
SAPERE AUDE

2020 ISSUE

THE UNDERGRADUATE PHILOSOPHY JOURNAL OF
THE COLLEGE OF WOOSTER



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In his essay "What is Enlightenment?", Immanuel Kant states that the motto of the Enlightenment is "*Sapere aude!*" [Dare to know!]. This phrase expresses our mission at Sapere Aude, the undergraduate philosophy journal of the College of Wooster. We invite undergraduate students to submit papers concerning any area of philosophy for publication in our journal, the goal being the general pursuit of knowledge. All submissions go through a blind peer review process, conducted by College of Wooster students to ensure the highest levels of quality.

SAPERE AUDE

dare to know

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Interview with Dr. José Medina

KAYLEE LIU AND MICAH PHILLIPS-GARY

This interview was conducted with Dr. José Medina, Walter Dill Scott professor of philosophy at Northwestern University, on October 31st, 2019 at the College of Wooster, following Dr. Medina's presentation of the 14th annual Lindner Lecture in Ethics, "Capital Vices, Institutional Failures, and Activism Inside/Outside a County Jail."

Micah Phillips-Gary: I just want to say first, thank you very much for agreeing to come and talk to us. It's an honor to have you here.

Dr. José Medina: Well, thank you for inviting me.

Kaylee Liu: So what inspired you to pursue this line of philosophy and dedicate your life to it?

Dr. Medina: Yeah. Thank you for the question. Well, I was drawn to philosophy mainly because of social and political issues growing up. You know, my family was escaping different countries and different political regimes. And we landed in southern Spain and there was a dictatorship there at the time. So it was tough. But, being in high school already and starting college, I was drawn to the criticism of society and the criticism of differing aspects of life and everything that was going on at the time in terms of people seeking freedom and different movements of liberation, like the women's movement, the sexual liberation movement and issues of race and class. So those were the interests that I had from the beginning, when I started reading philosophy and studying philosophy more systematically. Then, when I decided to go to graduate school, the issues that I was most interested in were issues that

had to do with communication, knowledge, but in relation to those issues of social criticism and social liberation, and then I realized that some of the disciplines that were addressing these issues, they were not addressing these issues from a critical and social justice point of view. Like in issues of communication, philosophy of language was focused only on theories of meaning, theories of truth, accounts of ideal communication and I was interested in precisely the opposite. What counts as misunderstanding and miscommunication? Silence? How do we break silences and how do we understand nonsense or the limits of intelligibility? So, I was more interested in the negative and the problematic side of language, communication, meaning, truth. When it comes to epistemology, the same thing, right? Most of the accounts and discussions were about understanding, knowledge, justification. And I was interested in ignorance, misunderstanding, lack of justification and how those epistemic problems and epistemic lacunas were formed and maintained. And at the time, actually, there was not a lot of discussion of social and political issues in epistemology or philosophy of language. And that started to change already when I was in graduate school around the 80s. And in particular, it was because of feminist epistemology and also some people working in critical race theory, dealing with issues of miscommunication, ignorance and so on. And then a little later in the 90s, for example, the paradigm of epistemology of ignorance started to develop with Charles Mills in particular in *The Racial Contract*, some articles by Nancy Tuana and other people talking about issues of ignorance. And then also around the same time, but also more recently in philosophy of language, there has been a social turn so that now there is a lot of social philosophy of language dealing with all kinds of issues, including hate speech, propaganda, slurs, the misuses of language or ways in which language is used for oppression, the criticism of linguistic practice and all of that. So now it is a vibrant field that I am still contributing to.

Kaylee: Could you elaborate? I guess when you said that language is a tool of oppression, I'm not really sure if this is what you're referring to, but I've heard some people talk about how "standard" English is part of the oppression because people who speak "pidgin" or "broken" English are looked down on and then it is used to oppress them, because it's like,

“Oh, you’re not smart enough to speak good English.”

Dr. Medina: Now, that is a great question. I was interested in those issues, linguistic variations and issues of dialect, mannerisms. And there were very few people in the standard philosophy of language that were addressing those issues, and then there were very few tools. And I thought that one of the philosophers who provided powerful, critical tools to address this was the later Wittgenstein with the concept of language games and linguistic practices and what it means to engage in a language game, to think about language and language use as an activity, as an embodied activity that is done differently by different people and how to navigate those differences. Then also, a little later, when I was a student in graduate school, I became fascinated with Pierre Bourdieu and the sociology of language and the notion of the habitus. And then also, as I was exploring these issues, as you said, the people who have written powerful essays on dialectical differences, James Baldwin and his writings on black English and how black English language was marginalized and used to stigmatize the black community. And I was very aware of that because even in some of the political contexts that I was very familiar with, political oppression contained that linguistic side, like some languages in Spain were prohibited, so that Spanish was the official language and people could not speak Catalan or Basque and other dialects were allowed, but clearly they were looked down on, like southern Spanish from southern Spain was not supposed to be equal with Spanish and Gloria Anzaldúa, for example, speaks about that all the time. In *Borderlands/La Frontera* she talks about how her Chicana identity has a lot to do with speaking a particular kind of dialect in Spanish, Chicano Spanish, which is different from Mexican Spanish and it is different, obviously, from Castilian Spanish as it is spoken in Spain. She has an entire account of how she internalized all these negative views of how she spoke and her expression and her dialect, but at the same time, it was really important for her to come to appreciate her way of speaking. It was a way of appreciating who she was and her community.

Micah: So I’m curious about the relationship between ethics and epistemology. It seems like there are these sort of epistemic vices that you talk about and it seems like, in some

contexts, there's a certain normative force that an epistemic vice has in the sense that something like incuriosity is going to be in any context, or at least in almost any context, in some sense bad, then there's some specific contexts where there's a specific sort of ethical normative force as well, like the county jails that you're talking about.

Dr. Medina: That's a great question, yeah. Most of my work in in epistemology is focused precisely around normative issues. So it is about the ethics of knowing but also the politics of knowing and these issues have become the center of attention in one area of epistemology, for example, under the rubric of epistemic injustice. Miranda Fricker's book on epistemic injustice is entitled *Epistemic Injustice: Power and the Ethics of Knowing* so clearly it's about how to understand knowledge and the activities that go along with the production and the dissemination of knowledge in ethical terms. What are the ethical norms that are operating there? And there are different views of how to understand the relation between epistemology and ethics and differing ethical approaches that can be applied to knowledge practices. As I was explaining yesterday, in my talk, I'm interested in different approaches, actually, in ethics as they relate to epistemology. For example, I am interested in the consequentialist perspective, at least to the degree that we have to pay attention to the consequences, the normative consequences, the ethical consequences of the way in which we produce knowledge and share knowledge. So, for example, the possible harms that can result from the ways in which we interact epistemically with each other. So I'm very interested in that, for example, the possible harms and the possible vulnerabilities that appear in epistemic practices. But then also I am interested in non-consequentialist approaches as well. So that we think about issues such as the intrinsic dignity and respect that we owe to each other. So that is something that is not within the framework of consequentialism. It is really about, you know, what is the standing, the moral standing, of a subject of knowledge and of understanding, right? And that means, "Well, if you're going to be recognized as a subject of knowledge and of understanding, you do need to be respected, your voice needs to be respected, there has to be a space for you to speak." And then within those frameworks, both the consequentialist framework and the value theory of respect and recognition and

dignity, we can talk about things like virtues and vices. Are people operating in these practices in the best way possible, or are they failing in particular ways, in normative ways? And then we can talk about specific virtues and vices, but then more interestingly we can contextualize what may amount to a virtue or a vice so that you take differing attitudes or, as I was explaining yesterday, not only attitudes, but habits, personality traits, ways of thinking and then you try to figure out, in a contextual way, whether or not that is optimal or suboptimal. And I think you're absolutely right that it is very tricky sometimes because the very same thing could be a vice in one context, but not in another context. So, almost every vice that we can think of, every epistemic vice, every vice of the mind that we can think of, could in some instances be part of proper functioning, proper epistemic functioning. So, think for example about what I was talking about yesterday, incredulity. It is not always a vice to be incredulous, right? Sometimes, there are good reasons why you should be skeptical and you should distrust and even if it is some kind of systematic distrust, if there is good reason, if there are good grounds, if you have enough evidence about, you know, distrust in something. So a typical example would be, "Well, if a fire alarm is malfunctioning all the time, like the fire alarm of the philosophy department in the building goes off every day, all the time. Now, everybody knows it." Well, the fact that you are incredulous as to whether or not there is a fire, and you don't run out of the building, in that kind of context, is not necessarily vicious. Because you have good reasons why you are incredible, right? But at the same time, if you have no good reasons why you should distrust somebody or an entire group of individuals and you keep cultivating that distrust and you keep cultivating your incredulity, then that becomes a vice. The same thing on the other side, credulity. Of course credulity, being open to belief, being open to take somebody else's words at face value, credulity can be a vice, because it can be excessive credulity, it can be gullibility, right? You're gullible because you believe everything you're being told. So obviously, that doesn't work well either. So almost every attitude, like in this case, the doxastic attitude of forming a belief or not forming a belief on the basis of what you've been told, could be either a vice or a virtue or it could be in between. So it becomes something that really needs to be contextualized. And I do have a contextual perspective, which is one of the reasons why I was saying yesterday,

we need some kind of criteriom or metrics that we can apply context by context, and that is how you elucidate virtues and vices, not through a fixed catalog, so that you can simply list the things that are going to count in all context as a vice or as a virtue.

Micah: So I was thinking about this idea of epistemic neglect that you were talking about and it seems to me that, if you want to talk about a sort of neglect, it implies you have responsibilities that you're not meeting and I'm just wondering more about, if we have epistemic neglect, the corresponding epistemic responsibilities and how those are constituted—maybe that's not the right way to put it—but, what determines our responsibilities in different contexts and things like that.

