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D E E T H I C A
A JOURNAL OF PHILOSOPHICAL, THEOLOGICAL, AND APPLIED ETHICS

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We welcome contributions from all philosophical and theological traditions. While we welcome historically and empirically oriented work, we focus on normative ethical questions. We are also particularly interested in papers that contribute to ongoing public debates.

We aim to facilitate intellectual exchange across disciplinary and geographical boundaries and across the gaps between different philosophical and theological traditions. Thus, we seek to publish papers that advance a clear and concise argument, avoid jargon and are accessible to a non-specialized academic audience.

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De Ethica was founded in 2013. It published its first issue in 2014 under the guidance of its first Editor-in-Chief, distinguished professor Brenda Almond.

Cover photo: "Metal Fence Wire" by "Globetrotter78, https://pixabay.com/photos/metal-fence-wire-border-security-7049951/

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From the Editor

As our former Executive Editor, Lars Lindblom, mentioned in our previous issue, we are experiencing both new beginnings and closures. For many, this issue marks a fresh start—especially for me; I am honored and humbled to serve as De Ethica's new Executive Editor, and I owe much to Lars, who held the position for many years. Lars has long been an inspiration and a great mentor in our editorial office. He and the entire team have been crucial to De Ethica's growth over the past few years. As noted in the previous issue, we have started including book reviews, and we plan to continue doing so. Another essential aspect is the research we publish, and here the editorial Lars wrote in volume 8, issue 4, concerning the state of "allowed" research in the US. As before, De Ethica will continue publishing relevant research—even when it may be uncomfortable—that is vital for advancing discussions on ethics and morality. Our goal is to keep most elements the same, so you, as a reader, will continue to find familiarity in De Ethica.

In this issue of De Ethica, the articles examine ethics from various perspectives, including migration, administrative law, human rights, environmental philosophy, and moral methodology. Despite these different topics, each piece analyzes how ethical ideas are interpreted and applied in contexts shaped by institutions, public debate, and social practices. Together, they highlight the broad scope of contemporary ethical research across multiple fields that we regularly publish in De Ethica.

We start with Peter G. Kirschläger's article on the ethical foundations of the right to asylum. Using his Ethics-SAMBA model—observation, analysis, ethical judgment, and action—Kirschläger connects contemporary asylum debates to broader issues of human rights, political responsibility, and moral duty. His main point is that vulnerability is not an exceptional condition but a core aspect of human life. From this, he argues that those whose safety, dignity, or basic needs are threatened have both a moral and legal right to protection. He also questions common distinctions between asylum seekers, refugees, and migrants when such categories are used to limit moral concern or legal responsibility. The article highlights the tension between universal human rights and state sovereignty and shows how ethical reflection can link ideas like dignity and vulnerability to institutions, public policy, and practical steps.

The second article, by Johanna Romare, Johanna Ohlsson, and Olof Wilske, explores whether individuals have a right to receive reasons for administrative decisions that affect them, especially in areas like welfare, detention, and deportation. What might initially seem like a technical procedural issue is shown to have deep legal and moral importance. The authors place reason-giving within the context of administrative law and the rule of law, highlighting its links to transparency, accountability, and good governance. Providing reasons clarifies the exercise of public power, helps affected individuals understand the basis of a decision, and allows for appeal, review, or criticism. Philosophically, drawing on Kantian ideas and Rainer Forst's theory of justification, the authors argue that the obligation to give reasons is closely connected to autonomy, dignity, and mutual justification. They suggest that a person subject to public authority is not just

an object of administration but a subject entitled to ask why a decision was made. Thus, the article shows that fairness involves not only outcomes but also whether decisions are reasoned, communicable, and open to scrutiny.

The third article, by Alexandra Lebedeva, examines the connection between human rights discourse and responses to honor-based violence in Sweden. Her goal is not to question how serious this violence is but to analyze how it is presented in legal, political, and public discussions. A key point is that the language of human rights and gender equality can become strongly linked to national identity, so that these are seen not as universal principles but as specifically "Swedish values." When this happens, rights discourse can be used to distinguish between those who are seen as already embodying these values and those portrayed as culturally outside of them. By analyzing policy documents, legal changes, and court cases, Lebedeva illustrates how terms such as honor culture, honor norms, and honor context can contribute to the cultural framing of violence, especially when linked to ethnic or religious minorities. She argues this can hide larger patterns of gendered violence and may also enhance subtle forms of discrimination. The article therefore raises important ethical questions about how universal rights are understood in specific contexts and how they can sometimes be used in ways that promote exclusion rather than challenge it.

The fourth contribution by Anders Melin explores environmental ethics and considers whether the Capability Approach can serve as a normative framework for urban biodiversity management. Melin starts from the idea that biodiversity in cities is not just an ecological or planning issue but also a matter of justice. Since urban environments influence the conditions in which both human and nonhuman beings live, questions of flourishing, coexistence, and access become ethically important. Melin contends that the Capability Approach, which emphasizes what beings are able to be and do, offers a deeper understanding of well-being than approaches based solely on income, resources, or preference satisfaction. This makes it a useful way to interpret the ethical significance of green spaces, ecological diversity, and human interactions with nonhuman life. Melin further extends the discussion by asking whether the framework can be broadened beyond human beings to include animals, plants, species, and ecosystems. This raises profound questions about freedom, agency, and the limits of ethical individualism, because environmental ethics often involve not only individual organisms but also entire ecosystems and multispecies relationships. His analysis underscores both the potential and the limits of the Capability Approach when it comes to thinking about justice in more-than-human urban environments.

The final article by Anoop Kumar Suraj and C. Upendra shifts the focus from substantive ethical issues to moral methodology, offering a critical examination of reflective equilibrium. Associated mainly with John Rawls, reflective equilibrium aims for coherence among considered judgments, moral principles, and background theories, and has long been seen as a central model of ethical justification. Suraj and Upendra identify several key limitations of this approach. First, they argue that moral intuitions are not neutral starting points but are influenced by social, historical, and ideological factors, which complicates claims of universality or impartiality. Second, they point out the problem of circularity: achieving coherence within a system of beliefs can produce internal consistency without providing an independent basis for justification. Third, they highlight epistemic inequality, noting that the resources needed for reflective moral reasoning are unevenly distributed, with social position, education, and institutional authority shaping whose judgments are heard and whose perspectives are valued. As a result, the method

might perpetuate exclusion even while seeming inclusive. Their article makes a valuable contribution by questioning not only how moral justification is built but also whose perspectives are included, and whether ethical inquiry should focus solely on coherence or also accommodate ongoing disagreement in pluralistic societies.

The two book reviews in this issue, although they explore very different intellectual traditions and concerns, are linked by a common ethical question: what resources do we have for thinking clearly during a time marked by crisis, interconnectedness, and uncertain moral boundaries? Each review, in its own way, emphasizes the need for frameworks broad enough to handle the complexity of today.

Mao Xin reviews Jana S. Rošker's *Confucian Relationism and Global Ethics*, noting it questions whether global ethics are too Western-centric. Rošker advocates reviving Confucian relationism to address global issues like human rights, equality, and the ethical challenges of the pandemic. The book promotes a transcultural dialogue beyond mere opposition, although it leaves some political and societal questions unresolved. Mao sees it as a valuable addition to global ethics discussions.

Gary Slater's review of *Liberating People, Planet, and Religion*, edited by Joerg Rieger and Terra Schwerin Rowe, examines its focus on the connection between ecological crises, economic systems, and Christian thought. Slater describes the volume as an ambitious effort to explore these areas together, emphasizing their deep interconnectedness. He highlights the book's ability to combine systemic critique with practical action, analyzing capitalism, anthropocentrism, ecological injustice, and reflections on care work, divestment, organizing, and farming. The review also notes limitations such as its narrow focus, overemphasis on Christianity, and weaker engagement with politics. Overall, Slater sees it as a serious, thoughtful contribution to Christian ethics that addresses urgent issues.

Martin Langby, Executive Editor

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Seeking Asylum, Not Looking for Being the Scapegoat: An Ethical Analysis of the Discourse About Humans Seeking Asylum

Peter G. Kirchschlaeger

The ethical and political discourse about asylum-seeking is often dominated by two fundamental questions: Firstly, should all humans have a human right to asylum? Secondly, are the duties corresponding with this claim even fulfillable for a state? From an ethical perspective, attempts to answer these questions by searching for an ethical justification of a human right to asylum respectively of corresponding state responsibilities could rely on the model of ethical decision-making SAMBA. The Ethics-SAMBA, which aims to provide concrete guidance for ethical decision-making with ease and argumentative elegance in four steps, is applied and results in an ethical justification based on the principle of vulnerability for the human right to asylum. Beyond that, it shows why the duties corresponding with the human right to asylum for a state need to be fulfilled – even if they are demanding and challenging. Finally, it presents some ethical arguments why the distinction between humans fleeing, seeking asylum, and humans migrating as well as borders per se are arbitrary and feudal, and this ethical analysis results in concrete proposals for concrete appropriate action.

0. Introduction: Ethics-SAMBA

The political discourse about asylum-seeking is often dominated by two fundamental questions: Should all humans have a human right to asylum? Are the duties corresponding with this claim even fulfillable for a state? From an ethical perspective, attempts to answer these questions by searching for an ethical justification for a human right to asylum and corresponding state responsibilities could rely on the model of ethical decision-making SAMBA. The Ethics-SAMBA aims to provide concrete guidance for ethical decision-making with ease and argumentative elegance in four steps. It serves primarily as a philosophical instrument of argumentation and can – besides that – support secondarily ethical decision-making as a pedagogical tool. This model is intended to provide a concrete and practical framework for structuring ethical arguments, ethical discussions, and ethical decision-making. SAMBA strives to clarify why and how decisions are made, enabling

people to make concrete, consistent ethical decisions and take effective, ethically coherent, and sound action. SAMBA consists of the following four steps:[1]

1. **S**ee and understand the reality.
2. **A**nalyze the Reality from a **M**oral Standpoint.
3. **B**e the Ethical Judge!
4 **A**ct Accordingly!

*1. **S**ee and Understand the Reality*

The goal is to describe reality as objectively and neutrally as possible, while acknowledging that this is impossible to fully achieve due to the limits of human reasoning. The basis of this description of reality should strive for critical distance and should not be subjective. Studies from other scientific disciplines that can competently contribute to achieving the most objective and neutral perception of reality, rather than relying on personal impressions, should shape this perception.

*2. **A**nalyze Reality from a **M**oral Standpoint*

The goal is to identify the suspected ethical question/challenge/problem. This is initially only a guess, since the precise identification of an ethical question/challenge/problem is itself oriented toward and based on an ethical reference point. These ethical reference points must first be identified and then ethically justified in order to then – and only then – be able to precisely determine the ethical question/challenge/problem. The selection of the ethical reference points should be free from arbitrariness, randomness, sympathy, emotions, or gut feeling, and should be rationally justifiable and plausible.[2] When justifying the selection of the ethical reference points, the principle of generalizability must be met by providing rational and plausible arguments – "good reasons" – for it. "Good reasons" means that it must be conceivable that all humans, in their effective freedom and autonomy, as well as in their full equality, would agree to these reasons on ethical grounds – within a conceptual model and not within a real global referendum.[3] With the help of the ethically justified ethical reference points, the ethical question/challenge/problem needs to be defined.

*3. **B**e the Ethical Judge!*

The goal is to take a position from an ethical standpoint and conduct an ethical assessment. This ethical position and ethical assessment can initially include a response to and mastery of the challenge and problem, as well as subsequently a concrete ethical solution proposal. The ethical position and the ethical assessment need to be rationally and ethically justified. This ethical justification must fulfill the principle of generalizability by providing "good reasons" as introduced above.

[1] Peter G. Kirchschlaeger, *Ethical Decision-Making* (Baden-Baden: Nomos, 2023).
[2] Micha H. Werner, *Einführung in die Ethik*. Heidelberg/Berlin: J.B.Metzler, 2021, pp. 239-240.
[3] Kirchschlaeger, *Ethical Decision-Making*.

*4. **A**ct Accordingly!*

The goal is to demonstrate concretely and practically how the ethical position and assessment can be concretely and effectively addressed and an ethical solution implemented. The ethical solution on should be coherent with the ethical decision and its justification. Any necessary contextualization in the course of implementing these ethical principles in specific contexts must not involve a dilution of the ethical principles. At the same time, it must be ensured that the ethical solution does justice to the rule-transcending uniqueness of the concrete.[4] The rule-transcending uniqueness of the concrete means that the ethically right and ethically good in a concrete encounter with concrete humans in a concrete situation can include disregarding an ethical principle in the service of a higher ethical good. Ethics cannot blindly follow rules but must strive in every concrete encounter with concrete humans in a concrete situation for the ethically right and ethically good.

1. See the Reality

Striving for as objective a description of reality as possible, it can be stated, *firstly,* that in 2024 in the exemplary context of Europe (to sweep in front of one's own door in the course of an ethical critical account), about 981'319 people sought asylum in the European Union.[5]

448 million people live in the European Union. This means that asylum seekers equal 0.203 % of the population of the European Union.

Thirdly, the EU has allocated 16.2 billion EUR to support the EU's neighbors as well as international development and cooperation. This includes a targeted increase of 1.9 billion EUR for the humanitarian aid programme to respond to global crises, and 11.5 billion EUR for the Neighborhood, Development and International Cooperation Instrument – Global Europe, with a focus on migration in the EU's southern neighborhood and on addressing the root causes of migration from Africa.[6]

Fourthly, the member states of the European Union lost 100 billion EUR in 2024 because of harmful corporate tax avoidance.[7] How many times have you heard about this enormous theft? How many times a week do you hear or read about a political discussion about humans seeking asylum? Although this financial theft is so significant for the European Union because these resources are missing to fund education, social justice, and social welfare, it is literally neglected while 12 humans seeking asylum per municipality in the European Union are statistically irrelevant but overrepresented in the public and political discourse.[8]

Fifthly, legally speaking, there is a human right to seek asylum. If one considers – as it is often done in philosophy of human rights as well as in ethics of human rights – the

[4] Kirchschlaeger, *Ethical Decision-Making*.

[5] European Union Agency for Asylum (EUAA). *EU+ asylum applications decrease by 11% in 2024, and some changing trends established* (2025). Online at https://euaa.europa.eu/news-events/eu-asylum-applications-decrease-11-percent-in-2024 (accessed 2025-07-04); Flourish. *Key first instance indicators by EU+ country, 2024* (2024). Online at https://public.flourish.studio/visualisation/21467921/ (accessed 2025-07-04).

[6] EUR-Lex. *2024 European Union budget* (2024). Online at https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html (2025-07-04).

[7] European Court of Auditors. *EU fight against systemically harmful tax practices still not watertight* (2024). Online at https://www.eca.europa.eu/en/news/NEWS-SR-2024-27 (accessed 2025-07-04).

[8] Juan Sebastian Olier and Camilla Spadavecchia, 'Stereotypes, disproportions, and power asymmetries in the visual portrayal of migrants in ten countries: an interdisciplinary AI-based approach'. *Humanities and Social Sciences Communications* 9:410 (2022), pp. 1-16.

Universal Declaration of Human Rights of 1948 (although it is not legally binding, but rather a political programme), article 14 states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." So, the intention of humans seeking asylum is protected and guaranteed by a specific human right. (The question about the ethical justification still needs to be addressed below.) "Refugees are people who have fled their countries to escape conflict, violence, or persecution and have sought safety in another country."[9] Refugees are characterized by "first a movement from one place to another, and second an element of hardship and involuntariness, as the notions of flight and shelter indicate."[10] At the same time, they are granted a unique status in international law as well as in the ethical reflection of admission to a state. "For asylum seekers, who seek admittance and refugee status in a foreign country, being granted refugee status can make an enormous difference. First and foremost, a requirement of non-refoulement applies. A refugee cannot be returned to a country where they would be in danger. For refugees whose stay in the host country is more permanent, there is also typically a requirement to provide them with a 'durable solution' that involves gaining membership in the host country including the right to remain indefinitely."[11] This means: "Without question, all people who move between countries deserve full respect for their human rights and human dignity. However, refugees are a specifically defined and protected group in international law, because the situation in their country of origin makes it impossible for them to go home. Calling them by another name can put their lives and safety in jeopardy."[12]

Sixthly, there is a negative connotation of asylum-seeking in general as well as of humans seeking asylum in the political discourse. Humans seeking asylum are blamed for everything by some voices and political parties.[13]

Seventhly, negative effects of political unprofessionalism as well as economic, political, and societal challenges are attributed to humans seeking asylum[14] instead of being addressed as solvable problems – as they actually are – and with other causes independent of humans seeking asylum (e.g., is the cause of the growth of right-wing populism[15] not rather the insufficiency of political solutions and the lack of attractiveness of alternative political forces and parties?): worries about security, preoccupations concerning job security, lack of integration, lack of language skills, …

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[9] The UN Refugee Agency (UNHCR). *Who we protect. Refugees* (2025). Online at https://www.unhcr.org/about-unhcr/who-we-protect/refugees (accessed 2025-07-04).
[10] Dana Schmalz. *Refugees, Democracy and the Law. Political Rights at the Margins of the State* (UK: Routledge, 2020), p. 15.
[11] Adam Hosein. *The ethics of migration: an introduction* (UK: Routledge, 2019), p. 117-118. (emphasis in the text in the original)
[12] The UN Refugee Agency (UNHCR). *Asylum and migration* (2025). Online at https://www.unhcr.org/what-we-do/protect-human-rights/asylum-and-migration (accessed 2025-07-04).
[13] Musa Okwonga. *Anti-migrant hate is flourishing in Germany's time oft he cowards'*. The Guardian (2025). Online at https://www.theguardian.com/world/commentisfree/2025/feb/23/anti-migrant-hate-germany-election-time-of-the-cowards (accessed 2025-07-04).
[14] Julian Nida-Rümelin. 'Ethische Postulate für die Migrationspolitik', *Integration: Teilhabe und Zusammenleben in der Migrationsgesellschaft,* edited by Michael Spieker and Christian Hoffmann. (Baden-Baden: Nomos, 2020), pp. 33-51.
[15] Walter Lesch. *Europa - Migration - Populismus: aktuelle Spannungsfelder politischer Ethik*. Basel: Schwabe Verlag, 2022.

Eighthly, even the ethical discourse about migration is dominated by blaming humans seeking asylum.[16] This goes even so far that, among others, the rise of the political extreme right-wing parties is attributed to humans seeking asylum.[17]

2. Analyze the Reality from a Moral Standpoint

The suspected ethical question consists in the query of whether the human right to asylum can be ethically justified. The justification approach based on the principle of vulnerability addresses this question encompassing the ethical justification of human rights as an ethical point of reference (first step) and the ethical justification of a human right to asylum (second and third step). This analysis occurs thus from a perspective of ethics as the scientific discipline reflecting on, among others, what one should and what one shouldn't do including the critical examination of the legitimacy of positive law. In the course of this endeavor, human rights are understood as rights which "in a downright irritating way, (…) are supposed to be rights that – from a philosophical point of view – apply even when, from a realpolitik or legal point of view, they *do not* apply."[18]

First Step of the Approach Justifying Human Rights Based on the Principle of Vulnerability
The justification on the basis of the principle of vulnerability[19] is based on the observation that humans recognize their own vulnerability, a *first* element of this principle. For example, a person who is healthy today knows that he or she could become ill tomorrow. In this thought process, a human goes through a process of uncertainty. For he or she becomes aware of his or her own vulnerability and, ultimately, of his or her transitoriness.[20]

Second, an essential component of the principle of vulnerability is the "first-person perspective"[21]. During this process of becoming aware of one's own vulnerability, a human recognizes ex negativo the "first-person perspective" and the "self-relation". The "first-person perspective" includes a human's awareness that he or she is the subject of his or her own life, through which he or she has access to his or her own vulnerability (i.e., first person singular). The actions, decisions, sufferings, and the life of a person emanate from him or her as a subject.[22] In this process, the human being perceives "self-relation"; he or she relates to him- or herself.

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[16] Sarah Song, 'The Ethics of Migration', *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), ch. 15.; Lukas Schmitt, *Von Grenzen, Menschen und Mauern: Migrationsethische Perspektiven in der globalisierten Weltgesellschaft* (Freiburger theologische Studien Vol. 198) Freiburg i.Br./München/Berlin: Herder, 2022.; Adrian, Papenhagen, *Eine Stufentheorie der Migrationsethik* (Baden-Baden: Nomos, 2024).
[17] Anthony Edo and Yvonne Giesing. *Has Immigration contributed to the rise of rightwing extremist parties in Europe ?*. Econpol Policy Report 2020 July Vol. 4. Online at https://www.ifo.de/DocDL/EconPol_Policy_Report_23_Immigration_Far_Right.pdf (2025-07-04).
[18] Arnd Pollmann, *Menschenrechte und Menschenwürde. Zur philosophischen Bedeutung eines revolutionären Projekts*, Frankfurt a. M.: Suhrkamp, 2022, p. 57, highlighting in the text (translated by the author).
[19] Peter G. Kirchschlaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und sakuläre Menschenrechtskonzeptionen anschlussfähiger Ansatz.* Münster: LIT-Verlag, 2013, pp. 231-267.
[20] Barry Hoffmaster, 'What Does Vulnerability Mean?. *Hastings Center Report* 36:2 (2006), pp. 38-45, at p. 42.
[21] Edmund Runggaldier, 'Deutung menschlicher Grunderfahrungen im Hinblick auf unser Selbst', *Unser Selbst – Identität im Wandel neuronaler Prozesse*, edited by Guenter Rager, Josef Quitterer and Edmund Runggaldier (Paderborn: Ferdinand Schoeningh, 2003), pp. 143-221.
[22] Ludger Honnefelder, 'Theologische und metaphysische Menschenrechtsbegründungen', *Menschenrechte. Ein interdisziplinäres Handbuch*, edited by Arnd Pollmann and Georg Lohmann (Stuttgart: J.B. Metzler, 2012), pp. 171-178, at pp. 171-172.

Third, vulnerability is perceived by people from their "first-person perspective" as well as for the "first-person perspective" itself and "self-relation".

This process of becoming aware of one's own vulnerability and the "first-person perspective" leads *fourth* to the fact that he or she shares this vulnerability with all people.

Fifth, the process of becoming aware of one's own vulnerability and the vulnerability of all other people enables humans to perceive that they share also the individual "first-person perspective" as well as the individual "self-relation". Humans therefore recognize that the "first-person perspective" and the "self-relation" are a condition for the possibility of a life as a human being.

Humans become aware of the same vulnerability of all other human beings. In the face of their own vulnerability, humans want first and foremost to survive physically and to live a life with human dignity. Physical survival and a life with human dignity must not be taken away from a human. They must be legally enforceable in order to offer real protection, and they must be applicable to various dimensions because vulnerability can include legal, political, historical, and moral dimensions. Physical survival and a life with human dignity should not be conditional because they are of utmost importance, as mentioned above, and because vulnerability is unpredictable. The desire to physically survive and live a life with human dignity is shared with all other humans. This desire is not individualistic, even though it is a concern of each person as an individual, which each individual discovers through his/her "first-person perspective" and his/her "self-relation".

Sixth, because people are aware of their vulnerability but at the same time do not know if and when this vulnerability manifests itself and turns into a concrete violation or transgression, they are willing to grant all people the "first-person perspective" and "self-relation" based on the equality of all people, because this is the most rational, prudent, and advantageous solution for them. That means granting rights – human rights – to all humans in order to protect themselves and all others, because the vulnerability also includes the "first-person perspective" and "self-relation". This protection through human rights aims, on the one hand, at avoiding the transformation of vulnerability into a concrete violation, and on the other hand – in case of such a transformation – to receive active compensation. They choose to entitle all humans including themselves with rights and to not ascribe everyone including themselves mutual obligations toward one another because they want to ensure absolutely that the omission of the transformation of vulnerability into a concrete violation as well as the active compensation in the case of such a transformation works, makes a concrete difference, and causes a positive impact for them facing the fundamental significance of and existential threats embedded in the uncertainty corresponding with their own vulnerability.

In this context, people are aware that the protection through human rights also includes the duties corresponding to human rights, because they are not exclusive rights, but rights to which all humans are entitled.

These six points on the principle of vulnerability explain that, *seventh,* humans are not human rights bearers because of their vulnerability but because they deal with their own vulnerability and its relevance. The principle of vulnerability with the "first-person perspective" and "self-relation" as a moral claim is normatively charged. The principle of vulnerability is a starting point for the justification of human rights in general and of specific human rights.

Eighth: It is altogether possible that the principle of vulnerability can be the basis for recognizing new sufferings and experiences of injustice that require human rights protection.

With the first step of the justification model based on the principle of vulnerability, human rights were ethically justified as an ethical point of reference in the Ethics-SAMBA.

Human rights as an ethical point of reference confirm that there is an ethical question, namely whether there should be a human right to asylum. "Be the Ethical Judge!" One is invited by the Ethics-SAMBA to answer this question. The justification approach based on the principle of vulnerability addresses this inquiry in the second and third step.

3. Be the Ethical Judge!

Second Step of the Approach Justifying Human Rights Based on the Principle of Vulnerability

The selection of those historical experiences of injustice that need human rights protection requires criteria. These criteria can be derived from the above descriptions of humans and the weighting because it shows what humans want to primarily protect themselves from. First of all, people want to survive and live as humans with human dignity (fundamentality). People become aware that their vulnerability threatens their own survival and the survival of all humans as well as their own life with human dignity and the lives of all others with human dignity (universality), because vulnerability does not stop at the "first-person perspective" and "self-relation" as a condition of living as a human. Survival and a life with human dignity should absolutely never be taken away from people or be traded off for something else (inalienability). They must be legally enforceable (justiciability) and applicable to the different dimensions (multidimensionality) because humans want to make totally sure that this protection works if they need it and because vulnerability can include legal, political, historical, and moral dimensions. Due to the fact that they possess such a high priority, as mentioned above, and since vulnerability is unpredictable and can be transformed into injury, survival and a life with human dignity should not be conditional (categorical character) because humans want to avoid that they have to negotiate in the case of injury or in the need for compensation. People share this desire to survive and live a life with human dignity with all other people (equality) to the same extent and they are willing to accept and respect it in order to enjoy themselves human rights facing the uncertainty originating from vulnerability. It is not individualistic, even though each individual discovers it through his or her own "first-person perspective" and "self-relation", but embodies an individual entitlement (individual validity) because no one wants to – in the case of an injury or in the need of a compensation – first have to join a collective (e.g., a nationality, a religious or worldview-based community, …) in order to enjoy the protection by these rights but wants to enjoy directly and immediately these rights protecting physical survival and a life with human dignity. Therefore, the following eight criteria should determine the selection of those historical injustices and vulnerabilities from which all human beings should be protected by specific human rights: fundamentality, universality, inalienability, justiciability, multidimensionality, categorical character, equality, and individual validity.

Third Step of the Approach Justifying Human Rights Based on the Principle of Vulnerability
This step involves applying the above-mentioned eight criteria to identify the elements and spheres of human existence that must be protected by human rights. In our case, the question needs to be addressed whether asylum fulfills the eight criteria.

If one considers the numerous cases where physical survival or human dignity was denied to humans because of a lack of asylum, it seems obvious that experiences of violation of elements and spheres protected by a human right to asylum lead to the awareness which demands that these violations be put to an end and prevented.

In order to prove the *universality* of the right to asylum, the possibility must be excluded that these experiences of injustice in the sphere of protection of the right to asylum are only particular experiences of injustice that cannot be universalized. A positive outcome of this examination would mean the transition from a subjective experience of injustice to an experience of injustice that can be universalized. The universality of the right to asylum is justified because there cannot be "good reasons" as introduced above which would legitimate the exclusion of an individual human or a group of humans from this right.

In order to show the *categorical status* of the right to asylum, it is plausible that the right to asylum does not rely on any requirements expected from a human for sharing historical experiences of injustice in the sphere of asylum or for holding the corresponding right which protects every human from a vulnerability or a violation of the sphere protected by the right to asylum.

The *egalitarian nature* of the human right to asylum is based on the possibility that every human can enjoy protection of the human right to asylum in an identical manner.

The human right to asylum is an individual right that protects the individual right-holder's ability in the dimension of asylum and does not depend on their being part of a collective, which proves its *individual validity*.

The right to asylum is *legally enforceable* because a violation of this right can be identified, it can be a reason to take legal action, a verdict can be delivered, the perpetrator of the violation can be convicted, a sentence can be served, and this can be controlled and enforced.

The *fundamentality* of the right to asylum – belonging to the essential elements and spheres of human existence – is justified because the elements and spheres protected by the human right to asylum are necessary for the physical survival and for the human dignity of an individual. The protection by a human right to asylum cannot be substituted by other means (e.g., foreign aid in the case of famine, or, e.g., military intervention into foreign states in the case of persecution)[23] because of the impossibility and the impermissibility of these other means.[24] Moreover, if an individual's human right to asylum is violated or not respected, a human can be limited in his or her access to other rights, for example, the right to life, the right to security, the right to freedom.

The right to asylum is *inalienable* because of its necessity for the physical survival and for the human dignity of an individual. Therefore, it should not be possible that one can lose this right.

[23] Christopher Wellman, 'Immigration and Freedom of Association'. *Ethics* 119:1 (2008), pp. 109-141.
[24] Susanne Mantel. 'Stability, Protection, and Refugees: Does Refugee Protection Require Admission?', *Migration, Stability and Solidarity* (International Politics: Perspectives from Philosophy and Political Science Bd. 4), edited by Wolfram Cremer and Corinna Mieth. (Baden-Baden: Nomos, 2021), pp. 85-108, at pp. 90-92.

The right to asylum is *multidimensional* because its realization takes place in the legal, political, historical, and ethical dimensions.

Hence, it can be argued with "good reasons" that the right to asylum is universal, categorical, egalitarian, individual, enforceable, fundamental, inalienable, and multidimensional – and consequently: ethically justifiable.

Of course, when states implement the human right to asylum and generally regulate fleeing and asylum-seeking, there are constraints which need to be addressed. It represents the idea behind the SAMBA-step "Be the Ethical Judge!" that "constraints such as lack of political will or xenophobia should not inform the theorization of states' duties toward asylum seekers. This does not mean policymakers and other stakeholders should not consider these elements when formulating this policy. Yet, these considerations should not be accounted for in the theorization of states' duties to asylum seekers done from the point of view of justice understood in pure normative sense."[25]

At the same time, it needs to be taken into account that the human rights to asylum is part of the – based on the principle of vulnerability justifiable –[26] catalogue of human rights that must be respected, protected, implemented, and realized in its entirety due to the principle of indivisibility of human rights.[27] Therefore, the human right to asylum – if asylum is granted – goes beyond mere residence in the receiving state as also the other human rights need to be respected, protected, implemented, and realized. This results in implications regarding inclusion into the social contract, access to economic and social rights such as healthcare and social security.

Beyond that, it cannot escape the ethical assessment of the legitimacy of the human right to asylum that violations of this human right occur often and manifoldly in the exemplary context of Europe (to sweep in front of one's own door in the course of an ethical critical account).[28] "Refugees on Greek islands are being held in detention-like refugee camps and so-called migration agreements are being concluded with often authoritarian states or militias, such as in Libya, so that the effects of the EU's external border are already being felt by refugees outside EU territory."[29] In an open letter to European government leaders, "Doctors Without Borders (MSF)"-President Joanne Liu states: "What migrants and refugees are living in Libya should shock the collective conscience of Europe's citizens and elected leaders. (…) People are simply treated as a commodity to be exploited. They are packed into dark, filthy rooms with no ventilation, living on top of one another. Men told us how groups of them are forced to run naked in the courtyard until they collapse from exhaustion. Women are raped and then made to call their families back home asking

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[25] Mario Josue Cunningham Matamoros. 'Normativity in Migration Ethics: Toy Theories and Prudential Normativity. *Topoi* 44 (2025), pp. 115–126, at p. 116.

[26] Kirchschlaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz*.

[27] Kirchschlaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz*.

[28] Hungarian Helsinki Committee, *We Are Monitoring Association, Centre for Peace Studies et.al. Pushed, Beaten, left to die. European Pushback Report 2024* (2025). Online at https://11.be/sites/default/files/2025-02/20250217-Pushbacks-Report-2024-Pushed-Beaten-Left-to-die.pdf (accessed 2025-07-04); Mixed Migration Centre (MMC). *Quarterly Mixed Migration Update*. Online at https://mixedmigration.org/resource/quarterly-mixed-migration-update-eu-q3-2024/ (accessed 2025-07-04); Lukas Schmitt. 'Migrationsethik: Die Ukraine und die Verletzlichkeit von Menschen und Grenzen'. *Stimmen der Zeit* 240:6 (2022), pp. 403-416, at p. 410.

