

REVIEW ESSAY
KRITIČKI OSVRT

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The Constructivist Defence of the Objectivity of Moral Standards and Natural Law that Does not Require the Debate on Moral Realism

Abstract The main goal of Kenneth R. Westphal's *How Hume and Kant Reconstruct Natural Law: Justifying Strict Objectivity without Debating Moral Realism* is to defend the objectivity of moral standards and natural law and thus avoid the discussion about moral realism and its alternatives by interpreting Hume and Kant in a constructivist sense. The reason behind the author's disagreement with both: moral realism and non-realism (its alternative) is our inability to properly understand and answer one of the two parts in Socrates' question to Euthyphro: "Is the pious loved by the gods because it is pious, or is it pious because it is loved?" Moral realists cannot provide an answer to its second part, since it is not possible to prove that moral standards are not artificial; conversely, moral non-realists cannot provide an answer to its first part, since it is not possible to avoid the relativity of moral standards. The author tends to solve this problem by avoiding the confrontation between moral realism and non-realism and thus choosing the constructivist stance that, as he argues, can be found in both Hume's and Kant's theories. The main point of this stance is that moral standards are indeed artificial, yet not arbitrary. He proves this by pointing out that both Hume and Kant treat the moral standards as a social fact (that is, artificial), but also as objective. Westphal points out that Hume explicitly writes about moral standards as a social fact, while showing that, at the same time, his theory of justice, which precedes all of the moral standards, is established independently of his theory of moral sentiments (potentially leading to moral relativism). In this manner, he provides the objectivity of those standards. On the other hand, Kant's theory is interpreted as advanced, yet similar to Hume's in its structure. The crucial similarity is that both Hume and Kant interpret the moral standards as a social fact (that is, as an artificial) and, at the same time, as the objective ones. Kant, unlike Hume, provides this objectivity by using a specific moral criterion – a categorical imperative. Those assumptions will be used as the main premises of a distinctively inspiring interpretation of Hume's and Kant's theories of justice.

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Keywords: constructivism, objectivity, Hume, Kant, moral standards, theory of justice

Kenneth R. Westphal's book *How Hume and Kant Reconstruct Natural Law: Justifying Strict Objectivity without Debating Moral Realism* is a remarkable undertaking of discussing moral grounds and theory of justice that presuppose *objectivity*, while at the same time avoid getting into discussion about moral realism and its alternatives, theory of motivation and 'values'. The author

argumentatively develops this undertaking by interpreting Hume's theory of justice and Kant's normative theory as *constructivistic* theories.

Constructivism, as a form of Westphal's interpretation of Hume's and Kant's theories, is the view that *we* are the ones that construct principles of acting, although they are *not* arbitrary. (p. 5) This allows the author to avoid discussion about moral realism and its alternatives, meaning that insofar as the moral principles are our own construct, there is no need to search for their further foundations. On the other hand, he tends to provide the objectivity of such principles, since it is, at least, very difficult to talk about relative or subjective morals and justice. The reason for his tendencies to avoid the discussion about moral realism and its alternatives is stated in the second chapter of the book.

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In the second chapter Westphal analyzes following Socrates' question to Euthyphro: "Is the pious loved by the gods because it is pious, or is it pious because it is loved?"¹. Moral realists could answer the first part of the question, while moral non-realists could answer the second part. Moral realists, thus, claim that there are some objective moral standards (since piety, in this case, exists as independent), while non-realists claim that all of them are artificial (since piety is dependent, constructed value). Moral realists face a problem of proving that moral principles exist independently, meaning that they are not artificial. On the other hand, non-realists have difficulty avoiding relativism and conventional or arbitrary nature of moral standards. By interpreting Hume and Kant from a constructivistic standpoint, the author tends to avoid such problems and thus claims that moral standards are indeed artificial, however not arbitrary. (p. 17)

Non-arbitrariness (objectivity) is provided by external methods of judging. In order to prove that previous statement is correct, first it will be necessary to show that Hume and Kant can indeed be interpreted in constructivistic sense. In addition to that, author wants to point out that there is a specific connection between Hume and Kant, meaning that Kant deduced further consequences of the theory that Hume had previously conceived. Therefore, it's Hume's position that should be analyzed first of all.

