


Kantian Universalism in Context

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ENG Abstract: Proponents of Kantian ethics have paid relatively little attention to the question of whether – and if so, to what extent – Kantian ethics is sufficiently context-sensitive to leave room for morally permissible, different cultural ways of life. An exception to this is Katrin Flikschuh, who proposes an interpretation of Kant's ethics which she refers to as *Kantian contextualism*. Contrary to standard 'universalist' interpretations, Kantian contextualism maintains that the Categorical Imperative can give rise to 'contextually different substantive principles', and hence to different moralities for differently situated persons. Flikschuh takes Kantian contextualism, unlike Kantian universalism as it is standardly conceived, to be sufficiently sensitive to different ways of cultural life. In this paper, I provide several arguments for why Flikschuh's Kantian contextualism should be rejected. Moreover, I will argue that Kantian universalism leaves ample room for cultural pluralism without having to forfeit the idea that the Categorical Imperative puts categorical, universal constraints on action. **Keywords:** Kantian universalism; Kantian contextualism; cultural pluralism; Katrin Flikschuh.

Summary: Introduction; 1. Reconstruction of Katrin Flikschuh's Kantian contextualism; 2.1. Kantian contextualism relies on a contentious interpretation of Kant's CI test; 2.2. Kantian contextualism is too undemanding; 2.3. Kantian contextualism is theoretically incoherent; 2.4. Kantian contextualism fails to provide standards for normative orientation in the global justice debate; 3.1. With Kantian universalism, imperfect duties can only be enacted against the background of concrete, contextual circumstances; 3.2. With Kantian universalism, it can be context-dependent whether an action qualifies as a violation of perfect duty; 3.3. The context-sensitivity of perfect duty does not lead Kantian universalism into normative indeterminacy; 4. Conclusion. 5. References.

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Introduction

I call Kantian universalism the family of Kant-inspired philosophical views according to which universal, normative action principles can be derived from a supreme principle of morality that is grounded in practical reason: the Categorical Imperative (CI). Proponents of Kantian ethics have paid relatively little attention to the question of whether – and if so, to what extent – the theory is sufficiently context-sensitive to leave room for morally permissible, different cultural ways of life. This is somewhat surprising, given the amount of literature that depicts Kant's ethics as one that is parochial, Eurocentric or in some other capacity incapable of addressing the moral concerns or perspectives of certain (marginalized) groups of people (e.g. Velleman 2015; Allen 2013; Benhabib 1992; Mills 2018).

One of the few Kantian ethicists who has positively engaged with Kant's ethics in the context of cultural pluralism is Katrin Flikschuh. In her 2017 book *What is Orientation in Global Thinking?* and her 2018 article "Kant's Contextualism", she expresses her scepticism about the potential of Kantian universalism to be sufficiently sensitive to different ways of cultural life. According to Flikschuh, "[c]urrent normative Kantianism", by which she means Kantian universalism on my conception of it, "largely simply tracks the shifting normative concerns of liberal global theorizing" (Flikschuh 2017, 40). That is, according to Flikschuh, Kantian universalism is at fault of taking certain "liberal" values such as moral individualism, freedom and equality between persons as universally valid from the outset, because of which it lacks the flexibility and openness for different ways of thought and life that a global normative theory requires if it is to be "action-guiding". Instead, Flikschuh proposes an interpretation of Kant's ethics that she takes to be "more context-sensitive" (Flikschuh 2017, 36). She refers to her interpretation as Kantian contextualism (Flikschuh 2018, 557). Like Kantian universalism, Kantian contextualism sees the CI as the universally valid principle (or *form*) of moral

willing and moral judgment, but unlike Kantian universalism, it denies that universal, categorical action principles can be derived from it (Flikschuh 2017, 45). According to Kantian contextualism, the particular way in which the CI binds us “from where we stand” does not allow us to infer that others are similarly bound “from where they stand” (Flikschuh 2017, 68).¹ Instead, it maintains that the CI can give rise to “contextually different substantive principles”, including principles that would be incompatible with those that the CI would give rise to for different persons in different cultural contexts (Flikschuh 2018, 557).

In this paper, I take issue with Flikschuh’s suggestion that “substantive” moral universalism in Kantian ethics would render it insufficiently sensitive to cultural context (Flikschuh 2017, 45). I will argue, *pace* Flikschuh, that Kantian universalism leaves ample room for pluralism with regard to cultural ways of life on the basis that (1) principles of *imperfect duty* can only be acted upon against the background of contextual circumstances, requiring practical judgment from contextually situated agents, and (2) the object of *perfect duties* – actions – cannot be strictly separate from maxims, and hence from the concrete contextual circumstances in which an action is willed. This conclusion can be maintained without having to forfeit the idea that the CI puts categorical, universal constraints on action. If this argument works, Kantian universalism does not come with a commitment to a context-insensitive moral parochialism. However, as will become clear, Kantian universalism does categorically prohibit certain “illiberal” cultural practices that Flikschuh thinks should be allowed in certain contexts. However, I will argue that this should be considered a *virtue* rather than a shortcoming of Kantian universalism.

The paper is structured as follows. In section 1, I present a reconstruction of Flikschuh’s Kantian contextualism. In section 2, I discuss several problems for Kantian contextualism’s potential as a coherent and substantial moral theory. In section 3, I suggest that Kantian universalism, unlike Flikschuh’s Kantian contextualism, is capable of drawing a clear moral line that may not be crossed by rational beings whilst also preserving an ample amount of contextual flexibility.

