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Maxims and the Role of Moral Principles¹

Kant's Formula of Universal Law (FUL) currently enjoys a renaissance with a number of Kantians, such as Kleingeld (2017) and Bojanowski (2018), presenting interpretations intended to overcome standard objections against this principle. In my paper, I critically reply to Sven Nyholm (2015a) who seeks to defend the FUL via a new reading of what Kant intends maxims to be. My critical reply raises the fundamental question of what function(s) we should expect the FUL to fulfil. I will show that Nyholm's supposed defence of Kant rather reveals a problem for Kant and Kantians: the FUL might be redundant, since the moral status of maxims is either apparent even without any hypothetical universalization test or hypothetical universalization is not what is called for to evaluate a maxim.

I

According to Oliver Sensen (2014, 170), the FUL is faced with three main challenges: "It seems that the imperative (a) rules out too much as being morally forbidden, (b) that it rules out too little as immoral, and (c) that it rules out things for the wrong reasons." Examples for (a) are maxims that constitute false negatives such as "Only buy clockwork trains but never sell one" (see, for instance, Wood 1999, 105). According to this maxim, you are taking advantage of a system of exchange that, if everyone took advantage in this way, no one could take advantage of it, including you. The maxim is thus not universalizable. Yet, it is intuitively morally permissible.² Examples for (b) include false positives such as "making a false promise on Tuesday, August 21, to a person named Hildreth Milton Flitcraft" (Wood 1999, 102). These maxims we can universalize without any contradiction as they are so specific that, as a matter of fact, hardly anyone would ever be in the specific situation these maxims outline and have an

¹ I am grateful to Sven Nyholm, Pauline Kleingeld, Paul Guyer and Jacob Laurup Kristensen for discussion of my material.

² O'Neill (2013, 163-5) points out that "buying never selling" is problematic because you cannot universalize this maxim or its contrary "selling never buying". She calls this "antinomy of acts" (O'Neill 2013, 165). This antinomy calls into question the action-guidingness of the CI. O'Neill thinks that when confronted with antinomies of acts we should assume that both maxims are permissible, but she admits that this requires that we shift from exegesis to reconstruction of Kant's views. It remains unclear to me, though, why we would not have equally strong grounds to assume that both maxims are *impermissible* or that some antinomies of acts are comprised of two impermissible maxims whereas others are comprised of two permissible maxims.

opportunity to act on them. We could thus will them as universal regardless of their content. These two problems are rooted in the third, (c): just because a maxim yields a contradiction when universalized, this does not make the maxim *immoral*. The FUL might uncover certain deficiencies in maxims, but not all deficiencies in maxims are indications of *moral* deficiencies.

Against these types of criticism, Sven Nyholm (2015a, 282) argues that:

[c]ommentators have used bad translations of key passages; systematically focused on the wrong sets of examples in Kant's texts; paid unfortunately selective attention to Kant's theoretical claims about how his different ideas relate to one another; and overlooked or ignored some of Kant's characteristically idiosyncratic definitions of key concepts he employs within his theory.

Nyholm maintains that many supposed false positives/negatives do not have the form of maxims and thus cannot constitute counter-examples to the FUL. It is already well established that supposed false positives that contain very particular intentions, names and dates cannot count as maxims (see Wood 1999, 105). That maxims should not be very specific is, however, only a negative constraint and leaves open the crucial question of what *does* count as a maxim. Without a principled account of what a maxim is, all constraints on maxims that would support a defence of Kant appear *ad hoc*.