In the third chapter, Westphal notices Hume's establishment of theory of justice that is independent of his theory of moral sentiments. This is a very original insight, since Hume's political philosophy is usually interpreted as an extension of his theory of moral sentiments. This insight is very profound as well, since, as it will be demonstrated, it provides Hume's position with argumentative strength. Textual corroboration of mentioned stance author

1 Plato (2007), *Euthyphro*, San Francisco, California, Creative Commons: p. 3-4; translated by Cathal Woods and Ryan Pack

discovers in the third part of *Treatise on Human Nature*, where Hume claims that norms are neither given from God, nor from nature, but (developed) from human nature and activity. This statement means that norms are artificial, however not arbitrary, since the term 'natural' Hume interprets as 'what is common (inseparable) to any species.' (p. 28–29)

Hume in his theory of justice disagrees with non-social history of humanity (e.g. social contract) and instead discovers that the origin of justice lies within something grounded in reality – property. Here author points out that Hume doesn't make a distinction between property and possession (p. 29). In latter parts of the book, this will turn out to be a problem that Kant overcomes.

Hume constructs his theory of justice by referring to five problems of social coordination: 1) "Under conditions of relative scarcity of external goods and limited benevolence typical of human nature, we require a system of possession in order to stabilize the distribution of goods." (p. 31) "The remedy, then", as Hume claims, "is not derived from nature, but from artifice; or, more properly speaking, nature provides a remedy, in the judgment and understanding". (p. 33) This leads to author's conclusion that judgment and understanding mold and regulate the sentiments, which confirms the thesis that justice is not founded on sentiments. Hume's notion of justice is not grounded in neither contract nor promise, but in conventions (reciprocal acts) of conduct, namely the social practice. This statement could be related to latter Wittgenstein's theory – in order to achieve an agreement, it is not necessary that one proclaims that agreement; rather, we "proclaim" it by our participation in a practice of agreement, just as we would row if we were in a boat – language is not explicitly needed in such situation. 2) "However, simply because we must respect a certain distribution and possession of goods does not itself provide or entail any principle". (p. 35) Hume finds the solution to this problem of social coordination by claiming that one is a proprietor of what one already owns. 3) "Possession and property should always be stable, except when the proprietor consents to bestow them on some other person." (p. 35) 4) Promises and contracts – they allow a distribution of goods in different times and places. (p. 34–35) Those principles themselves are an artificial (non-arbitrary) useful creation. 5) Government – necessary as a protection of the previous four parts.

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In order to completely understand Hume's way of establishing theory of justice without referring to sentiments, the author gives two possible interpretations of human sentiments: 1) "Sentiments are a necessary component or basis of moral judgments." and 2) "Sentiments form a sole and sufficient basis of moral judgments." In sentence '1)' it is stated that sentiments are a necessary, however not sufficient requirement of morals, while in '2)' it is stated that sentiments are both necessary a sufficient requirement of morals. This

is followed by author's observation that Hume finds a neutral observer – being someone who understands human sentiments, however is not ruled by them – a necessary part of adequate moral (and aesthetic, as well) judgment. Therefore, he concludes that it would be much more rational for Hume to accept '1)', which allows theory of justice to be founded without referring to sentiments – moral sentiments are basis of moral judgments, yet they do not provide normativity. (p. 52)

In the following chapter Westphal shows that Hume's theory of justice is in its essence externalistic, which (along with above mentioned reasons) gives it a constructivistic sense. In order to explain constructivistic position he refers to Christine Korsgaard, who is probably the most influential constructivist of our time. I won't go into further details of Korsgaard's position, since it is of little relevance for the strength of Westphal's arguments, as well as beyond the scope of this review.

