

Is there a human right to reasons for administrative decisions?

Johanna Romare, Johanna Ohlsson & Olof Wilske

When public employees make administrative decisions affecting individuals, they exercise governmental power. The subjects affected by these decisions are often in a vulnerable position, generating an asymmetrical power relationship, which is why reason-giving – justifications – for administrative decisions serves a central role in communicating why a certain decision was taken. The aims of this article are to clarify the legal and philosophical reasons why public authorities have an obligation to justify the decisions they make and explore whether providing reasons for decisions can be seen as a human right. We do this by critically examining the obligation's legal and moral foundations, and we subsequently discuss to what extent it is reasonable to consider it a human right to have decisions justified. We conclude that when sufficient reasons for a decision are missing, the affected individual is deprived of crucial information, impairing their capacity to assess on what grounds the decision was taken, which we argue is a violation of their right to moral autonomy and self-government, and ultimately a violation of their right to justification.

1. Introduction

This article examines whether individuals¹ affected by administrative decisions have a human right to be provided with clarifying reasons for these decisions. By administrative decisions, we refer to the authoritative determinations made by public officers that directly affect the interests of individuals, often without the procedural protections typical of judicial decisions. The background is that administrative decisions made by public officers at governmental agencies often have a significant impact on individuals who are already vulnerable. For instance, public officers issue decisions on solitary confinement of inmates, deportation of asylum seekers, and welfare benefits, such as sickness compensation. In addition, in the case of Sweden, there have been several examples of categorical motivations for decisions, making it hard for individuals to appeal these decisions if necessary, as the actual reasoning is articulated in an unspecific way. The vulnerability is

¹ We use the terms ‘individuals’ and ‘persons’ interchangeably. However, for Kant (persons) and Forst (individuals), we use their own terminology.

relational, and ultimately a question of power asymmetry between the state employee and the individual affected by the decision. This calls for administrative decisions to be carefully reasoned and justified to those affected. In administrative law, the requirement is referred to as an obligation² to give reasons for administrative decisions, which mirrors important principles in a state governed by the rule of law.

Despite the perceived importance of the obligation, public authorities are recurrently criticised for not providing sufficient reasons for their decisions. For example, Sweden has, like many other states, been criticised by human rights committees for inadequate reason-giving. For instance, the United Nations Committee for the Rights of the Child has criticised Sweden for not informing detained children and juveniles of the reasons for the restrictions imposed on them, and for failing to explain the reasons in an understandable manner.³ Another example and potential challenge is explicated by the Swedish Tax Agency, articulating that an excessively inadequate justification in a decision is an example of a procedural error that may result in the decision being overturned upon judicial review.⁴

While the UN criticism is merely one example among many, it highlights a discrepancy between the perceived importance of justifying administrative decisions and their implementation. This discrepancy can be explained in several ways.⁵ Central to these explanations is our suspicion that the obligation to justify decisions appears obscure, stemming from a lack of a coherent rationale. To prevent maladministration, there is a pressing need to provide a comprehensive understanding of this obligation and explain why justification is imperative. Moreover, the examples indicate a relationship between reason-giving and human rights, warranting further scrutiny. UN human rights committees often treat insufficient or missing reasons for administrative decisions as human rights violations. The inclusion of reason-giving as a core component of the right to good administration in Article 41 of the Charter of Fundamental Rights of the European Union (the EU Charter) supports this interpretation, demonstrating its importance for respecting fundamental rights and freedoms.

Therefore, this article addresses three questions: (1) What is the legal basis for providing reasons for administrative decisions? (2) What is the moral basis for providing

² Though the concepts sometimes overlap, we use ‘obligation’ for requirements arising from legislation, or other external requirements, while ‘duty’ is used in the philosophical sense of a moral requirement.

³ United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Fifth Periodic Report of Sweden’ (6 March 2023) UN Doc CRC/C/SWE/CO/5, (accessed 3 December 2024).

⁴ Cf. Högsta förvaltningsdomstolen (Supreme Administrative Court) 2020 not. 34, case no. 2453-20, judgment of 23 December 2020, and Högsta förvaltningsdomstolen (Supreme Administrative Court) 2011 ref. 10, case no. 7262-09, judgment of 21 June 2011.

⁵ E.g., there may be a lack of awareness of the obligation to provide reasons, or differing assessments of what is sufficient; Cf. E. Fura and A. Svensson, ‘Motiveringsskyldigheten ur ett JO-perspektiv’, *Förvaltningsrättslig tidskrift*, 2015:4, (2015) pp. 539–549, and J. Ohlsson, J. Romare, and O. Wilske, ‘Beslutsmotivering som rättfärdigande’, *Förvaltningsrättslig tidskrift*, vol. 2021, no. 5, (2021) pp. 889-910. As argued by Ohlsson, Romare, and Wilske in 2021, there has been, also in the Swedish case, a lack of comprehensive and coherent rationale for the obligation. Building on S. Jägerskiöld, ‘Om motiveringen av förvaltningsbeslut’, *Förvaltningsrättslig tidskrift*, 1961:6, (1961), pp. 305–328, the practice of providing reasons for decisions is seen as a procedural safeguard grounded in rule of law principles. However, in the preparatory works for the Swedish legislation, the obligation is predominantly justified in instrumental and pragmatic terms – based on trust and efficiency – and is framed as a ‘basic guarantee for legal certainty’ (prop. 2016/17:180 p. 188). This suggests a functional rather than principled understanding of legal certainty in the Swedish context.

reasons for administrative decisions? (3) Is it a human right to have administrative decisions justified? Our starting point is that reason-giving embodies a deontological character, aligning with central rule of law principles. Section 2 presents an account of the legal foundations for providing reasons, especially in relation to the rule of law. Section 3 examines reason-giving through Kantian and neo-Kantian lenses, demonstrating that the practice is fundamentally rooted in deontological principles. Lastly, we examine the resources available for considering reason-giving as a human right. While we acknowledge that there may be other reasons than deontological ones (e.g., pragmatic reasons, such as clearly written and exhaustive decisions, leading to fewer appeals, and thus more efficient administration), we seek to examine the arguments for the practice based on a deontological position.