Dr. Medina: That's a great question. No, you're absolutely right. That's exactly the insight here, that the notion of neglect is a powerful normative notion because it makes you think about those obligations that have not been met, right? What are the things that should have happened? What are the things that should have been done so that we don't get to that predicament? And the analogy with all the forms of neglect show that very clearly. If you think about medical neglect, well, you have that phenomenon to begin with, because there are particular things that should have happened. There are forms of medical attention and medical care that should have been there and they were not provided. When you think about child neglect, for example, child neglect is a quick way of saying there are certain forms of care and protection that children are owed. And that means that somebody has that obligation to provide the care and the protection. So, when you identify child neglect, for example, you have to go to the obligations, the responsibilities immediately, and then you have to identify, you know, who had those responsibilities. And depending on the case, it could be the parents, the grandparents, designated caretakers, but notice also that sometimes it is broader than that, right? Sometimes society at large also has a responsibility to provide the care if other people are not providing the care. So if the parents fail, other family members should step in. If nobody in the family steps in. the neighbors, the people in the community should step in and give care and protection to the child. If nobody in the community steps in, there should be institutions that compensate for that. And they

say, "No, we're going to protect our children." So you can push the very issue that you're talking about, what are the relevant responsibilities? And who has those responsibilities? You can keep pushing that issue. So in that way, it's a really useful concept and a really useful framework, I think. And I think it applies in this case of epistemic neglect as well. When you're talking about epistemic neglect, you can say, "Okay, if this person who is suffering from epistemic neglect cannot contribute to the production and dissemination of knowledge, who has responsibilities to, you know, facilitate this person's contributions?" And then in this particular case, because we're talking about detained subjects, well, it is the people who are in charge of the detention, the detention facility, the officers of that facility, the people who are policing the detained subject. And in particular forms of attempts to communicate and attempts to share knowledge, like in the case of emergency calls these inmates were trying to alert the guards that somebody was lying there, right? So they press the emergency call button. They were trying to provide that knowledge, that they were witnessing an emergency, but they were prevented from sharing that knowledge. But then you can go to the responsibilities that the guards have to detect emergencies and to share that knowledge with others. But you can go even beyond the guards, just like in the case of child neglect you may go from family members to the neighbors and the communities and then the institutions of society at large, you can do something analogous in this case and you can say, "Well, the guards failed because they have responsibilities that they didn't meet." But then when that happens, other people and other institutional structures should make sure that these responsibilities are addressed because if the people who are supposed to meet this responsibility are not meeting it, then other people should address those responsibilities. So, you can keep pressing that issue of responsibility and obligation at different levels, so that you go from the guards to the institution itself to other units, other institutions and larger social and political units that should be supervising, giving oversight to the criminal justice system and, ultimately, the general public. And the general public has some obligation to make sure that there is no such thing as a radical epistemic neglect.

Kaylee: Speaking of epistemic neglect, it obviously isn't only happening in the prison sys-

tem, right? Like, even in classrooms boys are encouraged to speak up in math and sciences and girls are told, "Well, why don't you talk about language?" So, I guess my question for you would be kind of like, as a society where epistemic neglect is so deeply structured and especially when it comes to minorities, like people of color, like queer people and even women in some cases—for example, there are very few female philosophy professors—how would we go about trying to undo this when it's such a huge system that a lot of our existence is predicated on.

Dr. Medina: Yeah, no, that's a great question. Education, actually, and educational practices including higher education and what we do at the university is a real clear example in which issues of marginalization and oppression are reflected in the epistemic dynamics. Who has a voice? Who speaks? Who is listened to? Who is given more uptake, so that when they make a contribution to the discussion that gets more traction than other contributions, right? And so on. As you said, right, there are a really important gender dynamics that we have to pay attention to. Philosophy is actually the discipline in the humanities that still has more gender imbalance than any other discipline. So, actually, similar to math, for example, and other sciences in which it is still very much the case that, as you said, the majority of the professors are male and the entire field, the American Philosophical Association, has been traditionally dominated by men. And it is only changing very slowly and especially in the in the last decade or so, like for example, in the last decade, the Eastern APA had its first female president and now we have had a few female presidents, but that has been a recent phenomenon. So, how do you change that? And I think there are all kinds of levels at which you can start changing that. So for example, in philosophy, it has to do with many things, it has to do with recruiting more women to the field, more female philosophy students, and then recruiting more women to the profession, so that more women go to graduate school, they are admitted in PhD programs, they become professors and so on. So it has to do with representation in the profession. And not just representation in the profession, but also representation in the structure of the field, including things like the APA. So that's why I mentioned how important it was to finally have a president of the Eastern

APA who was female. But then also it's not only about that, who is doing philosophy, who is teaching philosophy, but it's also about who is read in philosophy, who is part of the canon, right? And it is still the case that there are so many courses that are taught without including a single woman, even though in the history of philosophy, not only in contemporary philosophy, but throughout the history of philosophy, there have been so many important women philosophers. So it is also about the content of the courses and the syllabus and diversifying the curriculum. And it is also about the dynamics, I mean, this goes also to another aspect of what you're saying. Sometimes there are gender dynamics in the classroom that we have to be vigilant about. So, of course, if we notice that the men are dominating the discussion, for example, or there is a particular style of engagement that seems to be pushing people to the margins or inhibiting some voices, we have to pay attention to that. And sometimes it is gender dynamics, but sometimes it is racial dynamics or ethnic dynamics or linguistic dynamics, even the issue that you mentioned earlier about dialects and different languages and so on. So how is it that we do philosophy in a particular kind of English not just in English in this country, but in a particular way of using English, right? So, all those things become really important for making the profession more welcome to different groups, different styles, different perspectives and different voices.

Kaylee: Another thing I was interested in, not about your talk, but because I was eavesdropping on you guys yesterday and you were talking about queer theory, could you talk more about how that connects to the rest of your work?

Dr. Medina: Yeah, actually, I was interested in queer theory from the very beginning of my career. And at the time, it was something that was done outside philosophy. There was nobody, *almost* nobody in philosophy, who was drawing from queer theory or using queer theory. One of the people who was doing that early on was Naomi Scheman. Naomi Scheman was doing feminist epistemology and she was using Wittgenstein and doing Wittgensteinian analysis. And she introduced queer theory and also trans theory in issues of language, communication and community formation. So I was really interested in that. And one of the reasons why I was interested in queer theory, well, there were also personal rea-

sons, my own sexual orientation as a gay man and also my own activism. From my college years, I was deeply involved in queer activism. But besides those personal and political reasons, I was philosophically interested in what queer theory had to offer. And one of the things that is really interesting about queer theory is that it is a really powerful way of interrogating and undoing dichotomies, like gender binaries, for example, and sexual norms and binaries, either you're straight *or* gay, right? Either you're a man *or* a woman, right? And I was very interested in those problems that have to do with binary thinking and polarization and ways in which we are pulled into this predicament that we have to go one way or another, choose between one or the other. And queer theory is precisely about complicating those binaries and showing how problematic they can be. A part of what queering, queering a concept, queering a practice, is, is to show how unstable these binaries are. And how problematic they are and how you can take things in many different directions. So I was interested in queer theory from that angle and I'm still working within queer theory and using queer theory in the issues that I talked about before, right? Issues of communication, issues of understanding, issues of knowledge production and the dissemination of knowledge, what queer theory has to offer there. What does it mean to queer a communicative dynamic? What does it mean to queer an epistemic practice, right? And a lot of the time it means decentering that dynamic or practice, shifting the focus to eccentric perspectives. And what that means for making the dynamics or the practice more open.

Micah: I was sort of thinking about your general approach and the idea of, you know, rather than looking at things working, sort of looking at where they break down. Would you say that's an accurate characterization?

Dr. Medina: So you're absolutely right, there is some methodological and theoretical insight that is driving that approach. And as I was explaining earlier, also, for all of my career that was there as an important piece of my of my research, right, and the way in which I was approaching these issues. I was interested in problems and how philosophy can help with normative problems and how in issues of communication and knowledge, if we start with the problems, with failures, how things break down, as you said, we can actually address our

practices and our real life problems in a direct way, so that we don't start with idealizations, "Well, this is what meaning is, this is a theory of meaning and this is a theory of communication and now you can, from that idealization, you can start applying the theory to particular practice," and then it becomes really hard to see how this purely ideal theory of meaning and communication applies to particular practices. However, if you start from the failures, how things break down, and then you start thinking about the limits of communication, the problems of communication, when there is a lack of meaning or a lack of understanding and how that is resolved, how that is addressed in actual cases, what does it mean to say that you're improving the communicative dynamic, that you're producing meaning or that you're making yourself understood, right? Then you can see in more detail what counts as doing better with constant improvement. So you go from the negative to the positive, you go from the failure, the breakdown to the proper functioning. And I think that's a more open approach, methodologically speaking, because you don't start with any assumptions about what is the ideal or what is the way in which we think about or we should think about meaning or knowledge. Rather, you start with ways in which people get stuck, and they are not able to produce meaning, where they are not able to produce knowledge, and then they figure out how to do it. And then you figure out how that process goes. So, that's exactly right. And it's interesting that there have been in different fields, really rich methodological discussions as to what is the starting point of our philosophizing. What comes first, what has methodological priority? And what is the order of explanation? Right? So that, for example, in political philosophy, there is the famous discussion around Rawls, but also around other figures, concerning ideal theory versus non-ideal theory. Charles Mills, for example, was one of the people who brought this up and put this on the philosophical agenda. He himself still wants to preserve ideal theory of some sort, but he wants to say, "But there has to be room for non-ideal theory, so that you also start with the real problems, and you do not start with the idealizations."