1. What is Kantian Contextualism?

According to Flikschuh, many philosophers in the global justice debate (“global theorists”) tend to “conflate global reasoning with globalizing particular, domestically favoured moral and political principles” (Flikschuh 2017, ix-x). By this Flikschuh means that rather than seriously engaging with substantively different, foreign points of view on moral issues, global theorists, including those who subscribe to what Flikschuh calls “current normative Kantianism”, have a tendency to take certain “commonsense” principles for granted (Flikschuh 2017, 3; 40). These include a strong commitment to moral individualism and the freedom and equality of persons (Flikschuh 2017, 2). The idea of such principles being “commonsense”, says Flikschuh, testifies to an implicit presumption that the “liberal way of thought and life” is in a sense furthest advanced in the moral span of time, which gives rise to the concern that global theorists are not taking other, “illiberal” ways of thought and life as seriously as they should (especially when people with other forms of thought and life are the subject of their theorizing).²

The overarching aim of Flikschuh’s project is to provide a Kantian basis for the idea that foreign, “illiberal” moralities need not be rationally wanting in terms of moral justification, because of which global theorists ought to engage with these moralities on equal terms. On Flikschuh’s view, we can recognize that there is a rational basis for a morality that is substantially different from our own without believing that there is reason *for us* to abide by that morality. All that is required is an understanding that the morality in question *could* have provided us with action-guiding principles had we been in the proverbial shoes of those for whom it *does* make sense to regard it as action-guiding (Flikschuh 2017, 118). As Flikschuh puts it: “we can come to recognize foreign practices as valuable for those whose practices they are insofar as we can come to see them as values which we *might* have had” (Flikschuh 2017, 118).

Flikschuh is optimistic about our capacity for such recognition. Her optimism stems from her agreement with Kant’s contention that as self-reflexive, rational beings, we can become aware of the finitude of our cognitive capacities (Flikschuh 2017, 126-127). More precisely, we can become aware of the fact that human beings, in addition to a universally shared “human standpoint”, need a particular “local standpoint” to orient themselves in the world (Flikschuh 2017, 104-106). As for the human standpoint, Flikschuh joins Kant in maintaining that human beings equally represent the world to themselves through the categories of the understanding (e.g., quantity, quality relation, modality, etc. (KrV, B129-B169)). What she adds to this picture is the idea that “differently situated human persons will respond to their particular contexts by developing context-specific concepts and practices” (Flikschuh 2017, 104). This is what Flikschuh means by the local standpoint. “Apart from the categories of the understanding”, Flikschuh says, “there is [...] nothing fixed or antecedently determined about [the] process of empirical concept formation” (Flikschuh 2017, 33). Substantively differently situated people orient themselves by different conceptual frameworks, leading to different ways of life. People from cultures that do not have the practice (let alone the concept) of promising or contracting, for instance, will not make sense of their actions through these concepts (cf. Flikschuh 2018,

¹ Flikschuh seems to use the opposition between “we” and “they” in such a way that these terms can pertain to any (cultural) group that is perceived as such from the first-person perspective of an agent. I will follow her in this regard.

² Some of the philosophers who belong to Flikschuh’s category of “global theorists” range from John Rawls, Charles Beitz and Aaron James to Amartya Sen, Martha Nussbaum, Simon Caney and Mathias Risse (cf. Flikschuh 2017, 3-5).

570-572).³ Nor is there any “a priori necessity” about human beings forming the concept of a state, because of which people are not necessitated to structure political life on the basis of such an idea (Flikschuh 2017, 33).

Flikschuh maintains that when we come to understand that, globally, there is great variety among local perspectives, we can come to understand that people with substantively different local perspectives could justifiably adopt action principles that we cannot from our own local perspective (Flikschuh 2017, 104-105). For instance, a Western European person could come to understand that a village elder of the Kenyan Kikuyu clan, as a result of her being part of a certain locally realized way of life, may have reason to practice female genital cutting (e.g., because of a deeply held belief that this is how girls are initiated into womanhood), whereas the Kikuyu elder may come to understand that the Western European person, being part of a locally realized way of life with a long tradition of “Enlightenment thinking”, may be justified in regarding this practice as a violation of bodily integrity. Hence, not only can there be deep *faultless* moral disagreements, but human beings are at the same time capable of realizing that such disagreement is not indicative of the superiority of their own moral beliefs (Flikschuh 2017, 125).

A natural question that arises at this point is how Flikschuh’s endorsement of faultless moral disagreement can be squared with Kant’s moral philosophy. This is where Flikschuh’s “contextualist” interpretation of Kant’s ethics comes in.

According to Flikschuh’s Kantian contextualism, the CI is meant to give us the universal form of moral judgment. However, this does *not* mean that the CI can tell us which substantive moral principles are valid for or true of all people at all times (Flikschuh 2018, 573). To the contrary, Kantian contextualism contends that the universal form of moral judgment only shows that maxims are (im)permissible *for the person who makes the judgment*:

[C]urrent readings of Kant’s categorical imperative [...] typically seek to derive generally valid principles of action from a categorical imperative test that asks each individual agent to reflect on the moral purity of *her* maxim. However, an agent’s judgement of her proposed maxim as one that any agent can follow does not warrant the inference that therefore the maxim is valid for everyone. To the contrary, its universal form merely shows that it is a morally permissible maxim for *her*. (Flikschuh 2017, 45)

Flikschuh puts this point even more strongly in her 2018 article “Kant’s Contextualism”: “[t]he point of the universalizability test is not to generate universally valid principles of action but to judge the moral purity of one’s maxim” (Flikschuh 2018, 562).⁴ What can be concluded from this is that according to Flikschuh, even though a moral judgment is a sincerely held conclusion from the first-person perspective that a proposed maxim could (or could not) be a valid action principle for everyone, the purpose of the CI test is not to arrive at the *truth* about whether this is actually so. Rather, its purpose is to find out whether you would *sincerely judge* that it is so (Flikschuh 2018, 572-573). When a sincere judgment has been reached on this question, the agent has done “all that Kantian morality can reasonably demand of her” (Flikschuh 2018, 569). That is, if an agent chooses to investigate the “purity of her maxim”, she can do no more than deliberate on whether she would sincerely judge that her maxim can be willed as a law. If the answer is yes, her maxim is pure. This, however, does not allow for the inference that the maxim *actually* could be willed as a law by everyone. It merely shows that the maxim is morally permissible for the person who sincerely arrives at this conclusion. “So long as the agent sincerely judges her maxim to be universalizable” Flikschuh maintains, “substantive divergence from others’ formally identical [...] judgements is *morally irrelevant*” (Flikschuh 2018, 570).