This article proceeds from the premise that legal and ethical justifications are both necessary, but not reducible to one another. Legal norms alone cannot ground the full normative weight of justification obligations, while ethical reasoning, without legal institutionalisation, risks ineffectiveness. By integrating both, we aim to show not only that there is a legal duty to give reasons, but also why such a duty is normatively compelling.

2. The legal obligation to give reasons for administrative decisions

Legal obligations to give reasons for decisions by public authorities exist in many jurisdictions, often within administrative law, but it is sometimes also regarded as a constitutional right.⁶ On a European level, the EU Charter guarantees in Article 41 a right to good administration including the right to have one's affairs handled impartially, fairly, and within a reasonable time.⁷ The principle of good administration is nevertheless complex, being both legal and extra-legal, a subjective right and a code of conduct, while at the same time also a condition for a functioning government, and a malleable vocabulary of power.⁸

More specifically, Article 41.2 (c) requires the administration to give reasons for its decisions, notably to prevent administrative arbitrariness, to ensure consistent practice, to provide a tool for administrative accountability and judicial review, and to fulfil an informative function vis-à-vis the individuals affected by such decisions.⁹ Reasons for decisions must always include their legal basis. In some cases, this might be sufficient, especially when decisions are beneficial for the recipient. However, the requirements regarding precision increase with the degree of administrative discretion, and when decisions penalise or are otherwise disadvantageous for the recipient. Reasons must be

⁶ See e.g., J. L. Mashaw, 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance', *The George Washington Law Review*, 76, (2007), pp. 99–124, and I. Opdebeek & S. De Somer, 'The Duty to Give Reasons in the European Legal Area: A Mechanism for Transparent and Accountable Administrative Decision-Making? A Comparison of Belgian, Dutch, French and EU Administrative Law', *Public Administration Yearbook*, 2016:2 (2016), pp. 97–148.

⁷ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Art. 41, available at: <https://www.refworld.org/docid/3ac6b3b70.html> (accessed 3 December 2024).

⁸ I. Koivisto, 'From Moral Rules to Individual Rights – and Beyond? The Institutionalization of Good Administration in Finland and in Europe', *Förvaltningsrättslig tidskrift*, 2018:1, (2018), p. 80. Koivisto argues that it 'could even be labelled a "magic concept"', *ibid.* pp. 71–72. Koivisto here refers to broad concepts with possibly conflicting definitions, often normatively attractive, obscuring conceptual opposites, and usually popular and fashionable.

⁹ J. Reichel, *God förvaltning i EU och i Sverige*, (Stockholm: Jure, 2006), pp. 259 ff.

clear and unambiguous, and normally delivered in writing.¹⁰ Nevertheless, it is not easy to legally formulate the exact scope of the obligation to state reasons.

Regardless of jurisdiction, the rationale for providing reasons is ultimately rooted in the rule of law, which is enshrined in many constitutions and other foundational documents. For instance, the European Union has the rule of law as one of its fundamental values, according to Article 2 of the Treaty on the European Union (TEU). The EU has adopted a rather elaborate idea of the rule of law, defined along the following six principles: legality, implying a transparent, accountable, democratic, and pluralistic process for enacting laws; legal certainty; prohibition of the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, with effective judicial review, including respect for fundamental rights; separation of powers; and equality before the law. These principles have been recognised by the European Court of Justice and the European Court of Human Rights. In addition, the Council of Europe has developed standards, and issued opinions and recommendations, that provide well-established guidance to promote and uphold the rule of law.¹¹

Having said that, there is no single definition of 'rule of law' upon which everyone agrees. A common distinction is between formal, procedural, and substantive aspects of the rule of law. The formal aspects include consistency and generality of norms, the procedural aspects incorporate a right to a fair hearing, and the substantive aspects add layers of human rights, such as non-discrimination.¹² The duty of administrative agencies to provide reasons for their decisions is an aspect of the procedural and substantive elements of the rule of law, and is analogous to the duty to provide reasons in court cases, which is derived from Article 6.1 of the European Convention on Human Rights. When a court decides a case, the provision of reasons shows the parties involved that their case has truly been heard. The reasons given must be such as to enable the parties to make effective use of any existing rights to appeal, and must, at the very least, examine the litigant's main arguments.¹³ Consequently, legal protection of the individual is a key concern of the duty to provide reasons.¹⁴

From a constitutional point of view, the rule of law can be said to limit the exercise of public authority and power by preventing arbitrary and illegal actions, and decisions. Its purpose is to provide order and foreseeability for those subject to public authority. In this endeavour, the statement of reasons for decisions is a tool for assessing the legality and legitimacy of a given decision, but may also be seen as an integral part of the rule of law. Thus, as elusive a concept as the rule of law may be, it is the foundation of all legal orders and might even be seen as a logical requirement: if the law can be ignored, there is no rule of law. Without the rule of law, there is no need for law at all.

How does the rule of law require that reasons be provided for decisions? As Mathilde Cohen has argued, a legal system would not conform to the rule of law if its

¹⁰ C. Lebeck, *EU-stadgan om grundläggande rättigheter*, 2nd rev. ed., (Lund: Studentlitteratur, 2016), p. 428.

¹¹ European Commission, 'What is the Rule of Law?', available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en, (accessed 30 April 2025).

¹² J. Waldron, 'The Rule of Law', in E. N. Zalta and U. Nodelman (eds.), *The Stanford Encyclopedia of Philosophy*, Stanford University, 2023. <https://plato.stanford.edu/archives/fall2023/entries/rule-of-law/> (accessed 11 February 2025).

¹³ Cf. European Court of Human Rights, *H. v. Belgium*, App. No. 8950/80, 30 November 1987 (ECtHR), and European Court of Human Rights, *Hirvisaari v. Finland*, App. No. 49684/99, 27 September 2001 (ECtHR).