Micah: I haven't read a lot in political philosophy, but is it correct to say that's sort of more of a pragmatist approach. It just reminds me in some ways of Peirce in the sense that inquiry

begins with doubt, something like this. I'm just trying to make connections.

Dr. Medina: No, that is a very good connection. In fact, one of the most influential, non-ideal theorists in political philosophy is Elizabeth Anderson and Elisabeth Anderson is precisely giving arguments for non-ideal theory from the point of view of pragmatism. So her work is grounded in American pragmatism, John Dewey and other pragmatists. She's saying, we have to start with the actual practices, we have to start in the middle of things, right? We have to start with how things are, and the way in which people do things, and then figure out from there, how we can improve those practices, right? And it is not a rejection of idealizations in every sense, it's not a way of rejecting that we should appeal to ideals, but it is a way of saying, "Well, those ideals should be grounded in actual practices. Those ideas should emerge from people's lives and people's lived experiences." Peirce himself was a pragmatist and there are a lot of idealizations in his framework. He talks about the end of inquiry as this ideal that we're trying to reach, but he made very clear that that ideal is an ideal that we're supposed to be approaching from the point of view of the actual practices and how they evolved. So yeah, it is definitely something that you can find in the pragmatist tradition and you can think about it pragmatically.

Kaylee: Where do you think the future of philosophy is headed and do you think it's headed in an interesting direction? What are your predictions for the field?

Dr. Medina: Yeah, that is a difficult question. I guess I'll mention a couple of things that are important for that question in my mind. One is that there has been an increasing interest in public philosophy, and in general in connecting philosophy with public life, which of course does not mean that we should all be doing philosophy in any particular way. It's not that we should all do applied ethics or anything like that or applied philosophy, but it is about thinking of how the different ways in which we do philosophy have a contribution to make to public life, whether it is, for example, people doing philosophy of science, or epistemology, and how that should have an impact in discussions about the role of science and knowledge in public life, right? Or whether it is normative issues that we address in

philosophy, in ethics, in political philosophy, in other areas, well how *that* should have an impact in public life. And in a way, it is taking very seriously that philosophy shouldn't be something that is done only in academia and is done only by a select few in this elitist way. But philosophy is something that is pursued in all walks of life and plays a role in all areas of life, and we should connect what we do in philosophy departments and in the field of philosophy with all these discussions that are happening in different ways, in public life and in public discourses. And it's interesting that the American Philosophical Association was not paying a lot of attention to public philosophy until recently, but now, they created a task force on public philosophy and the recent report now that is available at the APA website. So public philosophy, that's something that philosophy departments can use for outreach, connecting with all kinds of parts of society, high schools, the political life of communities, contributing in different ways to enrich the life of the community. So that's one thing, a public philosophy thing. Another way in which the profession seems to be changing, or at least there is the possibility of changing, is by becoming more diverse. There are more women in philosophy than ever before, right? More minorities are being recruited to philosophy and now we are paying attention to more philosophical traditions, not just the European Western tradition, but also African American philosophy, Latin American philosophy, Asian philosophy. So, that is really important because, even though these different ways of doing philosophy are not well represented in the profession yet, now they are there and there is an increasing interest in paying attention to how these different philosophical traditions connect, or they fail to connect, right? How is that there hasn't been more of a dialogue that connects different world philosophies? So that's another way in which the profession may be changing. And it will be an interesting development in the change of philosophy.

Kaylee: Thank you so much for letting us interview you.

Dr. Medina: Yeah, thank you.

The Strangeness of Knowledge-based Injustices against Children

SWAGATANJALI BAURI

Abstract. This paper explores a particular kind of epistemic injustice against children. Following Fricker and Dotson's ideas on epistemic injustice and testimonial smothering respectively, I use the terminology offered by them to examine the Christchurch Civic Creche case (1993).

Introduction

In November 1991, a sexual abuse counselor was informed by her son, who attended the Christchurch Civic Creche, that he did not like his childcare worker's genitalia. She inferred from this statement that Peter Ellis, a childcare worker, had sexually abused her son at the creche.¹

Although initial interviews of children failed to reveal any incriminating allegations, later interviews resulted in charges against Ellis. The charges soon began to escalate, with the nature of the complaints becoming increasingly extreme.² Children reported graphic details of the abuse they experienced. It is noteworthy that during this time, there had been

¹Felicity Goodyear-Smith, "Civic Creche Case, Christchurch." *IPT Journal* - "Civic Creche Case, Christchurch", http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

²Allegations of sexual abuse involved elements that seemed fantastical such as "underground tunnels, cages and trapdoors, children being defecated and urinated on, naked children being forced to hurt one another inside a circle of adults, children being forced into a steaming hot oven or buried in coffins" and so on. See Ross Francis, "New Evidence in the Peter Ellis Case," *New Zealand Law Journal*, (2007).

alleged cases of satanic ritualistic child sexual abuse in child care homes in other parts of the world, such as in America.³ The same was implicated in the Christchurch creche.⁴ However, many charges were subsequently dropped as children began recanting. A seven-year-old admitted that she had "learnt"⁵ her story before the interviews, and that the interviewer had "taught [her] what Peter did."⁶ Later independent research and investigations resulted in deeply problematic findings regarding the way the children were interviewed, which will become a focal point in this paper.

Nonetheless, Ellis was convicted of sixteen counts of sexual assault involving seven children in June 1993, and was given a prison sentence.⁷ The allegation of abuse made by a boy that led to Ellis' conviction was itself problematic; there is evidence that the allegation might have been affected by the suggestive questioning used by the interviewers and the boy's parents.⁸ The fairness of the verdict has been widely debated and has been subjected to several commission inquiries, but Ellis died on September 4, 2019 before the hearings of his final appeal began.⁹

This incident involves a host of concerns from a philosophical perspective. However, instead of attempting to give a complete account of the epistemically and morally interesting features of this case, I will focus on children as epistemic agents and the nature of injustices

³For a detailed account of the same, refer to Jeffrey S. Victor, "A Rumor-Panic about a Dangerous Satanic Cult in Western New York," *New York Folklore* 15, 1-2 (1989): 23-49. and "Satanic Cult Rumors as Contemporary Legends," *Western Folklore* 49, no.1 (1990): 51-81.

⁴Investigators had interviewed 116 children, and forty hours of videotaped interviews with twenty children were presented in a closed court during the depositions hearings. Subsequent trials failed to reveal any definite incriminating evidence of the abuse or any medical evidence of injury. See Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁵Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁶Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁷Ellis had pled 'not guilty'. He and his counsel lodged several petitions and appealed to the court, which led to a series of inquiries between 1998 and 2005, which acknowledged the worrisome manner in which the case was prosecuted, but did not overturn the sentence. Many New-Zealanders supported his plea and condemned his sentence as a miscarriage of justice. On July 25, Ellis, diagnosed with terminal bladder cancer, appealed to the Supreme Court of New Zealand, which was accepted by the court. For a detailed overview, see http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1 and <https://www.stuff.co.nz/national/crime/114665914/civic-creche-sexual-abuse-or-abuse-of-justice>.

⁸Ross Francis, "New Evidence in the Peter Ellis Case," *New Zealand Law Journal*, (2007): 400-402.

⁹Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

they may face.¹⁰ I will use the Christchurch case as an example to support my views. Most of the existing discussion involving knowledge-based injustices revolves around adults as victims of injustices. This paper highlights the importance of including children within the discussion of knowledge-based injustices. I will use concepts developed by Miranda Fricker and Kristie Dotson in their work on epistemic injustice and epistemic violence to examine the treatment of the children's testimonies in the Christchurch case.

I will argue that (i) the knowledge-based injustice against the Christchurch children may have stemmed from the situated ignorance of the adults, (ii) the usage of leading questions can cause knowledge-based injustices that are similar to, yet distinct from Dotson's characterization of testimonial smothering, (iii) we need new conceptual tools to analyze and define practices of knowledge-based injustices against children. To justify my position, I begin by discussing Fricker's concept of epistemic injustice and briefly outline children's status as epistemic agents. Subsequently, I elaborate on Dotson's characterization of testimonial smothering. I then go on to analyze the events at Christchurch and show why it is similar to, but distinct from testimonial smothering. Finally, I highlight the need for new conceptual tools to study the phenomenon of epistemic injustice against children.

Epistemic Injustice and Children

Epistemic Injustice

Much of the information we rely on to navigate through our lives comes from the testimonies of others. Therefore, we need to identify "good informants"¹¹ who reliably communicate information. "[G]ood informants"¹² possess "indicator properties"¹³—exter-

¹⁰One may make the case that the kind of epistemic injustice I go on to discuss may apply to adults as well. Individuals who aren't children may still be vulnerable to similar practices of epistemic injustice and testimonial smothering. However, children are the paradigmatic subjects vulnerable to epistemic injustices. When questioning an adult we need not assume that their memories are impressionable to the same degree as the memories of children are, but we are specially culpable if we do not make such an assumption when questioning children.

¹¹Miranda Fricker, "Rational Authority and Social Power: Towards a Truly Social Epistemology," in *Social Epistemology: Essential Readings*, ed. Alvin I. Goldman and Dennis Whitcomb (New York: Oxford University Press, 2011), 57.

¹²Fricker, "Rational Authority and Social Power," 57.

