirical practical reason within *Wille*.

ance of the idea that the distinction succeeds in helping can be explained by looking at what all of these accounts share. And what they share is that they all attempt to distance the capacity for choice from the standards of morality. Beck distinguishes spontaneity from autonomy and claims that actions can proceed from free choice even if they are not autonomous; Potter claims that freedom is the ability to be autonomous so that, again, actions can proceed from free choice even if they are not autonomous; Hudson maintains that free choice may follow the dictates of *Wille* when it functions as empirical practical reason, but the standards of morality are issued by *Wille* functioning as pure practical reason.

This attempt to separate morality from free choice is, of course, the obvious move to make. After all, Kant's apparent problem accounting for the imputability of immoral action is the result of the fact that he seems to identify morality too closely with free choice. So, surely, the solution is to drive a wedge between morality and freedom of choice. Christine Korsgaard, however, disagrees. Though she, too, believes that the problem of free immoral action is illusory, she argues that Kant has *another* distinction in place that dissolves the apparent difficulty.⁷ More specifically, she believes that Kant can argue that free immoral action is not *theoretically* impossible. Scholars who think Kant's practical philosophy commits him to the position that immoral action cannot be freely undertaken fail to take seriously the distinction Kant makes between the standpoints of practical and theoretical reason. Note, however, that Korsgaard frames the issue in terms of the possibility of

⁷ Though Korsgaard does not explicitly reject the idea that the *Wille/Willkür* distinction solves the problem of free immoral action in "Morality as Freedom," I think it is notable that she does not mention the distinction anywhere in that essay.

free immoral action rather than the imputability of immoral actions.⁸

Korsgaard's Solution

Korsgaard observes that in the *Critique of Practical Reason*, Kant claims that the positive conception of freedom, which she, unlike Hudson, identifies solely with autonomy, is a postulate of practical reason (Kant 1997: 110; *KpV*, 5.132). She explains:

A postulate of practical reason is an object of rational belief, but the reasons for the belief are practical and moral... Although the beliefs are theoretical in form – the will is free, there is a God – their basis and function are practical. As Kant ... constantly emphasizes in the second *Critique*, the postulates play no theoretical or explanatory role whatsoever.

(Korsgaard 1996c: 172)

Given that autonomy plays no theoretical role in Kant's philosophy, Korsgaard concludes that we cannot say with any certainty that moral evil *cannot* be freely undertaken. 'A free but evil will,' she writes, 'is shown to be unintelligible *from the standpoint of pure practical reason*, but not to be theoretically impossible' (Korsgaard 1996c: 173, *her emphasis*).

The theoretical standpoint, briefly, is the standpoint from which we investigate. It is the point of view of a spectator. By

⁸ She addresses the concept of responsibility elsewhere (Korsgaard 1996a), but her account there depends on our being able to regard wrongdoers as fellow rational agents. Though she maintains that responsibility is not a characteristic of persons but rather that we *hold* others responsible by adopting certain attitudes towards them, it is clear that we regard those we hold responsible as free rational agents. As we will see, this should be enough to generate problems when we try to regard agents as acting both freely and immorally.

contrast, the practical standpoint is often taken to be the point of view of an agent. I will complicate this definition later, but it will suffice for now. On this account, the practical standpoint is concerned with action, how I ought to interact with the world as it presents itself to me. This is why freedom is a postulate of *practical* reason: insofar as I am an agent I *must* regard myself as free and undetermined.⁹ Korsgaard (1996c: 173) describes the difference between the theoretical and practical standpoints as follows: ‘The deliberating agent, employing reasons practically, views the world ... as an expression of the wills of God and other rational agents... The theorizing spectator, on the other hand, views the world as ... mechanistic and fully determined.’ However, we can postulate that we are free to act morally because, though theoretical reason interprets the world as mechanistically determined, mechanism is a postulate of theoretical reason just as freedom is a postulate of practical reason. Theoretical reason cannot rule out the possibility of freedom of the will.