¹⁴ Cf. Obdebeek and de Somer, 2016.

decisions were not supported by publicly articulated reasons.¹⁵ Thus, a central tenet of the procedural conception of the rule of law is legal predictability: public authority should be exercised in a predictable and consistent manner, and this may be ensured by providing reasons. According to a substantive conception of the rule of law, its main purpose is to provide just outcomes. Unjust outcomes and abuse of power are less likely if (intelligible and reasonable) reasons must be provided by decision makers. It should be said that the obligation to provide reasons for administrative decisions has a close affinity to judicial reason-giving.¹⁶ Traditionally, the requirement has been, and still is, much stronger in judicial settings – a fact that is due to both varying legal requirements in different jurisdictions, and to professional orthodoxy in the judiciary. In an administrative context, the obligation has gradually evolved during the twentieth century, by and large relying on a simplified judicial model. For example, the jurisprudence of the European Court of Human Rights (ECtHR) has applied the right to criminal defence in Article 6 of the European Convention on Human Rights (ECHR) analogously in administrative matters.¹⁷

To a certain degree, there is an inherent requirement to provide reasons for administrative decisions in a legal order governed by rule of law principles. This implies that decisions by public authorities must at least refer to relevant legal rules, which may be understood as an embryonic requirement to provide reasons for decisions. However, the extension of ‘legal rule’ may vary between different jurisdictions depending on various legal traditions. For example, in comparison with many other jurisdictions, Swedish legal culture is permeated by a high degree of statutory positivism, especially in public law. This means that for a norm or principle to be legally relevant, it must, as emphasised by legal positivism, be expressed through positive law (legislation) in one way or another. Swedish legal positivism illustrates how the extension of the rule of law can vary as a result. In Sweden, this results in a legal system where statutory law is paramount, contrasting with jurisdictions where unwritten principles or judicial precedents play a more significant role. At the same time, the rule of law, understood as the principle of legality, is deeply entrenched in Swedish legal culture, and has been so since the dawn of the legal order. Sweden and Finland are similar in that standards and principles for good administration in a legal context have been elaborated on a case-by-case basis through what might be called ‘ombudsprudence’; that is, decisions by the Parliamentary Ombudsmen and the Chancellor of Justice. Such cases are usually triggered by ‘motivated irritation’, which is when a citizen has reason to be irritated due to a civil servant’s action or negligence, yet the action or negligence is not severe enough to constitute grounds for appeal or impeachment. Bad administrative behaviour often falls into the gap between the acceptable and the legally problematic.¹⁸ This approach further exemplifies how the extension of the rule of law can vary, as it relies on supervisory institutions to address issues that statutory law may not explicitly cover.

Now, we have observed a strong link between rule of law principles and the obligation to give reasons for administrative decisions. The obligation to give reasons is

¹⁵ M. Cohen, ‘The Rule of Law as the Rule of Reasons’, *Archiv für Rechts- und Sozialphilosophie*, 96:1, (2010), pp. 1–16.

¹⁶ For a discussion on judicial reason-giving see e.g., M. Cohen, ‘When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach’, *Washington and Lee Law Review*, 72:2, (2015), pp. 483–571. The term ‘judicial’ refers to decision-making by courts, as distinct from administrative agencies.

¹⁷ The Council of Europe has also issued a recommendation on good administration in Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on Good Administration*, adopted by the Committee of Ministers on 20 June 2007.

¹⁸ Koivisto, 2018, p. 76.

intimately connected to a procedural or even substantive concept of the rule of law. Research shows that from a legal perspective it is conceived as a procedural safeguard – as an instrument for regulating unequal power relationships between authorities and individuals.¹⁹ As a part of good administration, it has even been discussed as evolving towards an individual human right.²⁰ Thus, an issue here present is whether the obligation of state authorities to give reasons can be understood as a (human) right for the individual subject of a decision to obtain reasons. We will return to this discussion in Section 4, but let us first discuss the moral grounds for justifying administrative decisions.

3. Is there a moral duty to give reasons for administrative decisions?

As noted, from a legal point of view, providing reasons for administrative decisions ensures they follow legal rules and just considerations rather than an arbitrary use of power. With the aim of clarifying the rationales of reason-giving, this leads us to an elaboration of the moral foundation for the practice. Administrative decisions often entail significant consequences for personal autonomy and well-being, necessitating that public authorities justify their decisions. In this section, we contend that a Kantian deontological framework provides a compelling moral foundation for this obligation, emphasising respect for the inherent dignity of persons. Furthermore, we aim to demonstrate that such a theory not only aligns with the core principles of the rule of law, but also offers robust philosophical support for its practice. This argumentation will be developed in three steps, based on: (1) a duty to respect the moral autonomy of individuals, (2) a right to freedom from the arbitrary will of others, and 3) the idea that individuals are justificatory beings with an inherent right to justification.

However, before addressing the moral arguments for justifying administrative decisions, we must first define what justification entails. It is crucial to distinguish moral justification from other forms of justification, such as legal justification, briefly covered in the previous section, as well as political or pragmatic justification.²¹ We then return to the moral foundation for reason-giving in public administration.

¹⁹ Opdebeek and De Somer, 2016, p. 135; Ohlsson, Romare and Wilske, 2021, p. 902. In Sweden, the obligation to provide reasons for administrative decisions is expressly stipulated in the Swedish Administrative Procedure Act (SFS 2017:900), §32, which states that decisions presumed to affect someone's situation in more than an insignificant manner must be accompanied by clarifying reasons, unless it is manifestly unnecessary. A rationale for a revision in 2017 was to modernise and clarify the principles of good administration, ensuring that administrative processes are transparent, efficient, and fair. This was initiated due to the need to align with broader European standards, including those in the EU Charter of Fundamental Rights. This is supported by the preparatory work to SFS 2017:900, where the obligation is described as a 'basic guarantee for legal certainty', Swedish Government Bill, Prop. 2016/17:180, p. 188. In earlier administrative law doctrine, the obligation to give reasons was linked to several procedural safeguards, which serve the purpose of enhancing the legal protection of individuals against abusive state power. In this context, the rationale for providing reasons for decisions is clearly connected to demands for legal certainty and principles of the rule of law. See S. Jägerskiöld, 'Om motiveringen av förvaltningsbeslut', *Förvaltningsrättslig tidskrift*, 1961:6, (1961), pp. 305–328 for an interpretation of the obligation and its relation to the rule of law before the 2017 amendment.