¹³Fricker, 57.

nally recognizable properties that "signal the presence of both competence and trustworthiness"¹⁴ to the audience. Fricker identifies that an agent has "rational authority"¹⁵ when she is "competent and trustworthy"¹⁶ and has "credibility"¹⁷ when she displays "indicator properties."¹⁸ *Ideally*, those who really have rational authority are also treated as credible. In reality societal norms impact the way we assign credibility. We formulate "working indicator properties"¹⁹ using markers such as credentials and occupation. Such markers are often tied to an individual's social status. An individual in a socially advantageous position in terms of class, gender, and race is likely to have better credentials and occupation. People can have rational authority but may not seem credible, or they can abuse their social power to seem credible and fake rational authority. Since the indicator properties are the only things visible, the connection between credibility and rational authority becomes defeasible.²⁰ Fricker defines "epistemic injustice"²¹ as a prejudice-based disjunction between the credibility and rational authority assigned to an agent, where "the powerful tend to be given mere credibility and/or the powerless tend to be wrongly denied credibility."²²

Children as Epistemic Agents

It appears that children legitimately lack rational authority to a certain degree. Children often lack competence and a viable track record; they also are limited linguistically. Adults may not be able to identify whether a child understands and describes her experiences adequately or not. Havi and Györfy highlight how judging the credibility of children's testimonies is problematic. The fact that children are often incoherent and inconsistent during communication makes adults take their testimonies less seriously. Additionally, their difficulty in using language, their suggestible nature, and their reliance on adults for interpretation makes them more vulnerable to epistemic injustices. At the same time, denying

¹⁴Fricker, 57.

¹⁵Fricker, 60.

¹⁶Fricker, 60.

¹⁷Fricker, 60.

¹⁸Fricker, 60.

¹⁹Fricker, 60.

²⁰Fricker, 60.

²¹Fricker, 62.

²²Fricker, 62.

children credibility due to the lack of indicator properties when they are truthful will cause harm to the child.²³ Though sometimes, this harm might be unavoidable, when the child lacks even reliable indicator properties.

However, in terms of testimony involving sexual abuse, evidence shows that children can, and do, in fact, reliably communicate their experience. Studies investigating practices of interrogation of children reveal that "contrary to popular belief,"²⁴ children need not be "prodded to disclose abuse"²⁵ and are actually "unlikely to deny abuse"²⁶ when questioned appropriately. In fact, "a child's testimony may in some cases turn out to be more reliable than an adult's, because a child [often testifies] more spontaneously"²⁷ than adults do, since they lack the psychological and physiological capacity to fabricate and describe detailed events independently, and certainly not "traumatic and painful experiences"²⁸ like sexual abuse. However, their memories are, unlike adults' memories, extremely vulnerable to alteration by suggestive questioning. As I will discuss in detail later, this means obtaining reliable testimony from children requires special care. Not taking this care can easily amount to an epistemic injustice against the child.

Therefore, the terms and concepts Fricker offers as tools to judge the credibility of testimonies are useful in the analysis of the epistemic injustices that children may face. However, I argue that because of the difference between children and adults, these conceptual tools alone are not yet adequate to fully express the way children are vulnerable to epistemic injustices. I turn to Dotson's concept of testimonial smothering to gain a more nuanced understanding.

²³Carel, Havi, and Gita Györffy, "Seen but Not Heard: Children and Epistemic Injustice," *The Lancet* 384, no. 9950 (2014): 256—257. Also, I elaborate on what consists of 'harm' in such cases, later in my paper; refer to the section on 'Harms from Epistemic Injustice'.

²⁴Francis, "New Evidence in the Peter Ellis Case," 401.

²⁵Francis, 401.

²⁶Francis, 401.

²⁷G. Montanari Vergallo et al, "The Credibility of Testimony from Minors Allegedly Victims of Abuse within the Italian Legislative Framework," *International Journal of Law and Psychiatry* 56, (2018): 60.

²⁸Vergallo et al, "The Credibility of Testimony," 61.

Testimonial Smothering

Dotson introduces a specific kind of epistemic injustice called "testimonial smothering."²⁹ It happens when the speaker truncates her testimony because she perceives her audience as "unable or unwilling to gain the proffered uptake of the testimony."³⁰ This typically happens under three conditions. First, the speaker judges the content of her testimony as being "risky."³¹ Second, the audience displays "testimonial incompetence,"³² they are not only unable to understand the speaker's words, but also, they are unable to realize their failure to follow the speaker's words.³³ Third, the audience's testimonial incompetence must follow from "pernicious ignorance."³⁴ Pernicious ignorance is a reliable or consistent ignorance of the audience due to an epistemic gap in their cognitive resources that causes harm to the speaker in a specific circumstance.³⁵

Dotson shows how the social identities of class, race, gender can become risk factors for experiencing testimonial smothering.³⁶ I argue that age is also such a risk factor and that the children in Christchurch experienced an injustice close to, but not the same as, testimonial smothering.

The Christchurch Civic Creche Case (1993)

Nature of Questioning

I have already established the problematic nature of children's status as epistemic agents. Research shows that the nature of questioning children face as victims of sexual abuse is a crucial determinant of the kind of testimonies they give and the amount of credibility that

²⁹Kristie Dotson, "Tracking Epistemic Violence, Tracking Practices of Silencing," *Hypatia* 26, no. 2 (October 2011): 237-238.

³⁰Dotson, "Tracking Epistemic Violence," 244.

³¹Dotson, 244.

³²Dotson, 244.

³³Dotson, 244.

³⁴Dotson, 244.

³⁵Dotson, 238.

³⁶Dotson, 245-248.

can and should be assigned to them.³⁷ Unlike adults who "recount as they remember,"³⁸ children "remember as they recount,"³⁹ and memories can be altered by suggestive questioning.⁴⁰ Michael Lamb, a Cambridge University professor who has worked extensively on interviewing procedures of child abuse victims, holds that "young children could be competent witnesses but could also be susceptible to errors when interviewed because they: (1) infer that the interviewer wants a particular response; (2) want to help but do not understand the questions; (3) retrieve information recently acquired about the event in question; and (4) become confused as to the source of their memory about the event."⁴¹ Lamb notes that children were rarely asked "free recall, non-leading, open-ended questions"⁴² during the formal interviews at Christchurch, and were asked "suggestive"⁴³ and "leading"⁴⁴ questions. A boy gave a disclosure interview affirming Ellis abusing him, despite denying the same initially. He was known to be "exposed to "highly leading questioning" by [his] parents"⁴⁵ who were convinced that he was abused.⁴⁶ The boy alleged ritual sexual abuse only after talking to his therapist, who "showed him satanic signs and asked him to identify them."⁴⁷ Lamb's affidavit for the case highlights certain "conditions under which suggested information was likely to be adopted [by children]."⁴⁸ They included "[1] details suggested repeatedly; [2] an air of accusation is established; [3] details are rehearsed; [4] conversations with sources of contaminated information [such as parents and counsellors]... proceed unchecked."⁴⁹ Lamb's investigation of the case highlighted how suggestive questioning might have triggered the allegations the children made and explains the considerable extent of recantations afterward.

I will now make the case that the use of suggestive and leading questioning may have

³⁷Vergallo et al, "The Credibility of Testimony," 61.

³⁸Vergallo et al, "The Credibility of Testimony," 61.

³⁹Vergallo et al, 61.

⁴⁰Vergallo et al, 61.

⁴¹Francis, "New Evidence in the Peter Ellis Case," 399.

⁴²Francis, 399.

⁴³Francis, 400.

⁴⁴Francis, 399.

⁴⁵Francis, 400.

⁴⁶Francis, 401-402.

⁴⁷401

⁴⁸Francis, 400.

⁴⁹Francis, 400.

caused a kind of knowledge-based injustice akin to smothering, against children in the Christchurch incident.

Leading Questions and Testimonial Smothering

The example of the Christchurch children fits most criteria for Dotson's concept of epistemic smothering, and yet it needs to be recognized as a distinct form of testimonial injustice. Dotson's first condition claims that the speaker must think that the content of the testimony is somewhat "risky."⁵⁰ Although children do not have the ability to cognize the concept of sexual assault, they likely understood that the matter was somewhat grave, given the extent of interrogation they went through.⁵¹ Dotson's second and third conditions require that the audience display testimonial incompetence regarding the speaker's testimony stemming from pernicious ignorance.⁵² The extensive use of leading questions by the parents and interviewers in Christchurch can be interpreted as evidence of both testimonial incompetence and pernicious ignorance. The testimonial incompetence shown here was twofold. Firstly, there was testimonial incompetence stemming from 'confirmation bias' or favouring information that supports one's preconceived beliefs.⁵³ It is likely that when a child seems unsure about some event, the adult takes their uncertainty as confirming what the adult already believes. The bias is likely to be built into the kind of questions that were asked (e.g. "Can you remember any other things happening that you didn't like?... He [Peter] didn't pull his pants down, so you didn't see any of his rude bits?"⁵⁴). This forms one part of the testimonial incompetence, because the questioning adults could not recognize their own bias obscuring the child's testimony.

Secondly, the testimonial incompetence possibly stemmed from the situated ignorance of the adults. Code, as quoted by Dotson, describes the problem as follows: "Because differing

⁵⁰Dotson, "Tracking Epistemic Violence," 237.

⁵¹Francis "New Evidence in the Peter Ellis Case", 403-400.

⁵²Dotson, "Tracking Epistemic Violence," 244.

⁵³These kind of confirmation biases are arguably a manifestation of paternalistic interventions of adults, which intend to benefit children, but may end up causing harm. However, I will not engage with the discussion on paternalism in this paper. For more details on the same see Amy Mullin, "Children, Paternalism and the Development of Autonomy," *Ethical Theory and Moral Practice* 17, (2014): 414.