Korsgaard takes the theoretical and practical standpoints to map onto a distinction in Kant’s metaphysics between phenomena and noumena. The phenomenal is the world of experience. Sensible ‘intuitions,’ which are something like raw sense data, are structured in accordance with the forms of intuition and the concepts of the understanding to produce experience. Since we cannot experience anything apart from the

⁹ Korsgaard asks the reader to imagine that he or she has a device implanted in the brain that will cause him or her to choose to do the opposite of whatever we would choose to do prior to the intervention of the device. (So imagine that, the instant you make a choice, the device activates and causes you to choose otherwise.) Insofar as you think of yourself as an agent, you do not want your choice to be determined by the device. However, so long as you are concerned with ‘fooling’ the device, you will be unable to act since you will constantly be worried that your so-called ‘choice’ is really determined by the device on your brain. In order for you to act, you must think of yourself as undetermined (Korsgaard 1996c: 162-163).

structuring influence of the forms of intuition and the concepts of human understanding, phenomena are mere appearances. Something underlies these appearances, but we can never escape the influence of the concepts of the understanding to get at this ‘something.’ Thus, theoretical reason is restricted to dealing with the phenomenal realm. The ‘something’ underlying the phenomena, or, as Kant calls it, this ‘thing-in-itself,’ is the noumenal.

According to Korsgaard, we can admit that freedom is possible from a theoretical point of view since we cannot know the noumenal and thus cannot rule out the possibility of freedom. She connects this distinction between phenomena and noumena to her interpretation of the theoretical/practical distinction when she claims:

When we view ourselves as phenomena, we regard everything about ourselves including inner appearances such as thoughts and choices, as parts of the natural world, and therefore as governed by its laws. But insofar as we are rational, we also regard ourselves as *active* beings, who are the authors of our thoughts and choices... To this extent we must view ourselves as *noumena*.

(Korsgaard 1996b: x, *her emphasis*)

This passage suggests that to view ourselves as phenomena is to regard ourselves as objects, to take on the point of view of a spectator with respect to ourselves – that is, to take up the theoretical standpoint. By contrast, to view ourselves as noumena is to take ourselves to be active agents in the world, thus requiring us to adopt the practical standpoint.

This interpretation of Korsgaard’s is reinforced elsewhere. In ‘Creating the kingdom of ends’ (Korsgaard 1996a: 203),

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Korsgaard claims that the distinction between phenomena and noumena is ‘not between two kinds of beings, but between the beings of this world insofar as they are authentically active and the same beings insofar as we are passively receptive to them’.¹⁰ We cannot know ‘noumena’ because experience requires passivity: ‘we cannot experience activity as such’ (Korsgaard 1996a: 204).¹¹ However, she observes that we do regard ourselves as acting, even if we cannot experience ‘activity as such’.¹² When we take up the perspective of an agent acting in the world, we must take ourselves to be acting independently of the laws of nature – that is, independently of the laws governing phenomena. In taking up the practical standpoint, then, we regard ourselves as noumena.

¹⁰ Korsgaard thus clearly endorses what is called the ‘two-standpoint’ interpretation of Kant’s metaphysics rather than the ‘two-world’ interpretation. According to the two-world interpretation, for any given item we find in the world, for example a chair, there are really two objects: the noumenal object and the phenomenal object. Correspondingly, there is a world of noumenal objects and a world of phenomenal objects, with the noumenal world standing in a causal relationship to the phenomenal world. Though different interpretations of Kant’s metaphysics yield different interpretations of his ethics, I do not wish to adjudicate between ‘two-standpoint’ and ‘two-world’ readings of Kant’s metaphysics. For the purposes of this article, I am interested primarily in Korsgaard’s reading of Kant.

¹¹ Note that the distinction between phenomena and noumena was introduced as a result of our activity in structuring the intuitions that confront us. It is worth pointing out that Henry Allison (1990: 4) described the two standpoints in terms of considering things as they meet the epistemic conditions of the human mind and these same things considered ‘independently of the human mind and its cognitive apparatus’. I mention Allison’s take on the two-standpoint interpretation because it is not obvious that his two standpoints map onto Korsgaard’s two standpoints. But again, my concern is the relationship between Kant’s thought and Korsgaard’s.

¹² We must think again of Korsgaard’s thought experiment discussed in n.8 above.

Against Korsgaard's Interpretation

Unfortunately, I do not believe the distinction between the theoretical and practical standpoints can help Kant in the way Korsgaard suggests because the problem of the imputability of immoral actions is leveled from the standpoint of practical reason. In other words, while the possibility of free immoral action in Kant's thought might be regarded as a theoretical issue, when understood as a problem of imputability, it springs *from the standpoint of practical reason*. Indeed, the problem is most compelling when considered as a problem explaining the imputability of immoral actions: We just *do* interpret ourselves and others as choosing to act immorally. It is not simply that, having postulated the possibility of autonomous legislation, we have opened the door to the possibility that maybe, somehow, in some way someone *could* choose to act immorally. Rather, in interpreting the world as influenced by rational wills, we sometimes interpret them as choosing wrongly. Claiming that immoral action is *theoretically* possible, then, simply fails to address the issue.