²⁰ Opdebeek and De Somer, 2016, p. 140 f.

²¹ J. Ohlsson, 'On the Ethical, Moral and Pragmatic Justification of Political Decisions', *Ethical Thought*, 19:2, (2019), pp. 87–97, offers a typology differentiating between moral, ethical, and pragmatic justification which can be seen as an analytical roadmap. Developing this further lies beyond the scope of this article.

3.1. Justification as reason-giving

According to a standard dictionary definition, justification is '[t]he action of or result of showing something to be just, right, or reasonable'.²² This implies that justifying a decision involves providing reasons that demonstrate its fairness, correctness, etc. Thus, lexically, justification involves explaining the actions' rationale, which is why the obligation to give reasons for administrative decisions can be articulated in terms of an obligation to justify them.

We understand justification as providing normative reasons for an action or the normative arguments for undertaking a particular decision, where a reason is what Thomas M. Scanlon has described as 'a consideration that counts in favour of something'.²³ However, such reasons can be of various sorts: legal, moral, pragmatic, etc. Subsequent questions concern, then, what distinguishes the different types of justifications from each other, and what kind of justification public officers are expected to provide.

Distinguishing between different types of justification is crucial, as they relate to various normative frameworks and, thus, types of reasons. For example, in Swedish preparatory works, the obligation to provide reasons is supported by mixed and sometimes conflicting arguments, including both rule of law principles as well as instrumental and pragmatic arguments about trust and efficiency.²⁴ As indicated earlier, mixed arguments for why reasons ought to be provided may lead to confusion about when sufficient reasons have been given.²⁵ Using Swedish preparatory works as an example, we see that the arguments for the obligation relate to different types of reasons: some are pragmatic, others procedural, and some moral.

Our concern here is moral justification, which concerns the rightness or wrongness of an action (e.g., a decision) according to a normative moral standard, while legal justification can be said to concern reasoning and principles that render an action forbidden or permissible under specific legal standards and principles grounded in the rule of law, as already shown in section 2 above. Another type of justification is pragmatic justification, which involves practical or strategic reasons for political decisions, amongst others. While we consider the types of justifications to be normative, they relate to different types of reasons (moral, legal, pragmatic). Thus, they involve evaluative judgments about what ought to be done but are grounded in different normative frameworks. Nevertheless, there are overlaps and discussing legal as well as political justification separately furthers the understanding of the types of justification, as these could be of ethical, moral, or pragmatic character. While various types of reasons can be useful in clarifying the rationale of reason-giving, this article explores whether understanding this foundation can aid in interpreting the obligation as a legal demand. We therefore concentrate solely on moral and legal justifications and their interconnectedness.

In a broad sense, legal and moral justification are sub-types of rational justification, as they involve reasons that support a claim or an action that is logically sound.²⁶ However,

²² Oxford English Dictionary, 'Justification (n.)', September 2024, <https://doi.org/10.1093/OED/5642701592> (accessed 11 February 2025).

²³ T. M. Scanlon, *What We Owe to Each Other*, (Cambridge: Belknap Press of Harvard University Press, 1998), p. 17.

²⁴ Swedish Government Bill, Prop. 2016/17:180.

²⁵ Cf. n. 5.

²⁶ This may hold for other types of justifications as well. Whether they constitute a rational justification depends on the context and type of justification. For example, pragmatic reason relates to rational justification in that pragmatic reasons can provide a valid basis for justifying beliefs, actions, or decisions, especially in relation to means-end-reasoning.

a purely formal definition of justification has been criticised. Legal coherence theorists, such as Aleksander Peczenik, argue that legal justification requires deep justification that is beyond logical reasoning and legal validity. When it comes to the 'depth' of justification, it is helpful to differentiate between *formal* and *material* justification. Formal justification is achieved when the procedural or logical aspects are met (i.e. there are correct and transparent references to the accurate legal framework), while material justification is achieved once the contextual circumstances as well as the normative rationale for a decision are clearly communicated. As soon as one claims that one principle carries more weight more than another, one is, by definition, faced with the question: 'Why?'.²⁷ We interpret that as a matter of material justification, that is, including a normative rationale. Nevertheless, Peczenik highlights a challenge with deep justification in the sense that it 'constitutes a peculiar mixture of theoretical propositions and practical (normative or evaluative) statements, and yet is supposed to give knowledge of valid law or of juristic meaning of the sources of the law'.²⁸ This, we argue, indicates a need to explore further the theoretical mixture through a systematic assessment combining legal and ethical analysis.²⁹

3.2. *The argument from moral autonomy*

Kant was convinced that human reason alone is the foundation for morality, and in this lies the inherent dignity of persons.³⁰ By 'reason', he refers to the capacity to go beyond our nature and inclinations. Practical reason is the capacity to will, which enables us to act in contrast to the laws prescribed by nature by conceiving principles for action and choosing to act according to them.³¹ Thus, as rational beings we have the capacity of an autonomous will. It is from this idea that Kant formulates the introduction to his *Groundwork of the Metaphysics of Morals*: 'It is impossible to think of anything at all in the world, or indeed even beyond it, that could be considered good without limitation except a good will',³² and it is the good will that determines an action as moral. However, the will does not eliminate humans' naturally-given impulses but conveys the ability to distance ourselves from them as criteria for morality.

The categorical imperative serves as the supreme principle of morality – acting as a test for determining whether a maxim for action can be considered as part of the system of moral law that applies to all rational beings. The first formulation of the categorical imperative – the principle of universality – expresses this idea by requiring that a maxim can be willed as a universal law without contradiction, ensuring that moral principles are grounded in reason and apply equally to all rational agents.³³ Following Höffe's interpretation, the categorical imperative has a dual meaning.³⁴ It constitutes the highest principle (moral law) for all moral action but is at the same time the ultimate ground for

²⁷ A. Peczenik, *On Law and Reason*, (New York: Springer, 2009), p. 67. As J. C. Hage positions Peczenik's work (ibid., p. vi), he makes it clear 'that Peczenik rejected the idea of foundations that are beyond discussion'. Peczenik sees coherentism as the way to deal with the position that everything can be doubted.