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In the fifth chapter, author analyzes Kant's principles of moral constructivism, which can be found in his account of universalizability. A maxim can be tested for universalizability by applying categorical imperative. Categorical imperative is a normative moral principle, which, in its basic formulation, demands to "*Act only in accordance with that maxim through which you can at the same time will that it become a universal law.*"². If one, for example, tests the maxim of making deliberately false promises by applying this formulation, it becomes clear that it would not pass the test. If making deliberately false promises became a universal law, then each individual would know that all the other individuals make false promises and, thus, the making of false promises itself would become impossible. In order to achieve their goal, the one who makes a false promise must convince the other one that promise is sincere. However, if making false promises became a universal law, then the falsity itself would be revealed and, thus, would fail to help one to achieve their goals. Therefore, categorical imperative is a *normative* principle that excludes (treats as immoral) those maxims that, when universalized, contain any kind of *contradiction in conception*. However, there are some acts that do not pass this test (a contradiction arises when the maxim is universalized), although we trivially know that they are not immoral. Consider the situation in which two people want to pass through the same passage that is so narrow that only one person at a time can walk into it. If allowing the other person to pass through first became a universal law, that maxim would become contradictory when universalized, since no one would want to pass through first. Surely, this is a highly undesirable in any moral theory. Westphal provides a remarkable solution for this problem. He

2 Kant, Immanuel (2008), *Groundwork for the Metaphysic of Morals*, New Heaven and London, Yale University Press: p. 37

suggests a two-step universalizability test. First step is already mentioned – a maxim is compared to its corresponding universalization. The second step is to compare the opposite maxim with its corresponding universalization. Results regarding the nature of this procedure are achieved when those two steps are compared in following manner:

If the maxim and its corresponding universalization pass the test *and* the opposite maxim and its corresponding universalization do not pass the test, then the act that is prescribed by the maxim is an 'ought!' (binding).

If the maxim and its corresponding universalization do not pass the test *and* the opposite maxim and its corresponding universalization do pass the test, then the act prescribed by the maxim is an 'ought not!' (prohibited, impermissible).

If the maxim and its corresponding universalization do pass the test and the opposite maxim and its corresponding universalization do pass the test *or*, if the maxim and its corresponding universalization do not pass the test and the opposite maxim and its corresponding universalization do not pass the test, then the act prescribed by the maxim is a 'may' (permissible). (p. 82–83)

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Let us see now if this helps with the case of allowing another person to pass through first; as it was previously mentioned, this maxim does not pass the first step. However, it does not pass the second step as well, since the opposite maxim would prescribe to prevent the others from passing through first – if everyone prevented the others from passing through first, there wouldn't be "the others" to be prevented, so this maxim turns out contradictory. Therefore, this is a case of 'may' (permissible) acts, since the maxim passed neither first, nor the second step. On the other hand, making false promises, as it was shown, does not pass the first step, while at the same time passes the second one, since it is possible for a universal law of making true promises to exist, thus revealing that this is an 'ought not!' (prohibited, impermissible) case. In this manner, Westphal avoids the parodies that could have been previously constructed within Kant's ethics, while at the same time, in a remarkable sense, conserves a formality that is necessary for convincing justification of a constructivist standpoint, which is, although somewhat arbitrary, still objective. By excluding those maxims that do not pass this constructed, but still formal (objective) test of universalization (e.g. extortion, deception, exploitation), we achieve the solution for fundamental problems of social coordination and, at the same time, build a foundation of a justice theory that does not require a discussion regarding moral realism, its alternatives, theory of moral motivation nor the 'values'.

In the sixth chapter, Westphal provides a further explanation and arguments for the previously mentioned thesis – Kant's formalism is revealed through

his constructivism, namely it is not required to apply the universalizability test on the values. (p. 95) Our behavior is constructed through applying the universalizability test and in order for such construction to be *valid*, it is necessary to follow these maxims: “1. always to think actively, 2. to think consistently, 3. to think (as far as possible) without prejudice and 4. to think from the standpoint of *everyone* else.” (p. 98) Here, he refers to Onora O’Neill who claims that maxims 1–4 are necessary conditions for a normal communication. (It should be mentioned that O’Neill’s great influence is present throughout entire book, which Westphal himself admits to be true.³) In order for communication to be possible, one must think correctly and correct thinking requires a reason that gives itself the laws. (p. 99) If we practiced a lawless use of reason, then someone or something else would prescribe the laws to us, which would negate the reasoning itself, since someone or something else would think instead of us. It is interesting to notice that the consequence of this statement is that reasoning is a necessary requirement for freedom, since if someone or something else reasoned instead of us, then that someone or something else would also be making decisions instead of us. Therefore, the freedom would annihilate itself if it wished to break free from the laws of reason.