Nyholm aims to deliver such an account. He (2015a, 287-90) emphasizes that maxims are “practical foundational principles” that “contain a universal determination of the will” under which there may be “several practical rules” (see also KpV AA 5: 19.7-12, GMS AA 4: 420n). Since Kant's critics rely on a mistranslation of one of the key terms Kant repeatedly uses when explaining what he means by “maxims”, namely, that they are “Grundsätze”, they overlook that maxims are very general and fundamental principles (Nyholm 2015a, 287, see also Nyholm 2017, 236-7). “Grundsätze” does not simply mean “*principle*” but “*basic principles* or *foundational principles*” (Nyholm 2015a, 287). A maxim should be understood as “not simply a very general principle, but also a principle that (a) could offer cross-situational guidance for (b) all reason-endowed human beings” (Nyholm 2015b, 47). Maxims are our most fundamental principles and they are more general than many of supposed false positives/negatives. After all, something like “Buying but never selling clockwork trains” is hardly a fundamental principle and making a false promise to a specific person on a specific day is most definitely not. On top of relying on a mistranslation, critics and commentators,

according to Nyholm (2015a, 287-9), also focus on the wrong examples to understand what a maxim is, namely, on Kant's examples for maxims that *cannot* be universalized.³

II

The examples of universalizable maxims Kant himself provides in the *Metaphysics of Morals* are central to Nyholm's conception of maxims:

[1] "that I make it my maxim to act law-abidingly is a demand ethics makes on me"; [2] "[i]n accordance with the ethical law ... 'love your neighbor as yourself,' the maxim of benevolence (practical love of human beings), is a duty of all human beings towards one another"; [3] "the duty of respect for my neighbor is contained in the maxim not to treat any other human being merely as a means to my ends"; [4] "live in accordance with your nature"; [5] "make yourself more perfect than your nature has already made you"; (similarly,) [6] "build your mental and bodily powers for fitness for all ends that may spring out from you"; and the [7] "*duty of apathy*," which is to exercise self-control whereby one becomes *master* over one's "affects" and *ruler* of one's "passions" (6:407–8, 231, 419, 450). (Nyholm 2015a, 289)

These exemplary maxims are supposed to show that Kant intends maxims to be fundamental principles. However, closer scrutiny of these maxims reveals a problem for Kant's moral philosophy, namely, that it is unclear why we need the FUL at all.

This already becomes apparent when we look at [1], the maxim to act law-abidingly (MS AA 6: 231.8-9). This maxim occurs in the *Doctrine of Rights*' introductory section C in which Kant presents the Universal Principle of Right (UPR). Kant claims that juridical law cannot require that we incorporate the UPR into our maxim, since juridical law can only prescribe external actions, not maxims (MS AA 6: 231.3-8). By contrast, ethics or the moral law can demand that we obey juridical laws. However, we may ask: why would anyone see a need to put the maxim to adhere to juridical laws to a universalization test? If we understand juridical laws here as laws that follow from or conform to the UPR, i.e. laws that make agents' freedom of choice "coexist with everyone's freedom in accordance with a universal law" (MS AA 6: 230.29-31), then it should be clear that a maxim that I act law-abidingly is permissible and in fact obligatory. It would be extremely strange if an agent sees no reason to obey legitimate

³ This point is puzzling, though. Even if Kant gives examples of maxims that cannot be universalized, we can expect that these are examples of *maxims*. I will come back to this in the last section. In Nyholm (2017, sec.2), he himself uses examples for non-universalizable maxims to support his reading of Kant's notion of maxims.

juridical laws until she receives confirmation that this course of action can be universalized.

Matters might be different if “law” here referred to externally enforced law that does *not* conform to the UPR and that is, for instance, in place as the result of brute force and threat.⁴ In this case, it might not be obligatory to follow these laws and it might not even be permissible. However, if we put [1] to the universalization test, we learn nothing about how to distinguish between legitimate and illegitimate juridical laws, since the FUL only informs us about the universalizability of the maxim we test, not about the meaning of the terms employed in the maxim. If we think maxim [1] speaks about *any* juridical laws, the maxim will be sometimes obligatory, sometimes merely permissible, sometimes impermissible, and the maxim’s moral status in specific cases will be a matter of the laws in effect not of a hypothetical universalization of this maxim. However, since Kant thinks that the maxim of abiding by juridical laws can be ethically commanded (“is a demand ethics makes on me”), we should assume that Kant means: it is morally obligatory that *legitimate* juridical laws are to be obeyed. But then agents would hardly need universalization to understand that [1] is permissible.