²⁸ ibid., p. 162.

²⁹ This renders a discussion of (1) the conditions for justifications, and (2) the quality of justifications. We hold that aspects of transparency, coherence, and comprehensibility, as well as linguistic precision are central to the quality of justifications of administrative decisions.

³⁰ I. Kant, *Groundwork of the Metaphysics of Morals*, ed. M. Gregor, Cambridge Texts in the History of Philosophy, (Cambridge: Cambridge Univ. Press, 1997), 4:434–436.

³¹ ibid., 4:412, 4:432.

³² ibid., 4:393.

³³ ibid., 4:421.

³⁴ O. Höffe, *Immanuel Kant*, 5th rev. ed., transl. F. Linde, (Stockholm: Thales, 2004), p. 175.

being able to act in conformity with the moral law at all, i.e., to self-legislate. However, acting in conformity with the moral law is not a sufficient criterion for moral action. For this purpose, Kant distinguishes between *legalität* (acting in conformity with the moral law) and *moralität* (acting out of duty).³⁵ While conformity with the moral law can be driven by self-interest, morality requires that the agent acts out of duty, motivated solely by respect for the moral law. The latter means, as described in the paragraph above, that the possibility of moral agency lies in the capacity of the will to follow its own law. This is also why the good will is crucial for the morality of actions.

The second formulation of the categorical imperative requires of one to ‘act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means’.³⁶ This principle – the principle of humanity – requires that we treat others as *ends in themselves* by respecting their capacity to self-legislate. From this follows that it would be a moral wrong to influence someone by, for example, withholding information, as it would undermine their ability to freely act from duty. Thus, from a Kantian understanding, failure to justify administrative decisions would disregard the moral autonomy of persons, treating persons merely as passive recipients of authority rather than ends in themselves. Instead, providing reasons enables persons to understand and critically evaluate the rationale behind decisions, thereby respecting their autonomous will.

3.3. *The argument from external freedom*

Kant upholds a distinction between morality (doctrine of virtue) and politics (doctrine of right). His doctrine of right (*Rechtslehre*) centres on the legal and institutional conditions necessary for external freedom; that is, the conditions under which persons can coexist without arbitrary interference from other people or public authorities.³⁷ Thus, ‘right’ is a concept of reason, dealing with principles that regulate external freedom in relationship with others, not of internal moral motives. Nevertheless, similar to the moral law, the rules that govern people’s interactions must be able to be universally willed without contradiction and derived *a priori* – from pure reason. Consequently, the two domains are complementary in that morality underpins the legitimacy of political authority, as the laws governing external freedom must be consistent with the moral principles that respect the dignity of persons.

The doctrine of right requires that authorities operate through public laws, meaning that state power must always be exercised according to law, not arbitrary will.³⁸ Hence, the idea of a *Rechtsstaat* is indeed present in his political theory, ensuring that all laws and state actions respect the freedom of persons under universal (i.e., non-arbitrary) legal principles, and which operates in such a manner that makes its actions open to scrutiny and rational justification. Kant’s demand for public reason is not, however, merely a formal requirement but indeed also a substantive principle of justice, as it is rooted in the respect for persons as free and rational agents. An interpretation of this is that Kant

³⁵ See e.g., Kant, 1997, 4:397–399.

³⁶ *ibid.*, 4:429.

³⁷ I. Kant, *The Metaphysics of Morals*, 2nd ed., ed. and trans. by M. Gregor and L. Denis, (Cambridge: Cambridge University Press, 2017), 6:221–223.

³⁸ *ibid.*, 6:304–305, where Kant stresses that the legitimacy of state power depends upon its subordination to laws that are public and universally valid. Only then can the external freedom of all be preserved. See also *ibid.*, 6:230–233, where Kant discusses the right to property, and argues that rightful possession is performed in accordance with a public legal order.

provides a foundation for limiting the exercise of power and establishes a principle very similar to contemporary ideas of human rights.

A Kantian understanding of the rationale for justifying administrative decisions would thus not only reference the autonomous will of affected persons and fulfil the normative requirements of morality (universality). Opaque or unjustified decisions would also amount to an exercise of arbitrary power, subordinating the person's external freedom to the unchecked discretion of the authority. Thus, a lack of justification for administrative decisions would constitute a violation of external freedom, as it would lack the transparency required for rational endorsement by affected persons. This aligns well with contemporary interpretations of the rule of law as it requires that public officers act predictably, transparently, and in accordance with principles that persons can rationally endorse. Thus, providing justification is ultimately required to prevent the exercise of arbitrary power. From a moral perspective, providing reasons for decisions respects persons' autonomy by enabling them to evaluate the decision. Together, autonomy and freedom highlight the centrality of procedural justice and the indispensability of justification in ensuring that public administration operates transparently and consistently with the dignity and freedom of persons. Accepting the argument that morality underpins the domain of right, the obligation to justify administrative decisions can be derived from the importance of public reason, supported by Kant's principle of universality.

3.4. Merging the moral and political domains into a unified theory of justification

Forst's theory of justification constitutes an important contribution to contemporary political and legal philosophy, especially in relation to power and legitimacy. At the core of his theory is the idea that justification is not merely a normative aspect of power but its very structure. Further, Forst's theory of justification can be understood as an attempt to bridge Kant's distinction between the moral and political domains. By viewing justification – reason-giving – as a common foundation for both morality and politics, he places the individual's capacity to challenge power at the centre of his theory. Like Kant, he emphasises that norms must be justifiable according to universal principles but extends the principle of universality to the political sphere: exercises of power within the political sphere are not legitimate if they cannot be justified to those they affect.³⁹ Consequently, the practice of reason-giving belongs to a fundamental normative category underlying the legitimacy of moral and political norms.