[29] Lukas Schmitt. 'Migrationsethik: Die Ukraine und die Verletzlichkeit von Menschen und Grenzen'. Stimmen der Zeit 240:6 (2022), pp. 403-416, at p. 410.

for money to be freed. All the people I met had tears in their eyes, asking again and again, to get out. Their despair is overwhelming."[30]

Unfortunately, even the new "European Union Pact on Migration and Asylum" (adopted in May 2024) itself focuses more on securitizing the external borders rather than on protecting human rights.[31] Such an approach jeopardizes "la coherencia del proyecto europeo"[32].

Furthermore, safe and humane paths for fleeing from conflict and persecution to Europe hardly exist anymore.[33] At least 8'938 people died on migration routes worldwide in 2024. Unfortunately, this means that the year 2024 was the deadliest year on record.[34] "The tragedy of the growing number of migrant deaths worldwide is both unacceptable and preventable. Behind every number is a human being, someone for whom the loss is devastating."[35] These deaths did not fall from heaven. These deaths are the results of the ethical and political discourse about as well as the present policies on humans fleeing and humans seeking asylum. These deaths are of course ethically unacceptable. Ethically sound solutions including, among others, safe and humane transit routes[36] could avoid such deaths occurring in the future.

In addition, out of the ethical justification of the human right to asylum the question arises whether the search for a strict distinction[37] between refugees and asylum-seekers (without a choice for their flight) and migrants (with a choice) in the ethical, legal, and political discourse[38] can be upheld justifiably from an ethical standpoint.[39] The UN Refugee Convention of 1951, the Protocol relating to the Status of Refugees of 1967, and related instruments build on a clear distinction between legitimate and illegitimate rights-holders, with the state as the defined duty-bearer. This question if this distinction can be – ethically justified – be upheld finds a negative response from an ethical perspective

[30] Medecins sans frontières. *European governments are feeding the business of suffering.* Online at https://www.msf.org/libya-open-letter-european-governments-are-feeding-business-suffering (accessed 2025-07-04).
[31] Magda Ennaji Térmens. 'Anàlisi del Pacte de la Unió Europea sobre Migració i Asil'. *Quaderns IEE* 4:1 (2025), pp. 107–141.
[32] Gemma Pinyol-Jiménez, 'Migraciones, asilo y derechos humanos: Una aproximación lucasiana a las disfunciones de la gobernanza migratoria'. *Cuadernos Electrónicos De Filosofía Del Derecho* 49 (2023), pp. 979–988, at p. 987.
[33] Jeff Handmaker and Claudia Mora, 'Experts: the mantra of irregular migration and the reproduction of Hierarchies', *The Role of 'Experts' in International and European Decision-Making Processes: Advisors, Decision Makers or Irrelevant Actors?,* edited by Monika Ambrus, Karin Arts, Ellen Hey and Helena Raulus (Cambridge: Cambridge University Press, 2014), pp. 263-287.
[34] IOM UN Migration. *2024 is Deadliest Year on Record for Migration, New IOM Data Reveals* . Online at https://www.iom.int/news/2024-deadliest-year-record-migrants-new-iom-data-reveals (accessed 2025-07-04).
[35] IOM UN Migration. *2024 is Deadliest Year on Record for Migration, New IOM Data Reveals* . Online at https://www.iom.int/news/2024-deadliest-year-record-migrants-new-iom-data-reveals (accessed 2025-07-04).
[36] Borja Niño Arnaiz, 'Justicia global, autonomía personal y política migratoria'. *Revista De Estudios Políticos* 203 (2024), pp. 37–61.
[37] Papenhagen. *Eine Stufentheorie der Migrationsethik.*
[38] Lukas Schmitt. *Von Grenzen, Menschen und Mauern: Migrationsethische Perspektiven in der globalisierten Weltgesellschaft* (Freiburger theologische Studien Bd. 198) (Freiburg i.Br./München/Berlin: Herder, 2022).; Lesch, *Europa - Migration - Populismus : aktuelle Spannungsfelder politischer Ethik*, p. 181.
[39] Liza Schuster. 'Unmixing Migrants and Refugees', *The Routledge Handbook of Immigration and Refugee Studies*, edited by Anna Triandafyllidou. UK: Routledge, 2016, pp. 297-303.

because famine, poverty as well as miserable economic[40] and climate conditions[41] can take away any supposed choice.[42] "Restricting the status of refugees to those who have crossed an international border because of a well-founded fear of persecution is morally arbitrary."[43] In the focus here is that not only persecution but also famine, poverty as well as miserable economic and climate conditions can be threatening for the human dignity and for the physical survival of a human.

Moreover, the arbitrariness of borders should be acknowledged from an ethical standpoint: No one can choose to be born on the one side or the other side of a border. Borders make humans "refugees", "asylum-seekers", and "migrants". This arbitrariness of borders reinforces the criticism presented above of the arbitrariness of the distinction between refugees and asylum-seekers on the one side and migrants on the other side. "For many people on earth, borders are not easily surmountable landmarks on a map or itinerary but rather have an immobilizing power. Borders have by no means become less significant in our globalized world but rather exert power in a very selective manner on individuals, not only at the borders themselves, but also beyond them and within border areas."[44]

From the perspective of ethics of human rights, the impact of borders on the lives of humans represents a fundamental questioning of equality[45] and equal opportunities. "Most migrants want little more than to make a better life for themselves. If people wish to migrate across borders, why shouldn't they be able to?"[46] In addition to equality, also freedom and autonomy provide ethical guidance, especially freedom of movement. "Deciding where to live is an essential component of autonomy, and this includes both the decision to stay and the decision to migrate."[47] An inconsistency cannot be avoided if freedom of movement is restricted in the case of international movement. "Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one's native state and many in another; one might wish to pursue cultural opportunities that are only available in another land."[48]

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[40] Margaret E. Peters. 'Migration and Development', *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), pp. 223-243.

[41] Ingrid Boas and Hanne Wiegel. 'Environmental Change and Migration', *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), pp. 263-282.

[42] Franco Valenti, *Migrazioni. In Italia e nel mondo.* Brescia: Editrice Morcelliana, 2020, p. 5.

[43] Wellman, 'Immigration and Freedom of Association', pp. 109-141, at p. 128; Saskia Sassen, *Guests and Aliens*. New York: The New Press, 1999, p. 96.

[44] Lukas Schmitt, 'Macht von Grenzen: Macht über Grenzen: Eine migrationsethische Betrachtung im Spannungsfeld universaler und partikularer Perspektiven', *Macht: Omnipräsent und doch tabu? Theorien und Praktiken einer sozialethischen Grundkategorie*, edited by Sebastian Dietz, Felix Geyer, Lukas Schmitt, Isabella Senghor and Elisabeth Zschiedrich (Münster: Aschendorff Verlag, 2023), pp. 199-216, at pp. 199-200 (translated by pgk).

[45] Javier De Lucas, 'Immigrantes : del estado de excepción al estado de derecho'. *Oñati socio-legal series* 1:3 (2011), p. 7.

[46] Song, 'The Ethics of Migration', pp. 328-347.

[47] Niño Arnaiz, 'Justicia global, autonomía personal y política migratoria', pp. 37-61, at p. 53.

[48] Joseph Carens, *The Ethics of Immigration*. (Oxford: Oxford University Press, 2013), p. 239.

This inconsistency grows into a bias[49] of the ethical discourse about fleeing, seeking asylum, and migration or a fundamental denial of ethically justifiable claims to humans fleeing, seeking asylum, or migrating when ethical principles like freedom and equality of all humans as well as the principle of justice in the form of equal opportunities are ethically justified in providing ethical guidance in the general ethical discourse but are neglected in the ethical discourse about fleeing, seeking asylum, and migration or denied to humans fleeing, seeking asylum, or migrating.[50] E.g., it can be shown that in the ethical discourse about humans fleeing, seeking asylum, or migrating, "the question of how opportunities should be distributed is addressed in opposite terms depending on whether migrants are concerned or not"[51].

A source for this bias is nationalism.[52] This bias does not allow one to see clearly the reality through ethical lenses. "An ethos of white nationalism and capital accumulation, moral geographies that map responsibilities in order to deflect or deny them, creating hostile environments invoking moral immunity, are neither natural nor inevitable."[53]

A second source for this bias is methodological nationalism, defined by the assumption "that the nation-state provides the relevant unit of analysis and the categories for understanding social phenomena."[54]

A third source for this bias can be found in "crimmigration" applied in the ethics of migration[55] referring to "three areas in which criminal law enforcement and immigration law enforcement are problematically conflated. The first is when criminal convictions come to have immigration consequences, such as a revocation of a visa or green card. The second is when immigration law violations come to have criminal-style punishments. The third is when the tactics sanctioned for criminal law enforcement are commandeered for the purposes of performing immigration enforcement or vice versa."[56]

A fourth source for this bias is an abusive misinterpretation of the common good into an exclusive good for an exclusive group of people.[57]

The lack of equal opportunities "is further exacerbated by the fact of withholding of subjectivity for humans seeking asylum. They cannot speak in the political and ethical discourse about seeking asylum nor act in the political design of the legal framework of

[49] Speranta Dumitru, 'The ethics of immigration: How biased is the field?'.*Migration Studies* 11:1 (2023), pp. 1-22.
[50] Jan Friedrich, 'Können Integrationspflichten Migrationsrechte einschränken? Zum Verhältnis von Migrations- und Integrationsethik'. *Zeitschrift für Praktische Philosophie* 7:1 (2020), pp. 15-42. ; Jean-Philippe Vincent. *Éthiques de l'immigration*. Online at https://www.fondapol.org/etude/ethiques-de-limmigration/ (2025-07-04); Federico Arcos Ramírez, '¿Existe un derecho humano a inmigrar? Una crítica del argumento de la continuidad lógica'. *DOXA. Cuadernos De Filosofía Del Derecho* 43 (2020), pp. 285–312.; Francisco Javier Laporta San Miguel, 'Javier de Lucas y la ética de la inmigración'.*Cuadernos Electrónicos De Filosofía Del Derecho*, 49 (2023), pp. 264–273.
[51] Dumitru, 'The ethics of immigration: How biased is the field?', pp. 1-22.
[52] Lior Erez, 'The Nation, the State, and the Foreigner', *The Routledge Handbook of the Ethics of Immigration*, edited by Sahar Akhtar (UK: Routledge, 2025), pp. 140-154, at pp. 142-150.
[53] Dan Bulley, *A relational ethics of immigration: Hospitality and hostile Environments* (Oxford: Oxford University Press, 2023), pp. 161-162.
[54] Dumitru, 'The ethics of immigration: How biased is the field?', pp. 1-22.
[55] José Jorge Mendoza, 'Crimmigration and the Ethics of Migration'. *Social Philosophy Today* 36:1 (2020), pp. 49-68.
[56] Mendoza, 'Crimmigration and the Ethics of Migration', pp. 49-68, at p. 50.
[57] Frank Dietrich and Adis Selimi, 'Gemeinwohlargumente in der Ethik der Migration', *Handbuch Gemeinwohl*, edited by Christian Hiebaum. Springer: Heidelberg, 2020, pp. 379-391.

seeking asylum. These abilities are denied and withheld from them."[58] Human rights guarantee this participation in opinion-forming- and decision-making-processes to all humans – of course including also humans fleeing, seeking asylum, and migrating.[59]

Furthermore, the existence of borders violates moral equality.[60] "Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one's life chances. Like feudal birthright privilege, restrictive citizenship is hard to justify when one thinks about it closely"[61].

On top of that, the existence of borders as such makes humans "refugees", "asylum-seekers", and "migrants".[62] Moreover, humans fleeing or seeking asylum are neither per se and nor make themselves "refugees", "asylum-seekers" respectively "migrants", someone else does for them and about them.[63] The definitory and constituting process as well as corresponding decision-making processes about their fate are not in the hands of humans fleeing, seeking asylum, or migrating and take place without participation of the humans fleeing, seeking asylum, or migrating.[64]

Seen and used differently, the concepts "refugees", "asylum-seekers", and "migrants" offer "an important lens on law and democracy beyond the state. Its counterbalancing role within the state framework highlights that the territorial delimitation of rights and obligations has always been accompanied by commitments to openness and solidarity beyond the territorially defined community. This cross-border commitment of the refugee concept references a concrete rather than an abstract universalism."[65] At the same time, the problem is becoming apparent that "migrant rights are compromised by a paradox between the universality of international human rights and the national scope of their enforcement."[66]

In addition, humans fleeing from one place to another respectively or fleeing from one country to seek asylum in another country usually don't have the self-understanding as "refugees", "asylum-seekers", or "migrants" but the self-understanding as "HUMANS". Hannah Arendt states: "We don't like to be called 'refugees'."[67]

Moreover, no one is born and wishes to become a human fleeing, seeking asylum, or migrating. "On the one hand, mobility thereby mirrors global inequalities: borders are permeable to a starkly different degree depending on one's passport. On the other hand, migration works as a marker for interdependencies where these would otherwise be

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[58] Josef Becker, 'Normative Probleme der Ethics of Migration', *Grenzgänge der Ethik*, edited by Josef Becker, Sebastian Kistler & Max Niehoff (Münster: Aschendorff Verlag, 2020), pp. 69-86, at p. 75.
[59] Susana Angélica Pastrana Corral, 'Derechos humanos y políticas Migratorias'. *Revista Virtual Universidad Católica del Norte* 74 (2025), pp. 1-3, at p. 2.
[60] Joseph Carens, 'Aliens and Citizens: The Case for Open Borders'. *Review of Politics* 49:2 (1987), pp. 251-273.
[61] Carens, 'Aliens and Citizens: The Case for Open Borders', pp. 251-273, at p. 252.
[62] Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, p. 23.
[63] Johan Rochel, 'L'éthique de la migration : propositions pour un débat de Société', *La recherche et l'enseignement en éthique : Un état des lieux*, edited by Edwige Rude-Antoine and Marc Piévic (Paris: L'Harmattan, 2020), pp. 93-109, at p. 108.
[64] Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, pp. 27-40, pp. 106-120, pp. 151-166.
[65] Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, p. 24.
[66] Lisa Simeone, 'The Paradox of Migrant Rights', *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart. UK: Routledge, 2021, pp. 307-327, at p. 323.
[67] Hannah Arendt, 'We Refugees', *Altogether elsewhere. Writers on Exile*, edited by Marc Robinson (Boston; Faber and Faber, 1994), pp. 110-119.

omitted. When political conflicts, environmental degradation, or ravaging poverty causes persons to migrate, they bring to awareness elsewhere that we live in one world."[68]

Beyond that, living as humans means standing on the same ground – on the same "solidum" which represents the conceptual basis for the ethical principle of "solidarity".[69] The ethical principle of solidarity urges one to understand that all humans should be there for each other and for the community if it is necessary as well as the community of all humans should be there for a human who needs it. "L'insatisfaction est constante, dans l'action de solidarité."[70]. One should not escape from this challenge by framing its fulfillment as "unrealistic"[71] for three reasons[72]: first, the conceptual problems of assessing realistic versus unrealistic (for example, the arbitrary definition of "the given situation" or "the given reality"; the impossibility of foreseeing what is possible in advance; the impossibility to identify who is the acting subjects failing facing the unfeasibility)[73]; second, normative ethics does not work this way. An ethical compass does not lose its legitimacy just because it is demanding to follow it. Rather this challenge forms an incentive to become better. E.g., personally, I'm not able to avoid lying all the time. Just because of that, the legitimacy of honesty does not dissolve. Honesty as an ethical virtue is still in place.[74] Third, the complexity of reality cannot serve as an excuse not to fulfill ethical principles but rather as an impulse to find an ethically sound solution.

The principle of solidarity – combined with the above-mentioned principle of vulnerability – reminds all of us: It could be us. It could be oneself.

The kind invitation goes to everyone who contributes to the ethical discourse about fleeing, asylum-seeking, and migrating without critically questioning the arbitrary and feudal nature of borders to transfer the perspective and to imagine that they themselves would be the humans fleeing, seeking asylum, and migrating.

The same kind invitation goes to everyone who argues for the exception of the sphere of fleeing, asylum-seeking, and migrating from ethical principles that are otherwise in place in the general ethical discourse, like, for example, freedom and equality of all humans as well as the principle of justice in the form of equal opportunities to critically re-examine their own positions through the thought experiment to try (and these attempts will always fail due to the first-person perspective but could one bring at least a little bit closer to the perspective of other humans)[75] to put on the shoes of humans fleeing, humans seeking asylum, as well as humans migrating and to then question whether their own positions remain ethically justifiable.

The same kind invitation goes to everyone who argues that realizing the respect of human dignity of all humans – including humans fleeing and humans seeking asylum –

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[68] Schmalz, *Refugees, Democracy and the Law. Political Rights at the Margins of the State*, p. 167.
[69] Alois Baumgartner, 'Solidarität', *Christliche Sozialethik. Ein Lehrbuch* (Vol, 1: Grundlagen), edited by Marianne Heimbach-Steins (Regensburg; Verlag Friedrich Pustet, 2004), pp. 283-292.
[70] Bruno-Marie Duffé, 'Quand les migrants nous font faire un «chemin éthique» et nous rappellent au «devoir de fraternité». *Revue d'éthique et de théologie morale* 326:1 (2025), pp. 53-61, at p. 61.
[71] Papenhagen, *Eine Stufentheorie der Migrationsethik*, pp. 115-488.; Andreas Niederberger, 'Migrationsethik in der Krise. Einige grundlegende philosophische Überlegungen'. *Zeitschrift für Migrationsforschung* 1:1 (2021), pp. 97 - 123.
[72] Kirchschlaeger, *Ethical Decision-Making.*
[73] James S. Pearson, 'Realism in the ethics of immigration'. *Philosophy & Social Criticism* 49 :8 (2022), pp. 958-968.
[74] Kirchschlaeger, *Ethical Decision-Making.*
[75] Kirchschlaeger, *Wie können Menschenrechte begründet werden? Ein für religiöse und säkulare Menschenrechtskonzeptionen anschlussfähiger Ansatz.*

would be an act of "mercy"[76]. While attributing to mercy an essential role within ethics and morals, in the case of humans fleeing and humans seeking asylum mercy and their ethically justifiable claims to get their human rights respected and enforced, it is an absolutely inadequate category, first, because humans fleeing, seeking asylum, as well as migrating are holders of human rights. Their legal entitlements are neither depending on acts of mercy nor on arbitrariness and randomness. Second, mercy implies a certain power imbalance between the mercy-giver and the beneficiary of mercy, which would undermine the notion of human dignity and human rights including freedom, autonomy, and equal opportunities.

Finally, the same kind invitation goes to everyone who argues that humans fleeing, seeking asylum, and migrating by crossing boundaries without official permission – due to above-mentioned lack of safe and humane transit routes – should be framed as this person "made a bet that he(/she) would not be discovered; his(/her) pain when that bet fails to hold is a pain he(/she) is rightly made to endure."[77]

The ethical implications of the ethical principle of solidarity underline the ethical justification of the human right to asylum and its ethical relevance as well as the ethical necessity to take appropriate action in the particular contexts where the universality of human rights and the universal solidarity among all humans as well as of humanity become concretely alive. "Liberal states grant rights to their citizens as members of a political community sharing certain norms and obligations. While the international human rights system expands this theory of social contract to encompass all countries, it does not represent a global political community with the authority to protect its members. Its normative framework of human rights must be translated into civil rights to have legal power."[78]

Finally, humans seeking asylum are forced into the role of scapegoats for everything.[79] Blaming humans seeking asylum for everything negative goes so far that one asks oneself what would happen if there weren't any asylum-seekers anymore, but the political problems would continue to exist.

4. Act Accordingly!

The ethical justification of the human right to asylum calls for corresponding action, namely to respect, protect, implement, and realize the human right to asylum together with all other human rights.

Besides the legal enforcement of this human right, part of the corresponding action to this ethical assessment of the legitimacy of the human right to asylum is also to stop making humans seeking asylum to the problem. That does not mean at all not to take the

[76] Michael Blake, *Justice, Migration, and Mercy* (Oxford: Oxford University Press, 2023), pp. 210-223.
[77] Blake, *Justice, Migration, and Mercy*, pp. 215-216.
[78] Simeone, 'The Paradox of Migrant Rights', pp. 307-327, at pp. 307-308.
[79] Bianca Rumore, 'Imago migrantis: media, algoritmi e rappresentazioni. Il caso italiano', *Migrazione, donne, diritti. Orizzonti di pace per il mondo contemporaneo* edited by Uliano Conti and Maria Caterina Federici (Roma: Carocci editore, 2021, pp. 85-100), p. 98; Peter Schink and Jan Weber. *Nach Migrationsdebakel: Geflüchtete sind nun an allem Schuld.* Berliner Morgenpost (2025). Online at https://www.morgenpost.de/incoming/article408208780/nach-migrationsdebakel-gefluechtete-sind-nun-an-allem-schuld.html (accessed 2025-07-04); Daniel Winkler. Widerstand gegen Asylbewerber. Ängste bewirtschaften und Sündenböcke suchen. Der Bund (2024). https://www.derbund.ch/migration-aengste-bewirtschaften-widerstand-gegen-fluechtlinge-180743754399 (accessed 2025-07-04).

real problems seriously. In contrast, from an ethical standpoint, it is the ethical responsibility of a state, of a government, of politicians, of a political and legal community as well as of all humans to address consistently and diligently existing problems including the ethical and political dilemmas.[80] If there are, e.g., worries about security, preoccupations concerning job security, lack of inclusion, lack of language skills, …, humans seeking asylum should not be made the causes of these problems and challenges but rather the inadequate political and social treatment of humans seeking asylum, as the actual origins of these problems and challenges should be named and addressed concretely, pragmatically, and sustainably. Too simply put, for example, if there is a lack of language skills, don't make humans seeking asylum the problem, but rather the lack of adequate learning opportunities and incentives and address the latter accordingly, namely by, e.g., increasing the teaching capacities within a school class with children seeking asylum having another first language than the first official language of the context of the school. If some people should feel insecure, concrete security measures (e.g., more presence of police) should be implemented. If some people link threat automatically with humans seeking asylum, some nondiscriminatory awareness-building should be considered. If preoccupations concerning job-security exist, concrete economic steps to increase job-security or to compensate the massive reduction of paid professional tasks by so-called "AI"[81] should be taken. If there is a lack of inclusion, programs for humans seeking asylum and for humans living with humans seeking asylum promoting and fostering inclusion should be provided. And so on … The fallacy – surprisingly very present in the ethical discourse about humans fleeing or seeking asylum –[82] should be avoided, e.g., to counter the rise of populist extreme right-wing parties and politicians by not addressing perceptibly and visibly with concrete and immediate actions the real problems but by blaming humans fleeing or seeking asylum for them. In the ethical discourse about humans fleeing or seeking asylum, restrictions for flight, migration, and for asylum-seeking are often presented as the only solution. This alleged absence of alternatives is not only reductionist and does not represent the reality but manifests also a disappointing lack of political, societal, and economic creativity and innovativeness.

Besides that, from an ethical perspective, of course possible problems causing flights and asylum-seeking should be firmly addressed and sustainably resolved[83] – for example, persecution, global injustice, famine, poverty, as well as miserable economic and climate conditions – but they cannot be an alternative (as is often inadequately presented in the discourse about fleeing and asylum-seeking)[84] to immediate and concrete implementation and realization of the human right to asylum. It is only honest to admit that addressing the root causes will take time – more time than present humans fleeing and humans seeking asylum have at their disposal.

Last but not least, numbers – but in front of all – how we deal with numbers matters. First, ethically speaking, it is to avoid seeing numbers. "Refugees are often seen

[80] Rainer Bauboeck, Julia Mourao Permoser and Martin Ruhs, 'The ethics of migration policy dilemmas. *Migration Studies* 10:3 (2022), pp. 427-441.
[81] Peter G. Kirchschlaeger, *Ethics and the Digital Transformation of Human Work. The Society, Entrepreneurship, Research-Time Model SERT*. UK: Palgrave Macmillan, 2025.
[82] Stephen Macedo, 'After the Backlash: Populism and the Politics and Ethics of Migration'. *The Law & Ethics of Human Rights* 14:2 (2020), pp. 153-180.
[83] Rainer Bauboeck, 'A mid-level perspective on the ethics of immigration policies. *Criticial Review of International Social and Political Philosophy*, pp. 1-18.
[84] Bauboeck, 'A mid-level perspective on the ethics of immigration policies', pp. 1-18.

as nothing more than an anonymous mass of people from whom one must isolate oneself."[85] We should see an individual human being behind every number.[86]

Second, the European Union consists of 86'061 municipalities. Mathematically, if one would distribute all humans seeking asylum to all municipalities equally, every municipality would welcome 12 humans seeking asylum. To this reality belongs as well the fact that big cities like Rome and Berlin count as 1 municipality. This means that even a large city like Rome, with its 2.76 million inhabitants, or Berlin, with its 3.9 million inhabitants, would only welcome 12 asylum seekers each. This also indicates that there is extensive space for balancing if there should be a necessity in the case of a very small municipality.

Pragmatically speaking, 981'319 humans seeking asylum in the European Union in the year 2024 should be distributed equally to the 86'061 municipalities in the European Union. Mathematically, every municipality would welcome 12 humans seeking asylum.[87] This pragmatic approach embodies – and this needs to be made transparent right from the start – the ethical problem that the freedom to move and settle freely in the course of seeking asylum would be limited to a certain extent. I would argue only "to a certain extent" because humans seeking asylum should be entitled to indicate their preferences (including reasons for these preferences, e.g., presence of family members) and these preferences should be respected as much as possible relying on the substantial possibilities for balancing thanks to counting big cities as municipalities if there should be a respective need in the case of tiny municipalities.

Beyond that, the numbers show that there would be evidently space for more people in need due to persecution, famine, poverty, miserable economic and climate conditions, … This analysis takes place in front of a financial background supporting this argument: The financial background consists in the allocation of 3.73 billion EUR in the year 2024 for border-protection and migration by the EU[88], the allocation of 16.2 billion EUR to support the EU's neighbors as well as international development and cooperation by the EU, the allocation of 1.9 billion EUR for the humanitarian aid programme to respond to global crises by the EU, and the allocation of 11.5 billion EUR for the Neighborhood, Development and International Cooperation Instrument – Global Europe, with a focus on migration in the EU's southern neighborhood and on addressing the root causes of migration from Africa.[89] At the same time, part of this financial background is also that the member states of the European Union lost 100 billion EUR in 2024 because of harmful corporate tax avoidance.[90]

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[85] JoeBarth C. Abba. *Friedensethik : auf der Basis der Menschenrechte : eine Orientierung in Zeiten von Migration und wachsender Intoleranz* (München: Verlagshaus Schlosser, 2021), p. 186 (translated by pgk)
[86] Bruno-Marie Duffé. 'Quand les migrants nous font faire un «chemin éthique» et nous rappellent au «devoir de fraternité»', pp. 53-61, at p. 53.
[87] By this model "Distributing humans, not shifting numbers", the assumption of unfeasibility of ethically legitimate handling of fleeing and seeking asylum, e.g., in the "Stufentheorie der Migrationsethik" by Adrian Papenhagen (Papenhagen, A. (2024). Eine Stufentheorie der Migrationsethik. Nomos), can be invalidated.
[88] EUR-Lex. *2024 European Union budget* (2024). Online at https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html (2025-07-04).
[89] EUR-Lex. *2024 European Union budget* (2024). Online at https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html (2025-07-04).
[90] European Court of Auditors. *EU fight against systemically harmful tax practices still not watertight* (2024). Online at https://www.eca.europa.eu/en/news/NEWS-SR-2024-27 (accessed 2025-07-04).

Bibliography

Abba, JoeBarth C. *Friedensethik: auf der Basis der Menschenrechte: eine Orientierung in Zeiten von Migration und wachsender Intoleranz*. München: Verlagshaus Schlosser, 2021.

Arendt, Hannah. 'We Refugees', in *Altogether elsewhere. Writers on Exile*, edited by Marc Robinson. Boston; Faber and Faber, 1994, pp. 110-119.

Arcos Ramírez, Federico. '¿Existe un derecho humano a inmigrar? Una crítica del argumento de la continuidad lógica'. *DOXA. Cuadernos De Filosofía Del Derecho* 43 (2020), pp. 285–312.

Bauboeck, Rainer, Julia Mourao Permoser and Martin Ruhs. 'The ethics of migration policy dilemmas. *Migration Studies* 10:3 (2022), pp. 427-441.

Bauboeck, Rainer. 'A mid-level perspective on the ethics of immigration policies. *Critical Review of International Social and Political Philosophy* (2025), pp. 1-18.

Baumgartner, Alois. 'Solidarität', in *Christliche Sozialethik. Ein Lehrbuch* (Vol, 1: Grundlagen), edited by Marianne Heimbach-Steins. Regensburg; Verlag Friedrich Pustet, 2004, pp. 283-292.

Becker, Josef. 'Normative Probleme der Ethics of Migration', in *Grenzgänge der Ethik*, edited by Josef Becker, Sebastian Kistler & Max Niehoff. Münster: Aschendorff Verlag, 2020, pp. 69-86.

Blake, Michael. *Migration, and Mercy*. Oxford: Oxford University Press, 2023.

Boas, Ingrid and Wiegel, Hanne. 'Environmental Change and Migration', in *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart. UK: Routledge, 2021, pp. 263-282.

Bulley, Dan. *A relational ethics of immigration: Hospitality and hostile Environments*. Oxford: Oxford University Press, 2023.

Carens, Joseph. 'Aliens and Citizens: The Case for Open Borders'. *Review of Politics* 49:2 (1987), pp. 251-273.

Carens, Joseph. *The Ethics of Immigration*. Oxford: Oxford University Press, 2013.

Cunningham Matamoros, Mario Josue. 'Normativity in Migration Ethics: Toy Theories and Prudential Normativity. *Topoi* 44 (2025), pp. 115–126.

De Lucas, Javier (2011) "Inmigrantes: del estado de excepción al estado de derecho'. *Oñati socio-legal series* 1:3 (2011), pp.

Dietrich, Frank and Selimi, Adis.'Gemeinwohlargumente in der Ethik der Migration', in *Handbuch Gemeinwohl*, edited by Christian Hiebaum. Heidelberg: Springer, 2020, pp. 379-391.

Duffé, Bruno-Marie. 'Quand les migrants nous font faire un «chemin éthique» et nous rappellent au «devoir de fraternité». *Revue d'éthique et de théologie morale* 326:1 (2025), pp. 53-61.

Dumitru, Speranta. 'The ethics of immigration: How biased is the field?'. *Migration Studies* 11:1 (2023), pp. 1-22.

Edo, Anthony and Giesing, Yvonne. *Has Immigration contributed to the rise of rightwing extremist parties in Europe ?*. Econpol Policy Report 2020 July Vol. 4. Online at https://www.ifo.de/DocDL/EconPol_Policy_Report_23_Immigration_Far_Right.pdf (2025-07-04).

Ennaji Térmens, Magda. 'Anàlisi del Pacte de la Unió Europea sobre Migració i Asil'. *Quaderns IEE* 4:1 (2025), pp. 107–141.

Erez, Lior. 'The Nation, the State, and the Foreigner', in *The Routledge Handbook of the Ethics of Immigration*, edited by Sahar Akhtar. UK: Routledge, 2025, pp. 140-154.

European Union Agency for Asylum (EUAA). *EU+ asylum applications decrease by 11% in 2024, and some changing trends established* (2025). Online at https://euaa.europa.eu/news-events/eu-asylum-applications-decrease-11-percent-in-2024 (accessed 2025-07-04).

European Court of Auditors. *EU fight against systemically harmful tax practices still not watertight* (2024). Online at https://www.eca.europa.eu/en/news/NEWS-SR-2024-27 (accessed 2025-07-04).

EUR-Lex. *2024 European Union budget* (2024). Online at https://eur-lex.europa.eu/EN/legal-content/summary/2024-european-union-budget.html (2025-07-04).

Flourish. *Key first instance indicators by EU+ country, 2024* (2024). Online at https://public.flourish.studio/visualisation/21467921/ (accessed 2025-07-04).