⁵⁴Francis, "New Evidence in the Peter Ellis case," 401

social positions generate variable constructions of reality and afford differing perspectives on the world [knowers are] at once limited and enabled by the specificities of their locations."⁵⁵ This fits the Christchurch case well: while an adult is advantaged by their age and their increased cognitive capacity to understand the concept of sexual abuse and what that experience may entail, they are disadvantaged with regard to the way a child might understand the same, and may not realize their inadequacy to interpret the concept of 'sexual abuse' from a child's viewpoint. So, the epistemic gap between adults and children not only results in different understandings of the same concept but also restricts the adult's capacity to realize her limitations. "[This] kind of ignorance can be mostly non-culpable and unconscious, but it is also reliable,"⁵⁶ and thus can be classified as pernicious ignorance. Therefore, leading questions reflect testimonial incompetence due to both confirmation bias and situated ignorance. It appears then, that an argument can be made that the use of leading questions to elicit testimonies from children may cause a form of testimonial injustice that resembles testimonial smothering.

What makes it difficult to characterize this scenario as an instance of testimonial smothering, is that, even though most of the conditions for smothering are met, it is impossible to show that all the children were consciously silencing themselves. All the evidence regarding their vulnerability to suggestions, and how leading questions warp their memories, indicate that children are unconscious of the way the suggestions of the adults affects them. Nonetheless, it would not be incorrect to call the treatment of the children in the Christchurch case some form of testimonial injustice, that closely resembles testimonial smothering except that it may lead to changes in memories on the basis of which testimony is given instead of the suppression of testimony. A new conceptual tool is therefore required to make sense of knowledge-based injustices against children.

⁵⁵Dotson, "Tracking Epistemic Violence," 248.

⁵⁶Dotson, "Tracking Epistemic Violence," 248.

Harms from Epistemic Injustice and the Christchurch Case

Epistemic injustices are costly from an epistemic point of view because it deprives the audience and the society of gaining knowledge from the silenced, ignored or warped testimonies, that could have otherwise been a source of knowledge.⁵⁷ The problematic questioning process obscured evidence about the truth of the Christchurch situation. Ellis died maintaining he was innocent, and if that is the truth, then he suffered much humiliation and injustice due to all the false allegations. Knowledge-based injustices cause harm to the victim that is also tremendously costly from a personal standpoint. Epistemic injustices can devastatingly alter one's sense of self-worth.⁵⁸ Fricker mentions that when people are "degraded qua knower[s]," they are "symbolically degraded qua human[s]."⁵⁹ In worst cases, individuals can start adhering to the false prejudices in self-fulfilling ways.⁶⁰ The argument can be extended to children - children may grow up into adults who lack "intellectual courage"⁶¹ because they were never treated as a 'knower' during their developmental period. The Christchurch case exhibits some of the emotional costs of testimonial injustices. The children who "may have come to believe they have been abused"⁶² have apparently shown signs of emotional distress since the trials began, such as "excessive fearfulness"⁶³ and experiencing "nightmares."⁶⁴ Also, these children may actually self-silence as adults if they realise their misguided testimonies caused injustice to an innocent man, and they may lose trust in their own epistemic agency.

⁵⁷Fricker, "Rational Authority and Social Power," 64-65.

⁵⁸Fricker, Epistemic Injustice, 48-47.

⁵⁹Fricker, 44.

⁶⁰Fricker, 48-47.

⁶¹Fricker, 49.

⁶²Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁶³Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁶⁴Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

A Hermeneutical Lacuna

I think that philosophers presently have a "hermeneutical lacuna,"⁶⁵ or an obscurity in the collective understanding of a particular social experience, namely that of children, due to a gap in the collective hermeneutical resources. We need new conceptual tools that can help us analyze and describe epistemic injustice and violence as experienced by children. Epistemic injustices may take a unique form when the victims are children because their ability to remember and form lasting memories that are relatively robust against outside interference is less developed than in adults. This may not be captured by existing theories in this field. I have already shown how children differ from adults as epistemic agents, and the conceptual tools that apply to adults may not fit children appropriately. Fricker's notion of "indicator properties"⁶⁶ and Dotson's "testimonial smothering"⁶⁷ are instances of such concepts. Nevertheless, the phenomenon at Christchurch is dangerously similar to cases of smothering. The concept of testimonial smothering might therefore be a good starting point for developing much needed new conceptual tools for understanding epistemic injustice when it victimizes children.

Conclusion

This paper posits that (i) the knowledge-based injustice against the Christchurch children may have stemmed from the situated ignorance of the adults, (ii) the usage of leading questions can cause knowledge-based injustices that is similar to, yet distinct from Dotson's characterization of testimonial smothering, (iii) we need new conceptual tools to analyze and define practices of knowledge-based injustices against children. I have outlined the concepts of 'Epistemic Injustice' and 'Testimonial Smothering' as discussed by Fricker and Dotson, respectively. I have also highlighted the problematic status of children as epistemic agents. An examination of the nature of questioning used to interrogate the children in the Christchurch case (1993), showed that the case resembles some form of testimonial injus-

⁶⁵Fricker, *Epistemic Injustice*, 155-150.

⁶⁶Fricker, "Rational Authority and Social Power," 57.

⁶⁷Dotson, "Tracking Epistemic Violence," 244.

tice that is similar to and yet distinct from Dotson's concept of testimonial smothering. The inadequacy of the existing terms and concepts to fully capture the nature of knowledge-based injustice that children face suggests the need for more research and development of new conceptual tools that will fill the existing gap in our collective hermeneutical resources.

Bibliography

1. Carel, Havi, and Gita Györfy. "Seen but Not Heard: Children and Epistemic Injustice." *The Lancet* 384, no. 9950 (2014): 1256-57.
2. Dotson, Kristie. "Tracking Epistemic Violence, Tracking Practices of Silencing." *Hypatia* 26, no. 2 (October 2011): 236-57.
3. Francis, Ross. "New Evidence in the Peter Ellis case." *New Zealand Law Journal* (2007): 404-399.
4. Fricker, Miranda. *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press, 2007.
5. — "Rational Authority and Social Power: Towards a Truly Social Epistemology" In *Social Epistemology: Essential Readings*, edited by Alvin I. Goldman and Dennis Whitcomb, 68-54. New York: Oxford University Press, 2011.
6. Goodyear-Smith, Felicity. "Civic Creche Case, Christchurch." *IPT Journal* - "Civic Creche Case, Christchurch", 1993. Retrieved from http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1. Accessed on November 20, 2019.
7. Mullin, Amy. "Children, Paternalism and the Development of Autonomy." *Ethical Theory and Moral Practice* 17, 2014, pp. 413-426.
8. Vergallo, G. Montanari, E. Marinelli, V. Mastronardi, N.m. Di Luca, and S. Zaami. "The Credibility of Testimony from Minors Allegedly Victims of Abuse within the Italian

Legislative Framework." *International Journal of Law and Psychiatry* 56 (2018): 58-64.

Resolving Complications of a Kantian Conception of Human Rights

SHANE COUGHLIN

Abstract. Scholars have utilized Kant's philosophy in justifying human rights because it is based upon reason alone. However, his social/political philosophy raises complications. This essay responds to Sangiovanni's concerns as expressed in "Why There Cannot be a Truly Kantian Theory of Human Rights."

Introduction to Human Rights and Some Complications

Human rights are universal rights for all human beings. A claim to a human right grants individuals protection from the state and other actors which can deprive them of their human rights. When a state violates its subject's human rights, it risks losing its sovereignty as it opens itself up to the international community to intervene in defense of human rights. Because of the consequences that claims of human rights have in the world, scholars have debated the philosophy of human rights. Part of this debate involves explaining what human rights individuals hold and how individuals have these rights. As a result of this, one's understanding of human rights significantly depends on how one comprehends human nature as well as how one apprehends human rights. In order to determine which human rights individuals have, many scholars have turned to substantive accounts of human rights.

Substantive accounts of human rights are one method used for determining whether human rights claims are genuine.¹ Those who support a substantive account of human rights favor it because it allows them to know, generally, which human rights people have and why they have them. In theory, this is powerful as it allows one to assess the validity of a claim to a human right; however, these substantive accounts of human rights have flaws.

One popular substantive account of human rights is the political conception. Some of those who support a political conception of human rights are skeptical about universal rights that apply to all people across various cultures, but they are still seeking a justification for human rights.² In his political conception of human rights, John Rawls argues that human rights can be understood through identifying the role that they have in the political sphere. For Rawls, human rights serve as necessary conditions to having social cooperation.³ This relationship of human rights to the individual is problematic as the political conception bases human rights on being necessary for social cooperation. An unfortunate consequence of such an approach is that it leaves some human rights that only impact the individual to not be adequately grounded.

Another version of the political conception holds that human rights are to be respected as social constructions. This is flawed because it only provides a formal account of a list of human rights that the state recognizes. This version of the political conception does not explain why these rights exist.⁴ Furthermore, human rights, to sufficiently allow for action by other states when violations to human rights occur, must exist prior and independent from the state.

The capabilities approach is another popular substantive approach to grounding human rights. The capabilities approach is based upon people's real opportunities to choose and

¹S. Matthew Liao, "Human Rights as Fundamental Conditions for a Good Life," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft and Massimo Renzo, First edition, Philosophical Foundations of Law (Oxford, United Kingdom: Oxford University Press, 2015), 79.

²"Human Rights," Stanford Encyclopedia of Philosophy, April 11, 2019, <https://plato.stanford.edu/entries/rights-human/>.

³Liao, "Human Rights as Fundamental Conditions for a Good Life," 94.