While building on central parts of Kant's theory, he differs in his understanding of autonomy in that he sees humans as justificatory beings – beings that justify what they think and do.⁴⁰ This means that they not only act autonomously but also have the capacity and duty to justify their actions and beliefs to others. In doing so, this adds a layer of social and communicative responsibility that is a fruitful addition for the analysis of administrative reason-giving, not least his critique of power and domination.⁴¹ This goes back to his human anthropology – what it means to be human. For a society to be just, it must have a justified normative order, and respect an individual's right to justification.

³⁹ This thesis permeates many of Forst's writings, e.g., R. Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, (New York: Columbia University Press, 2014b); R. Forst, 'Noumenal Power', *The Journal of Political Philosophy*, 23:2, (2015), pp. 111–127; R. Forst, *Normativity and Power*, (Oxford: Oxford University Press, 2017).

⁴⁰ See e.g., Forst, 2014b, p. 13.

⁴¹ *ibid.*, p. 213.

Forst's claim that every person has a fundamental right to justification means that any action or decision affecting someone must be justified with reasons that the affected person can accept as valid. This relates to his criteria of reciprocity and generality as criteria for justification. Reciprocity means that justifications – in Kant's terms *practical reasons* – must be mutually acceptable. This means that they must be acceptable to all affected parties based on their own reasoning capacities.⁴² Generality requires that the reasons given must apply universally to all in a similar situation and cannot be based on particularistic principles – again, very similar to Kant's principle of universality.⁴³ These requirements ensure that justification cannot be a unilateral process in which an authority imposes its reasons on others, but must instead be an open and reflexive order in which all affected have a right to participate. He thus clearly stresses that the dignity of persons requires that they are treated as autonomous agents with the capacity for moral self-government.⁴⁴

An important distinction for our aim is that of the phenomenal and noumenal.⁴⁵ This is yet another legacy from Kant, where the latter realm is where moral laws exist as pure principles of reason, while the former is the empirical context in which these laws are applied. Forst relates these concepts to *power* by showing how power operates not just as visible, coercive force in the phenomenal realm, but also as a structure that shapes the grounds for justification. For this purpose, he introduces the concept of 'noumenal power' to refer to power that operates at the level of justification – the ability to shape the justifications that underlie social and political orders.⁴⁶ However, noumenal power is not detached from the phenomenal realm. In fact, noumenal power is indeed exercised through institutions, norms, and discourses in the phenomenal world. To phrase it in Forst's own words: '[...] the original phenomenon of power is of a noumenal, intellectual nature: *to have power means to be able – and this comes in different degrees – to influence, determine, occupy or even to seal the space of reasons for others*'.⁴⁷ He thereby aims to bridge the noumenal and phenomenal realms by showing how power functions both as a framework for justification, through political and social institutions, and for decision-making.

Ordering deportation in asylum cases can exemplify how noumenal power could be exercised in the phenomenal world.⁴⁸ In such cases, an individual's legal/factual

⁴² Forst 2014b, p. 6, 21 f.

⁴³ *ibid.*

⁴⁴ Forst 2014b, p. 55, Forst 2017, p. 21. Cf. Kant's term 'self-legislation', which in our interpretation is narrower in scope than 'self-government', as the former refers to personal autonomy only in the moral domain.

⁴⁵ The distinction is addressed in detail in Forst, 2015, pp. 111–127. See also R. Forst, 'Justifying Justification: Reply to My Critics', in R. Forst, ed., *Justice, Democracy and the Right to Justification: Rainer Forst in Dialogue*, (London; New York: Bloomsbury Academic, 2014a), pp. 169–216.

⁴⁶ Forst, 2015, p. 112, where he states that 'I want to claim that the real and general phenomenon of power is to be found in the noumenal realm. [...] I suggest that the essential point about power is that in characterizing a situation as an exercise of power, we do not merely give an empirical description of a state of affairs or a social relation; we also, and primarily, have to place it in the space of reasons, or the normative space of freedom and action'.

⁴⁷ Forst, 2014a, p. 179 f.

⁴⁸ For a discussion on the role of reasons for decisions that exemplifies the exercise of noumenal power in the phenomenal world, see Johan Rochel's work on the principle of proportionality and procedural guarantees in the handling of admission applications within EU immigration law. Rochel argues that '[i]t requires the public authority to be able to justify its decisions in the form of reasons that are understandable for the affected person. By getting notified about the reasons, the affected person or entity is able to ascertain his or her legal position and the associated rights and obligations. From a general point of view, the law and its application appear transparent, understandable, and

situation is directly affected by what is considered legitimate grounds – justifications – for decision-making. Another example of exercising noumenal power is communicating opaque or non-existing reasons for administrative decisions, not transparently or publicly justified to those affected. Thus, noumenal power does not have to involve direct control but instead shapes the reasons and norms underlying what is perceived as legitimate decisions. This gives a clear account of the importance of justifying administrative decisions. If a public officer issues a decision without explaining its justification or formulates it in a way that makes it difficult for the individual to understand the grounds of the decision, this restricts the individual's ability to contest and influence the power exercised over them. In this way, authorities affect not only an individual's legal status through noumenal power but also their moral agency. Thus, his analysis of noumenal power demonstrates that the exercise of power is problematic not only when it is repressive in a direct sense, but also when it limits the individual's ability to understand and challenge justifications.

Forst's theory comprises two aspects of justification: the duty of agents to provide justification, and individuals' right to justification.⁴⁹ The first aspect speaks directly to principles of the rule of law; for instance, the minimum requirement of legality as central to a right to reasons for administrative decisions. The second aspect explicates that the right to justification is a communicative act, which is both a moral duty of administrative decision makers and the right of the individual receiving the decision, and hence affected by it. If the use of power is legitimate only when it can be justified to those affected, it follows that administrative decisions must be articulated in a way that enables rational understanding and challenge. A public officer that issues decisions without explaining their grounds, violates the individual's right to justification. In Forst's model, this would constitute an unacceptable form of noumenal power, where certain agents are allowed to dictate what counts as a legitimate reason without these reasons being open to scrutiny by those affected. Following Koivisto (section 2), poor administrative behaviour tends to fall into a gap between the legally acceptable and problematic, which we interpret as a communicative challenge adding to the necessity of clarifying the scope of reasons for decisions.

