

Korsgaard's Constitutivism: Agency, Normativity, and the Moral Law

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Abstract

In this paper I critically assess Christine Korsgaard's work on the nature of normativity. Specifically, I focus on Korsgaard's attempt to ground normativity in the constitutive standards of action and agency. In the first section, I consider David Enoch's criticism of constitutivism in general and I acknowledge that his criticism works against constitutivists who focus on the constitutive features of objects, entities, or practices. But I argue that Korsgaard can avoid Enoch's criticism because she focuses instead on the constitutive features of the solution to a problem we already find ourselves facing: the problem of what to do and who to be. Korsgaard believes that, in order to solve this problem, we must value humanity. So, solving the problem requires that we respect the moral law. In the second section, I argue that, since the normative problem as presented by Korsgaard is either impossible to solve or has a trivial solution, we should reject Korsgaard's formulation of the normative problem. Finally, in the third section, I suggest that, though Korsgaard is right to say that we face normative problems and that this is the source of normativity, her formulation of the normative problem fails because she does not adequately consider the conditions under which we face normative problems. And I argue that, if we consider these conditions, we will realize that we encounter normative problems only when we find ourselves confronted by competing claims where solving the normative problem requires balancing these claims against one another.

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Introduction

This MRP will engage with Christine Korsgaard's work on the nature of normativity. In the first section of my paper, I defend Korsgaard's constitutivism against a standard critique of constitutivist projects. Korsgaard has been interpreted as arguing that we are essentially agents and so are subject to the constitutive standards of agency. One way of criticizing this argument is to say that the constitutive standards of agency are normative for us only if the category 'agent' is normative for us, and Korsgaard never tells us why we *should* be agents (at most, she shows us that we already *are* agents, and that is not quite the same thing). But I will argue that this criticism misses the point of Korsgaard's argument. I do not take Korsgaard to be arguing that we are some kind of entity 'agent', and so must be good agents. Instead, I take her to be arguing that we are confronted with a normative problem: unlike 'lower' animals, we cannot simply take our desires/inclination as authoritative. We are not constrained by instinct and thus we face the questions: 'what should I do?' and 'who should I be?'. Korsgaard thinks that the solution to this problem is agency (or reflective action) where there are certain constitutive norms of agency. Specifically, she argues that it is only as human (reflective) beings that we face the normative problem and must commit to agency. Therefore, agency requires that we respect our humanity (I am drawing a distinction here between the 'human (reflective) being' as the one who is confronted with the normative problem and the 'agent' as the one who solves the problem where 'agency' is the solution to the problem).¹ In other words, agency requires action in accordance with the moral law.

In the second section, however, I will argue that this last part of Korsgaard's argument fails. I will argue that the normative problem, as presented by Korsgaard, is either (a) impossible

to solve or (b) has a trivial solution. If (a), then the moral law is tantamount to: ‘everything is forbidden’. This would mean that, since there is no such thing as action in accordance with the moral law, agency is impossible. This is implausible. But if (b), then the moral law is tantamount to: ‘everything is permitted’ (except perhaps certain forms of self-deceit – see note 66). This means that, since essentially all action is consistent with the moral law, agency is all too easy. Moreover, if the problem is trivial and essentially everything is permitted, then it is no longer a real *problem*. Either way, Korsgaard’s account of the normative problem fails. If we are to remain constitutivists, we need a new account of the normative problem.

In the third section, I will argue that the reason Korsgaard’s initial framing of the normative problem is inaccurate is because she does not sufficiently consider the conditions under which we face the normative problem. We do not usually face the normative problem in our day to day lives. For the most part, we *do* take our desires and inclinations to be authoritative. We *are* mostly constrained by instinct and custom.² I will then suggest that we face the normative problem only when our desires and/or practical identities conflict with one another. And, under these conditions, the problem we face is one of responding to competing claims. There are certain standards a solution to this problem must meet in order to count as a viable solution. A response that fails to satisfy any of the competing claims would fail as a response; a response that satisfies the more important claim(s) would be better; and a response that satisfies all of the claims is best. But there is no reason to believe that the solution must conform to a robust moral law.

Section One: Constitutive Standards of Action and Agency

Constitutivist theories of normativity might seem to promise a resolution to the is-ought divide. After all, constitutive standards are at once normative and descriptive. Korsgaard explains that constitutive standards “are descriptive because an object must meet them, or at least aspire to meet them, in order to be what it is. And they are normative because an object to which they apply can fail to meet them, at least to some extent.”³ Several common examples of constitutive standards include: a good house provides shelter, a good knife is sharp, and a good chair supports a person’s weight. There is a sense in which a house with a leaky roof is less of a house, a dull knife is less of a knife, and a wobbly chair is less of a chair. In fact, if the roof becomes leaky enough, we might be tempted to say it is no longer a house, but a ruin. Likewise, a sufficiently dull knife might be said to be little more than a piece of metal and a sufficiently unstable chair might be said to be no more than a collection of wood. So, when you call something a house, a knife, or a chair, you are implying that it *should* keep out the rain, have a sharp edge, or support your weight. Of course, if we are interested in providing a foundation for normativity more broadly, pointing to the constitutive standards of houses, knives, and chairs won’t get us very far. We can still always ask whether or not it is *good* that the knife is a good knife. If the knife is in the hands of an assassin, maybe we would prefer that the knife be a little less sharp.⁴ But what if we could uncover constitutivist standards to being an agent? We are all agents, so perhaps the constitutive standards of agency can serve as the ultimate source of normativity.

Of course, there are good reasons to be suspicious of constitutivist theories which attempt to ground normativity in constitutive standards of agency. In this section I will begin by

considering David Enoch's criticism of such projects. But I will argue that Enoch misunderstands Korsgaard's position and thus his criticism of constitutivism in general does not apply to Korsgaard's work. By focusing on how Enoch gets Korsgaard wrong, I hope to show that Korsgaard does not begin, and *cannot* begin, by simply claiming that we are agents. Instead, she begins by claiming that we face a normative problem.

Much of Korsgaard's work is devoted to showing that we must see ourselves as reflective beings and so we are subject to the constitutive standards of agency.⁵ One way of reading her argument is: (1) we are reflective beings (agents) who act for reasons,⁶ and (2) there are constitutive standards of agency and action, therefore (3) we are subject to those standards of agency and action. Certainly, this is how Enoch reads Korsgaard's argument.⁷ And Enoch claims this argument fails because it still leaves us with the question: why *should* we be agents? He says that, even if Korsgaard can demonstrate that there are constitutive standards of agency, unless she can show us that we have a reason to be agents, she cannot show us that we have a reason to be good agents.

Of course, Korsgaard could respond to Enoch's objection by insisting that agency is not a choice: we are already agents and so are always subject to the constitutive standards of agency. In fact, in *Self-Constitution*, Korsgaard says that "human beings are *condemned* to choice and action"⁸ and that agency is our "*plight*: the simple and inexorable fact of the human condition."⁹ So perhaps Korsgaard would be tempted by the claim that, since we already are agents, we should be good agents. But, as Enoch points out, even if I must be an agent (where this is a descriptive claim), it does not follow that I must be a good agent (where this is a prescriptive claim).¹⁰ To illustrate this point, Enoch tells us to imagine that we find ourselves playing chess and, for some reason, we *cannot* quit.¹¹ Granted, we must play chess, but must we play chess

well? Enoch says no, in order to have a reason to play chess well, we would need a reason to play chess. The fact that we *must*¹² play chess does not give us a *reason* to play chess, and so cannot give us a reason to play chess well.¹³ Similarly, the fact that we *must*¹⁴ be agents does not give us a *reason* to be agents, and so cannot give us a reason to be good agents. Enoch reminds us that natural necessity is not equivalent to normative necessity.¹⁵ Thus, even if we must be agents, we can still ask: ‘why should I strive to be a good agent?’¹⁶ In short, Enoch thinks that Korsgaard is guilty of some version of the is-ought fallacy.