It may appear misleading to claim that this involves taking up the practical point of view since I provisionally identified the practical point of view with the deliberative standpoint. *Judging* that someone – whether myself or someone else – has acted wrongly is not deliberation.¹³ But Patrick Frierson remarks:

¹³ I suspect that someone might deliberate about whether or not to do something wrong. In such a case, I believe the agent might be characterized as imputing immoral action to himself (or doing something meaningfully similar) while occupying the deliberative standpoint. Korsgaard (1996a: 206) even talks this way when she says, 'At the moment of deliberate decision, you must regard yourself as the author of your action, and so you inevitably hold yourself responsible for what you do.' She even describes this case as 'holding yourself responsible in the context of deliberative choice' (Korsgaard 1996a: 206).

Korsgaard sometimes seems to associate the practical standpoint entirely with the *deliberative* or first-person perspective, although all that is strictly required is that one takes a standpoint according to which a person must be considered an *agent*, and this can occur whether one *deliberates* or is *evaluated* in a practical way.

(2010: 85, *his emphasis*)

Given the way in which Korsgaard connects the theoretical/practical distinction with the phenomena/noumena distinction, I believe Frierson is right. After all, according to Korsgaard, the phenomenal consists of passive objects while the noumenal includes active agents. Anytime we treat *anyone* as an active agent rather than a mere object acted on by natural forces, we thus adopt the practical point of view. It was no mistake when Korsgaard claimed that the practical point of view interprets the world ‘as an expression of the wills of God and other rational agents’ (Korsgaard 1996c: 173). I rather suspect that Korsgaard sometimes talks as if the practical standpoint were identical to the deliberative standpoint only because the fact that we deliberate¹⁴ provides perhaps the most compelling reason to posit the existence of active agents. It is hard not to treat oneself as an agent when you are deliberating.

In any case, Korsgaard seems committed to the claim that anytime you regard someone as an agent, you treat him as a noumenon and thus regard him from a practical standpoint. But

However, I hesitate to ground my objection on this sort of case because the possibility and nature of deliberate immoral action is controversial. To proceed on the basis of such a case would likely require me to address issues outside the scope of this paper.

¹⁴ Korsgaard (2009: 1, *emphasis hers*) begins her latest monograph by observing that ‘human beings are *condemned* to choice and action.’ In other words, deliberation is unavoidable.

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if actions can only be imputed to agents – which seems like a reasonable assumption – then anytime we impute wrongdoing to someone, we occupy the practical standpoint. And this is the problem facing Korsgaard: we can, from the practical point of view, interpret ourselves and others as deliberately acting wrongly.¹⁵ To insist that it is theoretically *possible* that a wrongdoer is free, even though it is practically impossible for an agent to act wrongly, is beside the point. If it is practically impossible for an agent to act wrongly, as Korsgaard seems to grant when she says that a free but evil will is ‘unintelligible’ from the practical point of view, then the practical standpoint is in conflict with itself when it leads us to impute wrong actions to agents. I will have more to say about this apparent tension in the practical standpoint in the next section.

The Theoretical/Practical Distinction as the Source of the Problem

I believe Korsgaard was mistaken to abandon the widely-accepted view that Kant intends to resolve the problem of free immoral action by distinguishing between *Wille* and *Willkür*. In fact, rather than invoking the distinction between the theoretical and practical standpoints to deal with a problem unaddressed by the *Wille/Willkür* distinction, I think Kant intends the *Wille/Willkür* distinction to solve a problem that results from the distinction between the theoretical and the practical, the phenomenal and the noumenal. Indeed, the tension internal to the practical standpoint alluded to above is, I believe, symptomatic of this underlying problem.

¹⁵ Her response to the unintelligibility of immoral action from a practical point of view in ‘Morality as freedom’ is simply that immoral action *is* unintelligible. It seems to me, however, that deliberate immoral action is a common feature of our experience and we have no trouble making sense of it.

As already noted, Korsgaard believes that we adopt the practical standpoint when we think of ourselves and others as active agents. Of course, we also regard ourselves as sometimes passive and thus as phenomena as well as noumena. And this is importantly related to the way in which the moral law binds us in the form of an imperative, or command. In order to act we must think of ourselves as setting ends for ourselves, as acting independently from the forces of nature, but at the same time we cannot help but admit that we are subject to various influences that might prevent us from achieving the ideal of autonomy. Autonomy, and by extension morality, are thus ideals we strive to conform to but do not automatically realize.