Friedrich, Jan. 'Können Integrationspflichten Migrationsrechte einschränken? Zum Verhältnis von Migrations- und Integrationsethik'. *Zeitschrift für Praktische Philosophie* 7:1 (2020), pp. 15-42.

Handmaker, Jeff and Mora, Claudia. 'Experts: the mantra of irregular migration and the reproduction of Hierarchies', in *The Role of 'Experts' in International and European Decision-Making Processes: Advisors, Decision Makers or Irrelevant Actors?*, edited by Monika Ambrus, Karin Arts, Ellen Hey and Helena Raulus. Cambridge: Cambridge University Press, 2014, pp. 263-287.

Hoffmaster, Barry. 'What Does Vulnerability Mean?'. *Hastings Center Report* 36:2 (2006), pp. 38-45.

Honnefelder, Ludger. 'Theologische und metaphysische Menschenrechtsbegründungen', in *Menschenrechte. Ein interdisziplinäres Handbuch*, edited by Arnd Pollmann and Georg Lohmann. Stuttgart: J.B. Metzler, 2012, pp. 171-178.

Hosein, Adam. *The ethics of migration: an introduction*. UK: Routledge, 2019.

Hungarian Helsinki Committee, *We Are Monitoring Association, Centre for Peace Studies et.al. Pushed, Beaten, left to die. European Pushback Report 2024* (2025). Online at https://11.be/sites/default/files/2025-02/20250217-Pushbacks-Report-2024-Pushed-Beaten-Left-to-die.pdf (accessed 2025-07-04).

IOM UN Migration. *2024 is Deadliest Year on Record for Migration, New IOM Data Reveals*. Online at https://www.iom.int/news/2024-deadliest-year-record-migrants-new-iom-data-reveals (accessed 2025-07-04).

Kirchschlaeger, Peter G. *Wie können Menschenrechte begründet werden? Ein für religiöse und sakuläre Menschenrechtskonzeptionen anschlussfähiger Ansatz*. Münster: LIT-Verlag, 2013.

Kirchschlaeger, Peter G. Ethical Decision-Making. Baden-Baden: Nomos, 2023.

Kirchschlaeger, Peter G. *Ethics and the Digital Transformation of Human Work. The Society-, Entrepreneurship-, Research-Time Model SERT*. UK: Palgrave Macmillan, 2025.

Laporta San Miguel, Francisco Javier. 'Javier de Lucas y la ética de la inmigración'. *Cuadernos Electrónicos De Filosofía Del Derecho*, 49 (2023), pp. 264–273.

Lesch, Walter. *Europa - Migration - Populismus: aktuelle Spannungsfelder politischer Ethik*. Basel: Schwabe Verlag, 2022.

Macedo, Stephen. 'After the Backlash: Populism and the Politics and Ethics of Migration'. *The Law & Ethics of Human Rights* 14:2 (2020), pp. 153-180.

Mantel, Susanne. 'Stability, Protection, and Refugees: Does Refugee Protection Require Admission?', in *Migration, Stability and Solidarity* (International Politics: Perspectives from Philosophy and Political Science Bd. 4), edited by Wolfram Cremer and Corinna Mieth. Baden-Baden: Nomos, 2021, pp. 85-108.

Medecins sans frontières. *European governments are feeding the business of suffering*. Online at https://www.msf.org/libya-open-letter-european-governments-are-feeding-business-suffering (accessed 2025-07-04).

Mendoza, José Jorge. 'Crimmigration and the Ethics of Migration'. *Social Philosophy Today* 36:1 (2020), pp. 49-68.

Mixed Migration Centre (MMC). *Quarterly Mixed Migration Update*. Online at https://mixedmigration.org/resource/quarterly-mixed-migration-update-eu-q3-2024/ (accessed 2025-07-04).

Nida-Rümelin, Julian. 'Ethische Postulate für die Migrationspolitik', *in Integration: Teilhabe und Zusammenleben in der Migrationsgesellschaft,* edited by Michael Spieker and Christian Hoffmann. Baden-Baden: Nomos, 2020, pp. 33-51.

Niederberger, Andreas. 'Migrationsethik in der Krise. Einige grundlegende philosophische Überlegungen'. *Zeitschrift für Migrationsforschung* 1:1 (2021), pp. 97-123.

Niño Arnaiz, Borja. 'Justicia global, autonomía personal y política migratoria'. *Revista De Estudios Políticos* 203 (2024), pp. 37–61.

Okwonga, Musa. *Anti-migrant hate is flourishing in Germany's time oft he cowards'*. The Guardian (2025). Online at https://www.theguardian.com/world/commentisfree/2025/feb/23/anti-migrant-hate-germany-election-time-of-the-cowards (accessed 2025-07-04).

Olier, Juan Sebastian and Spadavecchia, Camilla. 'Stereotypes, disproportions, and power asymmetries in the visual portrayal of migrants in ten countries: an interdisciplinary AI-based approach'. *Humanities and Social Sciences Communications* 9:410 (2022), pp. 1-16.

Papenhagen, Adrian. *Eine Stufentheorie der Migrationsethik*. Baden-Baden: Nomos, 2024. Pastrana Corral, Susana Angélica. 'Derechos humanos y políticas Migratorias'. *Revista Virtual Universidad Católica del Norte* 74 (2025), pp. 1-3.

Pearson, James S. 'Realism in the ethics of immigration'. *Philosophy & Social Criticism* 49 :8 (2022), pp. 958-968.

Peters, Margaret E. 'Migration and Development', in *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart. UK: Routledge, 2021, pp. 223-243.

Pinyol-Jiménez, Gemma. 'Migraciones, asilo y derechos humanos: Una aproximación lucasiana a las disfunciones de la gobernanza migratoria'. *Cuadernos Electrónicos De Filosofía Del Derecho* 49 (2023), pp. 979–988.

Rochel, Johan. 'L'éthique de la migration : propositions pour un débat de Société', in *La recherche et l'enseignement en éthique : Un état des lieux*, edited by Edwige Rude-Antoine and Marc Piévic. Paris: L'Harmattan, 2020, pp. 93-109.

Rumore, Bianca, 'Imago migrantis: media, algoritmi e rappresentazioni. Il caso italiano', *Migrazione, donne, diritti. Orizzonti di pace per il mondo contemporaneo* edited by Uliano Conti and Maria Caterina Federici. Roma: Carocci editore, 2021, pp. 85-100.

Runggaldier, Edmund. 'Deutung menschlicher Grunderfahrungen im Hinblick auf unser Selbst', in *Unser Selbst – Identität im Wandel neuronaler Prozesse*, edited by Guenter Rager, Josef Quitterer & Edmund Runggaldier. Paderborn: Ferdinand Schoeningh, 2003, pp. 143-221.

Sassen, Saskia. *Guests and Aliens*. New York: The New Press 1999.

Schink, Peter and Weber, Jan. *Nach Migrationsdebakel: "Geflüchtete sind nun an allem Schuld"*. Berliner Morgenpost (2025). Online at https://www.morgenpost.de/incoming/article408208780/nach-migrationsdebakel-gefluechtete-sind-nun-an-allem-schuld.html (accessed 2025-07-04).

Schmalz, Dana. *Refugees, Democracy and the Law. Political Rights at the Margins of the State*. UK: Routledge, 2020.

Schmitt, Lukas. 'Migrationsethik: Die Ukraine und die Verletzlichkeit von Menschen und Grenzen'. *Stimmen der Zeit* 240:6 (2022), pp. 403-416.

Schmitt, Lukas. *Von Grenzen, Menschen und Mauern: Migrationsethische Perspektiven in der globalisierten Weltgesellschaft* (Freiburger theologische Studien Vol. 198). Freiburg i.Br./München/Berlin: Herder, 2022.

Schmitt, Lukas. 'Macht von Grenzen: Macht über Grenzen: Eine migrationsethische Betrachtung im Spannungsfeld universaler und partikularer Perspektiven', in *Macht: Omnipräsent und doch tabu? Theorien und Praktiken einer sozialethischen Grundkategorie*, edited by Sebastian Dietz, Felix Geyer, Lukas Schmitt, Isabella Senghor and Elisabeth Zschiedrich (Münster: Aschendorff Verlag, 2023), pp. 199-216.

Schuster, Liza. 'Unmixing Migrants and Refugees', in *The Routledge Handbook of Immigration and Refugee Studies*, edited by Anna Triandafyllidou. UK: Routledge, 2016, pp. 297-303.

Simeone, Lisa. 'The Paradox of Migrant Rights', in *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart. UK: Routledge, 2021, pp. 307-327.

Song, Sarah. 'The Ethics of Migration', in *Introduction to International Migration: Population Movements in the 21st Century*, edited by Jeannette Money and Sarah Lockhart (UK: Routledge, 2021), ch. 15.

The UN Refugee Agency (UNHCR). *Asylum and migration* (2025). Online at https://www.unhcr.org/what-we-do/protect-human-rights/asylum-and-migration (accessed 2025-07-04).

The UN Refugee Agency (UNHCR). *Who we protect. Refugees* (2025). Online at https://www.unhcr.org/about-unhcr/who-we-protect/refugees (accessed 2025-07-04).

Valenti, Franco. *Migrazioni. In Italia e nel mondo.* Brescia: Editrice Morcelliana, 2020.

Vincent, Jean-Philippe. *Éthiques de l'immigration*. Online at https://www.fondapol.org/etude/ethiques-de-limmigration/ (2025-07-04)

Wellman, Christopher. 'Immigration and Freedom of Association'. *Ethics* 119:1 (2008), pp. 109-141.

Werner, Micha H. *Einführung in die Ethik*. Heidelberg/Berlin: J.B.Metzler, 2021.

Winkler, Daniel. *Widerstand gegen Asylbewerber. Ängste bewirtschaften und Sündenböcke suchen*. Der Bund (2024). Online at https://www.derbund.ch/migration-aengste-bewirtschaften-widerstand-gegen-fluechtlinge-180743754399 (accessed 2025-07-04).

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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 individuals[1] 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 obligation[2] 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

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[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/3ae6b3b70.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

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[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.

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[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 pragmatical 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,

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[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.

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[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.

Bibliography

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

Cohen, M., 'When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach', Washington and Lee Law Review, 72:2, (2015), pp. 483–571.

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.

Donnelly, J., Universal Human Rights in Theory and Practice, Ithaca, New York: Cornell University Press. 2013.

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).

European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, https://www.refworld.org/docid/3ae6b3b70.html (accessed 3 December).

Forst, R., '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.

Forst, R., The Right to Justification: Elements of a Constructivist Theory of Justice, New York: Columbia University Press, 2014b.

Forst, R., 'Noumenal Power', The Journal of Political Philosophy, 23:2, 2015, pp. 111–127.

Forst, R., Normativity and Power, Oxford: Oxford University Press, 2017.

Fura, E. & Svensson, A., 'Motiveringsskyldigheten ur ett JO-perspektiv', Förvaltningsrättslig tidskrift, 2015:4, 2015, pp. 539–549.

H. v. Belgium, App. No. 8950/80, European Court of Human Rights, 30 November 1987.

Hirvisaari v. Finland, App. No. 49684/99, European Court of Human Rights, 27 September 2001.

Hohfeld, W.N., Fundamental Legal Conceptions Applied as Applied in Judicial Decisions, 3rd reprint, org. 1919, New Haven: Yale University Press, 1964.

Höffe, O., Immanuel Kant, 5th rev. ed., transl. F. Linde, Stockholm: Thales, 2004 (2000).

Högsta förvaltningsdomstolen (Supreme Administrative Court), 2011 ref. 10, case no. 7262-09, judgment of 21 June 2011.

Högsta förvaltningsdomstolen (Supreme Administrative Court), 2020 not. 34, case no. 2453-20, judgment of 23 December 2020.

Jägerskiöld, S. 'Om motiveringen av förvaltningsbeslut', Förvaltningsrättslig tidskrift, vol. 1961:6, 1961, pp. 305–328.

Kant, I., Groundwork of the Metaphysics of Morals, 2nd edn, ed. and trans. by M. Gregor and J. Timmermann, Cambridge: Cambridge University Press, 1997 (1785).

Kant, I., The Metaphysics of Morals, 2nd edn, ed. and trans. by M. Gregor and L. Denis, Cambridge: Cambridge University Press, 2017 (1797).

Koivisto, I., 'From Moral Rules to Individual Rights – and Beyond? The Institutionalization of Good Administration in Finland and in Europe', Förvaltningsrättslig tidskrift, 2018:1, 2018, pp. 71–90.

Lebeck, C. EU-stadgan om grundläggande rättigheter, 2nd rev. ed., Lund: Studentlitteratur, 2016.

Mashaw, J. L., 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance', The George Washington Law Review, 76, 2007, pp. 99–124.

Ohlsson, J., 'On the Ethical, Moral and Pragmatic Justification of Political Decisions' Ethical Thought, 19:2, 2019, pp. 87–97.

Ohlsson, J., Romare, J. & Wilske, O., "Beslutsmotivering som rättfärdigande", Förvaltningsrättslig tidskrift, vol. 2021, no. 5, 2021, pp. 889-910.

Opdebeek, I. & De Somer, S., '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.

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

Peczenik, A., On Law and Reason, New York: Springer, 2009.

Prop. 2016/17:180, En modern och rättssäker förvaltning – Ny förvaltningslag.

Reichel, J., God förvaltning i EU och i Sverige, Stockholm: Jure, 2006.

Rochel, J., 'Working in Tandem; Proportionality and Procedural Guarantees in EU Immigration Law', German Law Journal, 20, 2019, pp. 89–110.

Scanlon, T. M., What We Owe to Each Other, Cambridge, MA: Belknap Press of Harvard University Press, 1998.

Sterzel, F., Författning i utveckling – Tjugo studier kring Sveriges författning, Stockholm: Iustus, 2009.

UN Committee on the Rights of the Child (CRC), 'Concluding Observations on the Fifth Periodic Report of Sweden', 6 March 2015, CRC/C/SWE/CO/5, https://www.refworld.org/policy/polrec/crc/2015/en/108241 (accessed 3 December).

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

De Ethica (2026) 9.3:43–59
https://doi.org/10.3384/de-ethica.2001-8819.269343

Human Rights Complicity in Contemporary Manifestations of Racism: An Analysis of Sweden's Efforts to Combat Honor-Based Violence

Alexandra Lebedeva

In the article, I examine how the ideologization of human rights contributes to their complicity in contemporary forms of racism by rendering racism invisible and overlooking the risks of indirect discrimination. The analysis is contextualized by an examination of the political discourse surrounding Sweden's efforts to combat honor-based violence, where human rights and gender equality are invoked. I argue that their invocation can be interpreted as an example of the ideologization of human rights through nationalistic rhetoric and politics, with human rights being framed as "Swedish values." This interpretation of human rights risks limiting their critical potential, turning human rights into a tool for self-justification and domination rather than a genuine framework for addressing social injustices.

Introduction

Contemporary societies legitimize human rights violations in various ways: by referencing the need for legal and social order, by invoking national and international security, by appealing to traditional values, or by prioritizing the economic benefits of the majority, to name a few. Regardless of whether a political regime is democratic or nondemocratic, minorities remain particularly vulnerable to human rights violations. Paradoxically, some of these violations are even justified through reference to human rights themselves, as new laws and policies are enacted in the name of protecting these rights. While human rights frameworks are intended to uphold equal dignity for all and to serve as a framework for limiting the power of the state, certain interpretations can inadvertently reinforce racial hierarchies and inequalities. This article explores the intersection of human rights and racism, examining the underlying understandings of human rights that contribute to their complicity in contemporary forms of racism.

Drawing on critical human rights theory, I argue that human rights are always in danger of becoming ideologized and instrumentalized for the advancement of political goals and thus contribute to the complicity of human rights in contemporary forms of racism by rendering racism invisible and overlooking the risks of indirect discrimination. I begin with a critique of human rights, focusing on the dangers posed by their ideologization. The second section explores racism as a systemic form of exclusion,

emphasizing its operation through denial and colorblindness. This is followed by an analysis of a case from Sweden, where there are strong reasons to interpret the case as manifestation of racism. In conclusion, I discuss the problem of contradictory interpretations of human rights that allow human rights to be deployed to legitimize exclusion and domination.

Human Rights as Ideology

The critical theory of human rights offers a framework for understanding human rights and challenging their origins, ideological foundations, and dominant interpretations in contemporary political discourse. This critical approach arises from the recognition of an inherent tension: while human rights possess emancipatory potential and a critical impetus, they are also embedded within structures of Western political, economic, and cultural dominance.[1] Historically, those in power have often invoked human rights hypocritically to justify and legitimize injustices. Examples range from colonialism and civilizing missions to the Responsibility to Protect doctrine and legitimizations of humanitarian interventions in the name of human rights protection. Due to the historical legacy of human rights appropriation for the purpose of domination, it is essential to scrutinize political discourse surrounding human rights to mitigate the risk of their ideologization.[2]

Previous analyses of human rights ideologization have primarily focused on two key issues: the Eurocentrism of human rights and their convergence with neoliberalism. Postcolonial scholars such as Makau Mutua, Gayatri Spivak, and Chandra Mohanty argue that the international human rights regime is deeply rooted in Western values and Western historical contexts. Mutua, in particular, contends that the Eurocentric bias leads to a failure to recognize alternative perspectives and lived experiences. For human rights to effectively address injustices and uphold the principles of justice, non-discrimination, and equality, this Eurocentrism must be abandoned.[3]

The second critique of human rights ideologization examines the historical and conceptual links between human rights and neoliberalism. In her influential book *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, Jessica Whyte argues that neoliberalism promotes a distinct morality in which human rights play a central role primarily by preserving and ensuring the functioning of competitive markets.[4]

Both critiques highlight how human rights are often depoliticized and framed as an ideologically neutral set of norms and principles. The process of depoliticization can lead to a reductionist interpretation of human rights, which, together with the invocation of their neutrality, opens the door to the ideological appropriation of human rights in service of the interests of those in power. The importance of understanding human rights as political has previously been discussed in detail by such scholars as Wendy Brown,

[1] Nascimento, Amos and Lutz-Bachmann, Matthias: *A Critical Theory of Human Rights*, Routledge, Boca Raton, FL 2018.
[2] Fine, Robert: Debating Human Rights, Law, and Subjectivity: Arendt, Adorno, and Critical Theory, in Rensmann L. & Gandesha S. (eds.) *Arendt and Adorno: Political and Philosophical Investigations*, Stanford University Press, Stanford 2012, 157.
[3] Mutua, Makau: Human Rights: a Political and Cultural Critique, University of Pennsylvania Press, Philadelphia 2002, 6.
[4] Whyte, Jessica: *The Morals of the Market: Human Rights and the Rise of Neoliberalism,* Verso, London 2019.

Michael Goodheart, Nicola Perugini and Neve Gordon. Brown writes that recognizing the political dimension of human rights allows us to see that, like any political project, human rights can evolve beyond their initial aims and actions.[5] This perspective acknowledges that the objectives of human rights are shaped by social contexts and may shift over time. If we accept this view, it then becomes essential to critically scrutinize and evaluate the human rights project itself, considering the specific social contexts that shape and have shaped its development.

Racism as a System of Exclusion

Today, a plurality of theoretical perspectives on racism exists, including conceptualizations of racism as an ideology, a system, and a practice. While a comprehensive analysis of these perspectives is beyond the scope of this article, I will address the relationship between racism and human rights – specifically, how human rights can become compatible with racism. Answering this question requires two steps: first, examining how contemporary racism operates, and second, analyzing the interpretations of human rights that align with racial and discriminatory practices. I will begin with the first.

Étienne Balibar identifies linguistic obscurity as a critical condition shaping contemporary understandings and analyses of racism. Historically, racism has been understood as an ideology tied to specific instances of genocide and apartheid, such as the Holocaust, segregation in the United States, and apartheid in South Africa. These historical experiences serve as reference points for studying and understanding racism in today's society. Condemned as an unequivocal evil, racism is often attributed to others rather than acknowledged within one's own community, shaping the way it is analyzed. 6 As Dimitrina Petrova observes, "racism is rarely a self-description; it is mostly a label applied to groups or individuals by others." 7 This process of othering follows a binary logic, where the demonization of others is often accompanied by a reinforced positive self-image. In constructing this self-image, condemnation of racism and the promotion of a human rights culture frequently play a central role.

According to Stefan Jonsson, the defining characteristic of racism is exclusion. His analysis shows that the basis for exclusion is not fixed: it can shift from biological race to ethnicity, religion, culture, or language. While the forms that racism takes may change over time, its core function – regulating and controlling populations through mechanisms of inclusion and exclusion – remains constant.8

Jonsson argues that exclusion has both cultural and economic motives, shaped by references to both cultural and economic values. The economic dimension is evident in migration politics, where restrictive policies are often legitimized by asserting the limited economic capacity of welfare states to support refugees and migrants. The cultural dimension is reflected in the construction of cultural hierarchies, where the values of the

[5] Brown, Wendy: "The Most We Can Hope For . . .": Human Rights and the Politics of Fatalism, in *The South Atlantic Quarterly*, Vol. 103, No.2-3, 2004, 461.
[6] Balibar, Étienne: Racism Revisited: Sources, Relevance, and Aporias of a Modern Concept, in Comparative Racialization, Vol. 123, No. 5, 2008.
[7] Petrova, Dimitrina: Racial Discrimination and the Rights of Minority Cultures, in Fredman Sandra (ed.) *Discrimination and Human Rights*, Oxford University Press, Oxford 2001, 49.
[8] Jonsson Stefan: Rasism och nyrasism i Sverige 1993–2003, i Mattsson, Katarina & Lindberg, Ingemar (red.): *Rasismer i Europa – kontinuitet och förändring.* Agora, Stockholm 2004, 50.

national culture are portrayed as incompatible with those of migrants. One example of cultural racism is the belief that immigrant groups threaten the national culture, based on the assumption that they are either unwilling or unable to integrate and assimilate. 9 Jonsson urges us to "examine the outrageous self-contradiction inherent in the global system of exclusion unfolding before us, the fact that contemporary racism often operates under the guise of protecting universal values"10 (my translation). Human rights are among these universal values, and paradoxically, they may contribute to perpetuating racism by legitimizing exclusion.

Racism encompasses not only racist attitudes and ideologies but also social practices and institutions that perpetuate racial inequalities, even in the absence of explicit racial beliefs or convictions. In line with critical race theory, I emphasize the importance of addressing colorblindness as a component of racist structures. Colorblindness refers to the use of seemingly neutral language, such as in legal provisions, that, while not explicitly racist, results in discriminatory effects. The concept of colorblindness assumes that everyone is treated equally, without regard to race or ethnicity. This idea is often invoked in legal and political contexts to support claims of equal treatment and the protection of rights. However, it overlooks the ways in which racism operates in contemporary societies and how racial inequalities are systematically and institutionally reproduced. 11

Colorblindness is rooted in the presumed neutrality of laws and politics, which, in reality, implicitly uphold whiteness as the ideal while devaluing anything that does not conform to this standard. 12 Colorblindness is also linked to the denial of racism. Teun van Dijk argues that denial of racism operates through a combination of positive self-presentation and negative other-presentation. Positive self-presentation involves the portrayal of values such as tolerance, along with the moral and legal dismissal of racism. As van Dijk notes, "...since discrimination and racism are legally and morally prohibited, most Western countries share the official belief that therefore discrimination and racism no longer exist as a structural characteristic of society or the state" 13 (my emphasis). In other words, racism is perceived as incompatible with official ideologies, as well as with dominant democratic and humanitarian norms and ideals. The result is a positive self-image or national myth of tolerance that makes it much harder for minorities to challenge existing inequalities.

Having outlined some key dimensions of racism as a system of exclusion, I will now address the second question: which interpretations of human rights are compatible with racism and discriminatory practices? The intersection of racism and human rights has already been touched upon in this section. It has been argued that racism often operates under the guise of universal human rights, with these rights being used to legitimize exclusion. Another point of intersection involves the denial of racism through reference to human rights, particularly in framing the state's self-image as one that condemns racism and upholds human rights. Several analyses of racism in Western states highlight this

[9] Ibid., 51.
[10] Ibid., 74.
[11] Zamudio, Margaret, et al. *Critical Race Theory Matters: Education and Ideology*, Taylor & Francis Group, 2010. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uu/detail.action?docID=592906, 22.
[12] Zamudio et al, op.cit., xviii.
[13] Van Dijk, Teun A.: Discourse and the denial of racism, in *Discourse & Society*, 1992, Vol. 3, No. 1, 95.

problematic condition, which ultimately renders racism invisible.14 So, how are human rights understood and interpreted in this context?

Human rights and human rights language can be and are appropriated and used as tools to promote different political goals. The invocation of human rights and gender equality by nationalist ideologies is not a new phenomenon and has been witnessed in many national contexts, including Sweden. For instance, women's rights and gender equality were invoked to justify military intervention in Afghanistan. A narrative about "saving" Muslim women and the construction of Muslim women as victims without agency fits well into the Orientalist discourse. The discourse of women's emancipation from patriarchal oppression and advocacy for women's rights has also made up part of a nationalist rhetoric in France. This rhetoric, which is directed against the Muslim minority, invokes the ideals of gender equality and laïcité, using them as a frame of reference for evaluating issues related to religious symbols, particularly the legislative regulation of veiling.15 The underlying motive concerns the perceived threat to French national identity from Muslim and other migrants.

When human rights are appropriated for nationalist purposes, they become interpreted as a feature of a particular nation – a part of a national and cultural identity, a set of national values. National belonging based on birth, skin color, religion, or language automatically implies an embrace of, and respect for, certain values. Simultaneously, non-belonging automatically implies a lack of respect for human rights and gender equality.

The discourse surrounding human rights as national values is constructed in opposition to other cultures, which are presumed to represent different values, thereby creating cultural hierarchies with racist implications. The appropriation of human rights for the purpose of creating an "imagined community" becomes an effective way to legitimize hierarchies and subordination between those cultures that embrace human rights and those who do not. This interpretation of human rights as national values aligns closely with a nationalistic, exclusive notion of a people who share the same traditions and values. As the example of France shows, the political goal of invoking women's rights and gender equality ideals is to provide cover for restricting migration in favor of an ethnically and culturally homogenous society.

Contemporary Manifestations of Racism in Sweden: A Case of Honor-Based Violence

Drawing on the critical theoretical tradition, I will now examine the political discourse surrounding Sweden's efforts to combat honor-based violence, where human rights and gender equality are often invoked. I argue that this discourse can be interpreted as an example of the ideologization of human rights through nationalistic rhetoric and politics, as human rights are framed as "Swedish values." The discourse on Swedish values, once a hallmark of nationalist rhetoric, has now been adopted by mainstream political parties across the spectrum. While nationalist parties, such as the Sweden Democrats, explicitly promote a racist agenda aimed at creating a homogeneous society, liberal parties adopt the notion of human rights as Swedish values in the name of protecting human rights and freedoms. Regardless of their respective agendas, the result is an assertion of the exclusive

[14] Petrova, Dimitrina: Racial Discrimination and the Rights of Minority Cultures, in Fredman Sandra (ed.) *Discrimination and Human Rights*, Oxford University Press, Oxford 2001.
[15] Léonard, Marie des Neiges: *Racial Diversity in Contemporary France: the Case of Colorblindness*, Bristol University Press, Bristol 2023.

right to interpret and act upon human rights, while denying other actors the agency to interpret human rights differently.

A substantial body of research across various fields has examined honor-based violence, with particular attention to the racist implications of its discourse. In the Nordic countries, a heightened public focus on honor-based violence has been attributed to two key factors. First, in the Nordic states, racism is rarely addressed in public debate or research – unlike, for example, the United Kingdom, where discussions of race are more prevalent due to that nation's colonial history. By contrast, Nordic states are often perceived as having little connection to colonialism and thus racism. Second, the Swedish national identity is strongly rooted in the notion of gender equality, which is seen as both an established reality and a core societal value. [16] These factors – little public attention to racism and racial discrimination and the significance of gender equality for the national self-image – have given rise to two opposing positions. On the one hand, there is a strong claim for addressing honor-based violence as a distinct form of violence, since Swedish society does not accept patriarchal oppression and violence. On the other hand, this claim is criticized particularly for its *distinct* approach to honor-based violence, due to the risk of its discriminatory implications.

This opposition has been described as an opposition between feminism and multiculturalism, where multiculturalism is understood not as an inclusive notion valuing plurality and difference, but as a tolerance for violence based on cultural, traditional, and religious justifications.[17] Critics of multiculturalism often accuse it of cultural relativism and standing for the toleration of honor-based violence. As Alinia Minoo rightly argues, the majority of such criticism is directed not at the ideologies of tolerance, but at diversity and the coexistence of difference.[18] The Istanbul Convention explicitly rejects such justifications, mandating that member states criminalize and prevent violence in all forms. Sweden not only signed and ratified the Convention but also went a step further by criminalizing honor-based violence and oppression as a separate offense, called honor-based oppression (*hedersförtryck*).

Culturalization of Violence

The representation and handling of honor-based violence in Sweden have been framed through the lens of the culturalization of violence, where violence is perceived as cultural in some cases but not in others, depending on factors such as the perpetrator's ethnicity, skin color, or religion.[19] Honor-based violence is constructed in opposition to "Swedish men's violence," reinforcing the idea that the former does not belong in Swedish society. Sabine Gruber observes that honor-based violence is seen as a more brutal form, compared to Swedish male violence against women. Unlike (Swedish) men's violence, which is seen

[16] Keskinen, Suvi: "Honor-related violence and Nation-Building", in Keskinen S., Tuori S., Irni S. and Mulinari D. (eds.) *Complying with Colonialism: Gender, Race and Ethnicity in the Nordic Region*. Taylor & Francis Group, 2009, 268-269.

[17] Meetoo Veena and Safia Mirza. Heodi: There is Nothing 'Honourable' about Honour Killings": Gender, Violence and the Limits of Multiculturalism, in *Women's Studies International Forum*, Vol. 30, 2007.

[18] Minoo, Alinia: Racial Discrimination in the Name of Women's Rights: On Contemporary Racism in Sweden, in *Routledge International Handbook of Contemporary Racisms*, Routledge 2020, 333.

[19] Bruno, Linnéa: National self-image as an obstacle to ensuring children's rights in the context of domestic violence and family law: the case of Sweden, i *Journal of Social Welfare and Family Law*, Vol. 40, No. 4, 431, 436.

as a series of individual and deviant acts, honor-based violence is portrayed as institutionalized and collectively accepted.[20] This categorization of violence is closely tied to a perceived cultural and value-based conflict between Swedish values and those of "the Others."

The construction of "we" and "the Other," whether as victim or perpetrator, is marked by certain ambiguities. As Gruber rightly points out, for a Swedish person, "the Other" is not necessarily a newly arrived stranger with unfamiliar norms and values. Instead, it refers to the presumedly violent suburbs. The suburbs are areas that are, geographically, part of Swedish cities and whose residents are part of Swedish society.[21] However, these communities are repeatedly identified as bearers of honor culture.[22] In contemporary discourse, the term "parallel communities" (*parallellsamhällen*) is used to suggest systems of distinct norms and sanctions that are presumed to emerge in environments where family honor serves as a driving force, influencing the creation of rules and enforcement mechanisms that are not accepted by broader Swedish society.[23]

Like all societies, minority communities are diverse – some individuals uphold conservative ideals, while others prioritize liberal values of freedom and individual agency. Yet, regardless of their perspective, minority voices are often delegitimized as relativistic, apologetic, or racist. In the end, their actual beliefs and statements become irrelevant.