That the FUL might be redundant on Nyholm’s reading becomes even more apparent when we look at the other examples of maxims: Some contain *ethically loaded* notions such as the command to “love your neighbour” [2]. At least agents with a Christian background, as Kant assumes his audience has, would immediately acknowledge that the maxim of not loving one’s neighbours cannot be right, as this directly contradicts the central Christian doctrine to love your neighbour as yourself (Mark 12:31). Furthermore, in [3] a crucial and morally loaded caveat, which Nyholm leaves out, is part of the maxim: the duty to respect others, which is to become part of my maxim, can “also be expressed as the duty to make others’ *ends* my own (*provided only that these are not immoral*)” (MS AA 6: 450.3-5, last emphasis mine).⁵ If my maxim is to

⁴ In Nyholm’s book, it becomes apparent that he has in mind the laws in a “just juridical state” (Nyholm 2015b, 44fn.142). Yet, it is still worthwhile to discuss unjust laws, since even in a just state some laws might be unjust.

⁵ Some maxims also feature terms indicating outright *impermissibility*: “from self-love I make it my principle to shorten my life if, when protracted any longer, it threatens more ill than it promises agreeableness” (MS AA 6: 422.4-7). The fact that the motive is stipulated as self-love already strongly indicates that a Kantian cannot approve. Sometimes maxims are also stipulated such that they are disinterested: “To promote according to his means the happiness of others who are in need, and this without the hope of gaining anything by it” (MS AA 6: 453.2-4). I take it that the latter does not *per se* give away the moral status of the maxim, since I could perform acts of cruelty without the hope of gaining

do something, but only as long as this is within the constraints of morality, the maxim is trivially permissible.⁶ Moreover, [3] also contains an ethically thick term, which Nyholm mistranslates. He phrases the maxim as being concerned with how we are to “treat” others, but the German verb is “abzuwürdigen” (MS AA 6: 450.7) which is normatively loaded. Gregor (1996, 569) translates it correctly as “degrade”.⁷ The maxim thus tells us not to degrade others, i.e., it is already formulated in such a way that it is obvious that this maxim is obligatory, since hardly anyone ever wonders whether they are permitted to treat others in degrading ways.⁸ What might be up for debate, though, is what courses of action constitute degrading treatment; a question that is in no way settled by a general prohibition of degrading treatment.

Other maxims, such as [4] (MS AA 6: 419.33), are vague. [4] was originally a Stoic doctrine (*naturae convenienter vive*). Without a more specified conception of human nature the command to live according to nature seems trivially permissible, maybe even trivially obligatory. People presumably do not wonder whether they should live against human nature. They might, however, have different conceptions of how inclusive human nature is in terms of ways of life, sexual practices, etc. With regard to [5-6] (see MS AA 6: 408.15-22, 419.25-36), we might still wonder whether we need universalization to understand that it would be better to be more perfect than we are [5], especially if this, as is the case in [6], will be beneficial for *all* our pursuits.

The only maxim that is different is [7]. After all, Kant here issues a duty that is in sharp contrast with the received virtue ethical wisdom of his time (MS AA 6: 408.26-8). The maxim is thus neither clearly obligatory nor too vague to be controversial. Importantly, however, it is unclear how we obtain [7] from the FUL. We can, without any contradiction, will that not everyone is apathetic and not always in complete control of oneself – in fact, we can will this much rather than the opposite (everyone is perfectly in control of oneself all the time), it seems. After all, a world of full self-control might

by it. Yet, I think there is a worry here that if maxims specify motivates then this might at least in some cases settle the question of whether a maxim is permissible without any need for universalization.

⁶ Technically, the maxim leaves open that I promote others’ morally permissible ends via *immoral* means. Yet, it is still significant that the maxim already comes with *some* inbuilt moral constraints.