This dual perspective on ourselves as both noumena and phenomena poses several puzzles, especially when we must occupy the practical and theoretical standpoints at the same time. For example, deliberation typically requires the agent to take into account theoretical claims about the world, suggesting that in the act of deliberating the agent must somehow occupy two distinct standpoints. I think this puzzle – and others like it – can be resolved,¹⁶ but there is a related worry about immoral action that is similar to the problem I have been discussing. After all, immoral behavior supposedly results from a failure to act autonomously. Without appealing to something like the *Wille/Willkür* distinction, failing to act autonomously seems to involve allowing oneself to be determined instead by inclinations and other external forces. So on the one hand, it seems that insofar as I take myself to be *acting* immorally, I adopt the

¹⁶ See Frierson (2010) for an overview of the challenges I have in mind as well as an attempt to address these challenges in light of a commitment to the ‘two-standpoint’ interpretation of Kant. A similar worry concerning the unity of the agent is especially vivid for ‘two-world’ theorists, since they take the agent literally to be a citizen of two distinct worlds. Jeanine Grenberg has recently suggested that the distinction between the theoretical and practical standpoints could be central to Kant’s solution to this problem (Grenberg 2010 pp.111-130).

practical standpoint. But insofar as I act *immorally*, I am determined to act as I do. If the practical point of view *can* take theoretical claims into account, then why can the deliberating agent not take into account the fact that she is determined to behave immorally? Does this account of the distinction between the practical and theoretical standpoints lead us to posit that an agent might simultaneously regard herself as both free *and* unfree from the practical standpoint? Insofar as she deliberates, she must consider herself free, but insofar as she takes into account the forces that determine her to behave immorally she thinks of herself as not free.

Frierson responds that, even if one regards oneself as under the influence of circumstances or psychology,

One must still *decide* whether to give one's natural disposition the weight it typically has. One must decide whether these influences will have the causal power over oneself that they have been observed to have. And here, one *cannot* say, 'well, it *has to* have that causal power over me,' or rather, if one does say this, the 'has to' will be a purely practical one, a decision about what one values, and not a decision 'forced by the facts'.

(Frierson 2010: 93-94, *his emphasis*)

But Frierson's response does not relieve all the pressure. Frierson may have shown that the deliberating agent cannot take the idea that various factors determine her action into account in her deliberations. However, he does not explain how an agent who does wrong can reconcile her judgment that she freely chose to do wrong with her acknowledgement that, in doing wrong, she did not act autonomously and thus did not act

freely.¹⁷ Insofar as we have done wrong, we cannot think of ourselves as free. We are reduced to mere phenomena, acted upon by the forces of nature. In regarding ourselves (or others) as having acted wrongly – we seem to take on conflicting perspectives simultaneously: we regard ourselves as both free and not free.

Notice that the problem is not that the standpoint of theoretical reason tells us we are not free while the standpoint of practical reason tells us we are; practical reason *all by itself* tells us that we are both free and not free. It is only from the standpoint of practical reason that we regard ourselves as agents, and as agents we must think of ourselves as free. At the same time, however, it is only from the standpoint of practical reason that the moral law applies to us as the complete expression of our freedom.¹⁸ And this observation reveals something more: the problem *springs from* the way the distinction between the theoretical and practical standpoints is drawn. The practical standpoint is closely identified with both agency *and* morality, while immorality results from the causal forces at work in the theoretical standpoint. Thus, it is difficult to see how the practical standpoint *could* make sense of deliberate, immoral action. We need to be able to affirm *both* that we are agents *and* that, *qua* agents, we can (and do) sometimes act immorally. The way that Korsgaard interprets the distinction between the theoretical and practical standpoints, however,

¹⁷ I do not intend to imply that Frierson was attempting to address this specific problem. I simply think Frierson has addressed a similar question and that his response might be mistakenly regarded as a solution to the problem I pose.

¹⁸ Henry Allison (1990: 226) argues that ‘moral requirements (or more generally, practical principles) must not only be addressed to agents conscious of having an intelligible character (in the language of the *Groundwork*, a will) but must also be addressed to them in that character.’ ‘Agents conscious of having an intelligible character’ is equivalent to agents occupying the practical standpoint. Though I will not re-hash his argument, I am in agreement with him on this point.

precludes us from doing so. Thus, the theoretical/practical distinction cannot be the *solution* to the problem.