As already stated, Jonsson identifies exclusion as the core function of racism. He therefore argues that mechanisms of exclusion and admission must be thoroughly examined and analyzed. He explores this dynamic using the tragic case of Fadime Şahindal, who was murdered by her father, Rahmi Şahindal, in January 2002. While the father was portrayed in the media as a symbol of Kurdish patriarchal norms and values, Fadime – an outspoken feminist and politically active young woman – was not defined by her Kurdish origins in the same way. [24]

Jonsson discusses the public debate that followed the murder of Fadime Şahindal as an example of how a cultural conflict came to be constructed between Kurdish and Swedish cultures. In this debate, Kurdish culture was depicted as premodern and patriarchal, while Swedish culture was framed as being committed to gender equality and a refusal to tolerate men's violence against women.[25] However, Jonsson concludes that the debate did not ultimately reinforce the idea of irreconcilable cultural differences. Instead, it shifted toward the notion that these differences could be reconciled through universal human rights. In this way, he argues, universal human rights served as a façade for cultural racism.[26]

In Sweden today, the preoccupation with religious dress and the symbolic meanings of the hijab and veil has been replaced by medial and political attention on

[20] Gruber, Sabine: In the Name of Action against "Honour-Related" Violence: National Nations, Gender, and Boundaries in the Swedish School's Ambitions to Combat Violence and Oppression, in *Nordic Journal of Migration Research*, Vol. 1, No. 3, 2011, 129-130.
[21] Gruber, op.cit., 130.
[22] Minoo, op.cit., 254.
[23] SOU 2020: 57 *Ett särskilt hedersbrott. Betänkande av Hedersbrottsutredningen*. Justitiedepartementet, 14.
[24] Jonsson, op.cit., 65.
[25] Jonsson, op.cit, 63-64.
[26] Ibid., 64–65.

honor-based violence – a shift that has also been observed in other Western countries. [27] Another key aspect of the Swedish context is an institutionalization of the discourse on honor-based violence within welfare practices, particularly in social services and schools.[28] This deepens the influence of the discourse, as it extends beyond media representations and becomes embedded in the policies and practices of welfare institutions and educational systems, where it is continually reproduced and reinforced.[29]

In addition to young women, who are commonly perceived as victims of honor-based violence, the discourse has now expanded to include families, communities, and other collectives. Since honor norms are viewed as collective-centered, violence is assumed to be sanctioned by the collective. As a result, families in ethnic minority groups (e.g., Muslim or Roma families) are often depicted as practicing conservative and violent forms of upbringing.

Honor-Based Violence and Human Rights

Honor-based violence, like any other form of gender-based violence, has been a focal point of human rights research.[30] The Istanbul Convention identifies violence against women and girls, including violence carried out in the name of "honor," as a serious violation of human rights.[31] Measures and actions to combat honor-based violence are framed as efforts to uphold human rights: fighting "on the barricades for human rights."[32] In this context, honor-based violence is portrayed as alien to Swedish society and incompatible with Swedish values of human rights, gender equality, and children's rights. The "barricade for human rights" often implies a need to "civilize" those who do not know or share these values.[33]

Instead of human rights providing a legal means for protection for those exposed to violence, there is a risk that they may be interpreted in a way that reinforces the construction of honor-based violence as an ethnicized issue.34 Building on previous research, I will now analyze the most recent developments in Sweden and the initiatives taken to address honor-based violence. The analysis will be guided by the following questions: What role do human rights play in Sweden's efforts to combat honor-based

[27] Altinbas, Nihan: Honor-related Violence in the Context of Patriarchy, Multicultural Politics, and Islamophobia after 9/11, in *The American Journal of Islamic Social Sciences*, Vol. 30, No.3, 2013, 10.
[28] Keskinen, Suvi, op.cit., 262. Safia Mirza, Heidi and Veena Meetoo: Empowering Muslim Girls? Post-feminism, multiculturalism and the production of the "model" Muslim female student in *British schools, in British Journal of Sociology of Education*, Vol. 39, No. 2, 231.
[29] Sabine Gruber offers a critical analysis of the Swedish educational system's ambitions to combat honor-based violence. Based on an analysis of policy documents for school welfare staff, interviews, and participant observations in schools, Gruber shows how a perception of Swedish values as respect for human rights, gender equality, and democracy frames measures against HRV as a form of "civilization of "the Others" (Gruber, op. cit., 131)
[30] See, for example, Meetoo Veena and Safia Mirza. Heodi: There is Nothing 'Honourable' about Honour Killings": Gender, Violence and the Limits of Multiculturalism, in *Women's Studies International Forum*, Vol. 30, 2007; Grans, Lisa: A Right Not to Be Left Alone – Utilizing the Right to Private Life to Prevent Honour-related Violence, in *Nordic Journal of International Law*, Vol. 85, 2016.
[31] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), Preamble.
[32] Gruber, op.cit., 131.
[33] Gruber, op.cit., 131.
[34] Meetoo and Safia, op.cit., 195.

violence? How do human rights contribute to reinforcing racism against ethnic minorities in Sweden?

I will start by examining how the issue of honor-based violence is constructed in key political and legal documents, including the Action Programme against Men's Violence against Women, Domestic Violence and Honor-Based Violence and Oppression 2024–2026 (the "Action Program" below); the Swedish Government Official Report "A Special Honor Crime" (SOU 2020:57); and two rulings from the Örebro and Västmanland District Courts in cases where the defendants were charged with honor-based oppression.

In the legal and political materials, efforts to combat honor-based violence are framed as being driven by Sweden's international human rights obligations, including adherence to the Istanbul Convention and the Convention on the Rights of the Child. At the heart of these commitments is the principle that every individual has the right to self-determination and to live freely.

The Swedish debate on honor-based violence is highly polarized. Addressing honor-based violence presents a dilemma. On one hand, there is a risk of reinforcing racist perceptions by treating honor-based violence as separate from other forms of gender-based violence (or male violence against women). On the other hand, the use of universal terms like "gender-based violence" may overlook the specific nature of this form of violence. 35 This dilemma is not new; it emerged in the early 2000s and still generates heated debate, particularly among researchers and activists.

Politically, however, a clear stance has emerged. A culturally reductionist approach predominates that calls for treating honor-based violence as a distinct form of violence demanding distinct political measures and legal regulations. National Strategy to Prevent and Combat Men's Violence against Women (2015) includes honor-based violence as a particularly vulnerable category, alongside other groups such as women with disabilities and LGBTQI persons.36 Similarly, the Action Program places significant emphasis on honor-based violence, outlining strategies for its prevention and mitigation.37

The Action Program is a policy document outlining the government's plan for measures to be taken, division of responsibilities, and budget. It identifies honor-based violence and oppression as serious societal issues that significantly violate the human rights of those affected, including women, men, boys, and girls.38 It also uses the term "honor norms" to describe norms that restrict rights and freedoms.

The Action Program prioritizes three groups of rights: girls and women's rights, children's rights, and LGBTQI rights. Among girls and women's rights, the right to life and bodily integrity is emphasized.39 Children's rights are mentioned repeatedly, with children and young people exposed to honor-based violence and oppression identified as a particularly vulnerable group. Their vulnerability is seen as compounded by a lack of family support, as the families (parents and other relatives) are often assumed to be the perpetrators of the violence.40 The aim is thus to provide these children and young people

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[35] Carbin, Maria: The Requirement to Speak: Victim stories in Swedish Policies against Honour-related Violence, in *Women's Studies International Forum*, Vol. 46, 2014, 108.

[36] SOU 2015:55 *Nationell strategi mot mäns våld mot kvinnor och hedersrelaterat våld och förtryck. Slutbetänkande av Utredningen som ska föreslå en nationell strategi mot mäns våld mot kvinnor.*

[37] Arbetsmarknadsdepartementet, Justitiedepartementet, Socialdepartementet: *Fri och trygg utan våld och förtryck: Åtgärdsprogram för att förebygga och bekämpa mäns våld mot kvinnor, våld i nära relationer och hedersrelaterat våld och förtryck 2024-2026*, Diarienummer: A2024/00869.

[38] Ibid., 16.

[39] Ibid., 8.

[40] Ibid., 22-23.

with help and support, as well as to inform them about their rights and freedoms.41 Finally, the document highlights LGBTQI rights as part of Sweden's international efforts to promote equality and equal rights for LGBTQI individuals.42

The Action Program proposes that the civic orientation course (samhällsintroduktion) for asylum seekers and migrants with temporary residence permits, organized by the Migration Board, should include information about gender equality and honor-based violence. The proposed content of the course is outlined as follows:

> To strengthen knowledge about Swedish society and clarify the expectations placed on individuals, the government has tasked a special investigator with reviewing the civic orientation [course] (dir. 2023:169). Among other things, the investigator will propose new content with a greater emphasis on gender equality. It is crucial to make clear that gender equality is a fundamental value in Swedish society, encompassing issues such as freedom from honor-based violence and oppression, as well as children's rights.[43]

This analysis of the Action Program reinforces findings from previous research. It is a document that constructs human rights and gender equality as inherently Swedish values – values that asylum seekers and migrants are presumed not to share and which they therefore need to be taught.

The Action Program is one of the central Swedish policy documents on gender-based violence. Given its overarching theme, the primary rights in focus concern physical integrity, personal freedom, and protection from violence. While this focus is crucial, it means that the document primarily addresses interpersonal violence: violence directed at an individual. This begs the question: should these violations be interpreted as *human rights* violations?

If human rights are understood as legitimate claims directed toward the state as the primary duty-bearer, as I argue they should be, then the state's role in upholding human rights extends beyond merely acknowledging individual harm. It entails a duty to take proactive measures to prevent, protect, and prosecute acts of violence. This broader perspective expands the scope of rights, emphasizing the relationship between individuals as rights-holders and the state as the duty-bearer. It also demands a more comprehensive interpretation of the state's human rights obligations, particularly regarding the principle of non-discrimination and its application to human rights and freedoms. However, in discussions of gender-based violence in general and honor-based violence in particular, there is a tendency to position the perpetrator (e.g., a partner or family member) as the primary duty-bearer.[44] This tendency effectively shifts responsibility away from the state, undermining its obligations to uphold and enforce human rights protections.

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[41] Ibid, 23, 57.

[42] *Fri och trygg utan våld och förtryck: Åtgärdsprogram för att förebygga och bekämpa mäns våld mot kvinnor, våld i nära relationer och hedersrelaterat våld och förtryck 2024-2026*, 9.

[43] Ibid., 39-40.

[44] See Elena Namli's blog post on expansion of duty-agency: "The Duty-Bearers of the Rights of the Child", in *Berkley Journal of International Law*, December 2024. Accessible at: https://www.berkeleyjournalofinternationallaw.com/post/the-duty-bearers-of-the-rights-of-the-child

Crime of Honor-Based Oppression

As previously noted, Sweden, unlike other members of the Council of Europe, has criminalized honor-based violence with the introduction of the specific offense of honor-based oppression in 2022. According to the Criminal Code, honor-based oppression is defined by motive, specifically the intent to preserve or restore an individual's or family's honor. [45]

During the legislative process, several critical concerns were raised, including the potential for discrimination against ethnic minorities and the argument that the law contradicts the principle of generality.[46] The preparatory work also highlighted broader objections to establishing a separate offense, such as the difficulty of defining and delineating which actions and individuals would be covered, the applicability of existing legislation, and the challenge of defining "honor" within a legal framework. [47] It has been acknowledged that implementing this legislation will be complex. Previous research has also underscored the difficulties involved in addressing honor-based violence through legal mechanisms.[48]

In connection with the law on honor-based oppression, the government asked an investigator to assess whether a specific criminal provision should be added to the Criminal Code to explicitly address honor-based violence and oppression.[49] In their official report, the investigator examined various considerations related to the definition of "honor" and "honor-based" violence, acknowledging that there is no clear consensus as to how these terms should be defined and suggesting that they must be understood and interpreted contextually. [50]

The way these terms are defined is crucial, as their inherent ambiguities open the door to for arbitrary interpretations and legal judgments. In Swedish discourse, there has been a shift in terminology from "honor-based thinking" (*hederstänkande*), a term used in a 2007 action plan, to "honor cultures" and "honor contexts." In the 2007 action plan, the government deliberately avoided the term "culture", emphasizing "honor-based *thinking*" to prevent linking honor-based violence to any specific religion or culture. However, the 2020 report states that "honor context" and "honor culture" are now widely accepted terms and that honor culture constitutes a distinct cultural framework of its own. [51] The report also suggests that avoiding a cultural link in earlier discussions was, in part, misleading. [52]

Apart from considerations of such legal principles as the principle of last resort (*ultima ratio*), proportionality, and legality, the criminalization of honor-based violence has also been debated in relation to the risk of discrimination. As previously noted, concerns were raised about violating the principle of the generality of the law. Ultimately, the risk

[45] The Criminal Code (Brottsbalken) 4 kap. 4e§.
[46] Consultation responses (Remissvar), Acessibble at:
https://www.regeringen.se/remisser/2020/10/remiss-av-sou-202057-ett-sarskilt-hedersbrott/
[47] Dir. 2017:25 *Utredningen om starkare skydd mot barnäktenskap, tvångsäktenskap och brott med hedersmotiv*. Justitiedepartement.
[48] See, for example, Lidman, Satu och Hong, Tuuli: "Collective violence" and honour in Finland: a survey for professionals, i *Journal of Aggression, Conflict and Peace Research*, Vol. 10, No. 4, 2018, 261-271; and Eldén, Åsa och Westerstrand, Jenny: "Hederns försvarare. Den rättsliga hanteringen av ett hedersmord", i *Kvinnovetenskaplig Tidskrift*, Vol. 3, No. 4.
[49] Kommittédirektiv 2019:43. *Straffansvar för hedersrelaterat våld och förtryck*. Justitiedepartement.
[50] SOU 2020:57, 99.
[51] SOU 2020:55, 101.
[52] SOU 202:55, 102.

of discrimination was largely dismissed, with the exception of a footnote in the official report stating:

> At first glance, discrimination based on ethnic origin may seem like a relevant factor in discussions of honor-based violence. However, we emphasize that honor culture exists among people of diverse ethnic backgrounds and religious affiliations. It cannot be concluded that honor-based acts are committed by perpetrators or experienced by victims solely due to their ethnicity or religious beliefs. That said, the degree of religiosity can be linked to the occurrence of honor-based violence and other forms of oppression.[53]

In other words, the report finds no conflict between discrimination prohibitions and the criminalization of honor-based violence as its own offense, defined by the motive of restoring honor. The argument is that, while religion and a high degree of religiosity may increase the risk of honor-based violence, such violence can also occur outside of a religious context.[54] The investigator simultaneously confirms that it is tenable to use the term "honor culture" to indicate a distinct cultural framework, without attributing it to any specific culture or religion. The risk of indirect discrimination,[55] where a seemingly neutral legal provision may disproportionately disadvantage individuals of certain ethnic or religious backgrounds that are assumed to represent "honor culture," is neither acknowledged nor discussed.

Subsequent case law clearly demonstrates this imminent risk of discrimination. The first case I will discuss, in which a family was convicted of honor-based oppression, came before the court in 2023. It involved a young woman who had been subjected to years of threats and abuse by her family members. According to the prosecutor, the woman sought independence, wanted to make her own decisions, and had begun a romantic relationship with a man of whom her family did not approve.[56]

The District Court of Västmanland found her parents and brother guilty of the newly established crime of honor-based oppression. As noted, the defining element of this crime is its motive: specifically, the intent to preserve or restore one's honor, distinguishing it from other offenses, such as the violation of a woman's integrity (*kvinnofridskränkning*). The motive-based nature of the offense makes it particularly important to examine how the motive is framed in judicial rulings.

In presenting the case, the prosecutor emphasized the family's Iraqi background, describing Iraq as a country with a strong patriarchal structure and noting that the family belonged to the Mandaean community, an ethnic and religious minority in Iraq. According to Mandaean norms, the prosecutor claimed, both men and women are expected to remain virgins until marriage and must marry within their community. The prosecutor concluded that the family operated within an honor context that imposed specific norms on the young woman.[57]

Another notable case of honor-based oppression involved the murder of a pregnant woman. Here, the prosecutor argued that the crime was honor-motivated based on the offender's Somali background. The Örebro District Court's reasoning relied heavily on cultural explanations, stating:

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[53] SOU 2020:55, footnote 16.
[54] SOU 2020:55, 161.
[55] Discrimination Act, 2008:567, chapter 1, section 4.
[56] The Västmanlands District Court, B 3572-23, 2023.08.16
[57] The Västmanlands District Court, B 3572-23, 2023.08.16, 11.

> Through his statement[58] and testimony at the District Court, which are largely supported by Somalia expert journalist Per Brinkemo, the prosecutor demonstrated that, within the Somali clan structure, honor is considered more important than blood ties and love. The Court finds that the prosecutor had shown that Amin's motive for killing Saga was rooted in honor, as he risked being ostracized if his family or clan did not accept his marriage to her. [59]

The application of the honor-based oppression law in both cases shows how cultural and ethnic background become central in legal reasoning, reinforcing stereotypes and leading to the disproportionate targeting of certain minorities. The way the courts interpret "honor contexts" and "honor culture" in assessing motive illustrates how law, presumed to be neutral and colorblind, can actually reinforce racial inequalities and results in indirect discrimination.

The establishment of honor-based violence as a criminal offense carries discriminatory implications for the specific ethnic minority groups assumed to practice honor norms. Broad definitions of honor norms and honor contexts, both in legislation and policy documents, open the door to arbitrary interpretation, which has serious consequences for the legal system as a whole and can severely impact the rule of law and legal certainty in specific cases.

In the Name of Human Rights

Having presented recent developments in Sweden regarding efforts to combat honor-based violence, I will now turn to the question of the role that human rights play in Sweden's approach to this issue, and how the application of human rights frameworks may, in some instances, reinforce racism against ethnic minorities.

Human rights are central to Sweden's efforts to address honor-based violence, particularly through Sweden's adherence to international conventions such as the Istanbul Convention and the Convention on the Rights of the Child. Sweden has positioned itself as an advocate for the protection of individual freedoms, gender equality, and the right to live free from violence. However, when human rights are invoked to combat honor-based violence, there is a risk that these rights may be selectively applied in ways that disproportionately target certain ethnic or religious communities.

This dynamic is particularly evident in the way Sweden has constructed the national narrative around honor-based violence. By framing the issue through the lens of human rights, Sweden emphasizes a need to "civilize" children and young people, asylum seekers, and migrants seen as not fully aligned with Swedish values. This interpretation of human rights inadvertently perpetuates discriminatory practices by constructing cultural hierarchies and viewing minority communities as in need of moral reform.

The culturalization of violence relies on an explanatory model that attributes violence to specific cultural values and norms perceived as inherent to certain groups. In the context of honor-based violence, a paradox emerges. On one hand, terms like "honor cultures," "honor norms," and "honor contexts" are frequently

[58] The statement of Devin Rexvid, an expert in honor-based violence.
[59] The Örebro District Court, B 2686-23, 2024.06.05, 38.

used in policy documents and public debates. These concepts are associated with rigidly conservative, patriarchal, and homophobic norms primarily aimed at controlling women's sexuality to preserve family honor. Over time, these ambiguous terms have become internalized in Sweden as legitimate knowledge. [60]

On the other hand, these so-called "honor norms" are often juxtaposed with universal human rights, which are simultaneously framed as Swedish values. In this framing, human rights are presented not only as universal principles that should be upheld by all, but also as uniquely Swedish ideals, integral to the nation's identity. Gender equality, in particular, is portrayed not only as a global goal but as a central tenet of Swedish society.

As Jonsson notes, the reconciliation between these conflicting sets of norms occurs through the invocation of universal human rights, which are used to critique harmful practices associated with honor norms while simultaneously reaffirming Sweden's own commitment to these values. Human rights, in this narrative, become a tool for highlighting the superiority of Swedish values over those perceived as "foreign" and "backward."

However, this interpretation of human rights carries significant risks. Even as human rights are wielded as a tool for critiquing and condemning practices linked to certain cultural norms, Sweden is prevented from critical reflection on its own violations of human rights, particularly those affecting minorities. By framing Swedish values as synonymous with human rights, a danger arises of making human rights into a unilateral and unquestionable force, effectively silencing any critiques of the state's own shortcomings. This undermines the political dimension of human rights and their potential to be genuinely emancipatory. In this way, the narrative of Swedish human rights exceptionalism risks limiting the critical potential of the concept of human rights, turning it into a tool for self-justification rather than a genuine framework for addressing social injustices.

The recent developments in Sweden and elsewhere clearly demonstrate how, despite different political agendas, both nationalist and liberal movements use the language of human rights.[61] Paradoxically, human rights are used not only to address social injustices but also for the purpose of subjugation and domination. Therefore, as I have argued earlier, human rights should be treated as a political project and, as such, open to different and contested interpretations. If human rights are presented as ideologically neutral and apolitical, they risk becoming ideologized and misused to serve the interests of those in power.[62]

The plurality of perspective and political disagreements have been neutralized for the sake of political compromise. For a long time, the liberal

[60] Minoo, Alinia: White Ignorance, Race, and Feminist Politics in Sweden, in *Ethnic and Racial Studies*, Vol. 43, No. 16, 2020, 252.
[61] Perugini, Nicola and Gordon, Neve: *The Human Right to Dominate*, Oxford University Press, Oxford 2015.
[62] Brown, Wende, op.cit., 463.

perspective on human rights has dominated, pursuing the ideal of neutrality and an apolitical understanding of human rights. However, it is specifically the politicization of human rights – their interpretation in relation to current social contexts and problems – that will make it possible to reclaim their emancipatory potential. A critique of the ideologization of human rights does not preclude the fact that all interpretations of human rights are ideological. But when human rights are appropriated by power, they come to operate in its service instead of limiting it.

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Bibliography

Altinbas, Nihan: Honor-related Violence in the Context of Patriarchy, Multicultural Politics, and Islamophobia after 9/11, in *The American Journal of Islamic Social Sciences*, Vol. 30, No.3, 2013.

Arbetsmarknadsdepartementet, Justitiedepartementet, Socialdepartementet: *Fri och trygg utan våld och förtryck: Åtgärdsprogram för att förebygga och bekämpa mäns våld mot kvinnor, våld i nära relationer och hedersrelaterat våld och förtryck 2024-2026*, Diarienummer: A2024/00869.

Balibar, Étienne: Racism Revisited: Sources, Relevance, and Aporias of a Modern Concept, in *Comparative Racialization*, Vol. 123, No. 5, 2008.

Brown, Wendy: ''The Most We Can Hope For . . .'': Human Rights and the Politics of Fatalism, in *The South Atlantic Quarterly*, Vol. 103, No.2-3, 2004.

Bruno, Linnéa: National self-image as an obstacle to ensuring children's rights in the context of domestic violence and family law: the case of Sweden, i *Journal of Social Welfare and Family Law*, Vol. 40, No. 4.

Carbin, Maria: The Requirement to Speak: Victim stories in Swedish Policies against Honour-related Violence, in *Women's Studies International Forum*, Vol. 46, 2014.

Consultation responses (Remissvar), Accessible at: https://www.regeringen.se/remisser/2020/10/remiss-av-sou-202057-ett-sarskilt-hedersbrott/

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210).

Dir. 2017:25 *Utredningen om starkare skydd mot barnäktenskap, tvångsäktenskap och brott med hedersmotiv*. Justitiedepartement.

Discrimination Act, 2008:567.

Eldén, Åsa och Westerstrand, Jenny: "Hederns försvarare. Den rättsliga hanteringen av ett hedersmord", i *Kvinnovetenskaplig Tidskrift*, Vol. 3, No. 4.

Fine, Robert: Debating Human Rights, Law, and Subjectivity: Arendt, Adorno, and Critical Theory, in Rensmann L. & Gandesha S. (eds.) *Arendt and Adorno: Political and Philosophical Investigations*, Stanford University Press, Stanford 2012.

Fredman, Sandra: *Discrimination and Human Rights*, Oxford University Press, Oxford 2001.

Grans, Lisa: A Right Not to Be Left Alone – Utilizing the Right to Private Life to Prevent Honour-related Violence, in *Nordic Journal of International Law*, Vol. 85, 2016.

Interview with the Minister on Gender Equality, Paulina Brandberg, Accessible at: https://www.sverigesradio.se/artikel/jamstalldhetspolitiken-andras-hedersvald-sarskiljs

Jonsson Stefan: Rasism och nyrasism i Sverige 1993–2003, i Mattsson, Katarina & Lindberg, Ingemar (red.): *Rasismer i Europa – kontinuitet och förändring*. Agora, Stockholm 2004.

Keskinen, Suvi: "Honor-related violence and Nation-Building", in Keskinen S., Tuori S., Irni S. and Mulinari D. (eds.) *Complying with Colonialism: Gender, Race and Ethnicity in the Nordic Region*. Taylor & Francis Group, 2009.

Kommittédirektiv 2019:43. *Straffansvar för hedersrelaterat våld och förtryck*. Justitiedepartement.

Léonard, Marie des Neiges: *Racial Diversity in Contemporary France: the Case of Colorblindness*, Bristol university Press, Bristol 2023.

Lidman, Satu och Hong, Tuuli: "Collective violence" and honour in Finland: a survey for professionals, i *Journal of Aggression, Conflict and Peace Research*, Vol. 10, No. 4, 2018, 261-271.

Meetoo Veena and Safia Mirza, Heidi: There is Nothing 'Honourable' about Honour Killings": Gender, Violence and the Limits of Multiculturalism, in *Women's Studies International Forum*, Vol. 30, 2007.

Minoo, Alinia: Racial Discrimination in the Name of Women's Rights: On Contemporary Racism in Sweden, in Routledge International Handbook of Contemporary Racisms, Routledge 2020.

Minoo, Alinia: White Ignorance, Race, and Feminist Politics in Sweden, in *Ethnic and Racial Studies*, Vol. 43, No. 16, 2020.

Mutua, Makau: *Human Rights: a Political and Cultural Critique*, University of Pennsylvania Press, Philadelphia 2002.

Namli, Elena: Mänskliga rättigheter när rasismen normaliseras, i Bremdal och Ohlsson (red.): Mänskliga rättigheter i teori och praktik: från idé till förvaltning, Studentlitteratur, Lund 2020.

Namli, Elena: "The Duty-Bearers of the Rights of the Child", in *Berkley Journal of International Law*, December 2024. Accessible at: https://www.berkeleyjournalofinternationallaw.com/post/the-duty-bearers-of-the-rights-of-the-child

Nascimento, Amos and Lutz-Bachmann, Matthias: *A Critical Theory of Human Rights*, Routledge, Boca Raton, FL 2018.

Petrova, Dimitrina: Racial Discrimination and the Rights of Minority Cultures, in Fredman Sandra (ed.) *Discrimination and Human Rights*, Oxford University Press, Oxford 2001.

Perugini, Nicola and Gordon, Neve: *The Human Right to Dominate*, Oxford University Press, Oxford 2015.

Regeringskansliet*: Nytt delmål för att bekämpa hedersvåldet*, January 21, 2025. Accessible at: https://www.regeringen.se/pressmeddelanden/2025/01/nytt-delmal-for-att-bekampa-hedersvaldet/

Safia Mirza Heidi and Veena Meetoo: Empowering Muslim Girls? Post-feminism, multiculturalism and the production of the "model" Muslim female student in British schools, in *British Journal of Sociology of Education*, Vol. 39, No. 2

SOU 2015:55 *Nationell strategi mot mäns våld mot kvinnor och hedersrelaterat våld och förtryck. Slutbetänkande av Utredningen som ska föreslå en nationell strategi mot mäns våld mot kvinnor.*

SOU 2020: 57 *Ett särskilt hedersbrott. Betänkande av Hedersbrottsutredningen*. Justitiedepartementet

Strategi för Sveriges globala utvecklingssamarbete inom migration, återvändande och frivillig återvandring 2024–2028, oktober 2024, Accessible at https://www.regeringen.se/strategier-for-internationellt-bistand/2024/10/strategi-for-sveriges-globala-utvecklingssamarbete-inom-migration-atervandande-och-frivillig-atervandring-20242028/

The Criminal Code (Brottsbalken) 4 kap. 4e§.

The Västmanlands District Court, B 3572-23, 2023.08.16.

The Örebro District Court, B 2686-23, 2024.06.05.

Van Dijk, Teun A.: Discourse and the denial of racism, in *Discourse & Society*, 1992, Vol. 3, No. 1.

Whyte, Jessica: *The Morals of the Market: Human Rights and the Rise of Neoliberalism*, Verso, London 2019.

Zamudio, Margaret, Russell, Christopher, Rios, Francisco, and Bridgeman, Jacquelyn L.: *Critical Race Theory Matters: Education and Ideology*, Taylor & Francis Group, 2010. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uu/detail.action?docID=592906

De Ethica (2026) 9.3:60–76
https://doi.org/10.3384/de-ethica.2001-8819.269360

The Capability Approach as a Normative Framework for Urban Biodiversity Management: Strong Points and Unresolved Issues

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The Capability Approach (CA) has since the 1990s become one of the most influential theories of justice. It has been proven to be helpful for analysing both questions of social, environmental and multispecies justice. This article contributes to the debate on the usefulness of the CA in the context of ecological sustainability by evaluating its appropriateness as a normative framework for urban biodiversity management. The paper concludes that in its present form, it is uncertain whether the CA is suitable as a normative framework in this context. Its multidimensional view of human welfare can be considered a strong point, but there are also important unresolved issues. There are reasons for considering a redefinition of the concept of capability as it is problematic to apply to animals and even more so to plants. Finally, the question of whether collective entities should be considered for their own sake within the CA challenges the ethical individualism that is a core assumption in most formulations of the CA.

Introduction

The Capability Approach (CA) has since the 1990s become one of the most influential theories of justice. It has been proven to be useful for analysing both questions of social, environmental and multispecies justice.[1] This article contributes to the debate on the usefulness of the CA in the context of ecological sustainability by evaluating its appropriateness as a normative framework for urban biodiversity management. At the same time, it contributes to the debate on urban biodiversity management and justice. Today, there is an increasing interest in protecting biodiversity in urban settings among

[1] Amartya Sen, *Inequality Reexamined* (Oxford: Clarendon Press, 1992), Ortrud Lessmann & Felix Rauschmayer. 2013; "Re-conceptualizing Sustainable Development on the Basis of the Capability Approach: A Model and Its Difficulties," *Journal of Human Development and Capabilities,* 14 (1), pp. 95-114; Martha C. Nussbaum, *Justice for Animals: Our Collective Responsibility* (New York: Simon & Schuster, 2022).

municipal planners and scientists, as well as residents and community groups.[2] At the same time, urban residents often do not have equal access to biodiversity. Areas where citizens have high socioeconomic status is often characterized by better access to green spaces.[3] The current inequalities have made scholars increasingly interested in analysing urban biodiversity management from a justice perspective.[4] In addition, it is necessary to acknowledge the question of whether urban biodiversity and its components should be considered for their own sake within the CA, regardless of their value for humans.

The reason for focusing especially on *urban* biodiversity is that ethical discussions on biodiversity management have so far concerned primarily non-urban settings. In an article from 2001, Light[5] identifies an "urban blind spot in environmental ethics" which is connected with the fact that environmental ethicists often value wilderness much higher than natural areas created by or heavily modified by humans. Although some scientific works on urban environmental ethics have been published more recently, partly as a response to Light's call for more attention to urban contexts[6], the ethics of urban nature conservation remains a relatively unexplored area. Therefore, there is a gap in the research field that needs to be filled.

The article starts with a brief description of the concept and phenomenon of urban biodiversity and of the CA. Then I discuss what can be considered the strong points of the CA as a normative framework for urban biodiversity. Finally, I discuss some unresolved issues that raises questions about the usefulness of the CA in this context.

The concept of urban biodiversity

Biodiversity is a concept with many possible definitions and there is currently no consensus on how it should be defined. The most well-known definition is the one presented in the UN Convention on Biological Diversity that states that: "biological diversity" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems".[7] However, many other definitions have been proposed, based on characteristics, such as richness, difference, and rarity. There have been some attempts to define biodiversity in a

[2] Archana Bele and Ujwala Chakradeo, "Public Perception of Biodiversity: A Literature Review of its Role in Urban Green Spaces," *Journal of Landscape Ecology*, 14:2, (2021), pp. 1-28.
[3] Jennifer R. Wolch, Jason Byrne and Joshua P. Newell. "Urban green space, public health, and environmental justice: The challenge of making cities 'just green enough", *Landscape and Urban Planning,* 125 (2014), pp. 234-244.
[4] Max R. Lambert and Christopher J. Schell, "Cities as the Solution to the Biodiversity Crisis," in *Urban Biodiversity and Equity: Justice-centered conservation in cities*, edited by Max R. Lambert and Christopher J. Schell, (Oxford: Oxford University Press, 2023), pp. 1-21.
[5] Andrew Light, "The Urban Blind Spot in Environmental Ethics", *Environmental Politics,* 10:1 (2001), pp. 7-35.
[6] Clare Palmer, "Placing Animals in Urban Environmental Ethics", *Journal of Social Philosophy,* 34:1 (2003), pp. 64-78; Diane P. Michelfelder, "Valuing Wildlife Populations in Urban Environments." *Journal of Social Philosophy,* 34:1 (2023), pp. 79-90; Samantha Noll, "History Lessons: What Urban Environmental Ethics Can Learn from Nineteenth Century Cities", *Journal of Agricultural and Environmental Ethics*, 28 (2015), pp. 143-159.
[7] UN (1992). *Convention on Biological Diversity.*

more narrow sense than in the UN definition to make it operationalizable.[8] Here I adhere to a pluralistic view of the concept according to which definitions may vary between contexts.[9] In policy documents and in the social scientific debate on biodiversity,[10] the concept of biodiversity is often defined in a rather broad sense as biological variation at different levels, both within and between species and between ecosystems. Thus, for the purpose of this article, a broad definition of biodiversity as biological variation at all these levels seems most appropriate.