I would argue, however, that Enoch misreads Korsgaard on this point. Korsgaard does not begin her argument by insisting that we are agents. She does not commit the is-ought fallacy. Instead, she begins by arguing that, unlike lower animals, human (reflective) beings face a normative problem. “[A lower animal’s] desires are its will,” but we can call our desires into question and ask: “is this desire really a *reason* to act?”¹⁷ Thus, unlike lower animals, we face the question: ‘what do I have a reason to do?’. It is important to keep in mind that, for Korsgaard, normative concepts do not refer to objects out there in the world. Instead, she argues that “normative concepts like right, good, obligation, reason, are our names for the solutions to normative problems.”¹⁸ And she maintains that this is the source of the ‘force’ of normativity. “If you recognize the problem to be yours, and the solution to be the best one, then the solution is binding upon you.”¹⁹ So, when Korsgaard refers to the constitutive standards of agency and action, she is not referring to the constitutive standards of a certain kind of entity or behaviour. Enoch is right to reject that kind of constitutivism. Instead, she is referring to constitutive standards of a solution to a problem we all already find ourselves facing.²⁰

For Korsgaard, a human being is an animal that faces the problem of reflection and finds itself asking: ‘what do I have a reason to do?’. And since we need a solution to this problem, we

must take the constitutive standards of such a solution seriously.²¹ Specifically, Korsgaard believes that any answer to the reflective being's problem, in order to count as an answer to the reflective being's problem, must take the form: 'I have a reason to do x (act) for the sake of y (purpose)'. Moreover, she thinks that we can have a reason to do x for the sake of y only if we can will that 'doing x for the sake of y' (the maxim) become a universal law.²² Korsgaard therefore insists that any solution to the normative problem must have the form of a categorical imperative.²³ In other words, rational action is the solution to a normative problem we face, and this is why we have a reason to be agents and so to commit to the constitutive norms of agency.²⁴

Of course, the idea that action requires willing our maxim as a universal law is controversial. But Korsgaard believes that we can show that this claim is true if we consider the nature of the normative problem. If we must act for reasons and cannot simply act on our desires like other animals can, then we need a way of determining whether a desire can serve as a reason for acting. We need a standard against which to test our desires. And, for this standard to work, it must be a sufficient standard, i.e., one that is, at least in some respect, immune to further questioning.²⁵ But Korsgaard argues that the categorical imperative: "act only on a maxim which [you] could will to be a law" is the only standard that we cannot question. "Its only constraint on our choice is that it has the form of a law. And nothing determines what the law must be. *All that it has to be is a law.*"²⁶ In other words, the categorical imperative is nothing more than that form of a law or standard against which to test our desires. So, once we accept that we need some standard, we have already accepted the categorical imperative. Thus, we cannot coherently ask for some further standard against which to test the categorical imperative.

Korsgaard acknowledges, however, that this does not do much to restrict the content of our solutions to the normative problem. The categorical imperative, as described by Korsgaard,

is little more than an empty formalism. And she recognizes this, and so acknowledges that the categorical imperative is not enough to get us to any truly determinate moral law.²⁷ For Korsgaard, the categorical imperative requires that you “act only according to that maxim through which you can at the same time will that it become a universal law.”²⁸ But she does not think that this is equivalent to the imperative: “so act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means.”²⁹ This is because Korsgaard does not assume that, when I will my maxim as a universal law, I must will it as a universal law for all persons. The question remains: ‘what is the domain of the universal law?’³⁰ Certainly, I must be legislating for myself, but who else am I legislating for? According to Korsgaard, the answer depends on how I see myself, or my practical identity. If I see myself as essentially an Athenian, then I must see myself as legislating for all Athenians and the relevant question would be: ‘what can an Athenian have a reason to do?’ If I believe that, *as an Athenian*, I must not betray Athens to Sparta for money, then I must believe that, *as an Athenian*, you must not betray Athens to Sparta for money. Likewise, if I see myself as essentially a Christian, then I must see myself as legislating for all Christians and the relevant question would be: ‘what can a Christian have a reason to do?’ And if I see myself as essentially a human (reflective) being, then the relevant question would be: ‘what can a human being have a reason to do?’

Thus, Korsgaard believes that our practical identities determine the domain of the law we give to ourselves, and she says that “[our] reasons express [our] identity ...; [our] obligations spring from what that identity forbids.”³¹ But this seems to leave us with relativism. We all have many different practical identities and so we all have different reasons and obligations. We

all live under different laws. The answer to the question: ‘is this desire really a *reason* [for me] to act?’ depends on who I am.

Korsgaard thinks that she can avoid this relativism because there is another normative question: ‘what do I have a reason to be?’ As human (reflective) beings, we can always step back from our desires and call them into question. But as human (reflective) beings, we can also always step back from our particular practical identities and call them into question.³² There is, however, one practical identity from which we cannot step back. We cannot step back from the practical identity of human (reflective) being. This is because it is only as reflective beings that we are confronted with normative questions in the first place. To question our identity as reflective beings is to question our identity as the kind of beings that can question their own identity. I take it that this is what Korsgaard means when she says that we need particular practical identities, but that this need itself comes from our identity as “a *human being*, a reflective animal who needs reasons to act and to live.”³³ Thus, we are essentially human (reflective) beings and the relevant question is always: ‘what can a human being have a reason to do?’ It is not simply because we are some kind of entity ‘agent’ that we are subject to the constitutive standards of agency. Instead, we are reflective beings, to be a reflective being is to *be confronted*³⁴ with a normative *problem*, and agency is the solution to this normative problem. Moreover, in order to count as a solution to our problem, our solution must have the form of a law for all of humanity, a moral law. Agency requires action in accordance with the moral law. But this then leaves us with the question: what is this ‘moral law’? What reasons ‘express’ the human identity and what does this identity forbid?

Section Two: A Useless Standard

2.1 – Everything is Forbidden

Before considering the nature of the ‘moral law’, however, we need to say more about the normative problem, what’s at stake in solving this problem, and how appealing to humanity is supposed to help us solve this problem. Korsgaard insists that, as reflective beings, we are driven to seek “the unconditioned.”³⁵ Practical reason introduces a normative regress because it forces us to question our contingent desires and practical identities, and to seek a stable foundation which will allow us to justify our actions. But Korsgaard says that the only necessary identity which can provide such a foundation is our identity as human beings, and it is only as human beings that we have a reason to embrace our particular practical identities. Moreover, our particular practical identities are the sources of our reasons for acting. Thus, Korsgaard insists that, “if we do not treat our humanity as a normative identity, none of our other identities can be normative, and then we can have no reason to act at all.”³⁶ If we want to avoid normative scepticism, we must treat our humanity as a practical, normative form of identity and value ourselves as human beings.³⁷

Korsgaard says that we should understand this argument as a transcendental argument, according to which valuing our humanity is the transcendental condition of acting. She claims that “rational action exists, so we know it is possible.” But “rational action is possible only if human beings find their own humanity to be valuable.”³⁸ Therefore, we must take ourselves to be valuable. Unfortunately, even if we must accept our human identity as normative, it is not obvious how this is supposed to help us justify our other contingent identities which we *can*

question. It is not clear that the second premise of Korsgaard's argument works. Perhaps she can show that we must value our humanity. But how does this make rational action possible? Some of Korsgaard's critics worry that, if her argument goes through, nothing is permitted. Samuel Kerstein, for example, argues that "an appeal to the notion of identity necessity is not sufficient to justify any particular practical identity".³⁹ In other words, Kerstein insists that an appeal to humanity cannot help us answer the question: 'what do I have a reason to be?' He points out that, according to Korsgaard, "your identity would withstand such scrutiny only if, after posing the question of your grounds for conforming to it, you reach 'a satisfactory answer, one that admits of no further questioning.'"⁴⁰ But I can always question my particular practical identities. And pointing out that I need *some* practical identity in order to act does not help me decide *which* practical identity I should adopt. Since I can still question each of my particular practical identities, it is not clear why I should take any of them to be normative. If I do not take any of my particular practical identities to be normative, it is not clear how I can have a reason to act. Thus, it is not clear how my valuing my humanity makes rational action possible.