⁴Liao, 99.

act on various functionings.⁵ Nussbaum argues that all human beings have central capabilities, such as life, bodily health, and control over one's own environment. Human dignity arises when one has enough of each of these capabilities. However, the capabilities approach cannot protect status rights — rights which protect human being's moral status as persons.⁶ One example of a moral status right is the right to be presumed innocent until proven guilty. Additionally, human rights are supposed to be inalienable rights, and the capabilities approach implies that people have a choice when it comes to these rights. In the end, the capabilities approach cannot explain the rights of children as they are focused on functionings — which are not yet developed in children.

S. Matthew Liao critiques the capabilities approach and the political conception approach with some of the arguments presented above. He remains determined to have a substantive approach to human rights, and his solution is the fundamental conditions approach. It asserts that human rights are those which are fundamental conditions to one being able to pursue a good life.⁷ It recognizes that there are certain basic activities that human beings need to be able to perform to have a good life. The goal of society is thus to protect these fundamental conditions and to ensure that people can have a minimally good life. Initially, it appears as if this framework can be used to determine what human rights people have and how these claims are to be justified.

Rowan Cruft raises complications with the fundamental conditions approach. He asserts that defining a minimally good life is much harder than Liao anticipates it being. Cruft asks why the pursuit of a good life is being protected over the activities which lead one to have a good life. Furthermore, it is difficult to define basic activities which must be respected as human rights. Applying the fundamental conditions approach is not as clean-cut as Liao makes it since some have lived minimally good lives without human rights. Thus, respect for human rights is not always necessary for one to have a minimally good life.⁸

⁵Liao, 91.

⁶Liao, 92.

⁷Liao, 81.

⁸Rowan Cruft, "From a Good Life to Human Rights: Some Complications," in *Philosophical Foundations of Human Rights*, ed. S. Matthew Liao and Massimo Renzo, First edition, Philosophical Foundations of Law

Furthermore, having a human right is not sufficient to guaranteeing that one has a good life. People vary, and so people have differing fundamental conditions when it comes to living a minimally good life. Because these three major substantive accounts of human rights all have issues, some have resorted to non-substantive accounts of human rights. One non-substantive account of human rights concerns respecting human beings' dignity and their capacity for freedom.

Many international treaties, including the Universal Declaration of Human Rights, appeal to the inherent dignity of human beings in justifying human rights. Naturalistic theories of human rights, of which dignity is one approach, assert that people possess human rights by their nature as a person. This method prevents human rights from being solely conventional since they exist prior and independent of the state.⁹ One advantage of this approach is that it makes human rights universal as all human beings, regardless of their abilities or conditions, hold these natural rights. These are innate rights which cannot be forfeited, unless one commits a heinous act. Even though natural rights are pre-institutional, they have implications for what political institutions should look like. For example, Kantians hold that rational beings have an innate natural right to maximal freedom.¹⁰ This right includes the right to be in a civil society with institutions that help to actualize full freedom. Kant's philosophy has been used by many thinkers to develop a justification for human rights.

A Kantian Conception of Human Rights

Katrin Flikschuh, in "Human Rights in a Kantian Mode: A Sketch," spells out what she believes a Kantian conception of human rights would look like. Flikschuh begins by recalling Kant's understanding of concepts. Concepts contain a set of marks, or other concepts, that are united analytically.¹¹ These concepts serve as the basis for recognizing objects. Con-

(Oxford, United Kingdom: Oxford University Press, 2015), 105.

⁹John Simmons, "Human Rights, Natural Rights, and Human Dignity," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition, Philosophical Foundations of Law (Oxford, United Kingdom: Oxford University Press, 2015), 145.

¹⁰Simmons, 150.

¹¹Katrin Flikschuh, "Human Rights in a Kantian Mode: A Sketch," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition, Philosophical Foundations of Law (Oxford, United Kingdom: Oxford University Press, 2015), 654.

cepts are best regarded as "subjects' cognitive judgements of sensible intuitions as objects of experience in accordance with certain rules of cognition."¹² Because of human cognitive fallibility, concepts are limited, and it is often unclear what is precisely contained within a concept. In reflecting on the concept of human rights, a Kantian would recognize the inherent restrictions in developing a philosophy of human rights. Moral concepts, like human rights, are especially vulnerable to being contested. Ultimately, following Kant's philosophical thinking leads one to derive a transcendent human rights conception which acknowledges this cognitive and moral fallibility.¹³

Kant asserts that there are juridical and ethical duties. Juridical duties, grounded in the moral law, hold without exception, and they impose restrictions on people's actions that transcend their intentions.¹⁴ For example, a juridical duty could demand that one not lie (since it could not be willed to be universal), even if their intention was to prevent somebody from getting hurt. On the other hand, ethical duties allow for discretion as one must consider the ends and other elements related to the ends. Human rights would be found within juridical duties as they are absolute restrictions. For Kant, claims to rights are reciprocal, and mutually non-enforceable. This means that one who makes a claim to a right against another person is also bound by this claim. Furthermore, the one making the claim is unable to enforce this right as that would involve asserting themselves over the other person. Because of this, people must enter into a civil condition as it allows for a coercive authority to ensure that people fulfill their duties. According to Kant's philosophy, human rights understood as a transcendent concept entails that a substantive rights legislation cannot be developed due to human cognitive and moral fallibility.¹⁵

A transcendent conception stands in contrast to a foundationalist approach. For Kant, the transcendent is beyond understanding with respect to the substantive components. The content of a transcendent conception of human rights would entail concepts that ratio-

¹²Flikschuh, 654.

¹³Flikschuh, 656.

¹⁴Flikschuh, 658.

¹⁵Flikschuh, 660.

nal beings must recognize lie beyond their understanding. Furthermore, rational beings would have to acknowledge that they have never experienced a clearly formed concept of human rights.¹⁶ At first, it appears as if transcendent concepts are not useful. However, Kant believes that a transcendent concept is valuable in helping understand certain concepts. For example, Kant holds that recognizing the concept of God as transcendent allows for a better understanding of God. He believed that rational beings could not truly understand something that is omnipotent and omniscient.¹⁷ Therefore, it is more appropriate, and even preferable, to recognize certain concepts as transcendent. A transcendent concept of human rights allows one to better understand that practical reason is attempting to grasp something indeterminable, and it reminds rational beings of their own moral fallibility. Under the transcendent conception, human rights arise from recognizing the moral necessity of having a coercive public law making body.¹⁸ This differs from the more typical notion of human rights which places them as antecedent conditions of a legitimate state.

For Kant, legislating is an activity that is beyond human capacities. This is not a critique of human beings and their mental abilities. Instead, it relates to how Kant understands rights as being reciprocal. With reciprocal rights, claims of rights hold for both parties: the one making the claim and the one who the claim is directed towards. The state is needed as it can enforce reciprocal rights since one cannot act on their own and thus claim to have authority over another. When one is legislating, or determining the content of human rights, they are entering into a morally problematic dilemma as they have institutional elevation over others in society.¹⁹ This is an unavoidable dilemma as there is no alternative other than human rule. All that can be done is for legislators to recognize that they are in a position which exceeds their human capacities. This calls for them to be humble in exercising their power.

The transcendent approach to human rights can be seen in those who appeal to human

¹⁶Flikschuh, 664.

¹⁷Flikschuh, 664.

¹⁸Flikschuh, 666.

¹⁹Flikschuh, 667.

dignity and respecting human beings as ends in themselves.²⁰ These philosophical justifications of human rights are also transcendent as it is often unclear precisely what is meant by these ideas. Perhaps the human rights discourse has been so divisive as thinkers have tried to come to understand a transcendent concept. Kant's philosophy aids scholars in recognizing that they are attempting to grasp something which is beyond their understanding. If human rights were to be spoken of with mechanical precision, they would lose some of their moral appeal.²¹ This would diminish the power of speaking about respecting human dignity as an integral part of this concept is its complexity.

A transcendent concept of human rights does not directly provide enforceable requirements for states to follow. Instead, it would remind those in positions of power of their fallibility. Many will see this approach as restricted as it carries non-substantive implications when applying human rights to the world. This is a necessary limitation when deriving a philosophy of human rights from Kant. This paper will not consider critics of a non-substantive approach of human rights. Instead, it will respond to those who raise challenges to employing Kant's philosophy to justify human rights. Specifically, this paper will respond to Andrea Sangiovanni's challenges as raised in "Why There Cannot be a Truly Kantian Theory of Human Rights."

The Argument Against the Possibility of Having a Kantian Conception of Human Rights

Sangiovanni posits that Kant's philosophy cannot be employed in seeking to construct a philosophical foundation for human rights. Her argument is threefold.²² She argues that Kant's division between the domain of morality and the domain of right prevents the categorical imperative from being employed as the basis for human rights. Next, she posits that Kant's argument for there being a moral obligation to exit the state of nature restricts

²⁰Flikschuh, 669.

²¹Flikschuh, 670.

²²Andrea Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition, *Philosophical Foundations of Law* (Oxford, United Kingdom: Oxford University Press, 2015), 671.

the ability of people to claim human rights under a Kantian conception. Lastly, she contends that Kant's assertion of unitary sovereignty prevents others from being able to raise human rights claims. Sangiovanni regards Flikschuh's construction of a non-substantive account of human rights as a product of the limitations of utilizing Kant's philosophy to construct a human rights conception.²³ In light of these constraints, Sangiovanni believes that Flikschuh should have acknowledged that there cannot be a Kantian basis for human rights.