Urban biodiversity can be defined as the diversity of living beings in urban areas.[11] However, what should be considered as urban areas is not obvious and the definitions vary between different disciplines. Social scientists often define urban areas in terms of population density and environmental scientists in terms of dominant land cover. Here, I define urban areas based on population density and follow the definition Degree of Urbanisation endorsed by the UN Statistical Commission. It considers cities, towns and semi-dense areas as belonging to the category of urban areas and defines them in the following way:

1. **An urban centre** consists of contiguous grid cells of 1 km² that have a density of at least 1500 inhabitants per km². The contiguous cells should have a total population of at least 50,000. Gaps in these urban centres are filled and edges are smoothed. This defines a **city.**

2. **An urban cluster** consists of contiguous grid cells with a density of at least 300 inhabitants per km². The contiguous cells should have a total population of at least 5000; This defines a **town and semi-dense area.**[12]

The capability approach

As mentioned, I have chosen to apply the CA to ethical questions of urban biodiversity managements as its usefulness for analysing both questions of social and environmental justice has been demonstrated. Amartya Sen and Martha Nussbaum are the two most influential pioneers within the capability approach. Sen first developed the capability approach as an alternative to traditional Utilitarian theories in welfare economics, and later

[8] Sahotra Sarkar, "Approaches to biodiversity," in *Routledge Handbook of Philosophy of Biodiversity,* edited by Justin Garson, Anya Plutynski and Sahotra Sarkar, (Milton Park, Abingdon, Oxfordshire: Routledge, 2016), pp. 43-55.
[9] David M. Frank, "Biodiversity" and biological diversities: Consequences of pluralism between biology and policy," in *Routledge Handbook of Philosophy of Biodiversity*, edited by Justin Garson, Anya Plutynski and Sahotra Sahar, (Milton Park, Abingdon, Oxfordshire: Routledge, 2016), pp. 96-109.
[10] European Environment Agency. "Biodiversity – Ecosystems," https://www.eea.europa.eu/themes/biodiversity/intro (retrieved 2024-06-07), Bele and Chakradeo, "Public Perception of Biodiversity".
[11] P. Farinha-Marques, J.M. Lameiras, C. Fernandes, S. Silva and F. Guilherme. "Urban biodiversity: a review of current concepts and contributions to multidisciplinary approaches," *Innovation: The European Journal of Social Science Research,* 24:3 (2011), pp. 247-272.
[12] Dijkstra, Lewis, Aneta J. Florczyk, Sergio Freire, Thomas Kemper, Michele Melchiorri, Martino Pesaresi and Marcello Schiavina. "Applying the Degree of Urbanisation to the globe: A new harmonization reveals a different picture of global urbanization," *Journal of Urban Economics,* 125 (2021), 103312, p. 2.

Nussbaum put forward her version of the capability approach (labelled "the capabilities approach") which she describes as a minimal theory of justice.[13]

"Capability" is, of course, a central concept within the capability approach, which is defined in contrast to functionings. While the concept of functionings stands for what people are or do, such as being a father or working as a carpenter, a capability stands for an opportunity to function in a specific way. Within the capability approach, freedom to live the kind of life one wants is a central value.[14]

One of the most significant differences between Sen's and Nussbaum's versions of the capability approach is that Nussbaum advocates a set list consisting of the following capabilities: 1) Life; 2) Bodily Health; 3) Bodily Integrity; 4) Senses, Imagination, and Thought; 5) Emotions; 6) Practical Reason; 7) Affiliation; 8) Other Species; 9) Play, and 10) Control over One's Environment.[15] By contrast, Sen[16] is critical of formulating a set list as he thinks that a list needs to be based on democratic deliberation in specific contexts.

Strong points of the CA

A multidimensional view of the importance of urban biodiversity for human well-being and freedom

Discussing issues of social justice within the CA has a long tradition, and its strongest point as a normative framework for urban biodiversity management is its multidimensional view of human well-being and freedom. This enables a nuanced understanding of what impact urban biodiversity has on human beings. In contrast to mainstream utilitarian and opulence-based approaches, the CA recognises that human well-being and freedom has many dimensions that cannot be reduced to monetary measures. A loss of urban biodiversity cannot always be compensated for through increases of income or wealth.[17]

To analyse how urban biodiversity affect the different capabilities, we first need to clarify how biodiversity can be of instrumental value for city residents, in other words in what sense it can be valuable as a means to an end, in this case human well-being. As mentioned, environmental ethicists often value wilderness higher than nature created by or heavily modified by humans. However, urban biodiversity can have considerable instrumental value, even if it is made by humans. The instrumental value of individual living beings is more direct than the value of biodiversity, because it is individual living beings that humans directly receive value from as they are the source of environmental goods and services —commonly labelled as "ecosystem services" – that ecosystems provide.[18] However, biodiversity can have an indirect instrumental value if it is the

[13] Amartya Sen, *Inequality Reexamined,* (Oxford: Clarendon Press, 1992); Martha C. Nussbaum, *Women and Human Development. The Capabilities Approach,* (Cambridge: Cambridge University Press, 2000). According to Sen's original use of the term, a person has only one capability, or capability set, which consists of the combinations of functionings that he or she can achieve. However, other capability scholars, such as Nussbaum, use the concept to denote a potential functioning, and therefore a person's capability set consists of a number of capabilities. In this article, I adhere to the latter use of the term capability as it has become dominant in the scientific debate.

[14] Sen, *Inequality Reexamined,* pp. 40-42; Nussbaum, *Women and Human Development,* pp. 87-88.

[15] Nussbaum, *Women and Human Development*, pp. 78-80.

[16] Sen, Amartya, *The Idea of Justice,* (London: Allen Lane, 2009).

[17] Lessmann & Rauschmayer, "Re-conceptualizing Sustainable Development"; Sudhir Anand and Amartya Sen," Human Development and Economic Sustainability", *World Development,* 28:12 (2000), pp. 2029-2049.

[18] Millenium Ecosystem Assessment, *Ecosystems and Human Well-Being: Synthesis*, (Washington, D.C.: IslandPress, 2005)

precondition of the existence of individual living beings. Instrumental values can be linked to one another in chains.[19] Some living beings belonging to species A may have direct instrumental value because of the goods they provide, while these beings are dependent on the biodiversity in the ecosystem in which they live. Thus, biodiversity may have derivative instrumental value. It should be acknowledged that biodiversity may have different forms of instrumental value, both material ones as a certain level of biodiversity is a precondition for human survival and health and immaterial ones as it is a source of aesthetic enjoyment and recreation.

The CA is helpful for attaining a better understanding of how human welfare depends on a certain level of urban biodiversity by analysing its impact on different capabilities. Taking the capabilities on Nussbaum's list of 10 central capabilities as examples, it seems clear that a certain diversity of urban plant species is needed as urban plants provide humans with ecosystem services that are necessary for the capabilities of life and bodily health. For example, they regulate the levels of oxygen in the atmosphere and improve air quality.[20] As for the diversity of animal species in urban settings, some non-domesticated urban animals also perform ecosystem services that can be important for the capability of bodily health. Scavengers, such as magpies, crows, and foxes, perform three different ecosystem services: they increase stability within food webs, distribute nutrients both across the borders of ecosystems and within ecosystems, and play a crucial hygienic role by removing sources of pathogens and toxins.[21] Moreover, urban plants and non-domesticated animals have recreational and aesthetic value, and therefore urban biodiversity positively affects the capability of senses, imagination and thought, as well as the capabilities of emotions and play.[22] Furthermore, the capability of other species is obviously dependent on a certain level of biodiversity.

One central difference between different theories of distributive justice concerns the unit of distribution. For the CA, capabilities are the units of distribution, while welfarists regards instead regard welfare – defined as the satisfaction of desires or preferences – as the correct currency of justice. Resourcist theories of justice instead see material resources as the correct unit of distribution.[23] It can be argued that compared with the other two forms of theories, the CA has certain advantages that are relevant in the context of urban biodiversity management. As for welfarist theories, one central problem consists of the fact that individuals often adapt their preferences to their specific living conditions.[24] For example, urban residents growing up in a poor district with no or very

[19] Patrik Baard, *Ethics in Biodiversity Conservation* (Routledge Studies in Conservation and the Environment), (London: Routledge, 2021), p. 62.
[20] David J. Nowak, Daniel E. Crane and Jack C. Stevens, "Air pollution removal by urban trees and shrubs in the United States," *Urban forestry & urban greening*, 4 (2006), pp. 115-123.
[21] Richard Inger, Daniel T. C. Cox, Esra Per, Briony A. Norton and Kevin J. Gaston, "Ecological role of vertebrate scavengers in urban ecosystems in the UK", *Ecology and Evolution*, 6 (2016), pp. 7015-7023.
[22] Emma Wood, Alice Harsant, Martin Dallimer, Anna Cronin de Chavez, Rosemary R. C. McEachan and Christopher Hassall, "Not All Green Space Is Created Equal: Biodiversity Predicts Psychological Restorative Benefits From Urban Green Space," *Frontiers in Psychology*, 9 (2018), article 2320; Lin Qiu, Stefan Lindberg and Anders B. Nielsen, "Is biodiversity attractive? – On-site perception of recreational and biodiversity values in urban green space," *Landscape and Urban Planning,* 119 (2013), pp. 136-146.
[23] Edward A. Page, "Intergenerational justice of what? Welfare, resources or capabilities?", *Environmental Politics,* 16:3 (2007), pp. 453-469.
[24] Nussbaum, *Women and Human Development,* p. 136.

small greenspaces and thus a very low level of biodiversity, may be accustomed to the situation and do not prefer a higher level. From a welfarist perspective, it may not be considered unjust that they live in an area with much lower biodiversity than residents in richer neighbourhoods as they do not have more unsatisfied preferences, which seems counterintuitive. As for resourcist theories, one problem is that individuals with the same resources may have different possibilities to use them, due to different characteristics. For example, two individuals that live in the same area and have the same distance to a large park have different possibilities to enjoy it if one of them is disabled and cannot afford a wheelchair. Therefore, the disabled person may need more resources in order to live an equally good life, which conflicts with resourcist theories of justice. In the context of urban biodiversity management, it can be seen as an advantage of the CA that it is focused on what people can actually be or do, rather than on whether their preferences are satisfied or what material resources they have.[25]

To conclude, the CA is useful for assessing how measures that impact urban biodiversity affect people's possibilities to live a good life. Thus, it can help us determine whether such measures fulfil the demands of social justice. According to both Nussbaum and Sen, it is important that individuals reach a certain threshold for the essential capabilities.[26] Policies that affect urban biodiversity are problematic from a justice perspective if they cause residents to fall below this threshold.

A multidimensional view of the well-being of urban animals

When assessing different policies on urban biodiversity management, it is crucial to determine not only their impact on individual humans but also their impacts on individual urban animals. This statement may come as a surprise to some readers as both the scientific and political debates on urban biodiversity are focused on non-human collective entities, such as species and ecosystems, rather than on individual animals.[27] However, from an ethical perspective, there are strong reasons for recognizing the importance of the well-being of individual animals. Especially during the past half century, it has become increasingly accepted within the ethical debate that humans should be concerned about animals for their own sake. This claim has been supported both from Utilitarian and Deontological perspectives.[28]

[25] Ingrid Robeyns, Morten Fibieger Byskov, "The Capability Approach", Stanford Encyclopedia of Philosophy, edited by Edward N. Zalta, Uri Nodelman, online at https://plato.stanford.edu/entries/capability-approach/.

[26] Nussbaum, *Women and Human Development*, pp. 78-82; Amartya Sen, "Equality of what?", online at http:// tannerlectures.utah.edu/ _documents/a-to-z/s/sen 80.pdf, 1979, pp. 217-219.

[27] UN, *Convention on Biological Diversity*, 1992; Charles H. Nilon, and Myla F. J. Aronson (Eds.). *Routledge Handbook of Urban Biodiversity*, Milton Park, Abingdon, Oxfordshire: Routledge, 2024.

[28] Peter Singer, *Practical Ethics*, (Cambridge: Cambridge University Press, 2011); Tom Regan, *The Case for Animal Rights* (updated with a new preface), University of California Press, 2004 [originally published in 1983]); Christine Korsgaard, *Fellow Creatures: Our Obligations to the Other Animals* (Oxford: Oxford University Press, 2018)

There is a growing body of the literature that discusses animal ethics from the perspective of the CA.[29] As for Sen[30], his version of the CA is focused on human agency, and he has not acknowledged questions about the moral status[31] of non-human beings and entities, but Nussbaum has given important contributions to the debate on animal ethics. She argues that we do not only have duties of charity to animals, but also duties of justice.[32] Nussbaum claims that all sentient animals have inherent dignity. Each sentient animal has strivings that should not be hindered, and we have no reason to claim that only some sentient creatures should be considered for their own sake.[33]

Nussbaum argues that beings must have some form of subjective experience in order to be regarded as subjects of justice[34]. The necessary and sufficient conditions for being a subject of justice is "sentience, emotion, cognitive awareness of objects, movement toward the good and away from the bad".[35] Nussbaum concludes that there is scientific evidence that many forms of animals fulfil the criteria for being a subject of justice, such as mammals, fish, birds and cephalopods.[36]

Moreover, Nussbaum argues that her list of ten human capabilities can be applied also to animals, although they must be adapted to each specific species.[37] The CA is concerned not only with animal suffering but also the possibility of animals to live a full species-characteristic form of life, which includes many different forms of characteristic activities, such as free movement, play and reproduction.[38] Thus, it can be argued that the CA can provide a more comprehensive understanding than other ethical theories, such as Utilitarianism, of how urban biodiversity affects the well-being of urban non-domesticated animals. As for humans, a certain level of biodiversity is necessary for urban animals to live a decent life. Some of the ecosystem services that urban plants produce for humans, such as regulating the content of oxygen, are also of importance for urban animals.[39] Moreover, urban plants are important sources of food for non-domesticated urban birds and mammals. The well-being of herbivores requires a certain level of species diversity among urban plants.[40]

Nussbaum's argumentation provides strong support for the conclusion that concern for animal well-being for its own sake should be a part of the CA. However, I think

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[29] Simon Hailwood, "Bewildering Nussbaum: Capability Justice and Predation", *The Journal of Political Philosophy,* 20:3 (2012), pp. 293-313; Amy Linch and Breena Holland, "Cultural Killing and Human-Animal Capability Conflict," *Journal of Human Development and Capabilities,* 18:3 (2017), pp. 332-336; Nicolas Delon, "Animal Capabilities and Freedom in the City," *Journal of Human Development and Capabilities,* 22:1 (2021), pp. 131-153.

[30] Sen, *The Idea of Justice*, pp. 248-252.

[31] That a non-human being or entity is ascribed moral status means that we should consider it for its own sake, regardless of its instrumental value for humans. However, that fact that such a being or entity has moral status does not necessarily imply that we should care about it as much as we care about a human being.

[32] Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership,* Cambridge, MA: The Belknap Press of Harvard University Press, 2006, p. 327.

[33] Martha C. Nussbaum, *Justice for Animals: Our Collective Responsibility*, (New York: Simon & Schuster, 2022), p. 96.

[34] In line with Nussbaum's argumentation in *Justice for Animals*, I understand the status as subject of justice as one specific form of moral status.

[35] Nussbaum, *Justice for Animals,* p. 138.

[36] Nussbaum, *Justice for Animals*, pp. 141-148.

[37] Nussbaum, *Justice for Animals,* p. 102.

[38] Nussbaum, *Justice for Animals*, p. 98, p. 236.

[39] Clark E. Adams, *Urban Wildlife Management,* (Boca Raton, FL: CRC Press, 2021), pp. 90-94.

[40] Adams, *Urban Wildlife Management*, p. 95.

there is a need of more reflection on whether concern for the well-being of urban animals should focus on their functionings, rather than on their capabilities. Nussbaum acknowledges this issue in *Creating Capabilities*[41] where she states that we should favour choice for beings that has a capacity for making choices, but that a focus on functioning can be more appropriate for animals than for humans. However, it is not discussed in *Justice for Animals* where she instead seems to assume that the reasons for regarding animals as subjects of justice are also valid reasons for ascribing capabilities to them.

However, the claim that animals are subjects of justice does not necessarily lead to the conclusion that they should be ascribed capabilities. Instead, it can be a reason for being concerned with their functionings for their own sake, and not their capabilities. Nussbaum's account of animal capabilities lacks a detailed discussion of what a capability is and what is required for having a capability. She describes a capability as "a real, substantive, freedom, or opportunity to choose to act".[42] However, there is no analysis of whether, and to what extent, animals have the freedom to choose to act. It can be argued that humans have a unique level of self-consciousness and that only humans can understand their lives as a narrative with a past, present and future. Some forms of choices, such as whether to shift to a plant-based diet or continue to eat meat, seem to require such a high level of consciousness. It is questionable whether we have valid reasons for ascribing capabilities to animals.[43]

However, even if we conclude that we lack valid reasons for assigning capabilities to animals, it is not necessarily a convincing argument for discarding the CA as a normative framework for urban biodiversity management. Concern for animals for their own sake can be expressed in terms of protecting or promoting their functionings instead of their capabilities. It seems clear that animals have certain functionings that are important for them to live a decent life, such as eating healthy food, procreating and having relationships with other members of their species.[44] Regardless of whether we express concern for animals in terms of respect for their capabilities or their functionings, the fact remains that the CA provides us with a multidimensional view of animal well-being.

However, the problems involved in ascribing capabilities to animals gives rise to the question whether a redefinition of the concept of capability is necessary. The concept of capability was originally developed to emphasize the value of having freedom in areas that are unique for humans, for example, having the opportunity to choose to take part in an education. Such forms of freedom seem to require the specific human ability to make rationally considered choice, based on one's values and future goals.[45] It can be argued that current conceptualizations of capability are too much based on unique human abilities. This concern become even more important if we want to consider non-sentient beings and collective entities for their own sake within the CA, as I discuss in the following section.

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[41] Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach,* (Cambridge, MA: The Belknap Press of Harvard University Press, 2011), p. 162.
[42] Nussbaum, *Justice for Animals*, p. 86.
[43] Gary E. Varner, *Personhood, Ethics, and Animal Cognition: Situating Animals in Hare's Two Level Utilitarianism,* (Oxford: Oxford Scholarship Online, 2012), 135-155, 169-170; Anders Melin and David Kronlid, "Should We Ascribe Capabilities to Sentient Animals? A Critical Analysis of the Extension of Nussbaum's Capabilities Approach, *De Ethica: A Journal of Philosophical, Theological and Applied Ethics,* 3:2 (2016), pp. 53-63.
[44] Melin & Kronlid, "Should We Ascribe Capabilities to Sentient Animals?".
[45] Melin & Kronlid, "Should We Ascribe Capabilities to Sentient Animals?".

Unresolved issues

Here I identify and discuss some unresolved issues that need to be addressed to determine whether the CA is appropriate as a normative framework for urban biodiversity management: questions about the moral status of individual non-sentient beings and of non-human collective entities. These questions are important to discuss as it is often assumed in policy documents on biodiversity, such as the Convention on Biodiversity, that biodiversity and its components have not only instrumental value for humans, but also intrinsic value.[46]

The consideration of individual non-sentient beings

From the perspective of urban biodiversity management, it is a crucial question how we should relate also to other individual beings than animals. If we can conclude that such beings have some form of moral status, this leads indirectly to stronger reasons for preserving urban biodiversity. The protection of other individual beings, such as plants, for their own sake is not a direct argument for protecting urban biodiversity as it is concerned with individual life forms and not the diversity of life forms, but the protection of such beings indirectly leads to the protection of at least some level of biodiversity.

As mentioned, several works discuss justice to animals from the perspective of the CA, but the question of whether we should consider other individual beings for their own sake have received less attention. Nussbaum discusses this issue, but relatively briefly. In her most detailed treatment of the topic, Nussbaum acknowledges that the question about the sentience of plants is controversial.[47] Even though experiments have shown that plants convey information about the colour and intensity of light to other plants with the help of electrical signals, she still concludes that at present the evidence that they are sentient are not sufficient. Moreover, as for their neuroanatomical characteristics, plants do not have brains or central nervous systems. Concerning behaviour, plants does not have the same flexibility to react to different situations as animals have. Even if they grow in the direction of gravity and turn to the light, it is not a strong enough reason for concluding that they have subjective feelings. Nussbaum concludes that plants can be harmed, but we cannot treat them unjust as they cannot be subjects of justice. Still, she maintains that they deserve some form of ethical concern. The natural environment is of importance both instrumentally and intrinsically.[48] In other words, Nussbaum concludes that plants cannot be considered subjects of justice, but they may have some other form of moral status.

Nussbaum seems right in claiming that the scientific support for the conclusion that plants are sentient is at present rather weak.[49] However, even if we assume that plants are not sentient, it is unclear whether it is a valid reason for concluding that they cannot be ascribed the status as subjects of justice within the CA. Some capability scholars, primarily Fulfer[50], argue that we have reasons for regarding plants as subjects of justice and for ascribing capabilities to them even if they lack sentience. Fulfer claims that the concept of

[46] UN, *Convention on Biological Diversity*. Intrinsic value seems to have a similar meaning as moral status in this context, i.e., that something has intrinsic value if we should consider it for its own sake.
[47] Nussbaum, *Justice for Animals,* pp. 148-152.
[48] Nussbaum, *Justice for Animals,* pp. 151-152.
[49] Miguel Segundo-Ortin, and Paco Calvo. "Consciousness and cognition in plants," *WIREs Cognitive Science,* (2021), 13e1578.
[50] Katy Fulfer, "The Capabilities Approach to Justice and the Flourishing of Nonsentient Life", *Ethics & the Environment,* 18:1 (2013), pp. 19-38.

flourishing that is central for Nussbaum can be applied also to plants and that they should be regarded as subjects of justice. She points out that the notion that we should promote the flourishing of non-human life forms is central to Nussbaum's argumentation and that she conceives of flourishing from both an objective and a subjective point of view. Whether a life form flourish can be determined in a subjective sense by considering its own perception of its living conditions, but it can also be determined in an objective sense by comparing a living being with a species norm. For example, by looking at a tree we can see whether it flourishes even if it does not have a perception of its living conditions, at least none that it can communicate to us. Fulfer claims that the CA only needs an objective definition of flourishing as a standard for determining what justice requires. According to an objective standard, non-sentient living beings can flourish, and therefore we should care about them for their own sake. She argues that our moral responsibility towards non-sentient life forms follows from the fact that we are dependent on them.[51]

However, Fulfer's argumentation is unconvincing in several respects. First, the ascription of capabilities to plants is problematic as capabilities are commonly understood as "real freedoms or opportunities" within the CA, and it is highly doubtful that plants have freedom of choice. Although some scientists claim that plants have consciousness, such claims have been refuted by others.[52] However, as with animals, the problem with ascribing capabilities to plants is not a strong argument against ascribing to plants the status as subjects of justice as our concern for plants for their own sake can also be expressed in terms of concern for the functionings, rather than capabilities. It seems clear that plants have functionings that are important for their survival and well-being, such as the functioning of absorbing water through their roots and the functioning of photosynthesis. Nevertheless, the fact that it is problematic to ascribe capabilities to plants can be a good reason for revising the concept.

We need to consider, however, that there are other problems with Fulfer's argumentation that are more difficult to handle. First, I agree with her claim that a tree needs water to flourish even if it has no subjective experience of such a need, but the question remains why humans ought to take the needs of the tree into account for its own sake. The fact that we are dependent on non-sentient life forms cannot in itself be considered a valid argument for the claim that they are subjects of justice or have another form of moral status, because we are dependent on many inanimate objects in nature to which we normally do not ascribe moral status.

To grant moral status to plants we need a persuasive argumentation for why we should be concerned about the flourishing of plants for their own sake, even though it is uncertain whether they have subjective experiences. Several elaborated attempts to justify this moral claim have been presented within environmental ethics and many of them make use of an extensionist form of moral reasoning according to which non-sentient beings are assigned moral status due to their similarities with humans, in principle the same argumentative strategy that has been used successfully for supporting the claim that sentient animals should be ascribed moral status. For example, Varner argues that also beings that cannot have desires, such as insects and plants, can have morally relevant interests. Varner claims that certain conditions can be in the interest of a being even if it does not desire anything. For example, a plant does not desire water, but it is still in its

[51] Fulfer, "Flourishing of Nonsentient Life".
[52] Jon Mallat, Michael R. Blatt, Andreas Draguhn, David G. Robinson, and Lincoln Taiz, "Debunking a myth: plant consciousness". *Protoplasma*, 258 (2021), pp. 459-476.

interest to receive it because the plant would die without water.[53] Varner criticizes mental state theories of interests, which is the dominant form of theories of interests. These theories define an individual's interests based on his or her idealized desires, and Varner argues that they fail to acknowledge that humans have biological interests, which cannot be identified based on their desires. For example, a smoker has a morally considerable interest in not smoking as it damages his or her lungs, irrespective of his or her preferences.[54] However, Varner's line of argumentation has been called into question because it rests on an unconvincing critique of mental state theories of interest. For example, Agar claims that the case of a person who prefers smoking and similar cases can be handled by an externalistic version of an ideal desires theory, which says that what is good for a being A to experience is what an idealized person would want A to experience in A's actual situation.[55]. In later publications, Varner concedes that this critique is valid.[56]

Also other extensionist attempts to support the claim that non-sentient beings should be ascribed moral status have been criticized in the debate.[57] To justify the ascription of moral status to beings that lack sentience because of similarities to humans is a problematic strategy. The only humans who lack sentience and cannot be expected to become sentient in the future are individuals in a permanent state of coma. However, it is unclear whether we have any moral responsibility towards such persons. Many would probably conclude that we do not have any reasons to maintain their lives.[58] Moreover, it can be argued that extensionist strategies are ethically illegitimate because they presuppose an anthropocentric logic, which assigns moral status to other life forms only if they are significantly similar to humans. Instead, an ethically legitimate strategy ought to appreciate both differences and similarities.[59]

Within the CA, the concept of wonder can be a useful starting-point for developing a non-extensionist strategy. In *Justice to Animals*, Nussbaum states that animal lives are wonderful because animals actively pursue their own ends. As animals have active and striving agency, they are not only objects of wonder but also subjects of justice. For Nussbaum, wonder shows that animals matter for their own sake, not because of their similarity with ourselves.[60] As mentioned, Nussbaum concludes that only sentient beings can be considered subjects of justice, but she at the same time connects wonder to the realization that the consideration of other beings for their own sake is not due to the similarities with us. This opens for the possibility of ascribing the status as subjects of justice also to beings that do not share the characteristic of being sentient with humans.

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[53] Gary E. Varner, *In Nature's Interests? Interests, Animals Rights, and Environmental Ethics*, (New York: Oxford University Press, 1998), pp. 55-60; Anders Melin, *Living with Other Beings: A virtue-oriented approach to the ethics of species protection* (Studies in Religion and the Environment, Vol. 9), Münster: LIT Verlag 2013, p. 62.

[54] Varner, *In Nature's Interests?*, pp. 57-62,

[55] Nicholas Agar, *Life's Intrinsic Value. Science, Ethics, and Nature*, (New York: Columbia University Press, 2001), pp. 74-77.

[56] See, for example, Jonathan A. Newman, Gary Varner and Stefan Linquist, *Defending Biocentrism: Environmental Science and Ethics,* (Cambridge: Cambridge University Press, 2017), pp. 404-405.

[57] John Basl, *The Death of the Ethic of Life,* (Oxford: Oxford University Press, 2019).

[58] Melin, *Living with Other Beings*, p. 64.

[59] Anna Wienhues, *Ecological Justice and the Extinction Crisis: Giving Living Beings their Due*, (Bristol: Bristol University Press, 2020), pp. 37-38.

[60] Nussbaum, *Justice for Animals*, pp. 66-67.

Bendik-Keymer has developed the concept of wonder in this direction. He argues that wonder helps us recognize the variety of ways in which different beings strive. For Bendik-Keymer, wonder is connected with a positive form of anxiety that opens us to new ways of making sense of the world. It helps us understand how all living beings, including non-sentient ones, such as plants, seek to realize their own ways of life.[61] Bendik-Keymer's interpretation of wonder may be a useful point of departure for justifying the claim that also non-sentient beings can be considered subjects of justice within the CA, although it needs to be discussed in more detail than what the space allows for here.

The consideration of non-human collective entities

Another question that is necessary to recognize in the context of urban biodiversity management is whether also non-human collective entities, such as species and ecosystems, should be granted the status of subjects of justice or some other form of moral status. This moral belief conflicts with the CA as most versions of it are based on ethical individualism, that is, the view that only individuals, and not collectives, should be considered for their own. Robeyns describes ethical individualism as an unavoidable property of the CA, as the evaluation of functionings and capabilities that is a core element of the approach is an evaluation of the well-being and freedom of individuals.[62] By contrast, the concept of biodiversity builds at least implicitly on the view that also non-human collective entities, such as species and ecosystems, can have moral status. For example, textbooks on biodiversity preservation often state that species have intrinsic value, in the sense that we should consider them for their own sake.[63]

Also in the case of non-human collective entities, the debate within the CA has been more limited than the question about the moral status of animals. Nussbaum discusses this issue very briefly and concludes that non-human collective entities do not have subjective experiences and therefore cannot be regarded as subjects of justice, although they may have some other form of moral status.[64] However, the question about the moral status of non-human collective entities deserves further treatment, because Nussbaum's conclusion is contested by other capability theorists[65] who defend the view that non-human collective entities should be granted the status as subjects of justice.

Schlosberg's has put forward an elaborated defense for the view that non-human collective entities should be ascribed the status as subjects of justice within the CA. First, he argues that the concepts of flourishing and integrity are more suitable than the concept of dignity for entities that are not conscious subjects.[66] He states that also such entities should be regarded as subjects of justice because they share the characteristics of agency and integrity with humans.[67] Schlosberg concludes that both individual subjects and non-human collective entities have integrity because they are self-regulating and

[61] Jeremy Bendik-Keymer, "Beneficial relations between species & the moral responsibility of wondering", *Environmental Politics*, 31:2 (2022), pp. 320-337, at pp. 321-325.
[62] Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Cambridge: Open Book Publishers, 2017), p. 58.
[63] Hunter, Jr. et al., *Fundamentals of Conservation Biology,* p. 39.
[64] Nussbaum, *Frontiers of Justice,* pp 357-358.
[65] David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature*, (Oxford: Oxford University Press, 2007); Daniel L. Crescenzo, "Loose Integrity and Ecosystem Justice on Nussbaum's Capabilities Approach," *Environmental Philosophy,* 10:2 (2013), pp. 53-74.
[66] Schlosberg, *Defining Environmental Justice,* pp. 147-148.
[67] Schlosberg, *Defining Environmental Justice,* pp. 132-136.

autonomous.[68] He suggests that the concept of capability is applicable not only to rational subjects that can decide between different functionings. Instead, we should acknowledge that ecosystems can have a different type of agency that takes the form of a potential or a process.[69]

However, Schlosberg's line of argumentation seems unpersuasive. We cannot draw the conclusion that we should ascribe the status of subjects of justice to species and ecosystems because they share the characteristics of agency and integrity with humans, as these two concepts have a different meaning when applied to species and ecosystem, and humans, respectively. When ascribing the characteristics of integrity and agency to humans, we assume that they have the ability to act in accordance with intentions.[70] As mentioned, when Schlosberg refers to the integrity of species and ecosystems, he is only thinking of the characteristic of being autonomous and self-regulating. Moreover, he acknowledges that such entities only can have agency in a very different sense than humans.[71]

Also in the case of collective entities, a non-extensionist strategy for justifying their status as subjects of justice seems more fruitful than the extensionist one that Schlosberg has put forward. Bendik-Keymer's interpretation of wonder can be helpful also in this regard as it builds on a questioning of the ontological and normative individualism within the CA. He argues that some of the goods of individuals can only be understood in the light of the collective to which they belong. For example, bees are genetically programmed to sting in order to protect the hive and the queen bee, even though it leads to their own death.[72]

Wonder may make us recognize the strivings of collective entities, over and above the striving of their constituting parts. However, a more elaborate discussion of it is required before we can establish that we have sufficient reasons for discarding the well-entrenched ethical individualism of the CA. If we come to the conclusion that also collective entities should be ascribed the status as subjects of justice within the CA, it would have significant practical implications for urban biodiversity management as it would give us stronger reasons for preserving threatened species.