The main difference between Kantian universalism and Kantian contextualism, it seems, is that according to Kantian universalism, the *soundness* of moral judgment is conditional on the *actual* universalizability of one’s proposed maxim, whereas on the Kantian contextualist account the soundness of moral judgment depends on nothing but a sincerely held belief that the maxim is universalizable. According to Flikschuh, the relevant kind of universalism in Kant’s ethics is a universalism in the *form* of moral judgment rather than a universalism in substantive principles (Flikschuh 2017, 118-122). In what follows, I will refer to Kantian contextualism’s conception of moral universalism as *subjective universalism*.

Kantian contextualism’s subjective universalism says that our moral judgments, *in our judgment*, take the shape of imperatives that anyone could follow. Even so, we can become reflexively aware of the fact that the content of our moral judgments is heavily influenced by the beliefs and value schemes that we have inherited from the (cultural) context in which we are brought up. In the same way, we can come to recognize that it is possible for others who are situated very differently to arrive at substantively different moral judgments (in the shape of categorical imperatives) from *their* point of view due to *their* contextual situatedness (Flikschuh 2017, 118). Flikschuh uses the practice of polygamy as an example to illustrate this point:

Initially, when you stepped off the plane, you thought that polygamy is where you draw the line. It’s just wrong, you thought. But now you find yourself having second thoughts [...] [Y]ou come to see that it works, that it has advantages and disadvantages – for males and females alike – that it, too, is part of the normalcy around here. You begin to think that had you not been brought up on a diet of notions of romantic love, but were instead a member of complex clan and extended family relations with rather different patterns of emotional investment and loyalty, polygamy might strike you as a sensible way of going about what truly matters in family life. (Flikschuh 2017, 119-120).

³ Flikschuh is not the only one to raise this point (cf. Velleman 2015, 56-74; Korsgaard 2012, 85; Rawls 1955, 27-28).

⁴ When Flikschuh speaks of a ‘pure’ maxim, she seems to refer to a maxim that is adopted on the basis of a sincere judgment that it could serve as a universal law (cf. Flikschuh 2018, 562).

On Flikschuh's account, the same mode of reasoning extends to the practice of female genital cutting. Provided that we sufficiently grasp the contextual background and local perspective of pro-female genital cutting members of the Kenyan Kikuyu clan, for example, we should come to understand how it is possible for members of this community to rationally endorse the practice of female genital cutting (Flikschuh 2017, 125).

Flikschuh maintains that it is only when we thoroughly put ourselves in the shoes of foreigners with substantively different moralities that we acquire the conceptual means to orient ourselves in the global justice debate in a way that goes beyond our own moral framework, which we come to regard as one contingent set of moral values among others. This is so even if a particular moral framework (e.g. "liberalism") remains the only viable reason-giving option *for us* (Flikschuh 2017, 119-120).

What emerges is a highly innovative take on Kantian ethics that differs in important respects from "standard" universalist interpretations. Like Kantian universalism, Kantian contextualism takes the CI to be the supreme principle of morality. According to both, the CI demands that you act only on "universalizable" maxims. However, where Kantian universalism takes this to imply that human beings are only permitted to act on maxims that *any* rational agent could at the same time will as laws, Kantian contextualism adheres to a subjective universalism that insists that the CI test is only meant to test the "purity" of the maxims of the one doing the testing.

2. The Problems with Kantian Contextualism

According to Flikschuh, "those who look for a universalism in moral substance overlook the universalism in the form of willing in Kant's ethics" (Flikschuh 2018, 573). In contrast to this, I will argue that we *should* be looking for a universalism in moral substance in Kant's ethics, in the sense that it derives norms from a supreme moral principle that cannot give rise to contradictory categorical imperatives to different persons. In the next section, I will turn to how Kantian universalism provides a more promising (albeit more stringent) moral framework for accommodating cultural pluralism than Kantian contextualism.

2.1. The Purpose of the CI-Test

Insofar as Kantian contextualism is meant as an *interpretation* of Kant's ethics, it rests on a contentious interpretation of the CI test and the purpose of moral judgment. Let us begin with Flikschuh's contention that the CI test is only meant to test the "purity" of our own maxims (Flikschuh 2018, 562).

A pure maxim, on Flikschuh's account, is a maxim of a good will (Flikschuh 2018, 562). It is true that Kant exclusively considers a good will to have moral worth (AA 4:393), but it does not follow that the CI test must therefore be designed to reach a judgment on the *purity* of our maxims. According to Kant, human beings are not transparent to themselves, and we are often inclined to flatter ourselves with a more positive self-image than is actually warranted. We can never truly know, irrespective of how deeply we examine ourselves, whether our maxim is adopted from duty or self-interest:

[N]o certain example can be cited of the disposition to act from pure duty; that, though much may be done *in conformity with what duty commands*, still it is always doubtful whether it is really done *from duty* and therefore has moral worth. (AA 4:407)

While Kant is clearly pessimistic about our insight into the "purity" of our maxims, he is rather *optimistic* that we can arrive at moral insights by applying the CI test. Hence, it would be peculiar if these moral insights were to pertain to the purity of our maxims. For his optimism, we only need to look at the examples that Kant discusses in the second section of the *Groundwork*, where the hypothetical men in question ask themselves whether it would not be contrary to duty to commit suicide when tired of life, make a lying promise when in need of money, make no attempt to cultivate their talents when in comfortable circumstances, or never assist others in need (AA 4:421-4:423). In all these cases, "it is seen at once" that these maxims can never also be willed (or even conceived, in the first two examples) as universal laws because this leads to a *contradiction* in the will (AA 4:424).

By stating that the best we can hope for on Kant's account is that we judge and act from purity of will, Flikschuh obscures Kant's contention that when we test whether maxims can at the same time be willed as universal laws, we should arrive at conclusions that we must accept on pain of rational self-contradiction. Her conception of the CI test as a purity test for maxims seems to replace Kant's "contradiction criterion" with a "sincerity criterion". That is, where for Kant the CI is meant to provide rational insight into the categorical (im)permissibility of a proposed maxim by showing that a contradiction in the will does or does not *necessarily* arise upon putting the maxim to the CI-test, in Kantian contextualism this role is fulfilled by a criterion which evaluates the "purity" of a maxim on the basis of whether, "upon genuine deliberation", we would sincerely judge that the maxim could be willed as a law.