As noted previously, human rights violations open the possibility, and justification of, unilateral infringement on a state's sovereignty by individuals, organizations, and the international community. Sangiovanni believes that this conflicts with Kant's assertion of there being a moral obligation to exit the state of nature. In *The Metaphysics of Morals*, Kant writes that rational beings have a moral obligation to enter into a civil condition. The state of nature is "*devoid of justice*, in which when rights are *in dispute*, [since] there would be no judge competent to render a verdict having rightful force."²⁴ The problem of the state of nature is that one *unilaterally* imposes their will against another. Because there is no sovereign authority, all claims to rights are unilateral impositions of an individual's will. Ultimately for Kant, this gives rise to a moral obligation to exit the state of nature and to live under a civil condition in which the state can act as the coercive force enforcing rights. Under the civil condition, the state gains a strong right to non-interference. Kant wrote in *Toward Perpetual Peace* that: "No state shall forcibly interfere in the constitution and government of another state."²⁵ Human rights claims justify states and entities to unilaterally impose their will against another. This precisely replicates the predicament that is encountered in the state of nature which Kant seeks to avoid.

Sangiovanni acknowledges that Kant also objects to a state of nature among nations as he calls for a voluntary federation to regulate the conduct of its members. For some Kan-

²³Sangiovanni, 672.

²⁴Immanuel Kant, "Doctrine of Right," in *The Metaphysics of Morals*, ed. Jens Timmermann, trans. Mary J. Gregor, Cambridge Texts in the History of Philosophy (New York: Cambridge University Press, 2017), 90.

²⁵Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 676.

tians, the federation could protect human rights. However, Sangiovanni argues that federations cannot be employed to protect human rights as it conflicts with Kant's call for unitary sovereignty. In exiting the state of nature, Kant calls for sovereignty to be unified under one authority. The same occurs with respect to states and how they are obligated to enter a federation. Sangiovanni raises her objection through a hypothetical situation. In this situation, a member state to a federation is determined to have violated a right by a court which members of the federation are subject to. However, the member state objects to the court's ruling. Sangiovanni describes the resulting dilemma:

If we assume that the higher-level Court was acting within its powers, and that its judgments are supposed to be ultimately binding on its member states, then clearly the member state should either change its law or leave the union. For a Kantian, if it leaves the union, it would be violating a moral duty. So it must change its law. But, according to Kant's unitary conception of sovereignty, if it changed its law, it would be effectively recognizing that it is no longer sovereign. Having lost the ultimate (normative) power to decide in all cases, it has either dissolved (and hence returned to a state of nature), or simply transferred sovereignty to the higher level.²⁶

This once again raises the issue of the unilateral imposition of the will against another. When sovereignty is divided, there is bound to be one entity unilaterally imposing its will against another entity.²⁷ For Sangiovanni, if member states become subordinate units to the federation, there is no federal league of states. Further Sangiovanni, holds that Kant believes the federation should only regulate matters arising between the states as opposed to matters that arise within them. Ultimately, the federation could issue recommendations, but not enforce or demand compliance with international human rights.²⁸

For Sangiovanni, another obstacle to constructing a Kantian account of human rights is

²⁶Sangiovanni, 677.

²⁷Sangiovanni, 678.

²⁸Sangiovanni, 679.

his argument that there is no right to revolution.²⁹ Even if the state is violating the original contract, people do not have a right to revolt as they would be regressing back to the state of nature. This grants the state absolute sovereignty and makes a revolution based off of human rights violations in contradiction with the moral obligation to exit the state of nature.

Lastly, Sangiovanni attacks the heart of utilizing Kant to conceive of a human rights conception by discussing human dignity. She notes that human dignity is one of the most pervasive ideas at the basis of the human rights discourse. In seeking to ground human rights in a universal and secular basis through valuing the dignity of humanity as an end in itself, many scholars resort to utilizing Kant's philosophy. However, Sangiovanni asserts that dignity is a moral notion which governs internal attitudes, reasons, and action.³⁰ Dignity does not govern the domain of right which places limitations on actions and is silent with respect to reasons or attitudes. Human rights would be a category within the domain of right, and so it would be improper to assert that human dignity can ground human rights. Sangiovanni believes that the idea of the dignity of humanity governs only the domain of morality. Dignity is used to refer to what has absolute worth, and Kant never speaks of the dignity in his political writings when addressing the domain of right. Even if one were to treat another as a mere means, they would be violating the moral law, but they would not be violating Right since no contract is broken. As Sangiovanni writes, "The duty to respect the dignity of humanity is a constraint on internal lawgiving, but no constraint on *external*."³¹ Because of this, dignity cannot be the basis for human rights with Kant's philosophy.

Furthermore, Kant's categorical imperative cannot be used to justify human rights since the categorical imperative makes no appearance in his political writings when he discusses the domain of right. Kant's universal principle of right from his political philosophy holds that: 'it cannot be required that *I make it the maxim* of my action; for anyone can be free so long as I do not impair his freedom by my *external action*, even though I am quite indifferent

²⁹Sangiovanni, 680.

³⁰Sangiovanni, 684.

³¹Sangiovanni, 684.

to his freedom or would like in my heart to infringe upon it.³² The universal principle of right, unlike the categorical imperative, thus does not require one to constrain their maxims of action. For Sangiovanni, applying the categorical imperative to human rights would be overlooking the other concerns which are raised about unitary sovereignty and the moral obligation to exit the state of nature. However, a careful reading of Kant's political philosophy will reveal that these concerns are misguided and that Kant's philosophy can still be used to derive a conception of human rights.

Human Rights are Compatible with the Moral Obligation to Exit the State of Nature

Sangiovanni holds that human rights cannot exist under Kant's philosophy because they would entail allowing one entity to unilaterally enforce its will against another. Ultimately, this gives rise to an obligation to enter into a civil condition. It should first be noted that a non-substantive account of human rights makes it more difficult for one to impose its will against another. Under a transcendent conception of human rights, it is impossible for one to determine precisely what is and what is not a human right. Flikschuh has derived a transcendent conception of human rights from Kant which "would function as a subjective reflective check on the moral quality of public law making in general, reminding legislators of the fallibility of their authority and judgment in relation to those over whom they exert coercive public authority."³³ Therefore, at least under Flikschuh's account of a Kantian mode of human rights, legislators would be reminded to carefully use their coercive power.

Sangiovanni contends that under Kant's philosophy, the state acquires a right of non-interference. The issue with human rights is that they justify external intervention which would involve a unilateral imposition of will against the sovereign state which is alleged to be violating human rights. Sangiovanni refers to Kant's *Toward Perpetual Peace* in which he writes that "No state shall forcibly interfere in the constitution and government of another state.' For what can justify it in doing so? It can much rather serve as a warning to them, by the ex-

³²Sangiovanni, 688.

³³Flikschuh, "Human Rights in a Kantian Mode: A Sketch," 670.

ample of the great troubles the people has brought upon itself by its lawlessness; and, in general, the bad example that one free person gives another (as *scandalum acceptum*) is no wrong to it."³⁴ Sangiovanni interprets this to prevent action from a will which is external — such as that of a foreign state, a league of foreign states, or a non-state actor.³⁵ While there may be no unilateral action against states, states still have a moral obligation to exit the state of nature which exists at the international level. This entails joining a federation to regulate their conduct. Kant describes the moral obligation to exit the international state of nature in "The Doctrine of Right" from *The Metaphysics of Morals*:

So, unless it [the state] wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it must leave the [international] state of nature, in which each follows its own judgement, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined by law and is allotted to it by adequate power (not its own but an external power); that is, it ought above all else to enter a civil condition.³⁶

As Kant's writing displays, when states voluntarily enter a federation with others, it submits itself to "a public lawful external coercion."³⁷

For Sangiovanni, a federation still cannot be the basis for human rights. She argues that if a federation were to hold the ability to implement and enforce rights, it would divide sovereignty and violate Kant's principles. Recall the example that Sangiovanni provides with a federation being bound by the rulings of an international court. Once the federation rules against a member state, the state must either leave the federation to keep its law or change its law. If the state were to leave the federation in response to the court ruling,

³⁴Immanuel Kant, "Toward Perpetual Peace," in *Practical Philosophy*, trans. Mary J. Gregor, 1. paperback ed., 9. print, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 2006), 319.

³⁵Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 676.

³⁶Kant, "Doctrine of Right," 90.

³⁷Kant, 90.

it would be regressing towards the international state of nature and thus violating Kant's assertion of there being a moral obligation to exit the state of nature. So, the state must change its law. In doing so, Sangiovanni holds that the state has lost sovereignty because sovereignty has effectively been transferred to the court and the federation.³⁸ For Sangiovanni, the dilemma of the state of nature persists as the federation's will is being unilaterally imposed against the state. However, with a federation of states, sovereignty has been united under a body which can regulate the states. For Kant, this is superior to having anarchy in the international order as states are subject to one higher authority: the federation. Instead of unilaterally enforcing their will against each other through war, states must resolve conflicts through the federation. Reason advocates that states form a federation for the same purpose as it demands that people exit the state of nature. In both cases, they must unite under a sovereign authority to mediate disputes between members. Regarding member states to a federation, Sangiovanni holds that there is no longer a federal league of states if member states must change their laws pursuant to the federation. This is not necessarily true. Member states can be subordinate to the federation while still being considered states.

Kant favors a federation because, "Only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war."³⁹ The federation allows for sovereignty to be united such that nations can resort to a mechanism to resolve disputes. Nations would not have to unilaterally impose their will against each other through war or other means. Reflecting upon the United Nations today, it has come to resemble the federation which Kant was calling for in his writings as it has encouraged nations to resolve disputes without engaging in war.

³⁸Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 677.

³⁹Kant, "Doctrine of Right," 120.