Conclusions

In its present form, it is unclear whether the CA is suitable as a normative framework for urban biodiversity management. It has its strong points, mainly connected with its view of human capabilities and social justice, but there are also important unresolved issues. The CA can give a nuanced account of how urban biodiversity impacts the well-being of sentient animals, but there is a need for a more detailed discussion of whether animals can

[68] Schlosberg, *Defining Environmental Justice*, pp. 137-139.
[69] Schlosberg, *Defining Environmental Justice,* p. 153-154; Anders Melin, "Should we Ascribe Capabilities to Species and Ecosystems? A Critical Analysis of Ecocentric Versions of the Capabilities Approach", *Journal of Agricultural and Environmental Ethics,* 34:26, 2021.
[70] Damian Cox, Marguerite La Caze and Michael Levine, "Integrity" in *Stanford encyclopedia of philosophy*, edited by Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/entries/integrity/, (Revised February 20, 2017); Markus Schlosser, "Agency," In *Stanford encyclopedia of philosophy,* edited by Edward N. Zalta and Uri Nodelman (Eds.), https://plato.stanford.edu/entries/agency/, (August 10, 2015); Melin, "Should we Ascribe Capabilities to Species and Ecosystems?".
[71] Schlosberg, *Defining Environmental Justice.*
[72] Bendik-Keymer, "Beneficial relations between species", p. 326.

be ascribed capabilities as it seems to presuppose having the ability to make choices. The problems involved in ascribing capabilities to animals can be a reason for revising the concept of capability so that it more easily can be applied to non-humans. Moreover, when discussing the consideration of non-sentient beings, such as plants, it becomes even more apparent that the current definition of capability may not be suitable in an ecological context. It is also unclear whether plants should be granted the status as subjects of justice within the CA. Finally, the question of whether we should consider collective entities for their own sake within the CA challenges the ethical individualism that is a core assumption in most versions of the CA. The concept of wonder may be helpful for justifying the ascription of the status of subject of justice to both individual non-sentient beings and collective entities, but it needs to be discussed in more detail.[73]

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References

Adams, Clark E. *Urban Wildlife Management.* Boca Raton, FL: CRC Press, 2021.

Agar, Nicholas. *Life's Intrinsic Value. Science, Ethics, and Nature*. New York: Columbia University Press, 2001.

Anand, Sudhir and Amartya Sen. "Human Development and Economic Sustainability". *World Development,* 28: 12 (2000), pp. 2029-2049.

Baard, Patrik. *Ethics in Biodiversity Conservation* (Routledge Studies in Conservation and the Environment). London: Routledge, 2021.

Basl, John. *The Death of the Ethic of Life*. Oxford: Oxford University Press, 2019.

Bele, Archana and Ujwala Chakradeo. "Public Perception of Biodiversity: A Literature Review of its Role in Urban Green Spaces," *Journal of Landscape Ecology*, 14:2, (2021), pp. 1-28.

Bendik-Keymer, Jeremy. "Beneficial relations between species & the moral responsibility of wondering", *Environmental Politics*, 31:2 (2022), pp. 320-337.

Cox, Damian, Marguerite La Caze and Michael Levine. "Integrity" in *Stanford encyclopedia of philosophy*, edited by Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/entries/integrity/. (Revised February 20, 2017).

Crescenzo, Daniel L. "Loose Integrity and Ecosystem Justice on Nussbaum's Capabilities Approach," *Environmental Philosophy,* 10:2 (2013), pp. 53-74.

Delon, Nicolas "Animal Capabilities and Freedom in the City," *Journal of Human Development and Capabilities,* 22:1, (2021), pp. 131-153.

Dijkstra, Lewis, Aneta J. Florczyk, Sergio Freire, Thomas Kemper, Michele Melchiorri, Martino Pesaresi and Marcello Schiavina. "Applying the Degree of Urbanisation to the globe: A new harmonization reveals a different picture of global urbanization," *Journal of Urban Economics,* 125 (2021), 103312.

European Environment Agency. "Biodiversity – Ecosystems," online at https://www.eea.europa.eu/themes/biodiversity/intro (accessed 2024-06-07).

Farinha-Marques, P., J.M. Lameiras, C. Fernandes, S. Silva and F. Guilherme. "Urban biodiversity: a review of current concepts and contributions to multidisciplinary

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approaches," *Innovation: The European Journal of Social Science Research,* 24:3 (2011), pp. 247-272.

Frank, David M. "Biodiversity" and biological diversities. Consequences of pluralism between biology and policy," In *Routledge Handbook of Philosophy of Biodiversity*, edited Justin Garson, Anya Plutynski and Sahotra Sahar. Milton Park, Abingdon, Oxfordshire: Routledge, 2016, pp. 96-109.

Fulfer, Katy. "The Capabilities Approach to Justice and the Flourishing of Nonsentient Life". *Ethics & Environment,* 18:1, (2013), pp. 19-38.

Hailwood, Simon. "Bewildering Nussbaum: Capability Justice and Predation,". *The Journal of Political Philosophy,* 20:3, (2012), pp. 293-313.

Hunter, Jr., Malcolm L., James P. Gibbs and Viorel D. Popescu. *Fundamentals of Conservation Biology.* Hoboken, NJ: Wiley Blackwell, 2021.

Inger, Richard, Daniel T. C. Cox, Esra Per, Briony A. Norton, and Kevin J. Gaston, (2016). "Ecological role of vertebrate scavengers in urban ecosystems in the UK", *Ecology and Evolution*, 6 (2016), pp. 7015-7023.

Korsgaard, Christine 2018. *Fellow Creatures: Our Obligations to the Other Animals.* Oxford: Oxford University Press.

Lambert, Max R. and Christopher J. Schell 2023. "Cities as the Solution to the Biodiversity Crisis," in *Urban Biodiversity and Equity: Justice-centered conservation in cities*, edited by Max R. Lambert and Christopher J. Schell. Oxford: Oxford University Press, 2023, pp. 1-21.

Lessmann, Ortrud and Felix Rauschmayer. "Re-conceptualizing Sustainable Development on the Basis of the Capability Approach: A Model and Its Difficulties," *Journal of Human Development and Capabilities,* 14:1 (2013), pp. 95-114.

Light, Andrew. "The Urban Blind Spot in Environmental Ethics. *Environmental Politics,* 10:1 (2001), pp. 7-35.

Linch, Amy and Breena Holland. "Cultural Killing and Human-Animal Capability Conflict," *Journal of Human Development and Capabilities,* 18:3 (2017), pp. 322-336.

Mallat, Jon, Michael R. Blatt, Andreas Draguhn, David G. Robinson, and Lincoln Taiz, "Debunking a myth: plant consciousness". *Protoplasma,* 258 (2021), pp. 459-476.

Melin, Anders. *Living with Other Beings: A virtue-oriented approach to the ethics of species protection* (Studies in Religion and the Environment, Vol. 9). Münster: LIT Verlag 2013.

Melin, Anders "Should we Ascribe Capabilities to Species and Ecosystems? A Critical Analysis of Ecocentric Versions of the Capabilities Approach", *Journal of Agricultural and Environmental Ethics,* 34:26, 2021.

Melin, Anders, and David Kronlid. "Should We Ascribe Capabilities to Sentient Animals? A Critical Analysis of the Extension of Nussbaum's Capabilities Approach," *De Ethica: A Journal of Philosophical, Theological and Applied Ethics,* 3:2 (2016), pp. 53-63.

Michelfelder, Diane P. "Valuing Wildlife Populations in Urban Environments", *Journal of Social Philosophy,* 34:1 (2023), pp. 79-90.

Millenium Ecosystem Assessment. *Ecosystems and Human Well-Being: Synthesis*. Washington, D.C.: IslandPress, 2005.

Newman, Jonathan A., Gary E. Varner, and Stefan Linquist. *Defending Biocentrism: Environmental Science and Ethics.* Cambridge: Cambridge University Press, 2017.

Nilon, Charles H. and Myla F. J. Aronson (Eds.). *Routledge Handbook of Urban Biodiversity*, Milton Park, Abingdon, Oxfordshire: Routledge, 2024.

Noll, Samantha. "History Lessons: What Urban Environmental Ethics Can Learn from Nineteenth Century Cities. *Journal of Agricultural and Environmental Ethics*, 28 (2015), pp. 143-159.

Nowak, David J., Daniel E. Crane and Jack C. Stevens. "Air pollution removal by urban trees and shrubs in the United States", *Urban forestry & urban greening*, 4 (2006), pp. 115-123.

Nussbaum, Martha C. *Women and Human Development. The Capabilities Approach.* Cambridge: Cambridge University Press, 2000.

Nussbaum, Martha C. *Frontiers of Justice: Disability, Nationality, Species Membership.* Cambridge, MA: The Belknap Press of Harvard University Press, 2006.

Nussbaum, Martha C. *Creating Capabilities: The Human Development Approach.* Cambridge, MA: The Belknap Press of Harvard University Press, 2011.

Nussbaum, Martha C. *Justice for Animals: Our Collective Responsibility.* New York: Simon & Schuster, 2022.

Page, Edward A. "Intergenerational justice of what? Welfare, resources or capabilities?", *Environmental Politics,* 16:3 (2007), pp. 453-469.

Palmer, Clare. "Placing Animals in Urban Environmental Ethics", *Journal of Social Philosophy,* 34:1 (2003), pp. 64-78.

Qiu, Lin, Stefan Lindberg and Anders B. Nielsen. "Is biodiversity attractive? – On-site perception of recreational and biodiversity values in urban green space," *Landscape and Urban Planning,* 119 (2013), pp. 136-146.

Regan, Tom 2004 [originally published in 1983]), *The Case for Animal Rights* (updated with a new preface), University of California Press.

Robeyns, Ingrid. *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined.* Cambridge: Open Book Publishers, 2017.

Sarkar, Sahotra. "Approaches to biodiversity," in *Routledge Handbook of Philosophy of Biodiversity,* edited by Justin Garson, Anya Plutynski and Sahotra Sahar. Milton Park, Abingdon, Oxfordshire: Routledge, 2016, pp. 43-55.

Schlosberg, David. *Defining Environmental Justice: Theories, Movements, and Nature.* Oxford: Oxford University Press, 2007.

Schlosser, Markus. 2015. "Agency," In, *Stanford encyclopedia of philosophy,* edited by Edward N. Zalta and Uri Nodelman (Eds.) online at https://plato.stanford.edu/entries/agency/. (August 10, 2015).

Segundo-Ortin, Miguel and Paco Calvo. "Consciousness and cognition in plants," *WIREs Cognitive Science,* (2021). 13e1578.

Sen, Amartya. Equality of what? online at http:// tannerlectures.utah.edu/ _documents/a-to-z/s/sen 80.pdf, 1979.

Sen, Amartya. *Inequality Reexamined.* Oxford: Clarendon Press, 1992.

Sen, Amartya. *The Idea of Justice.* London: Allen Lane, 2009.

Singer, Peter. *Practical Ethics*. Cambridge: Cambridge University Press, 2011.

UN (1992). *Convention on Biological Diversity*.

Varner, G. E. (1998). *In Nature's Interests? Interests, Animals Rights, and Environmental Ethics*. New York: Oxford University Press.

Varner, Gary E. *Personhood, Ethics, and Animal Cognition: Situating Animals in Hare's Two Level Utilitarianism.* Oxford: Oxford Scholarship Online, 2012.

Wienhues, Anna. *Ecological Justice and the Extinction Crisis: Giving Living Beings their Due*. Bristol: Bristol University Press, 2020.

Wolch, Jennifer R., Jason Byrne and Joshua P. Newell. "Urban green space, public health, and environmental justice: The challenge of making cities 'just green enough'," *Landscape and Urban Planning,* 125 (2014), pp. 234-244.

Wood, Emma, Alice Harsant, Martin Dallimer, Anna Cronin de Chavez, Rosemary R. C. McEachan and Christopher Hassall. "Not All Green Space Is Created Equal: Biodiversity Predicts Psychological Restorative Benefits From Urban Green Space," *Frontiers in Psychology*, 9 (2018), article 2320.

De Ethica (2026) 9.3:77–95
https://doi.org/10.3384/de-ethica.2001-8819.269377

Three Limitations of Reflective Equilibrium's Justificatory Claims

Anoop Kumar Suraj & C. Upendra

John Rawls's method of reflective equilibrium (RE) offers a non-foundationalist framework for moral and political justification by harmonizing considered judgments and principles through iterative recalibration. Positioned as a response to value pluralism and normative conflict, RE foregrounds coherence and internal consistency as its epistemic ideals. On three interlinked grounds, this paper offers a critical examination of RE. First, RE's reliance on moral intuitions can obscure the socio-historical construction of moral sensibilities. This effectively undermines the claims of universal moral justification. Second, in absence of external normative anchors, its procedural dynamism risks justificatory circularity. Third, RE assumes equal degree of epistemic accessibility to everyone that is unevenly allocated across social situations, favouring individuals possessing the cognitive, educational, and material resources required for prolonged contemplation. This asymmetry renders RE susceptible to epistemic exclusion, marginalizing subaltern moral imaginaries and reinforcing dominant normative frameworks. Consequently, RE's epistemic architecture narrows it aspiration to pluralism.

Introduction

The concept of *reflective equilibrium* (hereafter *RE*) represents one of the most philosophically rigorous and widely employed methodologies in contemporary normative theory, particularly within the tradition inaugurated by John Rawls. *RE* is not merely a technique of moral reasoning; it is a sophisticated method of normative justification that has acquired broad interdisciplinary traction in course of time. Its philosophical influence cuts across the domains of metaethics, bioethics, logic, and the philosophy of science—so much so that some scholars regard it as the methodological core of philosophy itself.[1]

RE is integral to the architecture of a well-ordered society in Rawlsian schema. A well-ordered society is governed by public reason and united by an overlapping consensus on principles of justice. This type of society does not subscribe or sustained by dogmatic

[1] Baumberger, Christoph. & Brun, Georg. Reflective equilibrium and understanding. *Synthese*, 198:8 (2020), p. 7924.

adherence to any one moral theory or doctrine. Instead they perpetually travel through an ongoing process of normative adjustment and alignment between our considered moral judgments and the collective principles we endorse.[2] The process of *RE* enables individuals to revise and reconcile their judgments in a way that yields the most reasonable conception of justice. As John Rawls defines, the most defensible sense of justice is not that which coincides with one's pre-reflective intuitions, but that which survives the test of *RE*.[3]

As a method, RE aims to provide a criterion of acceptability for ethical and political theories—one that does not rely on foundationalist certainties but emerges from the coherence among judgments, principles, and background theories.[4] Reflecting on its methodological importance, Michael William Schmidt has remarked that if we were to assemble an inventory of essential philosophical tools, RE would undoubtedly occupy a central place.[5] Paul Weithman similarly defends RE as a stabilizing mechanism in a social and political discourse capable of mitigating the epistemic and moral fragilities that liberal democratic societies must continuously navigate.[6] John Rawls introduced the term in *A Theory of Justice*. But he explicitly acknowledged its antecedents in Nelson Goodman's work on the justification of inductive inference.[7] He draws from Nelson Goodman's rejection of rigid foundationalism and his emphasis on necessary mutual adjustment as the basis for any kind of political justification.[8] What distinguishes John Rawls, however, is the manner in which he reconfigures this epistemological insight for the purposes of moral and political reasoning in a diversified society.

Among its staunch defenders, Thomas Michael Scanlon maintains that RE is the only viable method for moral justification, arguing that all putative alternatives are illusory.[9] Yet critics have voiced substantial reservations. One of the most forceful critiques comes from the epistemic direction: even when meticulously applied, RE may yield conclusions that remain normatively deficient or morally unsound.[10] This critique is instructive but not wholly sufficient. The weakness of RE lies not simply in its possible failure to guarantee moral truth but in a deeper set of conceptual problems that are often overlooked in the prevailing literature.

The aim of this paper is not to repudiate RE in its entirety. Rather, it is to draw attention to three significant limitations that can compromise its philosophical robustness and politically pragmatic applicability. While the method retains potential as a constructive tool for negotiating social and political disagreement, these limitations render the method increasingly inadequate for the pluralistic and fractured moral landscapes of the contemporary world society.

Two major camps dominate the academic discourse on RE. The first consists of those who uphold the method's enduring philosophical utility—among them Norman

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[2] Schaefer, Alexander. (2021). Is justice a fixed point? *American Journal of Political Science*, 67:2 2021, p. 2.
[3] Chung, Hun. Rawls's Self-Defeat: A Formal Analysis. *Erkenntnis*, 85:5 (2018), p. 1119. Also see - Kukathas, Chandran. & Pettit, Pettit. *Rawls: A Theory of Justice and its Critics*. Polity Press, 2007, p. 69.
[4] Maffettone, Sebastiano. *Rawls: An Introduction*. Polity Press, 2010, p. 140.
[5] Schmidt, Michael William. Defining the method of reflective equilibrium. *Synthese*, 203:5 2024, p. 170.
[6] Weithman, Paul. Stability and equilibrium in political liberalism. *Philosophical Studies*. 181:1 2023, pp. 23- 41.
[7] De Maagt, Sem. Reflective equilibrium and moral objectivity. *Inquiry*, 60:5 2016, p. 444.
[8] Daniels, Norman. Reflective Equilibrium, 2015, p. 711.
[9] Scanlon, Thomas Michael. (2002). *'Rawls on Justification', (2002),* Cambridge University Press, p. 149.
[10] Kelly, Thomas. & McGrath, Sarah. Is Reflective Equilibrium Enough? *Philosophical Perspectives*, 24:1 2010, p. 326.

Daniels, Thomas Michael Scanlon, Christine Korsgaard, and Samuel Freeman. They regard RE as a dynamic and context-sensitive process that lends itself well to ethical pluralism and political liberalism. The second camp adopts a more critical stance. Their criticism pointed out that RE is conceptually flawed or insufficiently rigorous to bear the normative weight placed upon it. This group includes thinkers such as Robert Nozick, Gerald Allan Cohen, Jürgen Habermas, Alasdair MacIntyre, Richard Mervyn Hare, and Amartya Sen.

This paper departs from this polarized camping by resisting both uncritical affirmation and outright dismissal. Excluding introduction, the paper has been divide in five sections. These are interconnected with each other. The first section explicates John Rawls's original formulation of RE. The second section engages with the cultural and historical contingency of moral intuitions. Here, we argue that RE cannot easily account for the diverse moral grammars that emerge across societies. The third section turns to the charge of circularity and the risk of infinite regress inherent in RE's structural design. The fourth section examines the epistemic privilege embedded in the notion of *"considered judgment,"*. We underlines that how it can marginalize non-dominant and subaltern perspectives. The final section synthesizes these critiques. Here, paper offers concluding reflections on the normative future of RE in a world marked by moral conflict and political asymmetry.

What is Reflective Equilibrium?

RE's initial formulation can be traced back to John Rawls's earlier essay, *"Outline of a Decision Procedure for Ethics"* (1951). The *term* does not appear in this foundational text. In that essay, John Rawls sought to address a fundamental question faced as a challenge in the process of almost all decision making: is it possible to devise a reasonable decision procedure robust enough to adjudicate among competing moral claims?[11] This inquiry emerged from his deeply held commitment to moral equality. This commitment specifies that no individual should benefit or suffer merely due to arbitrary forces and factors which are not a matter of their choice/efforts such as natural endowments or social position.[12] In *A Theory of Justice* John Rawls characterized RE as a state of balance or coherence that emerges when our moral principles and specific judgments align. Individuals possess awareness of both the principles our judgments confirm to and the justifications underlying those principles.[13] As Sebastiano Maffettone suggests rightly RE resembles a scientific model or a mathematical demonstration in its effort to generate coherent and testable normative conclusions.[14]

According to Woods Jack's observation, RE is perhaps best understood as the most robust form of "piecemeal method".[15] Rather than constructing or justifying an entire moral theory in a grand, top-down manner, RE proceeds incrementally. It foregrounded deductive certainty in favour of a more dialectical model. First, minor, localized adjustments are made between general principles and specific judgments until a state of coherence is achieved. The dialectic structure of RE emphasizes the interaction between two levels of moral cognition. First level is specific judgments (or what John Rawls calls

[11] Rawls, John. Outline of a Decision Procedure for Ethics. *The Philosophical Review*, 60:2 1951, p. 177.
[12] Lovett, Frank. *Rawls's A Theory of Justice: A Reader's Guide*. Bloomsbury Academic, 2011, p. 43.
[13] Rawls, John. *A Theory of Justice*. Harvard University Press, 1999, p. 18.
[14] Maffettone, Sebastiano. *Rawls: An Introduction*. Polity Press, 2010, p. 142.
[15] Jack, Woods. Against reflective equilibrium for logical theorising. *The Australasian Journal of Logic*, 16:7 2019, p. 319.

"considered judgments") and second one is general principles of collective life. Here, specific judgments are concrete responses to particular cases or moral dilemmas which individual realises in everyday life. John Rawls firmly believed that these judgments are epistemically reliable only when formed under conditions where our moral capacities are functioning at their best, undistorted by prejudice, fear, or ignorance.[16]

On the other side, the construction which aim to systematize and justify specific judgements, are general principles. They are abstract moral rules or theories. They possess broader thematic scope. The broader thematic scope helps to apply them across various situations to provide normative guidance in the process of decision making. What RE requires is not blind adherence to either specific judgments or general principles, but a continuous process of mutual adjustment in the form of a dynamic recalibration in which each is scrutinized and refined in light of the other. As Catherine Elgin notes, achieving RE may demand that we draw new evaluative and descriptive distinctions, discard existing ones, reorder moral priorities, or reconsider which facts and values are morally salient.[17]

David Wong has interpreted RE through a functionalist lens. In this exercise he emphasised on the role of moral convictions in shaping coherent belief systems. For David Wong, moral convictions fulfill epistemic and practical functions in diverse normative systems, and RE helps align those functions within internally coherent moral frameworks.[18] This account suggests that the utility of RE lies not in its capacity to produce universal convergence. The real role it has to play in its facilitation of intelligible and coherent moral outlooks across different political cultures and social traditions. This helps to understand that coherence in RE cannot be limited limited to logical consistency. It also involves normative integration in the process. As Folke Tersman explains, coherence demands that beliefs mutually support one another (not just logically but evaluatively) so that moral convictions are bolstered by principles and vice versa.[19] While we emphasize the depth of moral disagreement, this claim is not intended to dismiss the kind of shared moral terrain that David Wong (2006) describes as *moral ambivalence*. Rather, our point is that the presence of such ambivalence does not eliminate deeper conflicts over justification; it simply reframes them within a space of partial convergence.

As Jonathan Wolff points out, John Rawls's innovation lies in proposing a method where one need not begin with fixed starting points; both ends of the justificatory spectrum are open to negotiation.[20] This openness makes RE a deeply democratic method. It respects the complexity of moral reasoning and the plurality of reasonable viewpoints. Likewise, Michael DePaul reinforces this point by arguing that RE privileges no particular type of belief; all components are revisable in the search for coherence.[21] In this discussion, we argue that coherence must be understood as a matter of degree rather than an absolute state. In the process of political justification, coherence can never be perfect. The political tensions, disagreements, and unresolved questions *(shall & must)* inevitably remain. In other words, it is best conceived as gradual or partial, admitting stronger or weaker forms rather than demanding an unattainable completeness.

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[16] Rawls, John. *Justice as Fairness: A Restatement*. Harvard University Press, 2001, p. 29.
[17] Elgin, Catherine. *Considered Judgement*. Princeton University Press, 1999, pp. 106-107.
[18] Wong, David. *Natural Moralities: A Defense of Pluralistic Relativism*. Oxford University Press, 2006, p. 46.
[19] Tersman, Folke. (2018). Recent work on reflective equilibrium and method in ethics. *Philosophy Compass,* 13:6 2018, p. 2.
[20] Wolff, Jonathan. Public reflective disequilibrium. *Australasian Philosophical Review,* 4:1 2024, p. 46.
[21] DePaul, Michael R. *Balance and Refinement: Beyond Coherence Methods of Moral Inquiry*. Routledge, 1993, p. 13.

Foundationalism and coherentism articulate two competing conceptions of justification. For foundationalism, knowledge is structured hierarchically: it begins with a base of self-evident, infallible, or non-inferentially justified beliefs—what Laurence BonJour terms "*epistemic* foundations."[22] These basic beliefs provide the ultimate warrant from which derivative beliefs gain justification. This seeks epistemic certainty by anchoring knowledge in a stable, privileged core. The concept of coherentism suggests that justification is achieved holistically, through mutual support, consistency, and explanatory integration of assumptions within an interrelated system.[23] No single belief enjoys foundational priority. The credibility of each depends on its contribution to the coherence of the whole. The philosophical tension between the two models reflects a deeper dispute between epistemic linearity—the idea that justification proceeds from fixed starting points—and epistemic circularity, which treats justification as arising from equilibrium in a dynamic web of beliefs or moral convictions. Whereas foundationalism prioritizes certainty and asymmetry, coherentism embraces fallibilism, interdependence, and systemic coherence as epistemic virtues. We will understand how does John Rawls's method of RE exemplifies this coherentist orientation. He distinguishes between "resting point" and "endpoint." On the one hand, former signifies a provisional stage of justification in which a sufficient degree of coherence has been achieved to guide action and confer legitimacy. It remains open to revision in light of new argumentative experiences. For example,, John Rawls's two principles of justice can serve as a resting point, but we need not consider this as an end point. Even though certain edge cases or practical applications may remain unsettled. A state of perfect coherence will be called an end point, in which all judgments, principles, and background theories stand in complete harmony. Such an ideal would embody the notion of full justification.

The connection between these two notions lies precisely in the gradational character of coherence. Because justification should be understood not as pursuing a final, metaphysical harmony but as attaining a satisfactory and workable level of alignment. In this case a resting point becomes adequate for practical purposes. John Rawls thus conceives political justification as essentially provisional and open-ended, always subject to revision, rather than as the discovery of an ultimate and unrevivable endpoint.

Before proceeding ahead, we shall clarify the distinction between narrow and wide RE, a task that is essential to our argument.[24] According to Margaret Holmgren, the distinction between narrow and wide RE concerns the scope of justificatory resources employed in moral theory. Narrow RE (NRE) is defined as "an ordered pair of (a) a set of considered moral judgments … and (b) a set of moral principles that economically systematizes (a)".[25] As Norman Daniels notes, NRE "leaves us with the traditional two-tiered view of moral theories and is particularly ill suited to provide a basis for a justificational argument".[26] Here, justification rests solely on achieving coherence between judgments and principles after screening unreliable intuitions. Wide RE (WRE), by

[22] BonJour, Laurence. *The structure of empirical knowledge*, 1985, Harvard University Press.
[23] Sosa, Ernest. The Raft and the Pyramid: Coherence versus Foundations in the Theory of Knowledge. *Midwest Studies in Philosophy* 5:1 1980, pp. 3–26.
[24] We are grateful to the reviewer for suggesting this direction.
[25] Holmgren, Margaret. The wide and narrow of reflective equilibrium. *Canadian Journal of Philosophy*, 19:1 1989, p. 43.
[26] Daniels, Norman. Wide reflective equilibrium and theory acceptance in ethics. *The Journal of Philosophy,* 76:5 1979, pp. 256-282.

contrast, expands this model into "an ordered triple" including background theories.[27] These theories—ranging from conceptions of the person to social theory—provide independent grounds for assessing principles, thereby reducing the risk of accidental generalizations.[28] Thus, while NRE is restricted to coherence within moral judgments and principles, WRE seeks a more systematic integration by embedding them in a broader theoretical framework. Here, justification involves coherence among three elements: considered judgments, moral principles, and relevant background theories. The background theories include such as theories of the person, social institutions, or procedural justice. The role of these background theories, Norman Daniels emphasizes, is to ensure that principles are not "mere accidental generalizations of the considered judgments" but instead derive independent support from systematic theoretical considerations.

Taking a critical stance, Kai Nielsen argues that the method relies on considered judgments that differ across individuals and cultures, it appears unable to secure objectivity.[29] This concern is intensified by WRE's anti-foundationalist stance: there is, as Kai Nielsen stresses, no "ahistorical, perfectly general, archimedean point" from which justification could be anchored. Instead, WRE begins within particular traditions, which makes it context-sensitive but raises doubts about whether it can overcome cultural particularism. Moreover, the coherence it achieves is inherently provisional—valid "for a time, though only for a time".[30] This fallibilism ensures critical openness but also undermines stability. Sentiment too plays a residual role, risking conservatism or ideological accommodation if equilibrium is sought too quickly. Further Kai Nielsen argues that the equilibrium it achieves is necessarily "for a time, though only for a time"[31], making its results fallible and historically situated. The method depends on an overlapping consensus within democratic societies, yet issues such as abortion or pornography reveal "sharply divisive moral beliefs with clear political implications" that resist resolution even under sustained reflection.[32] Norman Daniels defend WRE as preferable, since background theories may help avoid accidental generalizations.[33] Margaret Holmgren, however, questions whether WRE marks a genuine advance. She argues that both methods presuppose the prima facie credibility of considered judgments and that WRE may simply represent a more sophisticated form of moral intuitionism rather than a fundamentally new methodology.[34]

According to Richard Booker Brandt, the main criticism of WRE is that it accords too much justificatory weight to coherence with our considered moral judgments, despite

[27] Holmgren, Margaret. The wide and narrow of reflective equilibrium. *Canadian Journal of Philosophy*, 19:1 1989, p. 44.
[28] Holmgren, Margaret. The wide and narrow of reflective equilibrium. *Canadian Journal of Philosophy*, 19:1 1989, p. 57.
[29] Nielsen, Kai. Relativism and wide reflective equilibrium. *The Monist*, 76:3 1993, p. 317.
[30] Nielsen, Kai. Relativism and wide reflective equilibrium. *The Monist*, 76:3 1993, p. 318.
[31] Nielsen, Kai. Philosophy Within the Limits of Wide Reflective Equilibrium Alone. *Iyyun: The Jerusalem Philosophical*. 43 1994, p. 16.
[32] Nielsen, Kai. Philosophy Within the Limits of Wide Reflective Equilibrium Alone. *Iyyun: The Jerusalem Philosophical*. 43 1994, p. 19.
[33] Daniels, Norman. *Justice and Justification: Reflective Equilibrium in Theory and Practice*. Cambridge University Press, 1996, p. 57.
[34] Daniels, Norman. *Justice and Justification: Reflective Equilibrium in Theory and Practice*. Cambridge University Press, 1996, pp. 59–60.

the fact that such judgments lack evidential force.[35] Richard Booker Brandt questions whether agreement between principles and considered beliefs can genuinely ground justification, since these beliefs are themselves historically contingent and variable across cultures. He argues that John Rawls's reliance on coherence risks arbitrariness, as it makes moral theory depend on aligning principles with intuitions rather than with independent empirical or psychological tests of validity. Many studies omit clear descriptions of the adjustment process—an essential component of achieving equilibrium—while others inconsistently apply or fail to specify criteria beyond coherence.[36]

The Cultural Contingency of Moral Intuitions in Reflective Equilibrium

In this section the concern is to understand that how could RE hold its claim of universality of justification. RE despite its procedural rigor, is vulnerable to the very particularisms it seeks to abstract from, thereby undermining its claim to universal applicability.[37] John Rawls acknowledges that intuitions may be distorted by the burdens of judgment, which is why his method of RE requires testing and revising them against principles and background theories to filter out general biasness and commonly practiced partiality. The shaping of intuitions by culture and history can also be read as an effect of ideology, whereby moral sensibilities may unconsciously reproduce systems of domination such as patriarchy or class hierarchies.