The Wille/Willkür Distinction Again

Henry Allison suggests that the *Wille/Willkür* distinction is intended to solve just this sort of problem. He makes this suggestion while discussing the third section of the *Groundwork*. Kant's purpose in this section is to establish that there *is* a moral law which applies to human beings. Kant famously begins by trying to show that the mere fact that human beings must think of themselves as free – that is, as not determined by external forces – means that they are bound by the moral law. But this argument to establish the moral law is not enough. Remember that Kant believes the moral law is represented as an *imperative* for human beings, precisely because they do not always conform to the dictates of the law. Thus, Kant needs to show not merely that there *is* a moral law but that it can actually command beings that do not always conform to it. Kant puts the problem this way:

All my actions as only a member of the world of understanding [the noumenal] would ... conform perfectly with the principle of autonomy of the pure will [the moral law]; as only a part of the world of sense [the phenomenal] they would have to be taken to conform wholly to the natural law of desires and inclinations, hence to the heteronomy of nature.

(Kant 1998b: 58; *G*, 4.453; bracketed added)

But there is more to it than that. It is a truism that Kant believes ought implies can. If there is an imperative that tells

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agents that they *ought* to act a certain way, they must be free to do so.¹⁹ If they fail to do so, it cannot be because they were determined *not* to conform to the law. Thus, Kant's attempt to establish the categorical imperative is closely related to the issue that concerns me. Remember that I want to preserve the possibility of imputing wrong actions to agents. Similarly, if Kant is correct in maintaining that the moral law takes the form of an imperative when applied to humans, he must preserve the possibility of free immoral action. Korsgaard has suggested that free immoral action *is* possible from the theoretical standpoint; it is only from the standpoint of practical reason that it is incoherent. However, I maintain that free immoral action must also be possible from the practical standpoint. Given that the categorical imperative is a vestige of practical reason – not theoretical reason – it seems that Kant would agree that free immoral action must present itself as a real possibility from the practical point of view. Kant's attempt to argue for the possibility of a categorical imperative, then, must address the fact that the practical standpoint appears to both require and rule out the possibility of free immoral action.²⁰

Unfortunately, the account Kant offers in the *Groundwork* is unsatisfactory. Kant seems to have failed to recognize the source of the problem since, rather than explaining how a view of the self that seems most compatible with the theoretical standpoint can have a home in the practical standpoint, he

¹⁹ This is essentially Kant's point in *KpV*, 5.29-30 (Kant 1997: 26-27). Some scholars believe Kant changes his argument in the second *Critique* to derive freedom from morality rather than morality from freedom. I take it that all that matters for my argument is that freedom and morality imply one another, and Kant seems to maintain this position in both the *Groundwork* and the second *Critique*.

²⁰ I am assuming, of course, that Korsgaard has correctly interpreted the theoretical/practical distinction. Since I am primarily interested in critiquing Korsgaard's attempts to deal with the problem of free immoral action, I will not consider alternative interpretations of the theoretical/practical distinction but will simply treat Korsgaard's view as if it accurately represents Kant's.

merely appeals to the distinction between phenomena and noumena as he has already drawn it. The distinction between phenomena and noumena, recall, maps onto the distinction between the theoretical and practical standpoints. Kant claims that, since the noumenal is more fundamental than the phenomenal, even though we cognize ourselves as phenomena, when we act under the idea of freedom and thus as noumena, we recognize that we *ought* to conform to the moral law.

To illustrate his view, Kant asks the reader to imagine ‘the most hardened scoundrel’ (so long as ‘he is otherwise accustomed to use reason’) (Kant 1998b: 59; *G*, 4.454). Kant maintains that when confronted by examples of virtue, the ‘scoundrel’ will wish that he were similarly virtuous. He observes:

He cannot indeed bring this about in himself, though only because of his inclinations and impulses; yet at the same time he wishes to be free from such inclinations, which are burdensome to him. Hence he proves, by this, that with a will free from impulses of sensibility he transfers himself in thought into an order of things altogether different from that of his desires in the field of sensibility, since from that wish he can expect no satisfaction of his desires and hence no condition that would satisfy any of his actual or otherwise imaginable inclinations.

(Kant 1998b: 59; *G*, 4.454)

This passage seems to reinforce the concern that Kant may not be able to make sense of immoral action from a practical point of view.