Having no Right to Revolution Does Not Prevent Having Human Rights for Kant

For Sangiovanni, connected with sovereignty and the unilateral imposition of the will against another is the right to revolt against the state. Revolting against the sovereign state is prohibited in Kant's philosophy because the state holds the authority to resolve conflicts. Those who rebel against the state are regressing towards the state of nature because they are imposing their will against the state which exists to resolve conflicts that arise. Even if the state is corrupt and violating the constitution, people do not gain the right to overthrow it. Kant writes that "The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution."⁴⁰ At first, Kant appears to be mirroring Hobbes in writing that the state enjoys absolute authority. This would prevent there from being human rights as the state would be supreme in all matters. However, Kant reserves sufficient rights for citizens such that there is still space to develop human rights.

Along with holding that there is no right to revolt against the state, Kant writes there may be no active resistance from citizens. Active resistance would entail people trying to coerce the government through an act of executive authority.⁴¹ On the other hand, Kant reserves the right of the people to engage in negative resistance — which is a refusal of the people to accede to the demands of the government. Kant discusses negative resistance in the context of a parliament refusing to grant the government what it deems is necessary to administer the state. This can be interpreted more widely as granting people the ability to engage in civil disobedience. Later in the "Doctrine of Right," Kant holds that there is a categorical imperative to "obey the authority who has power over you (in whatever does not conflict with inner morality)."⁴² Here, Kant has expressly reserved the ability for people to disobey the sovereign when they are directed to do something contrary to their conscience.

⁴⁰Kant, 97.

⁴¹Kant, 98.

⁴²Kant, 136.

In discussing a state going to war, Kant argues that the sovereign alone cannot demand the citizens to participate in fighting.⁴³ This is because citizens "must always be regarded as co-legislating members of a state (not merely as means, but also as ends in themselves), and must therefore give their free assent..."⁴⁴ Interpreting this more broadly reveals that Kant is not as Hobbesian as he appears. Citizens do have rights under Kant's political system, and they must be respected as ends in themselves by their rulers.

Kant does grant the state a wide degree of sovereignty; however, he has provided adequate space for there to be human rights such that the state is not always just in acting simply because it holds the sovereign authority. Kant believes that the state must exist to resolve conflicts peacefully, but this does not give the state the absolute authority to impose its will without restriction. In writing that there cannot be a right to revolution, he is writing that it is wrong to overthrow a duly chosen government — even if it is abusing its authority — because that would involve a contradiction between the wills.⁴⁵ The will of the individuals, specifically the rebels, would triumph over the will of the state, and it is the duty of the state to resolve these conflicts.

Dignity Can Serve as the Basis for a Kantian Mode of Human Rights

Sangiovanni's last objection concerns human dignity as a moral notion that governs internal attitudes and thus not the external domain of right.⁴⁶ Because of this, Sangiovanni argues, one cannot appeal to human dignity to justify claims of human rights since human rights would belong to the domain of right as they concern the relations between people. Sangiovanni notes that Kant's moral philosophy discusses human dignity and thus respecting humans as ends in themselves. However, Kant's political philosophy does not discuss human dignity. She believes that the duty to respect human dignity restricts internal lawgiving, but not external relations.⁴⁷ Based on this, Sangiovanni concludes that human dignity

⁴³Kant, 116.

⁴⁴Kant, 116.

⁴⁵Kant, 97.

⁴⁶Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 685.

⁴⁷Sangiovanni, 687.

and the categorical imperative cannot be used to ground human rights.

The relationship between Kant's moral philosophy and his political/social philosophy is contested, and this could be further explored in another paper. The divide between Kant's political philosophy and his moral philosophy need not be so large. The domain of right and the domain of virtue have similarities. For example, there is certainly a relationship between how human beings create laws for themselves and how they act externally. Kant's *Groundwork for the Metaphysics of Morals* holds that the categorical imperative is the ultimate law over human deliberative actions. Therefore, some hold that the domains of right and virtue both have the categorical imperative as the highest principle.⁴⁸

Kant does refer to the categorical imperative in *The Metaphysics of Morals*, but it is perhaps in a different sense when compared to how it is used in *The Groundwork for the Metaphysics of Morals*. As mentioned previously, in "The Doctrine of Right," Kant asserts that there is a categorical imperative to "obey the authority who has power over you (in whatever does not conflict with inner morality)."⁴⁹ He is using the term categorical imperative in a general sense to refer to an absolute and universal requirement. This differs from the categorical imperative derived in *The Groundwork for the Metaphysics of Morals* which demands that rational beings only act according to maxims which could be willed to be universal.⁵⁰ Even though the categorical imperative is referred to in a different sense, this lends support to there being a connection between the moral and political/social philosophy as reason makes demands in both realms. Furthermore, the state, while it may appear to fall squarely under Kant's political philosophy and his domain of right, is connected to his moral philosophy. The state exists to maximize freedom and part of this entails respecting individuals as ends in themselves. Sangiovanni's analysis and subsequent division between Kant's moral philosophy and his political/social philosophy is unwarranted given the ambiguity and debate which exists between scholars on these topics.

⁴⁸"Human Rights."

⁴⁹Kant, "Doctrine of Right," 136.

⁵⁰Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed. Jens Timmermann, trans. Mary J. Gregor, Revised edition, Cambridge Texts in the History of Philosophy (Cambridge: Cambridge University Press, 2012), 17.

Conclusions

Many contemporary scholars resort to Kant and his moral philosophy in justifying human rights. This paper has sought to examine what a Kantian mode of human rights would look like, and it has responded to objections which have been raised against the plausibility of such a theory of human rights. Scholars have not always paid attention to the nuances within Kant's philosophy that create complications for using his philosophy to justify human rights. As has been displayed in this paper, interpretative differences of Kant's philosophy can lead to complications in seeking to derive a strictly Kantian theory of human rights. Many thinkers have not bound themselves to Kant's philosophy and have only referenced him and his moral philosophy in passing as they justify human rights as entailing respect for human dignity.

Even though it would complicate contemporary human rights as practiced, there is some merit to there being a transcendent and non-substantive conception of human rights. Flikschuh believes that a truly Kantian theory of human rights must be non-foundational and thus transcendent as Kant's philosophy as a whole rejects philosophical foundationalism.⁵¹ A transcendent theory of human rights recognizes that trying to derive human rights involves human beings using their cognitive abilities for something that is beyond understanding. The Kantian asks how can one come to truly grasp what it means to respect human dignity? Perhaps it is best to start by recognizing the most egregious violations of human dignity when people are treated as means opposed to ends in themselves. Flikschuh believes that if we completely understood human rights, they would lose their appeal: "So with human rights: if we really could give a full specification of its meaning and moral significance, it would cease to fulfill its moral function as a reminder, in the political context, of the fragility of humanly instituted legal relations."⁵² Because human rights are such a difficult concept to understand, it forces one to reflect on human nature and the world, and this is a good thing. Otherwise, human rights could be applied in a mechanistic nature which could over-

⁵¹Flikschuh, "Human Rights in a Kantian Mode: A Sketch," 669.

⁵²Flikschuh, "Human Rights in a Kantian Mode: A Sketch," 669.

look some injustices.

Many would likely reject this human rights conception constructed by Flikschuh to be consistent with Kant's philosophy because of the challenges involved in a transcendent theory of human rights. One advantage of a strictly Kantian theory of human rights is that it recognizes the necessity of human beings establishing a government and having to subsequently elevate some above others who determine the laws. This results in an unavoidable dilemma as some human beings have too much power: they are responsible for creating laws which restrict others. Kant wants to remind those in positions of power to exercise their power diligently. In the end, it would be a mistake to quickly reject this approach as it provides much insight into the challenges of human rights.

Works Cited

1. Sangiovanni, Andrea. "Why There Cannot Be a Truly Kantian Theory of Human Rights." In *Philosophical Foundations of Human Rights*, edited by Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition., 671—90. Philosophical Foundations of Law. Oxford, United Kingdom: Oxford University Press, 2015.
2. Cruft, Rowan. "From a Good Life to Human Rights: Some Complications." In *Philosophical Foundations of Human Rights*, edited by S. Matthew Liao and Massimo Renzo, First edition., 101—16. Philosophical Foundations of Law. Oxford, United Kingdom: Oxford University Press, 2015.
3. Stanford Encyclopedia of Philosophy. "Human Rights," April 11, 2019. <https://plato.stanford.edu/entries/rights-human/>.
4. Kant, Immanuel. "Doctrine of Right." In *The Metaphysics of Morals*, edited by Jens Timmermann, translated by Mary J. Gregor, 89—138. Cambridge Texts in the History of Philosophy. New York: Cambridge University Press, 2017.

5. ———. *Groundwork of the Metaphysics of Morals*. Edited by Jens Timmermann. Translated by Mary J. Gregor. Revised edition. Cambridge Texts in the History of Philosophy. Cambridge: Cambridge University Press, 2012.
6. ———. "Toward Perpetual Peace." In *Practical Philosophy*, translated by Mary J. Gregor, 1. paperback ed., 9. print., 317—51. The Cambridge Edition of the Works of Immanuel Kant. Cambridge: Cambridge University Press, 2006.
7. Flikschuh, Katrin. "Human Rights in a Kantian Mode: A Sketch." In *Philosophical Foundations of Human Rights*, edited by Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition., 653—70. Philosophical Foundations of Law. Oxford, United Kingdom: Oxford University Press, 2015.
8. Liao, S. Matthew. "Human Rights as Fundamental Conditions for a Good Life." In *Philosophical Foundations of Human Rights*, edited by Rowan Cruft and Massimo Renzo, First edition., 79—100. Philosophical Foundations of Law. Oxford, United Kingdom: Oxford University Press, 2015.
9. Simmons, John. "Human Rights, Natural Rights, and Human Dignity." In *Philosophical Foundations of Human Rights*, edited by Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition., 138—52. Philosophical Foundations of Law. Oxford, United Kingdom: Oxford University Press, 2015.