Of course, this shows only that endorsing our humanity is not sufficient to justify action. It may still be necessary for us to endorse our humanity in order to justify action. So Korsgaard could still insist that the argument works. But this then leads us to a problem with the first premise of the transcendental argument, that rational action exists. If Korsgaard is right, and *true* action is unconditioned / fully reflective, then, on her own terms, we do not ever truly act. We cannot appeal to the fact that we take ourselves to be acting in order to show that true rational action is possible. The problem is that, in order to support the second premise of her argument (that we must value our humanity in order to act), Korsgaard argues that our humanity is the only identity which can end the normative regress. And she argues that we cannot act until we solve

this regress and that we face this regress because we must always question our desires and particular practical identities. But this means that we must value our humanity *because* we must always question our desires and particular practical identities. However, it is not clear how a being who must always question its desires and particular practical identities could ever have a reason to do anything. In other words, the very identity which is supposed to be a necessary condition for action would also seem to preclude acting.⁴¹ So, if Korsgaard's transcendental argument is going to work as a solution to the normative regress, she needs to show that endorsing our humanity is a necessary *and* sufficient condition for acting. She must show that we can appeal to our humanity (which we have now established is valuable) in order to *justify* acting on our desires and particular practical identities (which we have now called into question).

Korsgaard could respond that she is making a practical claim, not a theoretical claim.⁴² She does not need to show that we truly act; all that the transcendental argument requires is that we take ourselves to be acting. Korsgaard makes a similar argument with respect to the problem of the freedom of the will. She acknowledges that determinism may threaten the possibility of action from the theoretical point of view.⁴³ But she reminds us that the "Scientific World View ... is not a *substitute* for human life."⁴⁴ From a practical point of view, we are capable of free action. It might be tempting to make a similar claim here. Thus, Korsgaard might substitute the premise: 'rational action exists' with the premise: 'we necessarily take ourselves to engage in rational action' and insist that this is enough for her argument to go through. However, while determinism is a theoretical threat to the possibility of action, the normative regress is a *practical* threat to the possibility of action. As Korsgaard presents it, the problem of reflection is a practical problem.⁴⁵ The problem is not that we might never act according to a theoretical point of view, but that we might never truly act according to a practical point of view.

Our problem is a serious one, we need reasons to act. But appealing to our humanity will not help us find any such reasons. Korsgaard can show that we must value our humanity only if she also argues that we must call everything else into question. But if our reasons express our identities it is not clear what a human being as such has a reason to do. What reasons ‘express’ the human identity? And if our obligations stem from what our identity forbids, and we are forbidden to act on our desires or particular practical identities, then we human beings are forbidden to act and obligated to do nothing. The moral law, the law for all human beings is: ‘everything is forbidden’.⁴⁶

2.2 – Is Anything Forbidden?

But perhaps Korsgaard can avoid these problems. Korsgaard says that, as reflective beings, we must reflect until we find “a satisfactory answer,” we must seek “the unconditioned.”⁴⁷ Kerstein⁴⁸ seems to think that this means that we must be able to derive our particular practical identities from our identity as reflective beings if our particular practical identities are to be justified. But he points out that no such derivation is possible. And he argues that this means that no particular practical identity is justified and so no particular action can be justified. Therefore, the normative problem cannot be solved. However, when Korsgaard says we need “a satisfactory answer”, she is not arguing that we must be able to *derive* our particular practical identities from our human identity. Instead, she means only that our particular practical identities must be *consistent* with our human identity. I do not take her to be arguing that a reflective being must question, and so *reject* all of its contingent desires and practical identities. Rather, she believes that a reflective being must question, and so *test* all of its contingent desires

and practical identities. The moral law can tell us only to rule out certain practical identities, it cannot tell us to adopt particular practical identities.⁴⁹ Certainly, Korsgaard's insistence that we need "a satisfactory answer" is misleading. But, if my interpretation of Korsgaard's constitutivism is correct (see section one, especially pages 5-8), it is best to read this as the claim that we need a solution with the correct form, a solution that can count as a solution to the normative problem. And any maxim that is consistent with the moral law can serve as a solution to that problem.⁵⁰

Korsgaard herself acknowledges that we need to endorse at least some of our inclinations if we are to act at all.⁵¹ And she denies that our reflective nature is opposed to our animal nature. She insists that "acting from reason is not opposed to acting from inclination; reason and inclination have different functional roles in action. The faculty of inclination alerts us to incentives, or possible reasons, for action, while reason has the function of deciding whether to act as we are inclined to or not."⁵² This is most likely why, in *The Sources of Normativity*, Korsgaard claims that we must value our animal nature if we are to value anything at all.⁵³ A mere animal is incapable of action⁵⁴ and a pure reflective being will never care to act. It is only for reflective animals that action is possible.

As discussed in the previous section, many of Korsgaard's critics⁵⁵ worry that she depicts human beings as forced to reject their desires and their particular practical identities and this means that the human being, as presented by Korsgaard, can never justify action: nothing is permitted. But I will argue that Korsgaard actually faces the opposite problem. It is not clear what the moral law rules out. It is not clear what is forbidden. Korsgaard certainly thinks that some identities will fail the test of reflection. For example, she claims that the practical identities of assassin or mafioso are clearly inconsistent with the moral law.⁵⁶ After all, Korsgaard says

that we do not discover our practical identities through scientific inquiry or theoretical reasoning.⁵⁷ Instead, they are best understood as descriptions “under which [we] value [ourselves], ... under which [we] find [our] life to be worth living and [our] actions to be worth undertaking.”⁵⁸ Moreover, Korsgaard thinks that the one practical identity we must all accept, the one identity which is not contingent, is the human identity. This is why Korsgaard says that we must value humanity if we are to value anything at all.⁵⁹ Unless we value humanity, we cannot act.⁶⁰ And clearly the assassin and the mafioso do not show enough respect for the value of humanity.