Further elaboration of constructivistic thesis now allows Westphal to argumentatively avoid the discussion regarding values and thus, avoid the problem that arises from Socrates’ question to Euthyphro from the beginning of this review. On one hand, the moral standards are artificial (constructed), since they are a social fact, while on the other, they are, as it was previously shown, objective, since that objectivity comes from the moral criteria in the form of categorical imperative. The first part of this statement is additionally supported by Kant’s fallibilistic thesis. This thesis can be formulated in a following manner: our fallibility makes all our justifications merely a social phenomenon and, further, our current state of knowledge is what counts as relevant. That further means that justification is a pragmatic and historic phenomenon, that is not based on the absolute (fundamental) concept of justification (which is referred to in one part of Socrates’ question) and, thus, it follows that this concept has been changing throughout history. (p. 109–110) This allows us to avoid the circularity that can arise from socratean type of questions. The other part of his question (which questions the state in which the moral standards are understood as relative) is, as it was previously mentioned, resolved by categorical imperative. The author also thinks (and convincingly argues) that some of the relatively related theories (such as the theory of social contract, as well as some of the contemporary theories) fail to provide adequate answers to socratean type of questions (to

3 The book is dedicated to Onora O’Neill.

its first, second or both parts), however further explanation of these arguments would require going well beyond the scope of this review and, thus, leaving less room for the more relevant issues.

In seventh chapter Westphal relies on the findings of previous chapters and now applies them to Kant's concept of justice, which is the central notion of this book. So far, two things have been shown: first, that someone's act is right, if that someone's freedom can coexist with everyone else's freedom according to universal law (categorical imperative) and, second, that if someone wants to achieve some ends, they also want all the available means to those ends (hypothetical imperative). This allows Kant to formulate the rights to usage and acquisition: a) human beings cannot will their ends into existence *ex nihilo* (we must make use of materials around us), b) ends we choose to pursue are complex, temporarily extended and, more or less, integrated (it is impossible that everyone simultaneously possesses everything), c) we live in finite time and space which entails d) that we are sufficiently populous, so that we cannot avoid relative scarcity and influence our actions have on the others. (p. 128-129) Here, author points out the similarities between conditions a)–d) and previously mentioned Hume's account of relative scarcity and limited human generosity, which is another example of resemblance between Hume's and Kant's theory or, more precisely, that Kant's theory is upgraded version of Hume's.

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The question that now arises regards the possibility of social coordination in situations where the conditions 'a)–d)' are met. It has already been mentioned that categorical and hypothetical imperative are foundations of 'a)–d)'; this means that our properties⁴ must be coordinated in such manner that the everyone else's freedom remains uncompromised, which entails that the scope of our freedom is defined by the scope of others'. Further, it entails that all of us have a relatively similar scope, as well as that the others cannot become our property (since it would jeopardize their freedom).⁵ This entails that we all live in a state of relative scarcity, that we all tend to achieve some ends (and, thus, materials), and since we do not have the right to jeopardize the others' actions as long as they do not jeopardize ours, a relatively equal distribution of goods shall be achieved. (p. 130-131)

In the chapter "Kant's Justification of Rights to Usufruct", Westphal notices that Kant, unlike Hume, makes a great difference between 'property' and 'usufruct'. Kant has the idea of establishing *a priori* either the notion of 'property' or the notion of 'usufruct', that will entail the notion of justice. That notion cannot be 'property', since the property entails (1) the right to possess

4 'Property' is not understood as a technical term here.