In sum, *pace* Flikschuh's interpretation, on Kant's account it actually lies within our ability to find out whether maxims can at the same time be willed as universal laws. The CI test is a meta-principle by which we arrive at such moral insights. It is not designed to test whether our proposed maxims are "pure".

2.2. Kantian Contextualism is Too Undemanding

Recall that according to Kantian contextualism, we can come to *recognize* foreign practices as potentially reason-giving, and hence potentially morally justifiable, if we can imagine *ourselves* regarding these practices as reason-giving. In what follows, I will refer to this idea as the *recognition principle*. This criterion, I will argue, is much too undemanding for a substantial moral theory.

Suppose I can imagine myself judging that I have good reason to rob banks. One does not need to be a Kantian to see that it would be a stretch to hold that my capacity to empathetically put myself in the shoes of a bank robber renders bank robbing morally permissible, or potentially morally permissible, from certain perspectives. Yet if we are to follow the recognition principle, it seems that this is exactly the conclusion we should arrive at. After all, on Kantian contextualism's account, we can also come to understand that a person could have legitimate reasons to perform female genital cutting precisely by virtue of our capacity to imagine ourselves, from that person's local standpoint, sincerely judging that they have reason to perform female genital cutting.

This is a problem, especially because it is sometimes quite easy to empathetically put ourselves in the shoes of "bad guys". The best movie villains are those who empathetically resonate with us on some level. Suppose that I can perfectly imagine myself sincerely believing that banks are little more than the cornerstones of the capitalistic oppression of the working class. It seems that on the basis of this sincerely held belief, there are quite a few Robin Hood-like routes available to me (assuming I care about the working class) to arrive at the sincere judgment that it is permissible, or perhaps even a duty, for all rational beings to rob banks and distribute the wealth among the working class. Sure, I may be capable of recognizing that there are others for whom it is rational to care about the bank's continued existence; it just so turns out that from *my* finite perspective, there is a categorical reason for any rational being to do everything in their power to free the working class from capitalistic oppression, which happens to include robbing (or destroying) banks.

Although Kantian contextualism aspires to justify belief in a supreme principle of morality that has "reasoned authority" in our moral deliberations (Flikschuh 2018, 558), its conception of the CI seems to be largely grounded not in reason but in our capacity for *empathetic imagination*. Even though our own moral judgments are supposed to be sincerely held categorical assertions regarding whether our maxims can possibly serve as action principles for everyone (Flikschuh 2018, 562), *any* maxim that satisfies the recognition principle should at the same time *in principle* be deemed justifiable, provided we can come to understand that we ourselves *could have been* in a position to sincerely judge that maxim to be universalizable. Kantian contextualism offers no method to prevent this from extending to maxims that Kant regards (or should regard) as contrary to duty.

2.3. Kantian Contextualism is Theoretically Incoherent

There is, however, a further problem for Kantian contextualism in addition to its being overly permissive, namely that the combination of its insistence on the CI as the universal form of moral judgment and its commitment to the recognition principle renders Kantian contextualism *theoretically incoherent*.

Suppose we are concerned about the moral permissibility (or "purity") of a maxim we are considering adopting. As good Kantian contextualists, our method of evaluation is to ask ourselves whether "in [our] judgment [our] proposed maxim is serviceable as a *possible* principle of action for everyone" (Flikschuh 2018, 562).⁵ Only if we sincerely judge that the maxim is universalizable in this way is the maxim morally permissible for us, and hence pure. However, being Kantian contextualists, we are at the same time committed to the idea that when we arrive at a sincere judgment concerning our maxim's (un-)universalizability, this only means that the maxim is morally (im)permissible *for us* (subjective universalism) due to our recognition of the fact that the CI test could have the *opposite* result for differently situated agents (recognition principle).⁶

Now, what is it that the Kantian contextualist *sincerely believes* upon arriving at the sincere judgment that her proposed maxim is (un)universalizable? Put differently, what does the judgment "M is (un-)universalizable" *mean* when uttered by someone who is committed to the idea that the method by which she establishes this conclusion is unfit for establishing the *actual* universalizability of maxims? While it eludes me how Flikschuh's Kantian contextualist would respond to this question, it does seem clear to me that it cannot be a judgment that is meant to be taken in earnest. If Kantian contextualism maintains (as it does) *both* that maxims are permissible for us only if we would sincerely judge them to be universalizable *and* that the method by which we arrive at our moral judgments cannot establish the *actual* universalizability of maxims, it should be impossible for a consistent Kantian contextualist to ever sincerely believe their moral judgments.

In short: Kantian contextualism implores us to evaluate the "purity" of our maxims on the basis of their supposed universalizability (CI) whilst simultaneously imploring us to keep in mind that these maxims need not be "truly" universalizable (recognition principle). This is theoretically incoherent.

2.4. Disorientation in The Global Justice Debate

Perhaps the issues discussed thus far will turn out to be trivial if Kantian contextualism can still succeed in what it set out to do: to provide us with an inclusive Kantian theoretical method for normatively orienting ourselves in the global justice debate. Suppose that Flikschuh is right in that "our own liberal principles" are *in principle* just as justifiable as certain contradictory "illiberal" moral principles. And let us further suppose that she is right in that we should take substantively different, "illiberal" moralities as seriously as our own in the global justice debate (Flikschuh 2017, 119-120). How would this provide us with the necessary tools for

⁵ It should be noted that it remains unclear, on this formulation of the CI-test, where this leaves maxims that Kant deems at the same time conceivable as laws but not at the same time willable as laws (cf. AA 4:423).

⁶ Flikschuh is aware of the "tension between the ineliminably indexical character of reasons for action and rationality's equally authoritative claim to universal validity" in Kantian contextualism (Flikschuh 2018, 567) but seriously underestimates how deep this problem goes (see also Flikschuh 2017, 120-123).

practical orientation in the global justice debate? Granted, it gives us more perspectives to consider than before, back when we supposedly only had our own domestic liberal moral concepts and commitments to go by and we implicitly mistook thinking about global justice for translating domestic moral principles to different contexts. But how does Kantian contextualism, unlike our liberal biases, provide us with a *compass* with which to orient our thinking about global justice?