But is it so obvious that a human (reflective) being cannot will ‘killing for cash’ as a universal law for all human (reflective) beings, even if this means that they will always be in danger of being assassinated? It might seem that no actual human being could will this, but that is only because we are not *simply* reflective beings. It is not insofar as we are reflective beings that we want to live.⁶¹ The problem is that, in order to show that we must see ourselves as essentially human, Korsgaard defines human beings as reflective beings, or beings that face the normative question: ‘what should I be?’. And it is not because we face that question that we are uncomfortable living in a society where assassination is commonplace. We are opposed to assassination because we care about other people and desire security. It is only by equivocating on ‘humanity’ and appealing to our intuitions about what a good human⁶² is like that Korsgaard can say a good human does not kill for cash.⁶³

Perhaps Korsgaard would say that, in killing someone, you prevent them from continuing to reflect. And if you live in a society where assassination is commonplace, there is always the risk that your own reflective activities might be cut short. Thus, the identity of assassin is inconsistent with valuing humanity after all. But why should the reflective being care if its

reflective activities are cut short? It is not clear why the reflective being must commit to continuing to reflect. Certainly, there are some identities where, to embrace these identities now, we must commit to continuing to embrace these identities in the future. To be a good parent now, you must commit to being there for your child in the future. To be a good spouse now, you must commit to being there for your partner in the future. Self-preservation (within reason) may be part of being a good parent or spouse, since a good parent or spouse does not want to abandon their child or partner.⁶⁴ But there are other identities where this does not hold. A good doctor takes care of the sick. But a good doctor is not necessarily committed to remaining a doctor. A doctor who hopes to retire someday is no worse a doctor here and now.⁶⁵ So, if I must identify as a reflective being, I must be committed to reflecting here and now, but it is not clear that I must be committed to continuing to reflect.⁶⁶

Several paragraphs ago, I quoted Korsgaard's claim that a practical identity is best understood as a description "under which [we] value [ourselves], ... under which [we] find [our] life to be worth living and [our] actions to be worth undertaking." But we might wonder if this is true of the identity: 'reflective being'. Keep in mind that, for Korsgaard, the reflective being is the one who faces the problem of reflection. But to say that we value ourselves as reflective beings is thus to say that we value facing this problem. Certainly, if we must face the problem of reflection, and we must see the problem as a problem, then we must value the solution to the problem. But that means that we must value being the kind of being that solves the problem of reflection, not that we must value the problem itself.⁶⁷ We must value action and agency because action is the solution to our problem, and it is as agents that we act. And so, we must take seriously the constitutive norms of action and agency. But there is an ambiguity in the notion of agency here. On the one hand, the agent / human (reflective) being is the one who faces the

problem of reflection, and on the other hand the agent / human (reflective) being is the one who temporarily solve the problem and acts. But it is human being only in the latter sense that we must value. The human being who *solves* the problem is never simply a reflective being.⁶⁸ They are a reflective-doctor, reflective-student, reflective-teacher, etc. So, if you value yourself as the reflective being who solves the problem, you do not value yourself simply as a human being, but as a particular individual with a particular practical identity. The human being does not act; individuals do.⁶⁹

Korsgaard might say that, because we face the problem of reflection, we cannot simply endorse our desires, or the objects of our desires as valuable in themselves. She claims that we do not treat our inclinations as reasons because we think that the objects of inclination are good in themselves. Rather, “we take the objects of inclination to be good for us and we tend to take ourselves as good” and this is why we take objects of inclination to be good and worthy of choice.⁷⁰ Thus, “every act of lawmaking [reflective choice to act on an inclination] expresses the value we place on ourselves.”⁷¹ And Korsgaard denies that this amounts to the metaphysical claim that if something is the condition of all value it must be taken to be valuable itself.⁷² But it is not clear how else we should understand this claim. In “Valuing Our Humanity” Korsgaard argues that “what it means to value people is to confer value on the objects of their interests or choices” and “the fact that you confer value on the objects of your own interests, for no further reason than that they are your interests, shows that you do set a value on yourself.”⁷³ This is why you must value your humanity. But if valuing yourself amounts to no more than conferring value on the objects of your interests, then the problem of reflection collapses. If valuing your humanity is equivalent to conferring value on the objects of your interests, then conferring value on the objects of your interests is always consistent with valuing your humanity.⁷⁴ If that is

what it means to value your humanity, then it is hard to see what we human beings are forbidden to value or forbidden to do. It is hard to see how valuing your humanity in *that* sense can help support a robust moral law.

In order to say that action is possible, Korsgaard must deny that our reflective nature is *always* opposed to our animal nature. Thus, the normative problem cannot be that we are forced back from our animal desires and must now *derive* our reasons from our reflective nature in order to act (the problem as Kerstein interprets Korsgaard). But once she allows that our animal nature and reflective nature do not always conflict with one another, it is hard for Korsgaard to show that they *ever* conflict with one another. She can say only that you must value what you value as a particular individual with a particular practical identity. And this is a problem for Korsgaard if she wants to say that anything is forbidden to us as human (reflective) beings. Korsgaard may still be able to maintain that our answers to the question: ‘what do I have a reason to do?’ must take the form of a law for beings like us. But all she can say about beings like us is that we are beings who face the problem of what to be, and *that* is not enough to support a robust moral law. If we take the problem seriously, then we must value solving the problem. But we do not have to value facing the problem in the first place. It is only because Korsgaard equivocates between human beings as those who face the problem and human beings as those who solve the problem that she can say that we must value our humanity in order to act. The problem with Korsgaard’s account is not that it means *no* particular practical identities or actions can be justified (Kerstein’s worry), but rather that *all* (or almost all – see note 66) practical identities and actions can be justified. This means that, far from being an *irresolvable* problem, Korsgaard’s normative problem is not even a *real* problem. If essentially all practical identities and actions can serve as equally viable solutions to the normative problem, then the

problem disappears.⁷⁵ The moral law, the law for all human (reflective) beings is: ‘essentially everything is permitted’. Enoch is right to think that appealing to the constitutive standards of entities will not get us very far. But a constitutivist who focuses instead on the constitutive standards of solutions to problems we already find ourselves facing can avoid Enoch’s criticism. And I do think that Korsgaard is right to think that we face a normative problem; that we need a viable solution to this problem (there are certain standards a solution must meet in order to count as a solution); and that this is a source of normativity (see page 5). But the problem as described by Korsgaard is either trivial or impossible to solve. So, if this kind of constitutivism is going to work, we need a better account of the normative problem.

Section Three: Another Interpretation of the Normative Problem

3.1 – When Do We Encounter the Normative Problem?

In this section I will argue that Korsgaard is right to say that we face a normative problem and the nature of the problem does determine what can count as a solution to the problem. But I will argue that Korsgaard mischaracterizes the normative problem. In the last section, I argued that the normative problem, as presented by Korsgaard, is either impossible to solve, or has a trivial solution. Thus, if a constitutivist argument is going to work, we need a different account of the normative problem. And, before we try to provide a different account of the problem, it might be helpful to first consider *why* Korsgaard’s account goes wrong. I think that the reason Korsgaard’s account fails is because she does not adequately consider the conditions under which we face normative problems. We do not usually find ourselves asking: ‘is this desire

really a reason to act?’ or ‘should I endorse this practical identity?’⁷⁶ We are not always reflective beings. Generally, we simply act on our desires and accept our particular practical identities without question.⁷⁷ If we want to understand the kind of normative problems we face as reflective beings, we need to understand what it is that kicks off the process of reflection. If we mostly just take our desires and identities to be reasonable, what is it that renders them problematic for us? When and why do we face the normative problem?

Korsgaard might insist that it does not matter that we do not always reflect on all of our desires and practical identities. She could argue that there are constitutive rules of reflection and that, when we fail to reflect on our desires and particular practical identities, we are failing as reflective beings. After all, she insists that the constitutive standards of reflection include the “rule that we should never stop reflecting until we have reached a satisfactory answer, one that admits of no further questioning. It is the rule, in Kant’s language, that we should seek the unconditioned.”⁷⁸ Korsgaard acknowledges that, according to her theory, a mafioso might have a reason to torture someone.⁷⁹ But she insists that such a reason can never be as strong as their obligation not to. Their reason to torture someone stems from a contingent practical identity which they can question. But their obligation not to torture stems from their more basic identity as a human being.⁸⁰ The mafioso’s “obligation to be a good person is therefore *deeper* than his obligation to stick to his code.”⁸¹ If the mafioso had reflected properly, he would have realized this, and realized that he needed to abandon his identity as a mafioso.