⁷ See also the maxim “of limiting our self-esteem by the dignity of humanity in another person” (VI:449.28-9). The ethically loaded term “dignity” here should already be ample indication that we are talking about something that ought to constrain our self-esteem.

⁸ In addition, “not to treat any other human being merely as a means to my ends” is of course simply a restatement of the second part of the Formula of Humanity and thus trivially universalizable if we grant Kant’s claim that the different CI formulae are expressions of the same law (GMS AA 4: IV:436.8-9).

lack goods essential to human flourishing such as certain forms of artistic and emotional expressions, gestures of love and attachment, losing oneself in certain activities, etc. The only maxim Nyholm presents that stands in need of a universalization test thus seems to be a false negative.⁹

The exemplary maxims Nyholm draws on for his reply to false negatives/positives objections rather indicate that the FUL is either redundant, because we only need to look at the maxims themselves to understand their moral status, or that the FUL does not settle the issue as to whether a maxim is permissible. Whether a maxim is permissible rather depends on how we understand terms such as “(human) nature” or how we spell out the notion of juridical law. This is a matter of conceptual clarification not universalization. If Nyholm’s defence of Kant is right then Kant is truly doomed, it seems.

Moreover, the problem I brought up potentially generalizes to other attempts to defend Kant on similar grounds as Nyholm. That maxims are very general principles is acknowledged by many Kant scholars. Höffe (1992, 90-1), for instance, thinks maxims capture one’s general way to lead one’s life, Bittner (1974) thinks of them as life-rules and Kuehn (2001, 145-7) as our “most basic rules of conduct and thinking” which “constitute the person as character”. If maxims are something very general, such as “Live according to nature”, “Be honest”, or to “enrich oneself by all secure means” (Bittner 1974, 489, translation mine) then this once again raises the problem that either everything hinges on how we understand the terms in these maxims or it might already be clear from the maxims themselves what their moral status is, for instance because they contain terms that require further elaboration (such as “nature”) or morally loaded terms (such as “honest”).

III

⁹ In Nyholm’s defense, he (2015a, 289fn.5) points out that apathy in this context should be understood as “the ideal [...] of always being composed enough to be able to deliberate” not as indifference or lack of emotion (see also Nyholm 2015b, 135-156). However, Kant then still owes us a story about how we derive the obligatoriness of this maxim of apathy from the FUL, and why we need the FUL to understand that it is morally obligatory to be able to deliberate calmly.

Let me turn to a potential reply to my criticism. We can question whether the FUL is really supposed to inform us about our duties. If it simply is not the FUL's task to inform us about the (im)permissibility of our maxims, the criticism that for the moral evaluation of some maxims we do not need the FUL and that the FUL is unhelpful for the evaluation of other maxims seems moot.

Ido Geiger (2010) argues that it is essential for understanding Kant's project that he assumes that agents are already aware of their duties, even before coming in contact with philosophical formulations of the CI. These formulations are therefore not supposed to help us discover our duties, as if we had no initial acquaintance with them. Instead they are to make explicit the form of our pre-theoretical understanding of duty, namely, universality. The *practical* use of an explicit formula of morality is, according to Geiger, to make moral transgressions "*perfectly vivid*" and to provide "*a heuristic tool for moral self-criticism and for fighting temptations*" (Geiger 2010, 286). The *theoretical* use of the Categorical Imperative formulation is to remind agents that the Categorical Imperative is the supreme principle of the will and to make agents "see most clearly that it is the moral law that ought to determine the will" (Geiger 2010, 290).¹⁰