5 A direct application of Westphal's 'contradiction in conception' can be noticed here.

(object manipulation), (2) the right to use, (3) the right to manage (to lend an object or to forbid others to use it), (4) the right to an income from a thing, (5) the right to capital in the thing, (6) the right to security, (7) transmissibility of things, (8) the prohibition that thing applies the damage to others, (9) liability to execution (to have property taken away for serious debt), (10) the right of residuary (the right to be returned to owner when the debt is paid). On the other hand, the notion of 'usufruct' implies characteristics '(1)', '(2)' and '(8)' which can be established *a priori*. (p. 146-148) The similarity between this notion and Hume's constructivistic analyses of 'the rules of justice' (property, promise and contract). Then, by the usage of universalizability test (contradiction in conception), Kant establishes the concept of 'usufruct' as moral principle (without referring to any social practice). Also, the concept of 'usufruct' entails the concepts of promise, exchange and contract, as well as public justice (which Kant refers to as republican government).

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Author provides three assumptions that require the right to usufruct (or – if these three assumptions weren't valid, there would be no need for the right to usufruct): A. we cannot will our ends into existence *ex nihilo* (we must make use of materials around us), B. ends we choose to pursue are complex, temporarily extended and, more or less, integrated (e.g. home and food are more or less integrated, since our existence depends on both), C. we are sufficiently populous, so we cannot avoid mutual influence (others' ends). By using 'A.-C.' and test for contradiction in conception that is based on the results stated in fifth chapter, Westphal uses really strong and convincing arguments (three intuitive facts and argumentatively already proven interpretation of Kant's test of contradiction in conception) and proves the right to usufruct. We should keep in mind the premise that we can possess the things that are not physically present. Let us suppose the Maxim of Arrogant Willing (MAW); whenever I need the means that others possess as well, I will consider those means under my control and use them for my own ends. There are three circumstances in which, as the author claims, it is possible to universalize (to apply the test of contradiction in conception) MAW: A) there is enough of the replaceable resources (means) that no one is using, B) someone gives up the ends, if the person that owns the means (to those ends) forbids their usage and C) someone allows the usage of the means they own if they are necessary for some ends. 'A)' passes the test, because the person never has to use someone else's means. 'B)' also passes the test, since the person stoically gives up the means, however 'C)' does not pass the test, since it is possible that someone needs all of their means. The problem for MAW is that 'A)' and 'B)', unlike 'C)' contradict the intuitive assumptions 'A.-C.', so, therefore, MAW is not valid. Therefore, the right to usufruct must be honored (above all, its first assumption – the right to possess). (p 160–161)

We can acquire an object if we start using it before someone else possesses it. This is a legitimate way of acquiring, since no one is harmed by the usage and the right to usufruct is honored. Therefore, this entails that we have an obligation to respect others' *acquired* objects as well as that such obligation is not unilateral, since the others are finite and rational as well. Author points out that stated argument says nothing about the liberal private property, nor about any other stronger rights; it is concerned only with the right to usufruct, that is the right to *possess*, not to a *property*. In the end, he concludes his argument by claiming that nothing in the world's order gives an answer to the question of possession, namely that we can possess the things only in relation to others (that is by their permission of such possession – if they permit us to possess it or if it is not already possessed by someone else). (p. 161) This is another representation of Kant's constructivistic thesis – the right to usufruct is a social (constructed) fact, which is established in order to achieve social coordination. This right has nothing to do with the structure of the world itself and instead it is an artificial, however not arbitrary (subjective or relative) invention.

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Although, as it has already been shown, the right to usufruct is necessary, it still remains conditional, although not optional. It is conditional, since it is possible to construct two situations in which it would no longer be valid: first possible world is the one in which owning the objects kills the others and second possible world is the one in the state of enormous scarcity (owning an object would *strongly* endanger the others). Neither of those worlds would allow the right to usufruct, since it would not pass the test of contradiction in conception. On the other hand, in a world, such as the actual one, in which the (not so 'extreme') assumptions 'A.-C.' are valid, it is prohibited to restrict the right to usufruct, since that maxim cannot be universally accepted (it fails the test of contradiction in conception⁶), which is the reason why this right cannot be optional. (p. 170)

In conclusion the author sums up and additionally explains the line of argument that is followed throughout the book. He points out that the aim of his study is to establish the constructivistic standpoint, that had been conceived by Hume in the III book of *Treatise on Human Nature* and later significantly developed within Kant's doctrine of justice that establishes objective moral principles without referring to moral realism or its alternatives. During that endeavor he refers to externalism of justification that conserves cognitivism and moral principles without 'truth makers'. Once again, he points out that constructivism is argumentatively stronger than moral realism, since it

6 According to analysis of the test of contradiction in conception that is represented in the fifth chapter, readers can deduce for themselves why this maxim fails the test.

provides an answer to socratean type of questions. It succeeds in it by moving the discussion away from the moral motivation.