However, Korsgaard can show that we must accept the identity ‘reflective being’ only if she defines a reflective being as a being who is confronted with the normative problem and if she shows that we face the normative problem (see the discussion above, pages 4-6). So, it is not clear why the constitutive standards of reflection are normative for us insofar as we are *not*

confronted with the normative problem. If Korsgaard wants to claim that the individual should accept the constitutive standards of reflection simply because they are *capable* of reflection, then her argument is vulnerable to Enoch's critique. Enoch would point out that we do not have a reason to reflect well unless we have a reason to reflect. The constitutive standards of reflection are normative for us only if reflection is normative for us. But the fact that we *can* reflect on does not support the claim that we *should* reflect.⁸² Keep in mind that Korsgaard can avoid Enoch's criticisms only if she can show that we face a problem and "recognize [or would recognize] the problem" to be our own (see page 5).⁸³ We must solve the problem of reflection only to the extent that we are confronted with the problem of reflection. Perhaps Korsgaard can show that, when we face the normative problem, we must take the constitutive standards of the solution to this problem seriously. But when we are not reflecting on a particular desire or practical identity, and have no reason to question that desire or practical identity (it is not inconsistent with any prior commitment of ours – see note 83), then we do not and would not recognize the problem to be our own or feel the need to solve the problem, and so have no reason to accept the constitutive standards of reflection.

When do we encounter the normative problem? When do we need to question our desires and particular practical identities? When do we need to take the constitutive standards of reflection seriously and seek the unconditioned? It might be argued that we encounter the problem as soon as the question: 'is this desire a reason to act?' occurs to us.⁸⁴ But if that were true, and we could not act until we justified the desire, then someone could rob us of any reason for acting by simply asking us this question. Nothing would be permitted to us as soon as the question occurred to us (see section 2.1). More plausibly, even when we consider the question, it does not typically occur to us as a real problem because the answer is usually a trivial 'yes' (see

section 2.2). In other words, even when we encounter the question, we do not usually encounter it as a *problem*. We do not usually think it a question worth considering. It is important to keep in mind that not all questions are *problems*. You can understand a question without seeing it as a problem or feeling compelled to answer it. A question only becomes a problem if we recognize (or would recognize) it as such and feel (or would feel) a need to solve it (see page 5 and note 34).

So, we do not always face the normative problem. And we do not necessarily face the problem just because we realize that our desires and particular practical identities are contingent. If you are someone's spouse, you might be aware that this identity is contingent without necessarily seeing this contingency as a *problem* or feeling compelled to justify your identity as their spouse. Sometimes, however, we do find one of our desires or identities problematic, and we need an account of when and why this happens. I would argue that this happens only when our desires and/or practical identities come into conflict with one another. When our desires and/or practical identities conflict with one another, we find ourselves identifying with *and* also threatened by each. Most of the time, we are not even fully aware of our desires or our practical identities. But when two identities conflict with one another, we become aware of each of them as a threat to the other. If two practical identities, A and B, come into conflict, then, as soon as we become aware of this conflict, we become aware of identity A as a problem for us as B and aware of identity B as a problem for us as A. We can step back from identity A and perceive it as a threat from the perspective provided by identity B, and we can step back from identity B and perceive it as a threat from the perspective provided by identity A. Imagine a doctor who works at a hospital into which their very ill spouse has just been admitted. They may want to focus all their attention on their spouse but recognize that there are other patients in even greater, and

more urgent need of care. They might begin to see their identity as a doctor as a threat to their identity as a spouse (a good doctor cares equally for all of their patients). And they may begin to see their identity as a spouse as a threat to their integrity as a doctor (a good spouse cares for their partner in times of illness).

3.2 – Unity as a Solution to the Normative Problem

Most of the time, we are not so different from other animals. Admittedly, many of our desires are the product of custom rather than instinct. But, for human beings, custom serves much the same function that instinct serves for other animals. So, it is not clear that this is an especially significant difference between human beings and ‘lower’ animals in our day to day mode of existence. And Korsgaard has some interesting things to say about how animals exist in the world. According to Korsgaard, pleasure and pain are best understood not as sensations but as “reflexive reactions to the things we experience.” “Pleasure and pain are not so much the objects of experience, at least in the first instance, as a *form* of experience – they are the way we are conscious of our own conditions, which is a fundamentally valenced way.”⁸⁵ Korsgaard points out that pleasure and pain cannot be sensations because the same sensation can be pleasant at one point, and painful the next. Moreover, we call a number of different sensations painful or pleasant.⁸⁶ What is it that makes us see all of the various painful sensations as painful and all of the various pleasant sensations as pleasant? Korsgaard thinks that we classify our sensations in this way because to experience something as pleasant is to experience it as good-for-us and to experience something as painful is to experience it as bad-for-us. Thus, Korsgaard says that when an animal feels pleasure or pain, they are perceiving a reason to preserve or to change their

condition. But Korsgaard insists that pain is only the unreflective rejection of a threat to your identity,⁸⁷ whereas obligation is the “reflective rejection of a threat to your identity.”⁸⁸ Because we human beings are capable of reflection, Korsgaard believes that human beings are subject to obligation. For animals, the objects of their desires are ‘reasons’ for ‘acting’, but for us the objects of our desires are only candidates for reasons.

Of course, pleasure and pain are terms we usually reserve for physical sensations or, on Korsgaard’s account, for things which are good-for or bad-for our actual body. But there is more to our identity than our physical body.⁸⁹ According to Korsgaard, if I identify with something, I take myself to have a reason to preserve it, and Korsgaard calls this identification “sympathy.” She argues that sympathy involves seeing the world from the perspective of some functional system: seeing that which is good-for that system as good and that which is bad-for that system as bad. Thus, she says that, “when you judge something is good, the function of the judgment is not descriptive, but sympathetic – at the limit, sympathy with yourself.”⁹⁰

However, we can and do identify with various different functional systems,⁹¹ but we do not *have* to identify with any of them. Korsgaard believes that we, unlike other animals, can and must question our contingent identities and so must always ask: ‘can I endorse this identity?’. And because the I is singular, because we must see ourselves as a unified self who asks this question and needs an answer, we must test the contingent identity against our necessary identity as a human (reflective) being (the one who asks the question and needs an answer). We must test the particular identity against the moral law. This is not to say that our contingent identities are not important. Korsgaard argues that the agent must conform to the dictates of reason (the constitutive standards of reflective being), but this is not because they simply identify with reason (reflective being), “but rather because [they] identifies with [their] constitution, and it

says that reason should rule.”⁹² She insists that reason must rule on behalf of the whole.⁹³ So Korsgaard believes that we must take our contingent identities and desires seriously.⁹⁴ But ultimately it is only by testing our incentives against the moral law that we determine if they can be reasons for acting.⁹⁵

Thus, for Korsgaard, we are creatures who must always step back from, and call into question, our contingent desires and practical identities. This is the source of the normative problem. And the solution to the problem is to appeal to our most basic practical identity (reflective being) and use this as a standard according to which we can test our desires and our other practical identities. But, as I argued in section two, the practical identity of ‘reflective being’ is a standard without any substance. Moreover, it is hard to imagine what other practical identity could serve as *the* basic standard against which we could test our desires and lesser practical identities. In fact, it is not at all clear that there is *any* sort of fixed hierarchy of desires and identities. If we encounter the normative problem only in cases of conflict between our contingent desires or between our contingent practical identities, then the problem is not one where we simply step back from our desires and judge them according to our practical identity, or step back from a contingent practical identity and judge it from the perspective of a necessary practical identity.⁹⁶ Instead, the problem is one of balancing our various desires and practical identities against one another. Korsgaard offers us a “‘testing’ rather than a ‘weighing’ model of reasons.”⁹⁷ However, without a substantive moral law against which to test our contingent identities and desires, this is not a plausible model of practical reason.