There are good reasons to doubt that Kantian contextualism can give us such a compass. Here is why. As is clear by now, Kantian contextualism says that practices and action principles that qualify as violations of the CI *for us* can still be in conformity with the CI from the perspective of substantively differently situated persons. However, Kantian contextualism does *not* say that certain practices and action principles must *necessarily* be judged as morally (im)permissible by those who are situated in a particular context. The most it can do is hope for intracommunal overlap in moral judgments and beliefs. Communities, however, usually consist of people with (sometimes substantively) different beliefs. It is obviously not the case that everyone always agrees with or even morally condones the *status quo* of their locally realized way of life. As has often been the case in history, some members of a community may wish for the continuation of female genital cutting, whilst other members may fervently object to this practice. Kantian contextualism would seem to lack the theoretical means to provide a “reason-based” solution to local, ethical disputes such as this.

The problem for Kantian contextualism, with regard to its potential as a compass in the global justice debate, lies in its insistence that “there is nothing over and above the act of judgement” that can tell agents whether their actions and action principles are morally justified (Flikschuh 2018, 573; Flikschuh 2017, 45). Provided the empathetic imagination of the “global theorist” stretches so far as to make it possible for her to understand *both* how somebody within a particular context could sincerely arrive at the judgment that women should not have voting rights *and* how somebody from the same community could sincerely arrive at the opposite judgment, it seems that Kantian contextualism provides the “global theorist” with no basis whatsoever for orienting herself in moral matters within particular contexts, leaving her morally rudderless. This is a problem for Flikschuh because it entails that Kantian contextualism, contrary to her aspirations, does nothing to prevent “global theorists” from becoming disorientated when deliberating about the ethical demands of global justice.

3. The Context-Sensitivity of Kantian Universalism

But does Kantian universalism fare any better? If it is to succeed where Kantian contextualism fails *without* falling prey to the problems Flikschuh thinks it faces, Kantian universalism must be able to put universal moral constraints on action in a way that does not turn the theory into a context-insensitive parochialism. In this section, I aim to demonstrate that it has the means to do so. More precisely, I will argue that Kantian universalism allows for an ample amount of (contextual) latitude in the enactment of duty whilst retaining the idea that the CI prescribes categorical, universal principles for action. Therefore, there is no practical need to get rid of the universalism in Kantian ethics in order to ensure that it can accommodate the idea that different (cultural) contexts may affect what the CI practically requires of agents.

3.1. Imperfect Duty

First of all, it must be emphasized that it is *maxims*, rather than actions, that are of primary moral importance in Kant's ethics. Rather than telling us which actions we ought to perform at all times (as Kant's ethics is sometimes presented), it says that we ought to solely act on *maxims* that accord with the moral law (AA 6:389; 6:392). This bodes well for Kantian universalism's potential as a context-sensitive moral theory, as maxims can be acted upon in many different ways. In fact, there is a prevalent category of duty – *imperfect duty* – “that leaves a latitude (*latitudo*) for free choice in following [...] the law” (AA 6:390). This category of duty derives its name from the fact that, unlike with perfect duty, reason cannot prescribe what specific actions or omissions are required in order to satisfy the duty. Where perfect duties prescribe laws for *actions*, imperfect duties prescribe laws for *maxims* only (AA 6:391-6:392; O'Neill 1975, 118-119). They require the adoption of two general *ends*, namely one's own perfection and the happiness of others (AA 6:385). It is up to the agent's capacity of judgment to determine what these ends practically require of them (cf. Bacin 2016, 259). I contend that it is only against the background of concrete, contextual circumstances that it is possible for an agent to reach a (sufficiently informed) judgment on how she should discharge her imperfect duties.

First of all, it is possible for an agent to reach a judgment about how she should *concretely* go about applying principles of imperfect duty only when it is clear to her which (empirical) options are available to her. For this, it seems that the agent must know several things about herself and her (social) environment. For one thing, this includes some knowledge of her own abilities. This seems clear enough with the duty to perfect oneself, as the agent needs a realistic idea of what she is (or could be) good at in order to reach an informed judgment as to which of her useful talents she ought to cultivate (cf. Timmermann 2005, 249). However, knowledge of one's own abilities is also needed to reach a judgment on how to promote the happiness of others.

Imagine a scenario in which you and I physically encounter a person who is hurt and in dire need of help. The person is within our reach, and there seems to be no one else around. Both of us have individually adopted a general principle of promoting the happiness of others. However, you are a medical professional, whereas I am not. Given our knowledge about our abilities, it would be rational to judge that the same principle requires different actions of us individually. I may enact this principle to the best of my abilities by calling for an ambulance, whereas you may do so by providing the victim with medical aid

Secondly, in order for an agent to have an epistemic basis for deciding on a *policy* to enact his imperfect duties, he must take certain considerations about his (social) environment into account. For instance, if an agent is determined to spend his life in an environment where people do not have cars, it can hardly be said that his endeavours to become a car mechanic can reasonably qualify as part of his policy to develop his useful talents (cf. AA 6:392). After all, there is no use for this profession within this particular context. Obviously, things would be different if the aspiring car mechanic had no plans to live in such a place.

The same goes for the duty to promote the happiness of others, as social factors such as culture can greatly affect what may or may not be done to achieve this. To mention one example, in many Western cultures it is not considered distasteful to place elderly family members in nursing homes when they are no longer able to take care of themselves, whereas this practice would be considered outrageous in many Asian, African and Middle-Eastern societies, where children are often expected to take care of their parents until the end of their lives. Since cultural conceptions and norms can impact which actions generally serve to make people happy (in the broadest sense), it can be context/culture-dependent whether an act (such as having one's elderly family members placed in a nursing home) could reasonably be conceived as promoting the happiness of others.⁷

Thus, it can be seen that on a "standard", universalistic reading of Kant's ethics, the same moral principle may favour the performance of different actions in different (cultural) contexts. Hence, Kantian universalism can require different actions and omissions from us when we find ourselves among people with customs, beliefs and traditions that are different from those we are used to. Kantian universalism is context-sensitive by design.