It is important to add that Forst's theory of justification highlights the limitation of formal legality. His analysis shows that it is insufficient for administrative decisions to be merely formally correct; they must also be transparent and justified in a way that allows citizens to understand and, if necessary, contest them. Thus, the two aspects of justification mentioned above cannot be separated. By analysing power through the lens of justification, Forst's theory allows us to understand why legality alone is not enough – decisions must also be justified to those affected by them.

Following the discussions in sections 2 and 3, we land in a position that sees the practice of reason-giving as a question of a right to a reasoned decision. What is not completely clear, however, is if this right could also be understood as a *human right*. Section 4 will explore this question.

hence legitimate.' J. Rochel, 'Working in Tandem; Proportionality and Procedural Guarantees in EU Immigration Law', *German Law Journal*, 20, (2019), p. 101.

⁴⁹ Forst, 2014b, p. 21.

4. Is there a human right to reasons for administrative decisions?

Human rights have been defined in various ways depending on the perspective adopted. In general, they are understood as universal and inalienable rights that belong to all human beings by virtue of their humanity, formulated in terms of legitimate freedoms and claims against the state. Kant has had a profound influence on contemporary discussions of human rights, as it implies universal moral duties that protect human dignity. Here, the principle of humanity, which demands that we always treat humanity, whether in ourselves or others, as an end in itself and never as a mere means, has been widely interpreted as a moral foundation for human rights – including individual claims such as a right to personal autonomy.

Kant's moral philosophy provides us with support for seeing justification as a *moral duty* grounded in the principle of humanity. If treating persons as ends in themselves requires recognising their capacity for self-legislation, then it follows that public authorities have a moral duty to justify their actions to those affected. Nevertheless, having a moral duty does not necessarily correspond to a claimable human right. While in a Hohfeldian claim-right sense rights are correlatives, and, thus, imply corresponding duties, the opposite does not hold.⁵⁰ Thus, further argumentation would be needed to maintain the assumption that there is a right to justification for administrative decisions, for example that receiving such justifications is a necessary condition for persons to be able to exercise their capacity for self-legislation. It should be stressed that 'necessity' in this context is to be understood as a deontic necessity, i.e., it is necessary in a noumenal sense, not by being derived from empirical facts or social contingencies. Otherwise, it would be nothing more than a derived human right, and not an inherent human right.

Would it instead be possible to suggest that a human right to justification for administrative decisions could be derived from Kant's political philosophy? As previously maintained, we must distinguish between the different domains of his philosophy. In his political philosophy, Kant is primarily concerned with external freedom of persons, which requires the state to establish a lawful condition in which persons can coexist under principles that secure their external freedom. One path could be to argue that external freedom is itself a fundamental human right – a right that exists prior to a particular legal order – and that a right to justification for administrative decisions can be derived from it. Nevertheless, the character of this right is still debateable: is justification for administrative decisions a human right or should we understand it in a juridical sense, as a condition for a legitimate political and legal order?

While it is possible to dig even deeper into interpretations of Kant, we will now return to Forst, as he builds on Kantian ideas but places a right to justification at the core of his theory. He argues that the right to demand justifications for the exercise of power is fundamental to a just society, as it ensures that individuals are treated as equal participants in a legitimate order. For Forst, human rights are those fundamental norms that must be justifiable to all affected parties based on the principles of reciprocity and generality. This perspective, while Kantian in spirit, departs from Kant's political theory by more explicitly grounding rights in a discursive and justificatory process rather than in the formal requirements of moral autonomy and external freedom.

As discussed, justification is central to Forst's theory of power, justice, and legitimacy. He argues that power must always be justified to those affected by it.

⁵⁰ W. N. Hohfeld, *Fundamental Legal Conceptions Applied as Applied in judicial Decisions*, 3rd reprint, org. 1919, (New Haven: Yale University Press, 1964), p. 36 f.

Consequently, the legitimacy of power depends on its justification being accessible, transparent, and mutually acceptable. In this context, the question of whether public authorities have a duty to justify their decisions becomes crucial. We have already seen how Forst distinguishes between phenomenal and noumenal power. When public authorities issue decisions without providing adequate justifications, they exercise noumenal power in a way that limits the individual's ability to understand and challenge the decision. This can be argued to constitute a potential violation of moral autonomy. Since Forst sees justification as a necessary component of legitimate power, he would likely argue that the obligation of public authorities to justify their decisions is not merely an administrative norm but a moral demand, and hence also a human right.

Forst develops the idea that '[p]receding all demands for concrete human rights, there is one basic right being claimed: the *right to justification*'.⁵¹ The quote illustrates that Forst is explicit in claiming that the right to justification is not in itself a human right. It is a basic moral and political principle from which human rights can be derived. Given this interpretation, it is reasonable to argue that a human right to receive justifications for administrative decisions can be derived from the right to justification. This would mean that individuals affected by administrative decisions have the right to understand the reasons behind those decisions, ensuring transparency and accountability in governance. Surely, a human right to justified administrative decisions is not a codified human right, but based on the reasoning above, it is clearly possible to be seen as derived from a basic right to justification.

The vast literature on the concept of human rights provides various definitions and understandings of what human rights mean. We argue, along with many others, that human rights are fundamentally about protecting individuals from arbitrary interference and abuse of power by the state. Both Kant and Forst reinforce this by asserting that individuals have a right to demand reasons for actions that affect them. Nevertheless, while Kant maintains a distinction between the moral and political domains, Forst's theory of a right to justification merges them into a unified theory. He integrates moral autonomy and political freedom, rendering them interdependent. This makes autonomy directly relevant to political and legal structures and practices, ensuring they are justified to all. By emphasising public justification, Forst addresses issues of power in ways that Kant does not fully anticipate. Thus, Forst's theory highlights the vulnerability of individual subjects to the decision-making of others, thereby addressing the power asymmetry between the officer issuing the decision and the person it affects.