I do agree with Korsgaard that the task of practical reason is to make us into unified agents. And I find Korsgaard’s account of pleasure, pain, and sympathy compelling. But I think that we encounter the normative problem when we sympathize with multiple, competing

functional systems. I would argue that the normative problem is a problem of responding to the various claims these competing functional systems make on us, where we must weigh each claim against the others.⁹⁸ After all, if the problem is something like: ‘what should I do / who should I be here and now, given that I am called to respond to these conflicting claims?’, then the nature of the problem actually determines the form the answer must take *and*, to some extent, the content it must have. It must take the form of a rule that can respond to *all* of these conflicting claims.⁹⁹ So perhaps we can understand humanity, or reflective being, in terms of being-confronted-with-a-problem-of-unification where this involves integrating our various identities into a coherent whole.¹⁰⁰ Our problem is that we must answer the normative question: ‘what do I have a reason to do?’ But we must answer this question only when it is not (or would not be)¹⁰¹ obvious to us what we have a reason to do.¹⁰² In other words, we find ourselves facing the normative problem only when we find ourselves needing to respond to conflicting claims. And the fact that this problem is one of conflicting claims sets limitations on what counts as an appropriate response. A response that fails to satisfy any of the claims would fail as a response, a response that satisfies the more important claim(s) would be better, and a response that satisfies all claims is best.¹⁰³

Conclusion

In this MRP I hope to have shown that, if constitutivism is to work, it cannot focus on the constitutive standards of certain kinds of entities or behaviors. Enoch is right to reject that kind of constitutivism. Constitutivists must instead consider the constitutive standards of solutions to problems we already find ourselves facing. In the first section of my paper, I argued that

Korsgaard is best read as claiming that we human beings face a normative problem, we *need* a solution to that problem, and so must recognize the constitutive standards of such a solution. Specifically, we face the problem of what to do and who to be. And Korsgaard thinks that the solution to that problem is agency, where agency entails valuing humanity (respecting the moral law). In the second section, however, I argued that the normative problem, as presented by Korsgaard, is either impossible to solve (if Kerstein's interpretation of the problem is correct) or has a trivial solution (if my interpretation of the problem is correct). Thus, we must reject Korsgaard's account of the normative problem and her attempts to ground a robust moral law on the constitutive standards of agency. If constitutivism is to work, we need a different account of the problem. In the third section, I showed that the reason Korsgaard's account of the problem fails is because she does not adequately consider the conditions under which we face normative problems. We do not usually face the normative problem in our day to day lives. Instead, we mostly act according to instinct, habit, and custom. I then suggested an alternative account of the normative problem where we are confronted with the problem whenever we find ourselves facing competing claims and/or torn between competing identities. Moreover, there are certain standards a solution to this kind of problem must meet in order to count as a viable solution. A response that fails to satisfy any of the competing claims would fail as a response; a response that satisfies the more important claim(s) would be better; and a response that satisfies all of the relevant claims is best. But there is no reason to believe that the solution to this kind of normative problem must conform to a robust moral law.

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Notes

¹ Korsgaard herself does not make this distinction and appears to use ‘human (reflective) being’ and ‘agent’ interchangeably. But this distinction will be important for the argument in section 2.2 (see page 15).

² And, for the purpose of this argument, custom serves the same function as instinct. Insofar as we act under the authority of custom, we do not need to ask: ‘what should I do?’ or ‘who should I be?’.

³ Korsgaard, *The Constitution of Agency*, 8.

⁴ And, of course, there are constitutive standards to being an assassin as well. But the assassin’s victim might prefer that their would-be assassin falls short of those standards.

⁵ This argument is introduced in *The Sources of Normativity* (see especially Korsgaard, *The Sources of Normativity*, 121-3, 236, and 257-8). It is also the main focus of *The Constitution of Agency* and *Self-Constitution: Agency, Identity, and Integrity*.

⁶ Keeping in mind that the reflective being / agent distinction is my distinction, not Korsgaard’s (see note 1).

⁷ Enoch is hardly alone in interpreting Korsgaard in this way. For other authors who interpret Korsgaard this way see: Bratu and Dittmeyer, “Constitutivism About Practical Principles,” 1132; Tubert, “Constitutive Arguments,” 656-666; and Okrent, “Heidegger and Korsgaard on Human Reflection” (especially page 63 – but see note 20 for Okrent’s reading of the argument). William FitzPatrick might also read her this way (see FitzPatrick, “The Practical Turn in Ethical Theory,” 671-3 – but see note 20 on FitzPatrick’s reading of the argument).

⁸ Korsgaard, *Self-Constitution*, 1.

⁹ Korsgaard, *Self-Constitution*, 2.

¹⁰ David Enoch, “Agency Shmagency,” 189.

¹¹ Not *should not* quit but somehow *cannot*.

¹² Where this is a descriptive ‘must’ rather than a normative ‘must’. For whatever reason, we have no other option.

¹³ Enoch, “Agency Shmagency,” 188-9.

¹⁴ Where this is also a descriptive ‘must’.

¹⁵ Enoch, “Agency Shmagency,” 188.

¹⁶ Other critics also think that Korsgaard faces a problem with this question. See for instance Bratu and Dittmeyer, “Constitutivism About Practical Principles,” 1135-6; Cohon, “The Roots of Reasons,” 81; and Katsafanas, *Agency*

and the Foundations of Ethics, 102-3 (although Katsafanas is himself a constitutivist, he thinks that Enoch's criticism of constitutivism in general works against Korsgaard's brand of constitutivism). Allan Gibbard may also be making a similar point when he talks about seeing reflective choice as a "burden" (Gibbard, "Morality as Consistency," 154). See also Tubert, "Constitutive Arguments," 663-664 for a discussion of this question.

¹⁷ Korsgaard, *The Sources of Normativity*, 93.

¹⁸ Korsgaard, *The Sources of Normativity*, 47.

¹⁹ Korsgaard, *The Sources of Normativity*, 114.

²⁰ For other authors who might understand Korsgaard this way see: Okrent, "Heidegger and Korsgaard on Human Reflection," 55-63; Crowell, "The existential sources of normativity," 239; Bambauer, "Christine Korsgaard and the Normativity of Practical Identities," 65; Bukoski, "Korsgaard's Arguments for the Value of Humanity," 212; and FitzPatrick "The Practical Turn in Ethical Theory," 658. Although both Okrent and FitzPatrick seem to think that Korsgaard's argument ultimately boils down to the point that we are agents and so must be good agents, they do seem to recognize that Korsgaard is *trying* to say we are confronted with a normative problem and need a solution that can count as a solution (see also note 7).

²¹ If we are used to talking about the constitutive standards of objects and entities, talk of the constitutive standards of a solution to so general a problem might seem somewhat abstract. But it is worth keeping in mind that it is functional objects and roles which are subject to constitutive standards. And these are generally themselves solutions to problems. Houses are the solution to the problem of our need for shelter, knives are the solution to a whole host of problems requiring sharp objects, and assassins are the solution to (certain individual's) 'need' to dispose of rivals.