3.2. Perfect Duty

Unlike Kantian contextualism, Kantian universalism is not context-sensitive in the sense that different contexts can give rise to different categorical imperatives. It allows for contextual latitude only with regard to how moral duties can, may and ought to be acted upon.

While Kantian universalism prioritizes maxims, it also forbids certain *actions*, namely those that can *only* be willed on the basis of non-universalizable maxims (cf. Kleingeld 2024, 172-173). According to Kant, these include lying, theft, suicide, (self-)mutilation and murder (AA 4:421-423; 6:422-423). Kant maintains that it is a perfect duty to refrain from engaging in these actions.⁸

What has been insufficiently appreciated in the Kant literature (and arguably by Kant himself) is that even though contextual considerations never trump the requirements of perfect duty, whether certain actions qualify as a violation of perfect duty is context-dependent. This is exemplified by a consideration that Flikschuh is right to point out, namely the fact that differently situated people may have different conceptual frameworks, because of which there may be certain action types that are available to "them" but not to "us" (Flikschuh 2017, 105).

An example may serve to make this clear. In a discussion on the normativity of culture-specific action types (or "doables"), David Velleman mentions a speech act in Russia that is called *vranyo*, which is said to be a particular form of intentionally telling falsehoods to others that does not exist in "Western" countries (Velleman 2015, 65-68). In an article in the *Moscow Times*, *vranyo* is described as occurring "when a person knows he is lying and expects the other person to understand that" (Murray 2012). The practice is thus, interestingly, understood as a form of "lying" without its purpose being the deception of others. It is said that Russian people can sense instances of *vranyo*, which upon recognition commonly does not lead to an attitude of disapproval on the part of the listener. Should *vranyo* be considered a form of lying, on Kant's account?

As mentioned above, Kant deems it a perfect duty to abstain from lying (AA 4:402-403; 4:422). In one of his famous "casuistical questions" in the *Metaphysics of Morals*, however, Kant asks: "Can an untruth from mere politeness (e.g., the 'your obedient servant' at the end of a letter) be considered a lie? No one is deceived by it" (AA 6:431). Or consider a situation in which "[a]n author asks one of his readers, 'How do you like my work?'" (*Ibid.*) – a question that, according to Kant, one is likely to ask only if one expects a positive answer. As usual, Kant gives no direct response to these questions. However, on several occasions Kant does make it clear (plausibly, I believe) that the *intention* of deceiving one's interlocutor or oneself is a necessary component of lying (AA 6:430; 4:422). Therefore, if intentionally telling someone something that one believes to be false is not meant to deceive that person (for example, in circumstances where there is a social expectation that one will not be telling the truth), it would be incorrect to consider this a case of lying on Kant's account.⁹

⁷ Culture is of course not the only relevant consideration when it comes to the ethics of placing the elderly in nursing homes. It is not uncommon for elderly people in Western countries to fervently object to being relocated to a nursing home, and some elderly people in Asia or Africa likely dislike the idea of being taken care of by their children, preferring a nursing home instead. However, these are also contextual considerations that should be taken into account by the agent when deliberating on how the principle of promoting other people's happiness should be applied in their particular circumstances.

⁸ The fact that there is a category of duty in Kant that explicitly forbids certain action types is already a strong indication that he puts much more rigidly defined constraints on action than Kantian contextualism seems to be willing to do. Regardless, the idea that the concept of perfect duty should be preserved in Kantian ethics can be maintained even if we disagree with some of Kant's claims about what perfect duty specifically requires of us. After all, some of these may be an expression of Kant's own cultural or personal biases rather than being based on rational principles (such as the supposed categorical prohibition against masturbation).

⁹ Martin Sticker has raised a similar point with regard to the ethics of suicide in Kant's ethics. He (tentatively) suggests that "[a]t

Since *vranyo* is supposedly initiated from the social expectation that others will understand that no attempt is being made to convince them of falsehoods, the practice cannot be described as one that is aimed at the deception of others. Since the aim of deception is inherent to Kant's conception of lying, *vranyo* should not qualify as such. In fact, as far as the matter of permissible untruth-telling is concerned, there can be circumstances in which *vranyo* is not morally different from casually using sarcasm or irony, where we are also not in the business of deceiving our interlocutor (even though our interlocutor may still *believe* she is deceived if she fails to pick up on the sarcasm/irony).¹⁰

I mention this particular example to underscore the point that even though practices may *appear* to be violations of perfect duty to someone who is unfamiliar with the practice, this need not be the case. While people who are unfamiliar with the practice of *vranyo* (or sarcasm/irony, for that matter) may, on the face of it, be tempted to write it off as lying (especially when, unbeknownst to them, they are confronted with the practice themselves), they would be mistaken due to a failure to sufficiently understand what is going on.

Does this conclusion imply that in Kantian universalism it is possible for one of two *outwardly* identical actions to qualify as a violation of perfect duty and the other not? I believe that it does. The reason for this, I propose, is that actions are not strictly separable from maxims, in Kant's ethics. By this I mean that what an action *is* cannot be determined by outward behaviour alone (i.e. what Kant calls the "matter" of the action (AA 4:416)). Instead, this is primarily determined by an action's underlying maxim (cf. AA 4:416; O'Neill 1975, 94-110; Herman 1990, 33; 49). If the question whether an action *is* a certain type of action depends on its underlying maxim, then the object of perfect duties – *actions* – also cannot be strictly separate from maxims. This is exemplified by the fact that while it is a perfect duty to abstain from lying, it is not a perfect duty to abstain from *vranyo*-ing. Even though both actions can be outwardly identical, only one can *possibly* be willed, within practical reason, as a means to morally permissible ends.¹¹ Christine Korsgaard describes a similar case in *The Sources of Normativity* when she compares the maxim "I will refuse to return your weapon, because I want it for myself" to the maxim "I will refuse to return your weapon, because you have gone mad and may hurt someone" (Korsgaard 1996, 108). As with the lying/*vranyo* case, it seems plausible to say that Korsgaard's example depicts yet another scenario with two fundamentally different actions, despite their being outwardly identical. If one were to act on the first maxim, one's action would qualify as *theft* – and hence be prohibited as a matter of perfect duty – whereas if one were to act on the second maxim, one's action would qualify as a form of beneficent *protection*.¹²