Notice, after all, that Kant’s description of the scoundrel makes it sound as though he must think of his immoral actions

as determined by his inclinations. If Kant means that the scoundrel must think of himself as determined from a *practical* standpoint, then the problem I pose remains intact. Remember that insofar as the scoundrel thinks of himself as *acting*, he must think of himself as *not* determined by natural forces. He *must* think of himself as free from the practical standpoint. Thus the practical standpoint, again, leads the scoundrel to conclude that he is both free and unfree. So, insofar as the problem I articulated remains untouched, it is not clear how the moral law as a categorical imperative actually has any authority over the scoundrel's actions. Instead it looks as if conformity to the categorical imperative is simply a kind of vain wish on the part of the scoundrel. Wishing my behavior would conform to the categorical imperative when I consider my behavior determined is akin to wishing that I could fly without the aid of technology: both involve a desire to be free from the laws that govern what I can and cannot do. Why should the fact that I wish that my determined behavior were different show that the categorical imperative has authority over me?

Alternatively, Kant could mean that the scoundrel must regard his actions as determined from the *theoretical* standpoint. But, in that case, Kant is simply failing to address the problem of the agent who, in choosing to do wrong, is required by the practical standpoint to think of himself as both free and unfree. Insofar as he is not addressing such an agent, Kant is also not explaining the possibility of the categorical imperative, since the imperative addresses someone who recognizes his failure to conform to the moral law as a matter of concern from the standpoint of practical reason. Kant might be able to show that the moral law *does* have authority over the agent insofar as the agent considers himself solely as pure noumenon that always conforms to the law, but it is not clear how it could apply to him as someone who recognizes that he is

also passively receptive to impulses and other natural forces. In other words: it does not explain how the moral law applies to someone who sometimes gives into those impulses. How could someone be bound by an imperative when we think of him as pushed around by various forces, like all the other parts of nature? Kant is simply not addressing the problem I have posed – or the one he posed for himself.

Allison recognizes the problems with this argument for the possibility of the categorical imperative, observing that,

. . . the fundamental problem is that the putative addressee of the law, the phenomenal self, that is, the agent qua considered part of the sensible world, is *ex hypothesi*, incapable of recognizing any obligation, much less of acting in light of the ‘ought.’ This is because beings so considered are not merely sensibly affected (which is the point Kant wishes to emphasize in explicating the imperatival form of the law) but causally necessitated.

(Allison 1990: 226)

He continues, ‘With the benefit of hindsight, it seems clear that what Kant needs at this point but does not yet possess is precisely the *Wille-Willkür* distinction’ (Allison 1990: 226), a distinction that appears in Kant’s later writings.

How would differentiating between *Wille* and *Willkür* help? Because the *Wille/Willkür* distinction is a distinction in the faculty of the will itself, both *Wille* and *Willkür* fall within the practical standpoint. In other words, we posit *Wille* and *Willkür* only when we adopt the practical point of view. The theoretical standpoint, which views everything as mechanistically determined, certainly would not posit a distinction in the will, since it would not posit a will that causes things independently of

Heidi Chamberlin Giannini, Korsgaard and the *Wille/Willkür* Distinction:
Radical Constructivism and the Imputability of Immoral Actions,
KSO 2013: 72-101.

Posted August 8, 2013 www.kantstudiesonline.net

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mechanistic forces at all. Since *Wille* legislates, but *Willkür* chooses, we can, from a practical standpoint, choose to do wrong even though from a practical standpoint we also legislate morality.

Allison puts the point this way: Kant's problem is that he is attempting to argue that the moral law is binding on beings that are considered causally necessitated from a theoretical standpoint rather than on beings regarded from the practical standpoint as having sensibly affected wills. It is the latter that Kant needs to argue. *Wille* legislates as pure practical reason, but *Willkür* identifies that aspect of the will that is sensibly affected.²¹ *Willkür* is, however, still an aspect of the will and thus posited by the practical standpoint. In other words, the distinction between *Wille* and *Willkür* makes room for agents to recognize themselves as influenced but not causally determined by incentives other than respect for the moral law. By appealing to this distinction, then, Kant can avoid having to claim that, from a practical point of view, agents who act immorally are both free and unfree.