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Kenneth R. Westphal's study is an exceptionally ambitious as well as successful enterprise of founding the constructivistic standpoint in Hume's and Kant's theories of justice. In addition to that, we are shown the way of merging those two theories into one, Kant's being the upgraded version of Hume's theory. This provides the stated claims with an outstanding cohesion and argumentative depth. The author begins with abstract, however intuitive constructions, such as an effort to separate Hume's theory of moral sentiments from his theory of justice. He does the similar procedure with Kant's notion of contradiction in conception and in conclusion uses both of those theories to infer the notion of justice as a part of one "practical" concept. These steps were, considering the author's argumentative ambition, necessary, since it would not be possible to convincingly infer such notion of justice without thorough analysis of Hume's theory of sentiments and Kant's notion of contradiction in conception. Perhaps the most relevant consequence of this study is that Westphal managed to show the relevance of the two authors that have lived more than two centuries before our time and have inspired standpoint that is, by our current standards, still extremely attractive and represented. Even more impressive is that the author managed to prove Hume's and Kant's superiority to many of the contemporary authors dealing with this subject and he does so by showing how further they had gone in their arguments. I would strongly recommend the book *How Hume and Kant Reconstruct Natural Law: Justifying Strict Objectivity without Debating Moral Realism* to anyone interested in ethical, meta-ethical and political problems, as well as to anyone willing to achieve a deeper and argumentatively stronger insight into the constructivistic standpoint.

Славенко Шљукић

Конструктивистичка одбрана објективности моралних стандарда и природног закона без улажења у расправу о моралном реализму

Апстракт

Главни циљ књиге *How Hume and Kant Reconstruct Natural Law: Justifying Strict Objectivity without Debating Moral Realism* Кенета Р. Вестфала је да успостављањем конструктивистичке позиције код Хјума и Канта одбрани објективност моралних стандарда и природног закона и на тај начин избегне расправу о моралном реализму и његовим алтернативама. Аутор сматра да је потребно избећи ову расправу, јер уколико се приклонимо моралном реализму или моралном не-реализму (његовој алтернативи), нећемо моћи да обухватимо један или други део питања које Сократ упућује

Еутифрону а које гласи: „Да ли је побожно биће вољено од стране богова јер је побожно, или је побожно зато што је вољено од стране богова?“. Моралним реализмом се не може обухватити други део, јер се не може показати да морални стандарди нису вештачки, док моралним не-реализмом не може први, јер се не може избећи релативизам моралних стандарда. Овај проблем аутор настоји да реши тако што ће заобићи конфронтацију моралног реализма и не-реализма заузимајући позицију конструктивизма, коју налази и утемељује код Хјума и Канта, а којом се тврди да морални стандарди јесу вештачки, али не арбитрарни. То показује тако што и код Хјума и код Канта проналази да моралне стандарде третирају као социјалну чињеницу (као вештачке), али и као нешто објективно. Вестфал примећује да Хјум експлицитно пише о моралу као социјалној чињеници, али показује да је његова теорија правде, којој подлежу морални принципи, изграђена невезано од његове теорије моралних сентимената (која може одвести у релативизам), те на тај начин обезбеђује објективност ових принципа. Кантову теорију, са друге стране, интерпретира као знатно унапређену, али структурално сличну, Хјумовој. Ова сличност огледа се у томе што се морални стандарди такође интерпретирају као социјална чињеница (као вештачки), и као објективни. Објективност, сада за разлику од Хјума, Кант добија спречицим моралним критеријумом – категоричким императивом. Наведене поставке аутор користи као премисе за веома инспиративну интерпретацију Хјумове и Кантове теорије правде.

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Кључне речи: конструктивизам, објективност, Хјум, Кант, морални стандарди, теорија правде