²² I will say something about why Korsgaard thinks this in the next paragraph but see also Korsgaard, *The Sources of Normativity*, 229-231 and *Self-Constitution*, 72-76 for her defense of this claim.

²³ Specifically, the formulation of the categorical imperative: "act only according to that maxim through which you can at the same time will that it become a universal law" (Kant, *Groundwork*, 4:421). See Korsgaard, *The Sources of Normativity*, 98.

²⁴ I.e., to action in accord with the categorical imperative.

²⁵ Otherwise, we could always ask if we have a reason to take the standard seriously.

²⁶ Korsgaard, *The Sources of Normativity*, 98.

²⁷ Korsgaard, *The Sources of Normativity*, 99.

²⁸ Kant, *Groundwork*, 4:421.

²⁹ Kant, *Groundwork*, 4:429.

³⁰ Korsgaard, *The Sources of Normativity*, 99.

³¹ Korsgaard, *The Sources of Normativity*, 101.

³² Korsgaard, *The Sources of Normativity*, 120-122.

³³ Korsgaard, *The Sources of Normativity*, 121.

³⁴ It is essential, if this argument is to work, that a reflective being is not merely a being with the *capacity* to reflect. After all, Enoch can always ask of any capacity: ‘why *should* I exercise that capacity? Why should I take it to be normative?’ If we want to avoid Enoch’s criticism, we must emphasize that the argument begins by supposing that we are already actively confronted with a *problem*. Why cannot ask: ‘why should I solve this problem?’ because to recognize something as a problem is to be already committed to solving it. We do not have to reflect because we *can* reflect. We must reflect because it is only by reflecting that we can solve our problem (‘What should I do?’ ‘Who should I be?’).

³⁵ Korsgaard, *The Sources of Normativity*, 258.

³⁶ Korsgaard, *The Sources of Normativity*, 129.

³⁷ Korsgaard, *The Sources of Normativity*, 121-2.

³⁸ Korsgaard, *The Sources of Normativity*, 123-4.

³⁹ Samuel Kerstein, “Korsgaard’s Kantian Arguments,” 49. See also Bambauer, “Christine Korsgaard and the Normativity of Practical Identities,” 75-6; Bukoski “Korsgaard’s Arguments for the Value of Humanity,” 219-22; Cohon, “The Roots of Reasons” 70-2; and Crowell, “The existential sources of normativity,” 253 for similar criticisms.

⁴⁰ Kerstein, “Korsgaard’s Kantian Arguments,” 50. And see Korsgaard, *The Sources of Normativity*, 258.

⁴¹ For a somewhat similar argument, see Bukoski, “Korsgaard’s Arguments for the Value of Humanity,” 217. Crowell, Okrent, and Sharon Street also express similar concerns (Crowell, “The existential sources of normativity,” 255; Okrent, “Heidegger and Korsgaard on Human Reflection,” 62-5; and Sharon Street, “Coming to Terms with Contingency,” 48-9).

⁴² This is an important distinction for Korsgaard. She is, after all, a follower of Kant.

⁴³ Korsgaard, *The Sources of Normativity*, 95-97.

⁴⁴ Korsgaard, *The Sources of Normativity*, 97.

⁴⁵ We *need* reasons to act and to live and *must* question our contingent desires and particular practical identities.

⁴⁶ Because ‘human being’ is here synonymous with ‘reflective being’, perhaps we still have a reason to reflect. In that case, the moral law could instead be: ‘everything but reflection is forbidden.’ But that is still an implausible moral law.

⁴⁷ Korsgaard, *The Sources of Normativity*, 258.

⁴⁸ And others who express related concerns, see notes 39 and 41.

⁴⁹ See Korsgaard, *The Sources of Normativity*, 127 and Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 51.

⁵⁰ See Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 51, 54-5.

⁵¹ Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 57.

⁵² Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 51. It is interesting to read this sentence alongside Kant’s discussion of the form and the matter of maxims in the *Groundwork*, 4:436 and Korsgaard’s claim that “a value, like everything else, is a form in matter. In the case of value, the form is the form of universal law, and the matter comes from human psychology: some desire, interest, or taste” (Korsgaard, *Self-Constitution*, 209). Korsgaard believes that reason determines the form of our maxim, but our inclinations provide the matter.

⁵³ Korsgaard, *The Sources of Normativity*, 152.

⁵⁴ This is not to say that Korsgaard believes that the ‘lower’ animals are mere stimulus response machines. She just doesn’t think that they are capable of true action, which is to say, reflective action (we might still say they ‘act’ in some other respect).

⁵⁵ I.e. Kerstein and those who offer similar criticisms (see notes 39 and 41).

⁵⁶ Korsgaard, *The Sources of Normativity*, 126 and 256-8.

⁵⁷ Korsgaard would agree with Enoch that *those* kinds of identities cannot be normative for us.

⁵⁸ Korsgaard, *The Sources of Normativity*, 101.

⁵⁹ Notice that what I say above would support only the weaker claim, that we must value *our* humanity, not the strong claim that we must value humanity in general. Korsgaard does present a separate argument to the effect that valuing your own humanity requires that you value also the humanity of others (see Korsgaard, *The Sources of*

Normativity, Lecture 4 and *Self-Constitution* 193-5). A number of commentators have criticized Korsgaard's argument for this claim. See, for instance, Geuss, "Morality and identity," 188; De Maagt, "It only takes two to tango," 2774-6; Politis "Critical Notice," 439-444; and Lebar, "Korsgaard, Wittgenstein, and the Mafioso," 261-271. But I will not be addressing that argument in this paper. So I will grant, for the sake of argument, that valuing our own humanity entails valuing the humanity in general.

⁶⁰ Korsgaard, *The Sources of Normativity*, 123.

⁶¹ Our reasons to live are not 'expressions' of our identity: reflective being.

⁶² Understood here in the common sense we appeal to when we call certain behaviour inhumane.

⁶³ For the point that Korsgaard's moral law lacks content because of how she defines 'human being' see also De Maagt, "Korsgaard's Other Argument," 897-99 and Gibbard, "Morality as Consistency," 156. Gibbard thinks that all Korsgaard could show is that we must protect our powers of reflective agency and De Maagt thinks that all Korsgaard can show is that we must not lead a robot-life and must value "leading a life containing reasons."

⁶⁴ We might say that the desire to live (at least for the sake of the relevant family member) is constitutive of these identities.

⁶⁵ In fact, a good doctor might even hope that someday doctors might become unnecessary. Because a good doctor cares about the well-being of their patients, there is a certain sense in which a desire for their own obsolescence is actually constitutive of being a doctor.

⁶⁶ Perhaps there are still *some* actions such an identity forbids. If we harm reflective beings, or even allow them to perish, in order to prevent them from asking uncomfortable questions, we *might* be said to violate our identity as reflective beings. Thus, it could be argued that the Athenians sinned by putting Socrates to death. Korsgaard does not suggest this possibility, but perhaps she could make an argument to this effect. But even if such an argument could be made to work, this wouldn't get us much in the way of a robust/plausible moral law. It would not rule out most cases of murder, assault, theft, etc. At most, it would prohibit certain forms of self-deceit.

⁶⁷ This should be seen as analogous to the doctor's case. The good doctor values curing patients, but not having patients.

⁶⁸ Elsewhere, I use 'human (reflective) being' to refer to the one who confronts the normative problem and 'agent' to refer to the one who solves the problem in recognition of this ambiguity. See page 1 and note 1.