Radical Constructivism and the *Wille/Willkür* Distinction

I do not intend to argue that this distinction between an aspect of the will that legislates how one ought to act and an aspect that chooses how one will act makes sense or solves Kant's difficulties (in fact, as we will see shortly, I think this distinction points to a genuine tension in his thought), but I do

²¹ Allison does not entertain the possibility of a distinction between pure practical reason and empirical practical reason within *Wille*, but I do not think this materially affects his point. After all, even when *Wille* functions as empirical practical reason, it is because an agent has already chosen, through the exercise of *Willkür*, to pursue some object of desire. *Willkür*, being sensibly affected, proceeds to affect *Wille*.

think the way Kant has gone about trying to solve the puzzle about the imputability of immoral actions is revealing. As indicated in my earlier discussion of the varying accounts of the *Wille/Willkür* distinction, Kant has recognized that, in order to make sense of the imputability of immoral actions, he must find a way to separate the standards of morality from the free choice characteristic of the deliberation of agents. But this is precisely the sort of distinction Korsgaard cannot appeal to in order to explain the possibility of deliberate immoral action. After all, Korsgaard embraces a radical constructivist project that does not construct values or reasons out of anything more fundamental. Instead, she maintains that constructivism can, in her own words, ‘go “all the way down”’ (Korsgaard 2008: 324).

According to Korsgaard, it is by following correct rational procedures that reasons for action are constructed, and it is only by acting on such reasons that we realize our agency.²² The ‘correct’ rational procedures are just those that are constitutive of rational deliberation. It is not so much that there is some external standard to which your deliberations must conform in order for your reasoning to count as ‘good’; rather, it is that there are standards internal to reasoning such that failure to conform to those standards constitutes a failure to reason at all. Korsgaard avoids appealing to any fundamental value or external standard by appealing instead to norms constitutive of reasoning itself. But this means that acting in any way that cannot be endorsed by properly engaging in rational reflection is a failure to really engage in rational deliberation. More than

²² I take Korsgaard’s most recent work in *Self-Constitution* to be representative of her own thought. In *The Sources of Normativity* she seems to think that reasons are created by the act of reflective endorsement, whether or not the reflection was carried out correctly: ‘[I]t is the endorsement, not the explanations and arguments that provide the material for the endorsement, that does the normative work’ (Korsgaard 1996: 257). Others have provided incisive critiques of Korsgaard’s early work. See, for example, Brewer 2002, Lavin 2004, and Fitzpatrick 2005.

that, Korsgaard goes so far as to say that only actions proceeding from correct rational deliberations are genuine actions (after all, they are the only actions done for reasons), and these actions are morally good actions (Korsgaard 2009: 159-161).

And this is why Korsgaard does not – indeed, cannot – appeal to the *Wille/Willkür* distinction to explain the imputability of immoral action. While the *Wille/Willkür* distinction, as we have seen, drives a wedge between the standards of morality and deliberative choice, Korsgaard endeavors to bind them together by making the standards of morality constitutive of rational deliberation and action. The *Wille/Willkür* distinction implies that the standards of morality are not constitutive of deliberative action. After all, the results of deliberation, executed by *Willkür*, can fail to conform to the standards of morality issued by *Wille* (or *W +*, if we follow Hudson).

Korsgaard (2009: 159) acknowledges that her own ethical thought has an apparent problem accounting for bad action and that ‘there’s an *exact* analogy to this difficulty in Kantian ethics.’ She even identifies the source of the apparent problem:

It is the essential nature of action that it has a certain metaphysical property... But in order to have that metaphysical property it must have a certain normative property... This explains why the action must meet the normative standard: *it just isn't action* if it doesn't. But it also seems as if it explains it rather too well, for it seems to imply that only good action is really action, and that there is nothing left for bad action to be.

(Korsgaard 2009: 160)

Indeed, she concludes that ‘this is just the result we should have expected’ (Korsgaard 2009: 160), since moral standards

Heidi Chamberlin Giannini, Korsgaard and the *Wille/Willkür* Distinction:
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KSO 2013: 72-101.

Posted August 8, 2013 www.kantstudiesonline.net

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are constitutive of deliberative choice and action. To be sure, Korsgaard proceeds to propose a solution to the problem insofar as it applies to her own ethical thought, but she adds nothing more to her account of Kant's solution to the problem than what she presented in her earlier work, which I have already discussed.²³ And we have seen that her appeal to the theoretical/practical distinction, as she understands that distinction, cannot help Kant. Rather, it seems to be the source of the problem.