3.3. Does The Context-Sensitivity of Perfect Duty Lead to Normative Indeterminacy?

A worry that may arise at this point is that the context-sensitivity of perfect duties in Kantian universalism, much like Kantian contextualism, comes at the cost of normative indeterminacy. If perfect duties are supposed to prescribe laws for actions but actions cannot be separated from their underlying principles, there may be cause for concern about perfect duties being incapable of drawing a clear moral line for rational agents after all. Suppose, for instance, that Kant is right in that is a perfect duty to abstain from mutilation. What should Kantian universalism say about female genital cutting rituals, given that proponents of such practices usually do not *conceive* of these as a form of mutilation but rather, for instance, as a culturally significant initiation from childhood to womanhood? Does it have the means to say that female genital cutting categorically qualifies as an act of mutilation, regardless of the fact that proponents do not *think* of such acts as mutilation?¹³ Let me start with a caveat. For my current purposes, I do not aim to provide irrefutable evidence that a perfect duty against mutilation would render female genital cutting rituals categorically impermissible. Instead, I aim to illuminate how, in Kantian universalism, such a claim can be intelligible despite the fact that there is no universal agreement on whether female genital cutting qualifies as mutilation. This is all that needs to be established

least to some extent it might depend on [...] linguistic customs and societal attitude" whether certain forms of suicide (such as euthanasia when terminally ill) should qualify as impermissible "self-murder" in Kant's ethics (Sticker 2018, 181-182).

¹⁰ In other circumstances there could be a moral difference between *vranyo* and the casual use of sarcasm or irony, such as when high-ranking military officials use *vranyo* in briefings to knowingly uphold an upstanding self-image that is not grounded in reality (thereby possibly enabling the continuation of war crimes, mistreatment or other forms of injustice). Even in such circumstances, however, *vranyo* would not fall under the umbrella of Kant's conception of lying.

¹¹ The idea that outwardly identical actions could qualify as fundamentally different action types due to different underlying maxims does not in turn imply that it is impossible for actions with substantively different underlying maxims to qualify as identical action types. For instance, agent A and agent B can both be said to be performing CPR even if agent A goes through the (correct) CPR motions with the sole intent of saving a person's life and agent B does the same with the intent of gaining the admiration of bystanders. In this example, agent A performs CPR from duty, whereas agent B performs CPR from self-interest.

¹² It must be noted that Korsgaard mentions this example in the context of establishing that on Kant's account, all maxims consist of "actions and ends" and that the moral quality of a maxim consists in the "functional arrangement" of both parts, rather than the parts themselves. She does not explicitly argue, as I do, that the moral difference between the first action and the second action can be explained in terms of the first's (but not the second's) qualifying as theft.

¹³ This concern seems to tie into what has come to be known as G.E.M. Anscombe's "problem of relevant descriptions" objection to Kant's ethics, according to which "[Kant's] rule about universalizable maxims is useless without stipulations as to what shall count as a relevant description of an action with a view to constructing a maxim about it" (Anscombe 1958, 2). While Kantian philosophers like Onora O'Neill, Barbara Herman and Jens Timmermann have aptly addressed this objection by arguing that the correct/relevant description of an action in Kant's ethics is determined by the actual maxim on which the agent wills the action (O'Neill 1975, 94-110; Herman 1990, 68-69; Timmermann 2005, 251), the current concern cannot be resolved by appealing to this argument. After all, the current challenge for Kantian universalism is to make sense of the idea that it is possible for actions to qualify as action types that perfect duty would forbid precisely despite the fact that agents may genuinely not conceive of their actions as such action types.

for the idea that the context-sensitivity of perfect duties does not impede on Kantian universalism's capacity to set categorical, universal constraints on action. Furthermore, it must be stressed that female genital cutting comes in multiple shapes and forms. The World Health Organization divides different types of female genital cutting into numerical categories based on the relative severity of the procedure and the (possible) physical complications.¹⁴ As mentioned in the previous section, Flikschuh argues that there is a Kantian route towards a justification of female genital cutting as practiced by the Kenyan Kikuyu clan (Flikschuh 2017, 125). Several sources confirm that the Kikuyu female genital cutting ritual falls under either the so-called "type II" or the "type III" category, which means that the procedure could range from a removal of the clitoral glans and the inner folds of the vulva to infibulation (cf. Boddy 2007, 235; 243; 359; Thomas 2000, 132). To remain conceptually aligned with Flikschuh, the reader can assume that when I refer to female genital cutting in this paper, I am referring to the type II and type III variants.

A temptation that should be avoided is to search for an "ideal" definition of mutilation and to proceed by arguing that proponents of female genital cutting rituals simply fail to understand that, according to this ideal definition, female genital cutting falls under its umbrella. For one thing, it is not clear that morally loaded concepts such as "mutilation" can be wholly defined in "pure" terms, uninfluenced by societal attitudes and linguistic customs (cf. Sticker 2018, 181-185). For another, what is important in the example borrowed from Korsgaard has nothing to do with whether the "theft maxim" is based on the best possible definition of stealing (or property, for that matter). Nor is it important whether the difference between *vranjo* and lying is explained in terms of the best possible definition of lying. What is important in these examples is what Kant's conception of lying and stealing *denotes* and why it is a perfect duty to abstain from *these* actions.

Now in some cases, an agent's maxim may already explicitly contain an action description that would be contrary to duty on Kant's account, such as "I will lie/steal/murder when ... to ...".¹⁵ In such cases, the maxim is not going to pass the CI test regardless of the circumstances and the end for which the agent adopts the maxim.¹⁶ However, it is clearly not the case that immoral maxims *need* to contain an action description that explicitly refers to an immoral action. It is clearly possible for a maxim to qualify as a "lying maxim", for instance, without having "lying" as its action description, for example when my maxim is "I will tell falsehoods when I am in need of money to get money" (AA 4:422). Again, what is important here is not that the maxim corresponds to a universally agreed upon definition of lying but that it corresponds to an action type that is ruled out by the CI: communicating ideas that one believes to be false with the intention of deceiving oneself or others. What matters is that this action type is available to the agent, not whether he or she has a (similar) concept of it.