⁶⁹ For a different, and very interesting argument to the effect that the identity of reflective being cannot serve as an effective standard, see Street, “Coming to Terms with Contingency,” 50-52.

⁷⁰ Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 53-4.

⁷¹ Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 64.

⁷² For critics who accused Korsgaard of such a claim see Kerstein, “Korsgaard’s Kantian Arguments,” 33 and J. B. Schneewind, “Korsgaard and the Unconditional in Morality,” 39. See also Korsgaard, “Motivation, Metaphysics, and the Value of the Self,” 64 for her response to Schneewind. And see Cohon, “The Roots of Reasons,” 75-6 for a discussion of this problem.

⁷³ Korsgaard, “Valuing Our Humanity,” 4.

⁷⁴ See Street, “Coming to Terms with Contingency,” 54-5 for a similar criticism. Street worries that all Korsgaard can say about valuing yourself is that you must “value what you value.”

⁷⁵ As Korsgaard herself says, normativity requires at least the *possibility* of failure. “There is no normativity if you cannot be wrong” (Korsgaard, *The Sources of Normativity*, 164 – and see also pages 35 and 231 and *Self-Constitution*, 61-2).

⁷⁶ And again, even if we do *sometimes* ask such questions, we either find ourselves unable to answer them (if Kerstein’s interpretation of Korsgaard is correct – section 2.1) or we find them all too easy to answer (if my interpretation of Korsgaard is correct – section 2.2). The question is either a real question with no solution, or a trivial question with a trivial solution.

⁷⁷ A number of commentators have criticized Korsgaard on something like this point. Crowell wonders why Korsgaard thinks reflection would necessarily cut me off from the authority of animal instinct (Crowell, “The existential sources of normativity,” 247-8) and asks how Korsgaard can account for “non-deliberative” action (257). Okrent points out that at least some of our first order desires are unaffected by our reflective nature (see Okrent, “Heidegger and Korsgaard on Human Reflection,” 52). Schneewind argues that, for the most part, we just take our desires and “motivating convictions and commitments” to be aspects of our self and treat them as valid reasons for acting unless/until we are given reason to think otherwise (Schneewind, “Korsgaard and the Unconditional in Morality,” 45). And Robert Stern points out that we are usually unwilling to question at least some of our practical identities (Stern, “The Value of Humanity,” 87). See also Gibbard, “Morality as Consistency,” 155.

⁷⁸ Korsgaard, *The Sources of Normativity*, 258.

⁷⁹ Because their identity as a mafioso can call for such an action.

⁸⁰ Although, if my argument in section two works, it is not clear that human (reflective) beings as such actually have any such obligation.

⁸¹ Korsgaard, *The Sources of Normativity*, 257-8.

⁸² Obviously, having a capacity is not enough to give us a reason to exercise that capacity to the fullest. Korsgaard herself makes something much like this point against “some perfectionists” (Korsgaard, *The Origin of the Good*, 1).

⁸³ The ‘would recognize’ is important here. Korsgaard thinks that the ‘force’ of normativity is due to the recognition of a problem on our part. But the normativity is due to the existence of the problem, and this does not depend on our *actually* recognizing the problem. If ‘doing x’ conflicts with some desire or commitment of ours (whether a commitment we have consciously embraced or a commitment which is implicit in our prior actions), ‘doing x’ can be a problem for us even without our recognizing it as such. If we want to live (or are committed to live for the sake of some other person(s) – see pages 14-15) then the action ‘drinking the wine’ is a problem for us if the wine is poisoned, even if we are not aware that it is poisoned. But when we speak of ‘human (reflective) beings’ we have abstracted from all particular actions, commitments, and desires. So, there is no reason to think that your ‘failure’ to reflect constantly is a problem for you. There is no reason to think that failing to reflect constantly conflicts with your various commitments or desires. All we know about you at this point is that you can reflect and (sometimes) do reflect. And, as I argued on pages 14-15, reflecting (sometimes) does not necessarily involve a commitment to continuing to reflect.

⁸⁴ For whatever reason. Perhaps we are asked this question by an irritating philosophy student.

⁸⁵ Korsgaard, *Fellow Creatures*, 160-1.

⁸⁶ Korsgaard, *The Sources of Normativity*, 147-8, 154.

⁸⁷ While pleasure is the unreflective endorsement of something that preserves your identity.

⁸⁸ And reasons are the reflective endorsement of something that preserves your identity. Korsgaard, *The Sources of Normativity*, 149-150. It is interesting to read Korsgaard’s discussion of pleasure and pain in conjunction with Aristotle, *Nicomachean Ethics*, 1153a10-15, 1153b10-15, 1174b30-1175a1, and 1175a10-21.

⁸⁹ Korsgaard has an interesting discussion of the significance of this point for egoism in *Self-Constitution*, 199-200

⁹⁰ Korsgaard, *The Origin of the Good*,” 37.

⁹¹ Even within our own body.

⁹² Korsgaard, *Self-Constitution*, 135.

⁹³ Korsgaard, *Self-Constitution*, 140-1 and 198. See also Korsgaard, *The Sources of Normativity*, 104 and 107. It is also worth reading this in conjunction with Plato, *Republic*, 590d (Korsgaard claims that her argument in *Self-Constitution* is deeply influenced by her interpretation of Plato's *Republic*).

⁹⁴ See Korsgaard, *Self-Constitution*, 126, 140-1 and 198.

⁹⁵ Korsgaard, *Self-Constitution*, 51 and 58.

⁹⁶ Of course, we might still reject a lesser identity as incompatible with a more important identity. But if we encounter the conflict between the two identities as a real *problem*, that is not all that happens. We only encounter the conflict as a *problem* if, all things considered, we would prefer to maintain both identities. So, even if the choice is clear, we still feel that our choice is accompanied by some loss.

⁹⁷ Korsgaard, *Self-Constitution*, 51.

⁹⁸ Here I say claims made by competing functional systems, rather than claims made by competing identities to capture the fact that, for Korsgaard (and I agree with her here) identification is sympathetic or empathetic. To identify with or sympathize with a functional system amounts to the same thing. And 'claim' here can include the claims your own body or social roles can make on you, the claims other people can make on you, the claims other animals can make on you (i.e., in the case of sympathy with an animal in distress), and even the claims an institution, society, or ecosystem can make on you. When I spoke of balancing desires and practical identities in the previous paragraph, I was talking about essentially the same thing. But talk of practical identity makes my position sound much more egoistic than it is.

⁹⁹ So the answer must be law-like (form) and serve as a plausible answer given the particular claims (content).

¹⁰⁰ Although talking about understanding *humanity* in this way is perhaps a bit misleading. One feature of my account (in contrast to Korsgaard's account) is that there is no *sharp* distinction between animals and human beings or between animal action and human action (and I take this to be a strength of my account). The difference is rather one of degree (albeit still an extremely significant difference). Animals are also capable of sympathy (if not to nearly the same extent or in as sophisticated a fashion) and also face the problem of unifying competing identities / weighing competing claims (even if all this means is balancing a desire for food and fear of a predator).

¹⁰¹ See note 83.

¹⁰² Sometimes obvious because of animal instinct, sometimes because of our practical identity/identities.

¹⁰³ Obviously, this is not always possible. This is not always a serious problem, since sometimes the claim of one of our practical identities or desires is inconsequential when compared to the all of the other claims with which it is incompatible (see also note 96). But at other times our inability to respond to all of the claims on us is the stuff of tragedy.