Interestingly, there are some *prima facie* difficulties with Kant's invocation of the *Wille/Willkür* distinction that offer further evidence of tension between this distinction and constructivist ethics. Perhaps most obviously, the distinction seems largely *ad hoc*, included only to solve the problem of free immoral action. And though Kant makes the distinction, he does not give any extensive analysis of the distinction and its role in his thought, as evidenced by the varied accounts of the distinction and its role in Kant's ethics. More importantly for my purposes, however, is the fact that it is also not at all initially clear how to make sense of the relationship between an aspect of the will that legislates and an aspect that chooses. Can someone's will *really* legislate a course of action without choosing it? What would that look like?²⁴

²³ Korsgaard suggests that agency and actions, constituted by rational deliberation, can come in degrees. Bad actions are defective because they only somewhat constitute agency, whereas good actions result in a fully unified agent. But I am not sure this is a satisfying account of the imputability of actions. Though an action may be more-or-less an action because it proceeds from a more-or-less unified agent, every failure to follow the moral law, on Korsgaard's account, seems to collapse into being guided by some external impulse or desire rather than reason. See Korsgaard 2009: 161-176. Unfortunately, pursuing this line of thought is beyond the scope of this paper.

²⁴ As Michalson (1990: 36) says, 'Kant's distinction between *Wille* and *Willkür* no doubt conveys a note of arbitrariness, and the question of the exact relationship between these two aspects of a supposedly unified will is never satisfactorily addressed by Kant.'

Whether or not Kant himself is a constructivist is controversial, but I think it is fairly clear that constructivists are inspired by Kant's project of locating the binding force of the moral law in the legislation of the agent's own will.²⁵ Thus, he tries to place a legislative capacity in the will: *Wille*. But as a result it is not clear how the will could act contrary to those standards legislated by the will itself. I suspect Kant wants both the motivational power of constructivist theories and the agent-independent standards needed to make sense of deliberate wrongdoing. Notice that the attraction of the *Wille/Willkür* distinction is, as we have seen, that it separates the standards of morality from the processes of deliberative choice, but some of the apparent difficulty mentioned above is the result of the fact that he attempts to make this distinction while still locating the legislative capacity in the will. Thus, some might wonder what it means for the will to legislate one course of action but choose another.

I do not know whether these problems are insurmountable for Kant. I will leave that question for another day. What I wish to observe for now is only this: The imputability of immoral actions seems to require that the standards of morality be separated from the processes of rational deliberation. Radical constructivists like Korsgaard can allow for no such separation. Kant attempts to account for this separation, though his own constructivist tendencies may leave some wondering whether he succeeded. Ultimately, there seems to be inherent tension between radical constructivist ethics and the imputability of immoral action.²⁶

²⁵ I deliberately refer to the 'legislation' of the agent's will to avoid presenting a constructivist reading of Kant rather than a realist reading of Kant. Patrick Kain, a staunch proponent of a realist reading of Kant, distinguishes between legislating the moral law and authoring the moral law. Human beings may legislate the moral law, but they are not its authors (Kain 2005).

²⁶ I only mean to observe that there is tension, not that this is tension is irresolvable. As indicated in a previous footnote, Korsgaard herself attempts to

Conclusion

It is not without reason that Kant scholars have traditionally looked on the *Wille/Willkür* distinction as the solution to the problem of free immoral action in Kant's moral theory. Korsgaard's appeal to the distinction between the theoretical and practical standpoints to address the same problem mistakes the source of the problem for its solution. But her neglect of the *Wille/Willkür* distinction is a mark of consistency on her part. Given her radical constructivist interpretation of Kant, Korsgaard can appeal to no such distinction to make room for the imputability of immoral action. Furthermore, some of the apparent difficulties with Kant's appeal to the *Wille/Willkür* distinction seem to be the result of Kant's own constructivist tendencies. The imputability of immoral action thus seems to raise problems for radical constructivist approaches to ethics. Though Korsgaard's interpretation of Kant's solution to the problem of free immoral action is unsatisfying, both as an interpretation of Kant and as a successful account of the imputability of immoral action, it provides useful insight into a challenge for constructivist Kantians.

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provide an account bad action. Though I have doubts about the success of her attempt, I do not have space to analyze and critique her own ethical project. The objective of this paper is more modest: to observe an interesting departure from traditional interpretations of Kant's ethics in Korsgaard's writings and to explore both the reason for this departure and its viability as an interpretation of Kant.

Heidi Chamberlin Giannini, Korsgaard and the *Wille/Willkür* Distinction:
Radical Constructivism and the Imputability of Immoral Actions,
KSO 2013: 72-101.

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