As with "lying maxims", it should be equally possible to adopt "mutilation maxims" without "mutilation" actually being the maxim's action description. However, to understand what a "mutilation maxim" would be on Kant's account, we first need to know what Kant means by mutilation.

When discussing perfect duties to the self in the *Doctrine of Virtue*, Kant explains what he means by mutilating *oneself*. According to Kant, this can either be done "materially" or "formally". *Material* self-mutilation would involve maiming oneself, understood as "*depriving* oneself of certain integral, organic *parts*" (AA 6:421). Importantly, one cannot be said to *deprive* oneself of integral, organic parts when one has these removed due to their being "dead or diseased", thereby endangering one's life (AA 6:423). However, if one were to have oneself castrated in order to pursue a career as a singer, this *would* qualify as a form of maiming oneself (AA 6:423).¹⁷

Kant describes *formal* self-mutilation as "*depriving* oneself (permanently or temporarily) of one's *capacity* for the natural (and so indirectly for the moral) *use* of one's powers" (AA 6:421). If I choose to blind, deafen or cripple myself, this would qualify as formal self-mutilation on Kant's account. The reason why Kant thinks that such actions indirectly deprive me of the capacity to use my moral powers is because I need my "natural powers" to act, and thus to act from duty. To preserve myself as a moral being, I must preserve myself as an animal being.

In a paper from 2009, Michael Cholbi asserts that Kant has a *symmetrical* understanding of moral duty:

Kant views our duties as subject to a kind of symmetry, according to which if an agent is morally required to treat herself in a particular fashion, then all other things being equal, she is morally required to treat similarly situated others in the same fashion. (Cholbi 2009, 20).

For my current purposes, I take this claim for granted. What this entails, with regard to the perfect duty against self-mutilation, is that a perfect duty against mutilating myself at the same time spells out a perfect duty against mutilating others. This can only be true if Kant's idea of what it means to mutilate others fundamentally means the same thing as what it means to mutilate myself (either materially, formally or both).

Now that it is clear what the Kantian perfect duty against mutilation *denotes*, we can determine whether female genital cutting is a violation of this duty. The answer is that female genital cutting morally qualifies as both material and formal mutilation. It is *material* mutilation because the act deprives a girl of her organic parts. The removal/destruction of organic parts qualifies as a form of *deprivation* because the act is not done with the intention of preserving the girl's health. If this were so, the act would not qualify as female

¹⁴ See, for instance: <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (last access 16-02-2024).

¹⁵ Provided that these concepts refer to the types of action that Kant has in mind.

¹⁶ Assuming, of course, that it is a perfect duty not to lie, steal or murder.

¹⁷ Kant also refers to self-mutilation as 'partial self-murder' (6:421-423).

genital cutting but as (surgical) amputation (cf. AA 6:423). Female genital cutting qualifies as *formal* mutilation because it comes with a high risk of depriving or diminishing a girl's capacity for sexual pleasure¹⁸ and her capacity to give birth without (sometimes severe) complications.¹⁹

If it is true that female genital cutting *inherently* qualifies as what Kant means by an act of mutilation, and if it is true that it is a perfect duty to abstain from what he means by mutilation, this means that there cannot possibly be any circumstances in which female genital cutting could be willed for permissible ends.

The main takeaway is as follows. The idea that actions cannot be separated from maxims in Kantian universalism does *not* make it impossible for Kantian universalism to prescribe perfect duties that are uniform in content. I have used the perfect duty against mutilation as a leading example. The discussion on female genital cutting illustrates that it is possible to will an act of mutilation without *taking oneself* to will an act of mutilation. To will an act of mutilation, on Kant's account, is to will the removal or destruction of organic parts or natural powers as a means to non-medical ends. Since the maxim that underlies an action can be a "mutilation maxim" even if the agent does not conceive of that action as a form of mutilation, an agent's action can qualify as mutilation, and thus as a violation of a perfect duty, whether or not the agent takes themselves to be willing an act of mutilation.

In this section, I hope to have made a plausible case for the idea that Kantian universalism is a context-sensitive moral theory that is also capable of prescribing substantive, universal action-principles. With Kantian universalism, it takes a contextually situated rational agent to judge how *imperfect* duties ought to be discharged. Reason alone does not prescribe what actions and omissions (nor how many of them) are required of the agent with regard to such duties, but only which *ends* the agent ought to adopt (AA 6:392). At the same time, Kantian universalism allows for the possibility that outwardly identical actions can qualify as different action types, because of which the question whether an action qualifies as a violation of *perfect* duty can be context-dependent. This conclusion can be sustained without forfeiting the idea that the CI sets categorical, universal constraints on action.

4. Conclusion

Kantian universalism is more potent as a context-sensitive moral theory than Kantian contextualism. The task with regard to evaluating the moral permissibility of less familiar cultural practices is not, as Kantian contextualism would have it, to find out whether we are capable of imagining ourselves sincerely endorsing these practices under particular circumstances. Instead, the task for Kantians is to first get sufficiently clear on the underlying context, conception and purpose of the practices in question *before* evaluating whether they are in conformity with duty. I think that this is exactly what it should mean for Kantian universalism to take "foreign ways of life" seriously.²⁰

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¹⁸ Some maintain that the deprivation of sexual pleasure as a result of female genital cutting is exaggerated, as such criticism supposedly 'presupposes an excessively mechanical picture of sexuality, omitting the role of the mind as the most important sexual organ' (Wong 2023, 51). This objection is unconvincing for at least two reasons. The first is the bare fact that different people enjoy sex differently. For some people 'the mind' may suffice as a source of sexual pleasure, but others may not be so fortunate. The second reason is that this response does not diminish the fact that female genital cutting comes with the substantial risk that the girl's 'mechanical' capacity for sexual pleasure will be destroyed or diminished – a 'natural power' of which the girl may not wish to be deprived (either now or later in life).

¹⁹ See, for instance: <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (last access: 16-02-2024).

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