I agree with Geiger that Kant does assume that agents are already morally competent, even before being acquainted with a philosophical universalization procedure (see Sticker 2017). However, even if we propose alternative functions for the CI formulae, the problem I brought up stands. It is not clear what purpose the *practical* use of the CI could have. It would be odd if it only became vivid to an agent that she must obey legitimate juridical laws and that she may not degrade others once it is explained to her that these courses of action can be universalized whereas the opposite course cannot. That abiding by legitimate laws and not degrading others is morally required is intuitively much more vivid than the moral significance of universalizability.¹¹ The same holds for the *theoretical* use of the CI. If maxims are already morally loaded such that we can gain an understanding of their moral status simply from the way they are formulated, then pedagogically the best thing would be to tell agents to think more

¹⁰ Specifically with regard to the points I made in sec.II one might argue that it is the role of the FUL to ground the ethically thick terms built into certain maxims or to explain why they do the work they do. I am grateful to Jacob Lautrup Kristensen for this proposal.

¹¹ This is a version the problem that universalization might be the wrong reason to rule out a course of action (see Sensen's point c in my section I).

carefully about the content of their maxims, rather than to remind them of universalizability as an underlying property of certain maxims.

I can see how it would reinforce an agent's motivation to act on one of her maxims, if the agent were shown that this maxim is morally required and this was previously not clear to her. However, why would an agent be motivated by abstract properties that the philosopher uncovers, if she is not already motivated by clearly morally salient concepts such as "respect", "love" and the legitimacy of external laws? In addition, the CI formulae in their motivational function do nothing to clarify crucial terms such as "(human) nature" and without such a clarification the moral status of certain maxims remains unclear.

Even though Nyholm's proposal might solve the false negatives/positives problem, it would do so at the expense of doing away with any or most applied functions for the FUL and other formulae. On Nyholm's account maxims are either already framed such that they give the right and intuitive guidance or they are vague and require conceptual clarification, not universalization. However, that cannot be Kant's intention, given that he spends almost no time on explaining what a maxim is, and none at all on how we can evaluate maxims without the CI, but a great deal of attention on the CI formulae, and their function to critically evaluate our maxims.

I think we must conceive of maxims as principles that are not so specific that they contain particular intentions, names or references to places and times, but also, pace Nyholm, not so abstract, vague or ethically loaded as to raise the question why Kant needs to introduce formulae to scrutinize maxims at all. Kant himself suggests a potentially more viable notion of maxims in those passages in which he discusses maxims that *cannot* be universalized.¹² These maxims are relatively concrete, and they might help us understand why maxims are something that must be put to a universalization test.

Let me address a last potential objection to my criticism.¹³ One of the things that is striking about Kant's examples for universalizable maxims is that they are of very different levels of generality. [1] and [3], for instance, seem more fundamental than

¹² See, for instance, "to extricate myself from a predicament by means of an untruthful promise" (GMS AA 4: 403.6-7, see also GMS AA 4: 422.22-4), and "to let no insult pass unavenged" (KpR AA 5: 19.19-20). Although, once more, the former contains an ethically loaded term ("untruthful"). Clearly more work is needed still to develop a viable conception of maxims.

¹³ I am grateful to Paul Guyer for raising this point.

other maxims as they do not so much regulate specific action-types but rather clarify the relation between law and ethics [1] or restate the FH [3]. It seems that these are simply not maxims intended for ethical evaluation. In addition, some of the other maxims (such as [2] and [7]) might state the *outcome* of universalization procedures rather than constitute maxims that are to be universalized. Thus, maybe these maxims were never meant to be subjected to the FUL.

I think this is an important observation. However, if we take this line, we give up on the Kantian idea that all maxims can and should be ethically evaluated. In addition, we would be stuck with the, I take it, unwelcome implication that most of the examples Kant himself gives for maxims are unsuitable for ethical evaluation, and maybe do not even qualify as maxims in Kant's own terminological sense.

I hope to have established, at the very least, that looking at Kant's own examples of universalizable maxims for a feasible account of maxims is not as promising as Kantians hope. Moreover, if we want to engineer a feasible conception of maxims we should bear in mind that there are (at least) two challenges: Avoid false positives/negatives and leave room for the FUL to do work.

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