A person's moral outlook emerges through a complex interplay of relationships, institutional norms, and community engagements. Important to note that what RE treats as foundational and stable are in fact historically situated and often laden with socio-cultural bias. As Michael DePaul observes, the method of RE compels theorists to include ordinary moral beliefs in theory construction, even if these beliefs lack argumentative support. He critiques this tendency, noting that it permits insufficient revision of these beliefs. This concern is also raised by thinkers such as Richard Mervyn Hare and Peter Singer.[38]

Peter Singer suggested that the problem lies precisely in the fact that moral intuitions are not neutral at all but are shaped by evolutionary pressures, cultural traditions, and socio-historical contexts that have no genuine universal moral relevance.[39] Findings from moral psychology, such as Jonathan Haidt's incest case or Joshua Greene's trolley problem studies, illustrate how our "gut reactions" often arise from emotional or evolutionary mechanisms rather than rational moral reasoning. This, Peter Singer argues, casts serious doubt on their reliability as guides to moral truth. From his perspective the charge that reliance on intuitions undermines universality is exactly correct. The contingencies that shape our sensibilities make them an unstable foundation for moral justification. In *Practical Ethics*, Peter Singer argues that the very nature of morality requires us to adopt a universal point of view, one that demands impartial consideration of all

[35] Brandt, Richard Booker. The science of man and wide reflective equilibrium. *Ethics*, 100:2 1990, pp. 259–278.
[36] Helms, Kevin. Applications of the Wide Reflective Equilibrium. *J Ethics* 28:0 2024, pp. 215–237.
[37] Richard Mervyn Hare in a critical note on *A Theory of Justice,* called this phenomenon 'a form of basic subjectivity'. See Hare, Richard Mervyn. (1973). Rawls's Theory of Justice. *Philosophical Quarterly*, *23* ,144–155.
[38] Hare, Richard Mervyn. *Moral thinking: Its Levels, Method, and Point.* Oxford University Press, 1981. Singer, Peter. *Practical ethics*. Cambridge University Press, 2011. DePaul, Michael. Reflective equilibrium and foundationalism. *American Philosophical Quarterly*, 23:1 1986, p. 60.
[39] Singer, Peter. Ethics and intuitions. *The Journal of Ethics*, *9:*3–4 2005, pp. 331–352.

interests. From this standpoint, cultural biases—such as the widespread but unfounded intuition that our obligation to help diminishes with physical distance—are revealed as morally irrelevant.

In *Ethics and Intuitions: A Reply to Singer,* Joakim Sandberg and Niklas Juth argued against Peter Singer's critique. They acknowledged that reliance on intuitions in isolation is problematic, but contended that Peter Singer's rationalist alternative, which seeks to base ethics solely on reason, suffers from parallel difficulties.[40] They introduce a distinction between "practical intuitions" (case-specific, pre-reflective responses such as those elicited in trolley dilemmas) and "theoretical intuitions" (abstract moral axioms such as the claim that five deaths are worse than one). While Peter Singer privileges the latter as rational and reliable, Joakim Sandberg and Niklas Juth argued that theoretical intuitions are no less susceptible to evolutionary, cultural, and psychological influences than practical ones, and therefore cannot serve as an indubitable foundation for moral theory. They believe strength of RE lies precisely in its coherentist structure. In their view, wide form of RE provides a more plausible and balanced methodology than either intuitionism or Peter Singer's rationalist foundationalism.

Norman Daniels refines John Rawls's notion of considered judgments in a more graspable way. On the one side, John Rawls described considered judgments as those moral judgments made under favourable conditions, when our moral capacities are least likely to be distorted by bias, self-interest, or lack of information.[41] On the other side, Norman Daniels emphasises that their significance lies not merely in their psychological stability, but in their support by reason and argument. In his account, a considered judgment is a moral judgment that we are prepared to defend with reasons we find acceptable upon reflection, and that is formed under conditions conducive to fairness and critical scrutiny.[42] Such judgments are not infallible. They are provisional but reasoned commitments that can justifiably serve as starting points in the process of RE. By characterising considered judgments in this way, he aims to strengthen the epistemological basis of RE. It shows that they do not rely on unexamined intuitions but on judgments that are already the product of critical reflection and rational deliberation.[43]

When we goes back to John Rawls, we finds that he deliberately replaces the language of "moral intuitions" with that of "considered judgments" to avoid the implication that moral justification rests on unexamined or purely affective responses. For him, considered judgments are moral judgments made under conditions conducive to rational and impartial reflection, where our sense of justice is least likely to be distorted by bias, ignorance, or self-interest. They are judgments in which "our moral capacities are most likely to be displayed without distortion." By contrast, intuitions—in the ordinary or traditional philosophical sense—refer more broadly to immediate moral responses or pre-reflective moral beliefs. They are the spontaneous outputs of our moral sensibility, which are not necessarily filtered through deliberation or argumentation. While intuitions can serve as the raw data for moral reflection, they lack the epistemic vetting that defines a

[40] Sandberg, Joakim, & Juth, Niklas. Ethics and Intuitions: A reply to Singer. The Journal of Ethics, 15:3 2010, pp. 209–226.
[41] Rawls, John. *A Theory of Justice.* Harvard University Press, 1971, pp. 42–43.
[42] Daniels, Norman. *Justice and Justification: Reflective Equilibrium in Theory and Practice.* Cambridge University Press, 1996, p. 22. And Daniels, Norman. *Reflective Equilibrium and Archimedes' Point. Canadian Journal of Philosophy* 9:2 1979, pp. 259–276.
[43] Daniels, Norman. *Justice and Justification: Reflective Equilibrium in Theory and Practice.* Cambridge University Press, 1996, p. 23-24.

considered judgment. Norman Daniels sharpens this distinction further by insisting that considered judgments are those which can be defended with reasons upon critical examination. Whereas intuitions may simply register what feels right or wrong, considered judgments are reflectively endorsed moral beliefs—those that survive scrutiny and can be rationally supported within a coherent moral framework.

Norbert Paulo's empirical findings corroborate this critique by demonstrating that moral intuitions vary markedly across cultural contexts.[44] In pluralistic societies, differing moral norms shape what are perceived as 'intuitive' responses. For example, practices seen as morally benign in one culture may be deeply objectionable in another. Such divergence reflects not irrationality but deeply embedded cultural conditioning. Consequently, RE's initial assumption—that moral intuitions are reliable guides toward moral truth—cannot withstand scrutiny in the face of cultural diversity or in a case where radically diverse people or group are coming together as one political community. Margaret Urban Walker notes that RE permits the disqualification of some intuitions when they obstruct the coherence of a preferred equilibrium.[45] This selectivity illustrates that moral intuitions are not treated consistently within the method, further problematizing the normative weight they carry.

Georg Brun's defence of RE attempts to address this issue by minimizing the role of moral intuitions. He asserts that intuitions occupy a minimal place in RE's epistemology, which prioritizes coherence among judgments over the preservation of any particular intuitive belief.[46] Yet, such a defence sidesteps a central difficulty, which is determining which intuitions merit preservation and which should be revised. This evaluative task is itself embedded in cultural presuppositions.

The relation between judgment and revision in RE mirrors broader tensions in philosophical discourse regarding coherence and pluralism. The conceptual apparatus of Jürgen Habermas, particularly his notion of communicative reason, offers a lens through which we can further examine this dilemma. Todd Hedrick characterizes communicative reason as grounded in the emancipatory potential of dialogue in the form of a discursive process aimed at consensus through the mutual overcoming of subjective standpoints.[47] In a homogeneous cultural context, such a reason may yield a shared moral understanding. However, in a world increasingly marked by hyper-pluralism—a term Alessandro Ferrara uses to describe radical, overlapping moral commitments—this model of reason faces significant challenges. The dialogical process envisioned by Jürgen Habermas assumes at least some shared normative space. Yet in today's global society, such a space is frequently fragmented and diminishing continuously.

Margaret Urban Walker contends that moral deliberation cannot be disentangled from the socio-political and relational contexts in which individuals are situated.[48] From this vantage point, RE's abstraction from social particularity renders it ill-suited to grapple with the power dynamics that structure moral reasoning. In a society stratified along lines

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[44] Paulo, Norbert. The unreliable intuitions objection against reflective equilibrium. *The Journal of Ethics*, 24:3 2020, p. 349.

[45] Walker, Margaret Urban. (1997). *Moral Understandings: A Feminist Study in Ethics.* Oxford University Press, 1997, pp. 70-71.

[46] Brun, Georg. Reflective equilibrium without intuitions? *Ethical Theory and Moral Practice*, 17:2 2013, p. 238.

[47] Hedrick, Todd. Rawls and Habermas: *Reason, Pluralism, and the Claims of Political Philosophy*. Stanford University Press, 2008, p. 90.

[48] Walker, Margaret Urban. (1997). *Moral Understandings: A Feminist Study in Ethics.* Oxford University Press, 1997.

of race, gender, caste, and class, certain moral perspectives gain epistemic privilege not due to coherence but through institutional reinforcement and cognitive normalization. In such a context, RE's claim of neutrality collapses into complicity with dominant normative frameworks.

While John Rawls champions the equal standing of moral convictions, the actual practice of RE betrays an asymmetry in how these convictions are treated. Important to note that, we are not putting any allegation on John Rawls, but trying to set a future direction with his discussion. Some intuitions which often aligned with dominant cultural narratives, are tacitly valorised. Others, particularly those emerging from marginalized experiences, are side-lined as anomalies or inconsistencies. This privileging is not merely an epistemic error but reflects an underlying political economy of knowledge. The concept of relational autonomy thus becomes essential to our analysis: it acknowledges that moral convictions do not arise in isolation but in webs of intersubjective relations shaped by power and social hierarchy.

Samuel Freeman, a leading Rawlsian interpreter, reinforces this point. Samuel Freeman acknowledges that John Rawls does not maintain—contra Kant—that moral autonomy can be realized irrespective of external conditions.[49] Instead, moral autonomy is profoundly shaped by one's social environment. This conviction further challenges the notion that RE can serve as a universally applicable methodology. His reading opens the possibility for a more context-sensitive and historically grounded application of RE, though even this may fall short of addressing the full complexity of cross-cultural moral reasoning.

The culmination of these critiques leads us to propose the notion of *reflective disequilibrium* as a more accurate representation of our moral landscape.[50] Rather than viewing inconsistency and incoherence as failures to be eliminated, reflective disequilibrium acknowledges them as constitutive features of moral life of a person and political community. The multiplicity of conflicting intuitions, principles, and background theories reflects the diverse cultural and historical trajectories that shape moral agents.

This notion differs importantly from John Rawls's distinction between *resting points* and *end-points*. For John Rawls, a resting point marks a provisional stage in RE—sufficient coherence to guide action and confer legitimacy, yet always open to future revision—whereas an end-point represents the ideal of perfect coherence, in which all judgments, principles, and background theories are in complete alignment. Reflective disequilibrium denies that either the provisional harmony of a resting point or the idealized closure of an end-point captures the actual moral condition of agents. Instead, it emphasizes the structural and enduring nature of tensions in moral reasoning, arguing that such tensions are not temporary obstacles but the very substance of ethical life in conditions of plurality.

This disequilibrium is enduring condition of moral plurality. The aim, therefore, is not to achieve a final state of harmony but to engage in sustained, critical reflection that remains open to ongoing revision. In embracing reflective disequilibrium, we resist the temptation to impose premature resolutions on moral disagreements. We recognize that coherence, while valuable, may be achieved at the cost of erasing moral particularities. Instead, we advocate for a model of moral reasoning that is dialogical, pluralistic, and

[49] Freeman, Samuel. *Justice and The Social Contract: Essays on Rawlsian Political Philosophy*. Oxford University Press, 2007, p. 43.

[50] We are using this terminology to represent our discussed condition. Please do not understand that we are proposing an alternative to RE.

reflexive—one that takes seriously the cultural contingency of moral intuitions and the socio-political contexts in which they arise. Ultimately, this reconceptualization enriches the moral philosophical project by revealing the limitations of abstract methods and emphasizing the significance of historically and culturally situated reasoning. The pursuit of justice and ethical understanding, in such a framework, becomes not a matter of arriving at equilibrium but of navigating the tensions and contestations that define our shared moral lives.

RE presupposes the possibility of reconciliation: it conceives moral justification as the regulative pursuit of coherence among judgments, principles, and background theories. Even if such coherence is only provisional, the method remains aspirational and teleological, oriented toward integration and harmony. Reflective disequilibrium foregrounds the irreducibility of conflict. It treats dissonance not as a flaw to be eliminated. Flaw is constitutive and enduring dimension of moral life under conditions of plurality. On this view, ethical reasoning is diagnostic and critical, directed not toward final reconciliation but toward the ongoing navigation of tensions and contestations. Whereas equilibrium imagines ethics as the achievement of harmony, disequilibrium reconceives it as the practice of engaging productively with persistent dissonance.

The Circularity and Endless Iteration in Reflective Equilibrium

In this section, we turn our attention to the iterative nature of the RE and risks it entails. The central problem lies in the way judgments and principles are adjusted to fit one another without any external validation. The danger is that RE can become an unending, circular process—one that may be theoretically appealing but practically insubstantial. Particularly when it is used to navigate moral dilemmas in the real world. The promise of RE lies in its ability to reconcile conflicting principles and moral convictions. But its iterative process risks becoming a ceaseless cycle. This raises questions about whether RE can genuinely resolve incommensurability in ethical judgments.

While John Rawls himself emphasized that this back-and-forth dynamic facilitates coherence between specific moral beliefs and overarching principles, we contend that the very nature of this iterative process can undermine its pragmatic efficacy. The key limitation lies in the absence of external validation. Without some form of external verification or anchor point, RE runs the risk of becoming a closed system in which moral convictions are adjusted solely in relation to one another, rather than in response to broader moral frameworks. This lack of external validation risks devolving into a circular reasoning loop that is disconnected from the actual ethical problems it seeks to address. By external normative validation, we refer to the process through which a moral theory's claims are assessed against normative and empirical reference points that can lie outside the internal coherence of RE (even beyond the background theories). External validation tests whether the results of this process hold when confronted with independent sources of moral insight, experience, and intersubjective evaluation.

As Norman Daniels reminds us, one possible form of such validation is empirical moral inquiry, which examines how moral principles correspond to lived experience, social practices, and the moral understandings of diverse groups.[51] His perspective helps ensure that ethical justification is not detached from the realities of life. A second form is

[51] Daniels, Norman. *Justice and Justification: Reflective Equilibrium in Theory and Practice*. Cambridge University Press, 1996.

deliberative-democratic validation, rooted in Jürgen Habermas's conception of communicative rationality.[52] Here, moral claims gain legitimacy through public reasoning and inclusive dialogue conducted under conditions of equality and reciprocity. In a way subjecting coherence-based judgments to intersubjective scrutiny. A third form is cross-cultural convergence, as suggested by David Wong, which can serve as a meta-ethical indicator of plausibility: when distinct moral traditions, shaped by different histories and worldviews, converge on similar principles, this convergence provides partial external support for their normative validity.[53] When we take together, these mechanisms extend RE beyond its self-referential limits. They provide epistemic and practical anchors that test the moral theory's coherence against the plural, dialogical, and empirical dimensions of human experience.

While WRE extends the justificatory reach of John Rawls's original model by incorporating background theories, it may still lack the epistemic resources to provide genuine external validation for moral justification. Norman Daniels attempts to strengthen WRE's justification by introducing background theories but admits that this remains "an internal expansion of coherence" rather than an external validation.[54] Principally, considered judgments, moral principles, and background theories perform mutual adjustment in a closed justificatory circular. In this way, its coherence-based structure remains internally referential. This internalism makes WRE vulnerable to the charge of epistemic circularity. And this charge is not unimportant also. The problem is refining coherence among beliefs without demonstrating why those beliefs should track anything normatively independent of the system itself. Kevin Helms emphasizes methodological inconsistency and lack of external standards for assessing equilibrium, suggesting that WRE functions "more as a metaphor than a standardized method".[55] Consequently, WRE risks collapsing into what critics describe as methodological insularity, where justification becomes an exercise in self-consistency rather than responsiveness to lived moral experience or objective moral truth. In theoretical terms, this reveals a structural limit of coherentism which is without a non-coherentist constraint, be it realist, empirical, or procedural, WRE cannot decisively bridge the gap between internal justification and external validity.

Circular reasoning in RE stems from its self-referential justification system. In this model, moral convictions and general principles are justified by referring only to one another, creating a closed loop of reasoning. When inconsistencies emerge between these judgments and principles, the method calls for an adjustment—either revising the judgments to fit the principles or modifying the principles to accommodate the judgments. As each revision introduces new inconsistencies, the method becomes stuck in a never-ending cycle of re-evaluation. The process itself becomes the focal point, and the original goal of arriving at a stable moral judgment or principle remains elusive.

The problem with this is not merely academic—it has real-world implications. In a practical context, when moral agents face pressing ethical dilemmas, they often need timely guidance to make decisions. With its constant adjustments and revisions, iterative nature of RE, risks delaying the formulation of actionable ethical responses. For example, consider the urgency of contemporary moral questions. The ongoing conflict between

[52] Habermas, Jürgen. *Moral Consciousness and Communicative Action.* MIT Press, 1990.
[53] Wong, David. *Natural Moralities: A Defence of Pluralistic Relativism.* Oxford University Press, 2006.
[54] Daniels, Norman. *Justice and Justification: Reflective Equilibrium in Theory and Practice.* Cambridge University Press, 1996, pp. 21-25.
[55] Helms, Kevin. Applications of the Wide Reflective Equilibrium. *J Ethics* 28:0 2024, pp. 230–233.

Ukraine and Russia demands an immediate ethical response from the world society. Similarly, the commercialization of education presents a moral crisis that demands swift and definitive action to ensure equal access to quality education for all citizens. In both cases, a decision-making framework that is tied to endless iteration and constant re-evaluation may prove inadequate, as it lacks the ability to provide clear and immediate moral guidance. The iterative nature of RE is epistemically valuable but in applied ethical or policy contexts, agents often require provisional but operational conclusions. Endless iteration, while theoretically coherent, risks undermining the practical function of moral reasoning, which is to orient judgment and guide choice under conditions of uncertainty. Thus, the argument is not against moral reasoning itself, but against a form of procedural open-endedness that offers no normative thresholds for sufficient justification.

The problem of endless iteration and circular reasoning in RE can be further understood through the lens of Woods Jack's 'oscillation problem,' as identified in his 2019 work. Woods Jack describes the oscillation problem as a moral agent's difficulty in maintaining a stable moral stance when confronted with competing ethical theories. This occurs when a moral agent shifts back and forth between different justifications, unable to reach a stable, consistent conclusion. In the case of RE, this oscillation manifests itself as the continual back-and-forth between adjusting moral convictions and principles.

Epistemic Privilege and the Exclusion of Marginalised Perspectives

The method of RE harbours a deep epistemological limitation which is its overreliance on *considered judgments* as the principal source of moral input in the process of moral reasoning. This dependency, often lauded as democratic and flexible. But it conceals a more troubling consequence. Which is, namely, the systematic privileging of epistemic agents who possess the social, educational, and cognitive resources to participate in such reflective processes. This epistemic asymmetry can marginalise those whose voices are formed in structurally disadvantaged contexts. Our critical intervention lies in revealing that this overreliance is not merely a technical problem of method. But an ontological and epistemological one—a concern rooted in the very conditions under which knowledge, moral conviction, and reasoning are constituted.

Drawing on Miranda Fricker's seminal work on *epistemic injustice*, we can deepen our understanding of how power relations infiltrate the epistemic domain.[56] Miranda Fricker identifies how structural inequalities lead to *testimonial injustice* and *hermeneutical marginalisation*. In these phenomenon individuals from subordinate groups are either not heard or not intelligible within dominant discourses. This framework is profoundly relevant to RE, which assumes that considered judgments are not only accessible but also normatively equivalent across socio-political contexts. Miranda Fricker argues that social systems and practices are not neutral but favour the powerful.[57] Ontologically, these dominant agents shape the very structure of the social world. The dominant actors determine which moral concerns appear urgent, which narratives are intelligible, and which forms of reasoning are acceptable. Epistemologically, this dominance permits the shaping of collective understandings in ways that reinforce and reproduce elite-centric perspectives, sidelining those of the marginalised.

[56] Fricker, Miranda. *Epistemic Injustice: Power and the ethics of knowing.* Oxford University Press, 2007.
[57] Fricker, Miranda. *Epistemic Injustice: Power and the ethics of knowing.* Oxford University Press, 2007, p. 147.

This dual reading of power—as ontologically constitutive and epistemologically structuring—problematizes RE's starting point. Considered judgments, far from being foundationally secure or universally available, are often shaped by embedded normativities that exclude the experiences and insights of subaltern groups. Norman Daniels anticipated this issue, observing that considered judgments are not foundational enough to ground moral theory reliably.[58] What is taken to be "considered" is already the product of socio-epistemic filtration. In this sense, it is a curated form of intuition, framed by dominant sensibilities of society. Thus, the justificatory framework of RE, which aspires to impartiality and inclusivity can reinforce epistemic privilege under the guise of coherence and rationality.

This vulnerability becomes particularly salient when RE is used to adjudicate moral disagreements in pluralistic societies. In the pursuit of internal consistency, RE may actively filter out judgments that deviate from the dominant liberal-democratic paradigm. Such paradigms include indigenous cosmologies, feminist ethics, or postcolonial critiques. These perspectives often challenge the epistemic assumptions underpinning liberal political morality itself, thus appearing "incoherent" or "inconsistent" when measured against dominant principles. However, we need to understand their very incoherence within the liberal framework is a function of their epistemic exteriority, not their moral inferiority. To ignore such perspectives is to fall into what Miranda Fricker would call a form of hermeneutical injustice, which is a failure of the moral community to provide interpretive resources adequate for all its members.

Michael DePaul's intervention is particularly relevant here. He argues that the radical potential of RE has been underexplored. He suggests that RE can function as a genuinely subversive methodology in moral inquiry when genuinely reoriented toward pluralism.[59] Michael Huemer (2008) complements this concern by identifying a parallel obstacle to RE's liberatory potential. He challenges the assumption that moral theory must preserve common-sense morality. Against this, Michael Huemer contends that intuitionism should be revisionary rather than preservative, rejecting the view.[60] Many ordinary intuitions, he extends, are distorted by cultural indoctrination, evolutionary bias, and emotional conditioning.[61] To counter this, he proposes a critical and self-corrective methodology that discounts intuitions most susceptible to distortion and accords greater weight to abstract, reflective, and formally coherent intuitions. In this revisionary form, intuitionism becomes a progressive epistemology capable of transforming rather than reproducing inherited moral frameworks. We argue building on this insight that RE must evolve beyond its conventional liberal structure if it is to remain normatively viable in moral and political communication. A radically pluralistic RE should not merely tolerate but actively integrate contestatory moral traditions and the lived experiences of those historically excluded from moral deliberation. This requires the development of procedural mechanisms that elevate marginalized moral reasoning and counteract the epistemic asymmetries embedded in current reflective practices.

Jonathan Wolff and Avner de-Shalit attempted to address this concern through their notion of *dynamic public reflective equilibrium*. We believe that they were partially successful in their attempt. They advocate beginning moral inquiry from the concrete

[58] Daniels, Norman. Wide reflective equilibrium and theory acceptance in ethics. *The Journal of Philosophy,* 76:5 1979, p. 268.
[59] Depaul, Michael. Two conceptions of coherence methods in Ethics. *Mind*, XCVI:384 1987, p. 463.
[60] Huemer, Michael. *Revisionary intuitionism. Social Philosophy & Policy,* 25:1 2008, p. 369.
[61] Huemer, Michael. *Revisionary intuitionism. Social Philosophy & Policy,* 25:1 2008, pp. 373–376.

experiences of the public, especially those engaged in activism and social struggle.[62] It means moral inquiry must not begin from the philosopher's reading desk. Their view foregrounds the necessity of cultural, historical, and social specificity in moral reasoning. However, while their account gestures toward inclusivity, it does not fully grapple with the circularity and potential infinitude of RE's justificatory loops. In the absence of such criteria, the issue of epistemic privilege persists—albeit mitigated, to some extent, by contextual sensitivity.

Recent scholarship has sought to reform RE by addressing its epistemic insularity and limited inclusivity. Julian Savulescu, Christopher Gyngell, and Guy Kahane's model of *Collective Reflective Equilibrium in Practice* (CREP) expands RE beyond individual moral reasoning by integrating empirical data on public moral attitudes into expert ethical deliberation.[63] They developed very important scholarship in this regard. CREP emphasizes a collective and participatory process. It filters public preferences to exclude dominant biases and aligning them with established normative theories to generate policies. These policies are both ethically justified and democratically legitimate. This embedded approach aims to counter the epistemic privilege inherent in traditional deliberative models. Alice Baderin similarly critiques individual reflective equilibrium. She argues that reliance on philosophers' considered judgments reproduces elite and socially exclusive perspectives.[64] She proposes a modestly public RE that incorporates diverse moral viewpoints as epistemic correctives to professional bias.[65] This intervention widens somehow Jonathan Wolff and Avner de-Shalit's line of argument. Building in this direction, Borgar Jølstad et al. (2024) contend that while including popular views can democratize moral justification, such inputs must approximate considered judgments in the form of inclusion of deliberated and informed beliefs rather than raw intuitions.[66] Together, these arguments elucidate that epistemic privilege in RE arises from methodological asymmetry. Because marginalized perspectives remain mediated through expert reasoning. A way to remove this is to prepare structures of deliberation in such way that can grant them direct justificatory authority.

The absence of an explicit criterion for holding the deliberative process in RE has implications for epistemic privilege because it leaves open, in practice, *who* exercises judgment about *when* coherence is sufficient for action.[67] In idealized terms, RE assumes that all agents can engage in sustained, open-ended moral reflection. However, in real-world contexts, only certain epistemic agents—typically those with social, educational, and material advantages—possess the time, resources, and institutional legitimacy to sustain such deliberation. This asymmetry means that the power to determine when deliberation ends, and whose judgments count as "reflectively adequate," is itself unequally distributed. Those with epistemic privilege can indefinitely defer action under the guise of reflective revision, while marginalized agents—whose moral knowledge is often grounded

[62] Wolff, Jonathan. & De-Shalit, Avnir. *Disagreement*. Oxford University Press, 2007, p. 41.
[63] Savulescu, Julian., Gyngell, Christopher., & Kahane, Guy. *Collective reflective equilibrium in practice (CREP) and controversial novel technologies*. *Bioethics, 35:6 2021*, pp. 652–663.
[64] Baderin, Alice. Reflective Equilibrium: Individual or Public? *Social Theory and Practice,* 43:1 2017, p. 8.
[65] Baderin, Alice. Reflective Equilibrium: Individual or Public? *Social Theory and Practice,* 43:1 2017, pp. 15-17.
[66] Jølstad, Borgar., et al. "When Should Popular Views be Included in a Reflective Equilibrium?" *Erkenntnis*, 90:6 2024, 2279–2296.
[67] Reviewer has raised a crucial question that "how the problem of not having a criterion for terminating the process in favor of practical action has anything to do with the problem of epistemic privilege?". We are grateful for suggesting this line of argument.

in lived experience rather than theoretical reflection—lack comparable authority in defining closure. Thus, the absence of termination criteria indirectly perpetuates epistemic exclusion, privileging those already positioned to control the boundaries of deliberation. In this sense, the two issues are intertwined: the indeterminacy of RE enables the reproduction of epistemic hierarchies, because the open-ended process tacitly assumes that all participants have equal capacity to deliberate, when in fact deliberative endurance is a form of epistemic power.

Conclusion

We do not claim to present an alternative to RE, but to seek to improve this method through three critical fronts. Positioned as a non-foundationalist methodology, RE's procedural model—characterised by iterative calibration between moral principles and considered judgments—sought coherence over hierarchy, promising a deliberative and egalitarian framework of normative justification. The epistemic and normative architecture of RE shows its internal fragilities, when interrogated through a critical lens. The method's reliance on considered judgments presumes a level of epistemic neutrality. In practice this is embedded within and shaped by structures of cultural memory, discursive power, and ideological hegemony. To resolve this entanglement is necessary. RE risks reifying the convictions of dominant agents as rational while disqualifying subaltern or counter-hegemonic claims as incoherent or unreasoned. In effect, its coherence-driven model inadvertently can function as a mechanism of epistemic exclusion. Whereby dissenting worldviews are filtered out under the guise of reflective dissonance. The justificatory logic of RE, by virtue of its self-referentiality, flirts with circularity. Lacking any external normative criterion, RE becomes susceptible to perpetual revision without resolution. This undermines its efficacy in contexts of deep moral conflict and crisis. Its procedural inclusivity proves illusory when access to reflective participation is predicated on the possession of specific cognitive, linguistic, and cultural capital. These are resources disproportionately held by epistemic elites. Thus, while RE aspires to democratic legitimacy and pluralistic engagement, its current formulation entrenches consensus among the already privileged. A genuine democratization of RE demands its radical reconstitution. This process of reconstitution will generate the kind of way(s) that centers epistemic multiplicity, restores moral agency to marginalised voices, and treats contestatory traditions not as anomalies to be reconciled, but as constitutive sites of normative innovation. Only by embracing such an epistemically decentered model can Reflective Equilibrium evolve from a method of theoretical coherence into a praxis of political justice.

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Bibliography

Baumberger, Christoph, & Brun, Georg. Reflective equilibrium and understanding. *Synthese*, 198:8 2020, pp. 7923–7947. https://doi.org/10.1007/s11229-020-02556-9

Baderin, Alice. Reflective Equilibrium: Individual or Public? *Social Theory and Practice,* 43:1 2017, pp. 1–28.

Brun, Georg. Reflective equilibrium without intuitions? *Ethical Theory and Moral Practice*, 17:2 2013, pp. 237–252. https://doi.org/10.1007/s10677-013-9432-5

Brandt, Richard Booker. The science of man and wide reflective equilibrium. *Ethics*, 100:2 1990, pp. 259–278. https://doi.org/10.1086/293176

BonJour, Laurence. *The structure of empirical knowledge*, 1985, Harvard University Press.

Chung, Hun. Rawls's Self-Defeat: A Formal Analysis. *Erkenntnis*, 85:5 2018, pp. 1169–1197. https://doi.org/10.1007/s10670-018-0079-4

De Maagt, Sem. Reflective equilibrium and moral objectivity. *Inquiry*, 60:5 2016, pp. 443–465. https://doi.org/10.1080/0020174x.2016.1175377

Daniels, Norman. Reflective Equilibrium. In Jon Mandle & David A. Reidy (Eds.), *The Cambridge Rawls Lexicon* (pp. 709-716). Cambridge University Press, 2015.

Daniels, Norman. Justice and justification: Reflective Equilibrium in Theory and Practice. *Cambridge University Press,* 1996.

Daniels, Norman. Wide reflective equilibrium and theory acceptance in ethics. *The Journal of Philosophy,* 76:5 1979, pp. 256-282. https://doi.org/10.2307/2025881

DePaul, Michael. *Balance and Refinement: Beyond Coherence Methods of Moral Inquiry*. Routledge, 1993.

Depaul, Michael. Two conceptions of coherence methods in Ethics. *Mind*, XCVI:384 1987, pp. 463–481. https://doi.org/10.1093/mind/xcvi.384.463

DePaul, Michael. Reflective equilibrium and foundationalism. *American Philosophical Quarterly,* 23:1 1986, pp. 59-69.

Elgin, Catherine. *Considered Judgement*. Princeton University Press, 1999.

Fricker, Miranda. *Epistemic Injustice: Power and the ethics of knowing*. Oxford University Press, 2007.

Freeman, Samuel. *Justice and The Social Contract: Essays on Rawlsian Political Philosophy*. Oxford University Press, 2007.

Helms, Kevin. Applications of the Wide Reflective Equilibrium. *J Ethics* 28:0 2024, pp. 215–237. https://doi.org/10.1007/s10892-023-09458-1

Jølstad, Borgar., et al. When Should Popular Views be Included in a Reflective Equilibrium? *Erkenntnis*, 90:6 2024, 2279–2296.

Jack, Woods. Against reflective equilibrium for logical theorising. *The Australasian Journal of Logic*, 16:7 2019, pp. 319–341. https://doi.org/10.26686/ajl.v16i7.5927

Huemer, Michael. *Revisionary intuitionism. Social Philosophy & Policy,* 25:1 2008, pp. 368–392.

Nielsen, Kai. Relativism and wide reflective equilibrium. *The Monist*, 76:3 1993, pp. 316–332. https://doi.org/10.5840/monist199376320

Nielsen, Kai. Philosophy Within the Limits of Wide Reflective Equilibrium Alone. *Iyyun: The Jerusalem Philosophical.* 43 1994, pp. 3–41.

Hedrick, Todd. *Rawls and Habermas: Reason, Pluralism, and the Claims of Political Philosophy*. Stanford University Press, 2008.