Forst's conception of a right to justification maintains that public authorities cannot impose decisions without providing valid reasons, thereby safeguarding individuals' autonomy. Thus, this right is essential for ensuring procedural justice, as it allows individuals to understand the rationale behind decisions and to challenge them if they believe they are unjust.

While it is true that the obligation to give reasons appears as a positive obligation embedded in legal rights, such as the right to a fair trial, or as a right to good administration, we argue that the practice of reason-giving cannot be wholly reduced to such derivative obligations. Instead, drawing on Forst's account of the 'right to justification', we maintain that being provided with intelligible reasons is a precondition for the exercise of moral and political autonomy, and, hence, a candidate for recognition

⁵¹ Forst, 2014b, p. 205.

as a human right in its own right. Thus, this right is not merely instrumental to other rights, but constitutive of the normative legitimacy of public authority itself.

While a right to justification of administrative decisions may not be explicitly listed in conventional human rights documents, we argue that it can be supported through a broader interpretation of existing rights, such as the right to a fair trial and protection against arbitrary detention. In the context of public administration, reason-giving is central to respecting, protecting, and providing particular rights claims of the individual; for instance, the right to equal treatment or equal protection of the law (the Universal Declaration of Human Rights, UDHR, Article 7). Additionally, the right to a fair trial, as articulated in Article 6 of the ECHR, includes the right to a fair and public hearing by an independent and impartial tribunal. This right ensures that individuals are informed of the reasons behind judicial decisions, which is a form of justification. Similarly, the right to be treated fairly by the court (Article 8, UDHR) and the right to protection against arbitrary detention (Article 9, UDHR) imply that individuals should be given reasons for decisions that affect their rights and freedoms. By interpreting these rights broadly, one can argue that the right to justification is an essential component of ensuring fairness and preventing arbitrary actions by public authorities.

As stressed in section 2 above, the right to good administration, enshrined in Article 41 of the EU Charter, explicitly includes the right to be given reasons for administrative decisions. While not expressed as a human right, it reinforces the principles of respect for personal autonomy and transparency, which are integral to both the EU Charter, and broader human rights frameworks. This is also a way of reinforcing the rule of law principles. Yet, these rights are to be understood as legal rights, possibly derived from Kantian political philosophy. Alternatively, they can also be seen as human rights, based on Article 41 in the EU Charter and following the Forstian basic right to justification and its interconnection to the basic structure of a democratic society. In addition, transparency ensures that the decisions of public authorities are open to scrutiny, preventing secretive and potentially abusive practices. This openness – or in Cohen’s terminology, predictability, helps to prevent arbitrary and abusive use of power by the state, and to secure just outcomes. Transparency thus acts as a safeguard against the misuse of power (and hence counteracts maladministration).⁵²

In sum, we are beings that communicate, reflect, and think critically. These are key aspects for articulating as well as receiving, accepting, and, if necessary, appealing against reasons for a decision. By embracing a Kantian deontological perspective, we argue for an understanding of justification as a theory and practice which recognises the moral agency in others, which prevents unjust structures and exploitation. Further, the Forstian theory of justification aligns with the broader aim of human rights to protect individuals from abuse of power, but also the principles of rule of law, by ensuring that power is exercised transparently and accountably.

5. Concluding remarks

This article has employed a dual approach, combining legal analysis with moral philosophy. While the legal discussion has focused on institutional obligations grounded in administrative law, and constitutional principles, the ethical argument has drawn on deontological theories to articulate the moral foundations of the duty to justify decisions.

⁵² Cf. Koivisto, n. 13.

By this dual approach, we demonstrate that legal obligations to give reasons become more compelling when understood in light of its deeper normative commitments. By integrating these dimensions, we argue that the practice of reason-giving is not merely a procedural requirement, but a reflection of the moral standing of individuals, as autonomous agents entitled to justification.

We have argued that when sufficient reasons for a decision are missing, the affected individual is deprived of crucial information, impairing their capacity to assess on what grounds the decision was taken. Thus, if the individual is not provided with sufficient reasons for matters that are of importance to them, there is a violation of their right to moral autonomy and self-government. To use Forst's terminology, it is a violation of their right to justification.

From a legal and political point of view, human rights are (as has been suggested by Jack Donnelly) fundamental constitutional principles.⁵³ As shown in section 2 above, reason-giving in public administration is an intrinsically valuable practice in a state governed by the rule of law. As a measure for securing legality (i.e., non-arbitrariness), moral quality, and transparency of administrative decision-making, it also – we argue – serves as an important safeguard for human rights.

The state – and by extension the public officer – should be the legitimate and trusted actor to make necessary infringements over freedoms of individuals within its jurisdiction, but for public power to be legitimate it must adhere to central legal and moral principles of democratic governance. This shows that there is a connection between reason-giving, justification, and state legitimacy.⁵⁴ However, this might seem like an ideal understanding of the state, implying that the state is always 'doing good'.⁵⁵ Yet, as Forst acknowledges in relation to noumenal power, state power can be exercised not only physically but through structures, in discourses, and in decision-making processes. This is why transparency of reasons for decisions is so central.

At the core, when the reasons for a decision are exhaustive and clearly communicated to the affected individual, it makes them *involved* in the decision. When provided with the full range of the reasons, they have a chance to understand the grounds on which the decision was made and take proper action: whether to accept or appeal. It respects their autonomy and power to act. In addition, as a communicative act, reason-giving requires the decision maker to be contextually specific about the reasons for the decisions. The aim should be to provide materially justified decisions, not only formally justified by reference to relevant statutory provisions.

Johanna Romare, University College Stockholm
johanna.romare@ehs.se

Johanna Ohlsson, University College Stockholm & Lund University
Johanna.ohlsson@ehs.se

Olof Wilske, Uppsala University
Olof.Wilske@jur.uu.se

⁵³ J. Donnelly, *Universal Human Rights in Theory and Practice*, (Ithaca, New York: Cornell University Press, 2013), p. 16.

⁵⁴ Exploring the detailed connection to legitimacy lies beyond the scope of this article.

⁵⁵ The state is nothing more than the state and should not be regarded as an ideal apolitical actor, as power is very much centred in the state machinery.

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