Habermas, Jürgen. *Moral Consciousness and Communicative Action*. MIT Press, 1990.

Holmgren, Margaret. The wide and narrow of reflective equilibrium. *Canadian Journal of Philosophy*, 19:1 1989, pp. 43–60. https://doi.org/10.1080/00455091.1989.10716466

Holmgren, Margaret. Wide Reflective Equilibrium And Objective Moral Truth. *Metaphilosophy*, 18:2 1987, pp. 108–124. https://doi.org/10.1111/j.1467-9973.1987.tb00192.x

Hare, Richard Mervyn. Rawls's Theory of Justice. *Philosophical Quarterly*, 23:91 1973, pp. 144–155.

Kelly, Thomas. & McGrath, Sarah. Is Reflective Equilibrium Enough? *Philosophical Perspectives*, 24:1 2010, pp. 325–359. https://doi.org/10.1111/j.1520-8583.2010.00195.x

Kukathas, Chandran. & Pettit, Pettit. *Rawls: A Theory of Justice and its Critics*. Polity Press, 2007.

Lovett, Frank. *Rawls's A Theory of Justice: A Reader's Guide*. Bloomsbury Academic, 2011.

Maffettone, Sebastiano. *Rawls: An Introduction*. Polity Press, 2010.

Paulo, Norbert. The unreliable intuitions objection against reflective equilibrium. *The Journal of Ethics*, 24:3 2020, pp. 333–353. https://doi.org/10.1007/s10892-020-09322-6

Rawls, John. *A Theory of Justice*. Harvard University Press, 1999.

Rawls, John. *Justice as Fairness: A Restatement*. Harvard University Press, 2001.

Rawls, John. Outline of a Decision Procedure for Ethics. *The Philosophical Review*, 60:2 1951, pp. 177–197. http://doi.org/10.2307/2181696

Schmidt, Michael William. Defining the method of reflective equilibrium. *Synthese*, 203:5 2024, pp. 1-23. https://doi.org/10.1007/s11229-024-04571-6

Schaefer, Alexander. (2021). Is justice a fixed point? *American Journal of Political Science*, 67:2 2021, pp. 277–290. https://doi.org/10.1111/ajps.12631

Savulescu, Julian., Gyngell, Christopher., & Kahane, Guy. Collective Reflective Equilibrium in Practice (CREP). *Bioethics*, 35:6 2021, pp. 652–663.

Scanlon, Thomas Michael. (2002). 'Rawls on Justification'. In Samul Freeman (Eds.), *The Cambridge Companion to Rawls* (pp. 139-167). Cambridge University Press.

Singer, Peter. *Practical ethics*. Cambridge University Press, 2011.

Sandberg, Joakim, & Juth, Niklas. Ethics and Intuitions: A reply to Singer. The Journal of Ethics, 15:3 2010, pp. 209–226.

Singer, Peter. Ethics and intuitions. *The Journal of Ethics*, *9*:3–4 2005, pp. 331–352.

Sosa, Ernest. The Raft and the Pyramid: Coherence versus Foundations in the Theory of Knowledge. *Midwest Studies in Philosophy* 5:1 1980, pp. 3–26.

Singer, Peter. Sidgwick and reflective equilibrium. *The Monist*, *58*:3 1974, pp. 490–517. https://doi.org/10.5840/monist197458330

Tersman, Folke. Recent work on reflective equilibrium and method in ethics. *Philosophy Compass,* 13:6 2018, pp. 1-10. https://doi.org/10.1111/phc3.12493

Weithman, Paul. Stability and equilibrium in political liberalism. *Philosophical Studies*. 181:1 2023, pp. 23- 41. https://doi.org/10.1007/s11098-023-02075-6

Wolff, Jonathan. Public reflective disequilibrium. *Australasian Philosophical Review,* 4:1 2024, pp. 45–50. https://doi.org/10.1080/24740500.2021.1876413

Wolff, Jonathan. & De-Shalit, Avnir. *Disagreement*. Oxford University Press, 2007.

Weber, Eric Thomas. *Rawls, Dewey and Constructivism: On the Epistemology of Justice*. Continuum International Publishing Group, 2010.

Wong, David. *Natural Moralities: A Defense of Pluralistic Relativism*. Oxford University Press, 2006.

Walker, Margaret Urban. (1997). *Moral Understandings: A Feminist Study in Ethics*. Oxford University Press, 1997.

De Ethica (2026) 9.3:96–100
https://doi.org/10.3384/de-ethica.2001-8819.269396

Book Review: Joerg Rieger & Terra Schwerin Rowe (eds.) *Liberating People, Planet, and Religion: Intersections of Ecology, Economics, and Christianity*.

Gary Slater

Rieger, Joerg and Rowe, Terra Schwerin, editors. *Liberating People, Planet, and Religion: Intersections of Ecology, Economics, and Christianity*. Rowman & Littlefield, 2024, 264 pp.

This volume is an intervention into the causes and consequences of some challenging contemporary intersections of economic, religious, and planetary systems. Joerg Rieger, a professor of theology and the director of Wendland-Cook Program in Religion and Justice at Vanderbilt University in Tennessee, and Terra Schwerin Rowe, a professor of philosophy and religion at the University of North Texas, have assembled within this volume a set of perspectives whose scope is sweeping, even as the range of academic, religious, and geographic backgrounds of its contributing authors is comparatively narrow. Given that the project stems from an academic conference that had been planned for the spring of 2020 at Vanderbilt but which had to be canceled because of the Covid-19 pandemic—an ongoing context referenced in many of the chapters—this relatively parochial quality is not a surprise. With the exception of George Zachariah, who is based in New Zealand, all of the book's contributors live and work in the United States (though contributor Whitney Bauman divides his time between Florida and Germany), and most are scholars of theology, religion, and ethics—particularly in liberal Protestant varieties—with a bit of social science and a lot of public engagement represented, as well.

The themes, aims, and structure of the book are clear and easy to represent. Across the triad of ecology, economics, and Christianity found in the subtitle of the book, there is a progression of normative positions that moves from the more unequivocal to more ambivalent: ecology (an absolute disaster), economics (deleteriously dominated by capitalism, which degrades the planet and corrupts religion, but which can sometimes be reimagined or mitigated), Christianity (ambivalent: errant in either ignoring the toxic link between capitalism and ecological devastation or in actively participating in it, and in some accounts even foundational to this link because of a deeply rooted anthropocentrism—an argument made famous by Lynn White—yet also possessed of alternative inheritances by which to reimagine the human/nonhuman dualism, learn from other cultures in a spirit of solidarity, and promote emerging liberative practices). These positions are reflected in some of the references that appear throughout the book: e.g., in ecology, Jason Moore's notion of the Capitalocene (a more polemical alternative to the Anthropocene); in economics, Herman Daly's steady-state economy; in Christianity, Sallie McFague's ecotheology, Catherine Keller's relational theology, and the liberationist theological tradition.

These positions are consistent with two key commitments shared by Rieger, Rowe, and the nine contributing authors in the volume. First, one must never fall into

pessimism, as there are counter-impulses to attend to that are worth celebrating and emulating. Second, one must focus on these forces holistically—for example, attending, in economic terms, to modes of production as well as well as habits of consumption. Fittingly, the structure of the volume seeks to place diagnoses and analyses of large-scale problems alongside descriptions of embedded practices. Even if the distinction between parts I and II of the book is not always clear, the volume's structure generally succeeds in this task. This combination of worldviews and practices reflects, respectively, the two parts of a typology that Christian ethicist Willis Jenkins has called the "cosmological" and "pragmatic" approaches to religious environmental ethics. Both of these types are represented within the volume, which is to its credit. The general progression across the book is from the abstract to the concrete, the large to the small scale.

Following the editors' introduction, the volume consists of eleven chapters structured across three parts. Part I, "Global Historical and Contextual Approaches," begins with a chapter from Rowe, which provides an overview of how the production and consumption of energy has been represented within the cultural imagination across history. Rowe's argument is that unsustainable extractivist economic practices are deeply rooted in the Western psyche. In her telling, the topic of energy need not be the preserve of engineers and technocrats or commercial interests but a basic theological occupation, too. Therefore, although the production and consumption of energy has been a site of unjust relations, it is at least possible for theologians to bring the resources of their tradition to bear in linking energy practices with moral commitments. The next chapter comes from sociologist Nathalia Hernández Vidal, who provides a detailed social history of Colombia as she traces changes in liberation theology in becoming less androcentric and more erotic, which is to say engaged with other-than-human worlds. Of particular interest to Vidal is pedagogy, which is represented as an ambivalent but vital means of taking a place-based approach to reimagining unjust economic practices. Part I's final chapter, from George Zachariah, focuses on the notion of the commons, with a cultural grounding in the traditions of the South Pacific. Zachariah argues that a *moana* perspective (*moana* means "water body") warrants a critique of ecotheology's separation of ecological and social concern. For Zachariah, what one ultimately finds in this vision is the "commons" as an ecological justice paradigm that might be applied in other cultural and geographic contexts.

Part II of the book, "Alternative Frameworks," begins with a chapter from Rieger. A summary of arguments developed in his 2022 monograph, *Theology in the Capitalocene* (Fortress Press), Rieger's chapter combines liberation theology with social theory, environmental sciences and ecology, and economic theory. Although Rieger's exhortation to "rethink everything, including religion" reads as a bit implausible on practical grounds, his attention to grassroots contexts and belief in the capacity of one's habits and assumptions to be transformed by an encounter from without are more convincing. The chapter extends, to some extent, a cultural critique of Christian anthropocentrism—according to Rieger, Lynn White's famous argument as such "just scratches the surface" (88)—the more fundamental force is that of capitalism. In the following chapter, Jeremy Posadas extends Rieger's focus on capitalism, arguing that capitalism is "the 'ism' that funds all other isms" (109), the root source of problems ranging from colonialism to racism to ecological degradation. According to Posadas, if society depends on the relation between a human "web of care" and a more-than-human "web of life," and if the former depends on the latter, then capitalism's defining trait is to remake that relation into exploitation. In similarly sweeping terms, Posadas argues that capitalism is inherently

incompatible with Christianity, a position that, however admirable as an aspiration, is nevertheless overdrawn. As an alternative, Posadas calls for a Christian-labor alliance, pointing toward an analogy between a union and a congregation.

In an unannounced shift in causal emphasis, the second half of part II comprises a pair of chapters that focus less on capitalism than on underlying religious cosmologies as the root of unjust contemporary ecological, economic, and religious relations. In the first of these chapters, Timothy Reinhold Eberhart lays the ecological and economic ills of our time at the feet of a disenchanted cosmology. According to Eberhart, "the formation of the Western imagination underlying capitalism's cheapening of nonhuman nature cannot be understood apart from its Christian theological foundations" (138). In response to this legacy, Eberhart argues on behalf of a self-conscious animism, invoking a wide range of references—from Jürgen Moltmann in theology to Kate Raworth in economics—in order to rethink fundamental ecological, economic, and environmental relations in the service of a new, re-enchanted vision. With ecotheologian Mark Wallace as his key interlocutor, Eberhart places particular emphasis on the Holy Spirit as the basis for an ecologically restorative pneumatology. In part II's final chapter, Whitney Bauman argues that the drawing of the human/nonhuman boundary has been the site at which many women and people of color become nonhuman: an astute point that corroborates the thesis of Zakiyyah Iman Jackson's book *Becoming Human: Matter and Meaning in an Antiblack World* (New York University Press, 2020). Bauman's key argument is that a theological anthropology of an "omni-God" (155) underwrites the economics that drives ecological degradation and racial exclusions. Accordingly, Bauman calls for a search for a new anthropology characterized by "common grounds" (156) and the promotion of planetary bodies, which, as he sees it, both integrates and entails planetary economics, queer economies, and home economies.

Part III of the book, "Practical Engagements," begins with Gabriella Lettini on the practice of care work amidst pandemic conditions. Lettini is attentive to the intersection of economic and racial disparities that infect such work even at a systemic level (readers of *De Ethica* might recall that LaShaunda Reese, winner of Societas Ethica's Young Scholar Award at its 2021 meeting, explored similar terrain in her paper, "And Yet We Survive: Ethical Reflections on the Double Pandemic of COVID and Racial Brutality* in Black America: Referencing Audre Lourde's Litany for Survival"). Lettini's chapter is followed by that of abby mohaupt, which focuses, refreshingly, on a specific issue: fossil fuel divestment on the part of the Presbyterian Church. Writing in favor of divestment, mohaupt explores the historical context of divestment practices in cases such as South African apartheid. Her chapter's conclusion raises the notion of as divestment as a liturgical resource. The next chapter, from Daniel Jaranko, explores in succession a nested sequence of organizing strategies: intentional communities, community sustainable development, community organizing, and strategic nonviolence. Although Jaranko's chapter does not stay with one single issue, as mohaupt's did, it is similarly drawn from what is clearly a long history of engagement on the part of its author. Perhaps Jaranko's most general comment is the claim that, in the notion of "just mercy," justice and mercy, which he framed as being in tension, can be balanced. The book's final chapter comes from Tim Van Meter, focusing on the MTSO, or Methodist Theological School of Ohio. His chapter tells the story of teaching at the institution and engaging with the built environment, specifically with respect to how the community has been interacting with the land on which it sits. Van Meter argues convincingly on behalf of agrarian commitments and rural perspectives as vital contributions to the intersection of religion, ecology, and economics explored across the volume.

Having surveyed the book's sections and chapters, it is now possible to offer a brief assessment of the volume as a whole. The book is at its best in its genuine success in demonstrating the plausibility of the following claims. First, religion, economics, and ecology are connected and should be thought together. One should therefore think systematically and holistically about their patterns of interaction, because, as Rieger and Rowe put it in the volume's introduction (1-2), to do otherwise creates false dichotomies, abstracts from lived experience in consequential ways, and contributes to polarization. Second, religion, economics, and ecology intersect in bad as well as good ways. Although the term "intersectionality" does not appear in the volume, the volume's capacity to show how problems can cluster and compound across multiple domains is an effective demonstration of intersectionality as an analytical approach. Third, religion has a vital role to play in this process—a positive one, even as Christianity bears a unique responsibility because of its historical participation in deleterious practices. Each of these claims attempts to address real challenges that are indeed related, and the book deserves praise for pressing them so consistently. Although academic projects that integrate ecological and social frameworks have become more common in recent years, it remains rare for a single project to maintain such a consistently capacious scope with clarity. That this volume manages to do so is commendable.

The success of the book at the level of its basic aims and commitments has the effect of making strengths out of some of its weaker aspects, which include, in addition to the relative parochialism referred to at the top of this review, a certain superficiality by which the category of religion is represented. This is because, in seeking to integrate ecological, economic, and religious challenges as holistically as possible, the volume overcomes its omissions and invites deeper investigation into the work of its contributing authors—especially Rieger, whose recorded output in these areas is extensive—and fits well alongside other recent academic projects whose aims and approaches are complementary. Such projects include Miguel De La Torre's *Shifting Climates, Shifting People* (Pilgrim Press, 2022), Jennifer Quigley and Catherine Keller's *Assembling Futures: Economy, Ecology, Democracy, and Religion* (Fordham Press, 2024), and Gary Slater and Lisa Landoe Hedrick's *Ethics Across Borders: Reimagining Religious, Political, and Ecological Divides* (Routledge, 2025). Readers based in Europe might appreciate how this volume complements the work of such European scholars as Sigurd Bergmann (on theology and ecology) or Ivo Frankenreiter (on ecology, theology, and monetary value).

As for the volume's underdeveloped or inconsistent treatment of religion, this is admittedly curious for a group of contributors mostly employed as scholars of religion and theology. On one level, the issue here is no different than that just noted, which is that greater theological depth can be found simply by reading further into the work of the volume's contributors or that of such frequently-cited authors as Catherine Keller. However, the volume's problem with religion is not simply one of omission. Yes, there is an absence of any critical engagement with the term "religion" itself, which has been subjected to a sustained scholarly critique—by Talal Asad and others—for several years now. This, however, could be addressed by reading, in addition to Asad and others, recent work from comparative theologian John Thatamanil. The more serious issue is, rather, the unacknowledged conflation of Christianity—the only major tradition that receives significant attention—with religion per se (a sleight-of-hand present even in the volume's title, which mentions "religion" in the main title and "Christianity" in the subtitle). Is "religion" equivalent to "Christianity"? Surely not. Along with the editors' arguments that Christianity bears a special responsibility because of its historical participation in unjust

ecological practices, readers of the volume might have been better served if its editors had made the exclusive focus on Christianity more explicit.

The benefit of bringing in further and complementary perspectives applies to what is arguably the volume's largest and most curious omission: the political, which has a claim equal to the economic as a key contemporary mediator of religion and ecology, as well as an equally rich and challenging legacy in the form of territorial sovereignty. Sovereignty receives only slight mention in the volume, yet its combination of associations—colonial histories, post-Reformation religion, and ecological relations—is a vital, arguably even indispensable counterpart to the religion-economics-ecology nexus in the book. Indeed, politics and economics combine in some of the most illustrative and challenging cases at the nexus of culture and more-than-human nature. To name just one example, Ecuador in 2008 enshrined into its constitution the rights of nature, yet the ensuing failure of such seemingly promising projects as the Yasuni-ITT initiative stemmed not just from capitalist economic pressure, but also the political calculations of then-president Rafael Correa. For readers interested in linking the economic focus of the present volume with analyses of politics and especially sovereignty, the work of Michael S. Hogue and Wendy Brown is highly recommended.

In sum, the present volume generally succeeds when its aims, arguments, and commitments come with an invitation to engage further, and it struggles when its occasional overdetermining of the causal relationships among its three key categories risks foreclosing this possibility. This is not only an external problem—that is, closing off the volume to complementary further readings and perspectives from outside—but also an internal one. To the extent that the volume gives the impression that there *must* be a single anchoring explanation for the deleterious intersections of economics, ecology, and religion characterizing the world today, this stifles the fruitful combination of causalities expressed in part II of the book—half of which argues for capitalism as the deepest explanatory factor, the other half of which argue for religious cosmologies—and works against the granular perspectives collected in section III, which is one of the book's strongest sections precisely because it is the most candid about being diffuse. Such reductive or overdetermining impulses within the volume are slight, however. Readers seeking an earnest engagement with Christian-ethical perspectives on pressing ecological-economic-religious intersections would therefore be well served by consulting this volume.

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Book Review: Rošker, Jana S. *Confucian Relationism and Global Ethics: Alternative Models of Ethics and Axiology in Times of Global Crises*, Brill, 2023, 181 pp.

Mao Xin

Rošker, Jana S. *Confucian Relationism and Global Ethics: Alternative Models of Ethics and Axiology in Times of Global Crises*, Brill, 2023, 181 pp.

In her book *Confucian Relationism and Global Ethics*, Jana S. Rošker explores global ethics from a reconstructed Confucian relationism perspective. For Rošker, the current global axiology takes a Western-centric point of view, which often bases its social and political analysis on a certain individualism. Rošker argues that the present monopoly of this Western-centric point of view fails to address global crises, and hence we are in need of a new global ethos that encourages cooperation and solidarity beyond national borders. In order to allocate "new way of sharing knowledge and ideas," alternative ethical systems need to be introduced into the debate of global ethics.[1] As a Sinologist, she takes the Confucian relational ethics as a serious dialogue partner in search of new global ethics. Based upon a close reading of new Confucianists such as Lizehou, Mouzongsan, and the contemporary Confucianist philosophers who engage Confucianism with present-day ethical questions, such as Lee Ming-huei and Hong Chun-chieh, Rošker both puts the individualism centred western mainstream thinking in a critical aspect, and proposes a Confucian relational alternative, which can give today's global ethical discourse a transcultural potential.

According to Rošker, facing global crises, such as the COVID-19 pandemic and global environmental catastrophes, necessitates a rethink of global ethics. She stresses that the emergence of global crises is both a challenge and an opportunity: a crisis is not just a problem to be solved but a chance for us to take a critical perspective of our own cognitive inertia. Without crises, we would go forward with our "habitual flow of life," and do not realise how strong the inertia controls us.[2] And in the current global dialogues, this cognitive inertia is most evident in the Euro-American intellectual traditions' lack of knowledge of the Sinic tradition. In other words, the current global crises reveal that, due to historical ground, the western-originated framework of conception is dominating the global discourse, and this dominance leads to an indifference to alternative conceptual frameworks, for instance, the Confucian tradition. And for Rošker, these crises remind the Euro-American traditions that "the Chinese thought deserves special attention."[3]

[1] Jana S. Rošker, *Confucian Relationism and Global Ethics: Alternative Models of Ethics and Axiology in Times of Global Crises*. Leiden, Boston: Brill, 2023, p 8.
[2] Ibid, p. 9.
[3] Ibid, p. 14.

To be exact, Rošker explores Confucian relationism compared to the Western-originated "individualism-based social orders."[4] For Rošker, individualism here is not just an emphasis on individuals, their values, or interests. Rather, it is more of a way to organise societies based on individual interests, according to which "anything that opposes or impedes individual development is explicitly negative."[5] In contrast to such a way of societal organization, the Confucianists emphasize social relations, in which the individual is seen as a self embedded in his/her relations. For the Confucianists, people cannot "abstract their lives from their relationships with their fellow human beings."[6] The society is hence organised through "self" lives his/her life through their relations to others.

From an individualist perspective, an individual's uniqueness is defined by his/her independence. However, from the relational perspective, the self(s) are also unique yet in the sense of being "unrepeatable" in their relationships with the others. According to Rošker, relationships in Confucian relationism can be "characterized by multiplicity, mutuality, and complementarity."[7] This is to emphasize that the relationships in which individuals find themselves are multiple in nature and in continuous change and development. For example, a person can be both a parent and a child, depending on the specific relationships under consideration. And this person's role changes when the relationship to others changes. Again, in family relations, the children one day may become parents themselves and live through different roles in relation to their parents and their children. This latter scenario can also be described as a relation of mutuality, in the sense that, in one's relation to one's children when they are young, care and education are implied in such a role and relation. But one day, when the children become adults, they will need to perform the duty of care and remonstration (giving advice) toward their parents.

Confucianism stresses the inter-dependency of individuals on their social network, their community, and society. This is to say the duty and right implied in one's role are not the same for everyone, but complement each other in the network of relations. For Confucianists, one cannot be a good teacher without having good students, and contribution to one's neighbours' welfare entails one's own. Confucian relationism confirms a codetermination in our communities, in the sense that people have a shared responsibility to the degree that one cannot achieve moral goodness independently. One's fulfilment of the requirement of one's role is not only an individual achievement, but also an important "social influence" in itself to benefit society, which in turn can be dedicated to helping others achieve their moral development.[8]

Rošker points out that the perspectives of individualism and relationism lead to different political and social consequences. The important social elements produced by individualism are, for example, individual rights and the principle of equality for all. Rošker claims that the dominating human rights discourse is based upon individualism, where the individuals are abstract, having "no face, no particular, concrete personhood or identity."[9] The Confucian relationism, on the other hand, focuses on the concrete individuals, who have multiple identities and whose rights cannot be separated from the

[4] Ibid, p. 4.
[5] Ibid, p. 34.
[6] Ibid, p. 51.
[7] Ibid, p. 68.
[8] Ibid, p. 46.
[9] Ibid, p. 53.

rights of groups and communities, in which their relations to others play out. Protection of human rights is important, but the discourse of human rights also needs to be able to include human rights understood from the perspective of "interdependent relational self." And hence Rošker maintains that protection of human rights cannot be associated exclusively with one specific type of "institutional order."

For Rošker, individualism, with certain inflexibility, becomes an ideological construction, which results in a potential antagonistic relation between the individual and society. The negative effects of such antagonistic relations are: an increase in egoism, "lack of skills and opportunities for participation," and curbing the development of "mutual solidarity."[10] Indeed, it is not the emphasis of human rights that hinders social solidarity but the overemphasis of the individualistic social institution implied in Western human rights ideas. Especially when we search for global ethos in order to face the global crises together, the overemphasis on individualistic social institutions does not offer us enough insight to find ways to bind the global community. From Rošker's observation, there is an "erosion of social cohesion, traditional norms and standards within local societies" currently worldwide.[11] And the Confucian relationism can contribute to counter such a trend.

Rošker gives similar comments on the principle of equality of all people, which, for her, from the Western-originated system, is based upon an individualism that artificially separates one from the other. This system emphasizes the realisation of the principle of equality, rather than real equality. This is to say, equality is pursued as a direction of social institutions, not as "equal evaluation of deeds, practices, and works of individuals." In this sense, she deems the liberal democratic notion of equality "hypocritical in its essence".[12] Confucian relationism does not pursue principles of equality and has been seen by others as a philosophy of inequality. Rošker disagrees with such claims. She points out that equality, as a general principle based on the sameness of all, is alien to the Confucians. For Confucianists, everyone has a specific role that guides their relations to others, and as one's roles are various in their relations to others, differentiation is more important in this system than generalization of sameness.

Yet Rošker maintains that we can still locate a certain notion of equality in Confucianism, which, though, is different compared to the Western equality concept. The Confucian equality can be understood as embedded in the net of relations. Rošker points out that both parties in a specific relation are in "complementary and equal to one another, both in the metaphysical and the moral sense".[13] Taking an example to explain such an idea, "I" am sacrificing A for you in our relationship, and "I" may get B back in my relationship with someone else. Everyone takes the duties implied in their roles seriously, which guarantees equal respect when we consider all aspects in the social interactions. We can say that the Confucian equality does not happen when we face an external force - God, law, or death; it happens when we face each other. This complementary equality requires a public conscience that regulates people's commitment to such equality. Confucianism promotes such a public conscience through its teachings.

Compared to human rights and equality, the social ethical system of Confucian relationism is driven by harmony (He). Rošker points out, "(T)he harmony that the original

[10] Ibid, p. 134.
[11] Ibid, p. 134.
[12] Ibid, p. 78.
[13] Ibid, p. 46.

Confucian stood for was the harmony of pluralism, not an equalizing alignment of all individuals in a society."[14] In other words, harmony in Confucianism is not about eliminating difference, but respecting others' differences, balancing our roles and duties out of such respect. As we have discussed above, Confucianism emphasizes inter-dependency between individuals. And the relations are seen as dynamic, ever-changing, and therefore harmony is not a principle, but a value that guides social roles and their interactions. And individuals' moral habits in these interactions can be seen as their virtues. Many scholars consider that Confucian ethics is a "virtue ethics". Rošker emphasizes that it is more of a "relational virtue ethics," which is essential to social harmony. The Confucianists place great value on social cultivation of moral emotions, which can lead to the possibility of relation-based virtues really influencing people's lives. A fundamental Confucian virtue is humanness, which is often also translated into benevolence. Following philosophical discussions from contemporary Confucianists such as Lee Ming-huei, Rošker continues to explore Confucian humanism based upon Confucian humanness.

To be precise, Confucian humanism is closely associated with a core Confucian concept: humanness, benevolence. The original meaning of humanness in Confucian tradition is duality or plurality of human, which is to say, "human can only exist in dual or plural."[15] Contemporary Confucian scholars consider that Confucianism places human beings (human relations) at the forefront of their thinking, which is similar to some of the Western humanistic tradition, especially the Kantian tradition, and can be counted also as a classic example of humanism. Lee stresses, Confucian humanism is not an ideology, nor "any kind of a state religion," but rather constitutes "a main resource for cultural Bildung, that is, for education, formation, and cultivation of self and society,"[16] In a comparative reading of Confucian humanism and Kantian humanism, Lee finds a transcultural possibility in connecting the two, and hence, claims that looking at Confucian tradition as a tradition of humanism, offers the western philosophers a lens to understand and position Confucianism referring back to their own ethical systems.

As a book written during a global crisis- the COVID-19 pandemic, exploring global ethics that can address global crises, Rošker applies some of the important ethical ideas from Confucianism to the global challenge at hand. For example, she discerns how the Western tradition and the Confucian tradition understand privacy, intimacy, and autonomy, and the impact of their different understandings on their dealings with the pandemic. She points out that, in Chinese tradition, privacy (Si) has been associated with a meaning of egoistic interest, which is often seen as ethically negative. There is yet also a neutral meaning of privacy, which is not private interests, but how one keeps one's morality when they are alone. In this sense, privacy is a condition for autonomy, which is to say, if one can carry out moral actions in privacy-without external observation and coercion, we can confirm moral autonomy in this person. Autonomy in Confucian tradition is relational, since this autonomy requires the moral person to fulfil one's moral duty to others, even in cases of privacy.

Differences in understanding of privacy and autonomy result in different attitudes to personal data integrity in the digitalization of COVID-19 controls, which is a reason why people have less sensitivity about personal data integrity in Sinic regions. The COVID-19

[14] Ibid, p. 30.
[15] Ibid, p. 58.
[16] Ibid, p. 73.

pandemic tracking app in Taiwan during the covid-19 pandemic helped to meet the challenges of controlling the spread of the disease. The app is likely to expose personal data and hence expose privacy, but it is also a method to create mutual benefits and solidarity in facing and combating the pandemic together. So, the population, from their different social ethical commitment, act differently concerning whether they allow their personal data to be monitored. At the same time, as Rošker correctly points out, in the digitalized age, data becomes extended memory, which makes the very border of privacy more ambiguous.

Rošker ends her discussions in the book with an attempt to create a new methodology towards global ethics, which is referred to by her as "method of transcultural philosophical sublation."[17] When we are facing different ethical traditions, how do we proceed forward to reach a transcultural dimension? Her method includes four steps. The first step is to search for similarities between the two different culturally constructed ethical traditions. For example, during the pandemic, most cultures share the desire to protect the vulnerable groups. For the second step, Rošker suggests that we continue to locate differences not only among single concepts, but the "main paradigms of the frames of reference to which they belong."[18] This can be, for example, the difference between individualism and relationism.

The third step is about eliminating some aspects of the individual tradition and preserving some valuable aspects that are suitable for the transcultural perspective. The overemphasis on individualism or the ideologization of individualism can be eliminated, but the respect for individual dignity can be kept. The fourth step is about sublation, which is more exactly a "cognitive shift" that can lead to a new insight. For example, the new insight can be about the importance of rethinking human rights based on a relational perspective. With this new insight, we can proceed in step five to generate new principles and ideas from this new insight. This method not only shows us the importance of contextualizing philosophical conceptions, but it also introduces ways to address the limited contexts that each tradition needs to break through.

Rošker's book has made an important theoretical contribution to introducing essential aspects of Confucian relationism into the global ethical dialogues. But there are still some ambiguities in the book that call for further discussion. For example, she argues that Confucian humanism could "contribute in many ways to new, alternative forms of democracy".[19] But what is this democracy like? How different is it compared to the liberal democracy? She has not given us a clear picture.

Another question that calls for additional discussion is how Rošker understands the association between Confucian folk psychology and Confucian ethics. Rošker rightly discerns between Ruism political institution and Confucianism philosophy. But on another front, in her discussion of so-called "general Chinese preference," she has not clearly defined such Confucianism-influenced folk psychology. What does it mean to refer to something as the "general attitude" of the people from a Confucian perspective? What is the proper way to establish a connection between observation of people's attitude with Confucian ethics? These questions call for further explanations.

Lastly, Rošker critically discussed the system of social credit in China. She claims:

[17] Ibid, p. 132.
[18] Ibid, p. 143.
[19] Ibid, p. 65.

> It (the system of social credit) aims to assess the creditworthiness, reliability, and performance of individual citizens by ranking and evaluating their "moral integrity," which is manifested in various behaviours, from the frequency of visits to parents to trustworthiness, work habits, and adherence to traffic rules. Moreover, the consequences of such evaluations are revealed in the concrete punishments and rewards of the observed individual.[20]

Yet she has not cited any study or even the official documents concerning the social credit system in China, which makes her critique of the social credit system constrained by Western media representation. From the Chinese governments document on the topics related to such a system, the primary aim of introducing the system is to reduce "serious production safety accidents and food and drug safety incidents occur from time to time; commercial fraud, counterfeiting and selling fake goods, tax evasion and fraud, false claims, and academic misconduct."[21] We can certainly criticise the effect of such a system, but she has not explained and analysed the system itself with original sources.

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[20] Ibid, p. 125.

[21] https://www.gov.cn/zhengce/content/2014-06/27/content_8913.htm "重特大生产安全事故、食品药品安全事件时有发生，商业欺诈、制假售假、偷逃骗税、虚报冒领、学术不端等现象屡禁不止".