

DIGNITY, LAW AND VALUE: ENRICHING SENSEN'S STRONG PRIORITY ACCOUNT¹

Sorin Baiasu, Keele University (UK)

Abstract

According to Oliver Sensen's book, Kant on Human Dignity, the notion of dignity which can be found in the Kantian corpus is fundamentally different from the notion that gains currency in politics-related contexts today, namely, dignity as a value inherent in human beings, a value that commands respect. According to Sensen, Kant's ethics makes it impossible for a value to be the foundation of a moral requirement; instead, Kant regards value as a prescription of reason, a prescription given by the moral law. Values are normatively secondary and determined by moral laws – call this the Strong Priority Thesis (SPT) of the moral law over values. In this paper, I formulate several objections to Sensen's SPT and I offer the Weaker Priority Thesis (WPT) as a philosophically and exegetically more compelling account of Kant's view. The WPT interprets Kant as advancing a more complex account of the relation between moral law, values and dignity than Sensen's SPT; moreover, I argue that, on the basis of the WPT, Kant's account becomes sufficiently complex to incorporate also the SPT.

This is a carefully written and argued for book², which clarifies Kant's position on the issues of dignity and on the relation between laws and values by introducing an illuminating reading of some crucial passages in the corpus. I am in broad agreement with the outline of the argument and with the more specific points developed by Sensen. I would, however, like to question and further elaborate on his main claim concerning the priority of the moral law. I will start with an outline of the book's aims, argument and results.

1. Dignity and the Priority of the Moral Law

Sensen's starting point is apposite: human dignity has indeed gained prominence in politics, philosophy and everyday life. For instance, human dignity is now an essential part of the constitution of many states. Moreover, the United Nations documents regard dignity as the justification for human rights. Interestingly, as Sensen mentions, the dictionary definition of dignity presents the

¹ The final part of the work on this review essay was completed while I was on institutional research leave (sabbatical) at my home institution and A Visiting Professor in the Department of Philosophy at the University of Warwick, as well as an Academic Visitor at the Uehiro Centre for Practical Ethics at Oxford University. I am grateful to these institutions for making possible, enjoyable and productive this period of research leave. I am particularly grateful to this journal's Review Editor, for his patience in coping my various delays, for his support and help.

² O. SENSEN, *Kant on Human Dignity*, Berlin, De Gruyter, 2011. In what follows, references to this text will be to page numbers of the volume, between parentheses, in text.

notion as a value inherent in human beings, a value that commands respect. Hence, the suggestion is that dignity is a value, which human beings inherently possess and which should be respected.

Although this view of dignity is often justified by reference to Kant, one of Sensen's main claims in this book is that Kant's view of dignity cannot perform this justificatory role. According to Kant, human beings should not be respected because they have dignity; on the contrary, they have dignity because they should be respected. Moreover, the idea that Kant's view of respecting other human beings would be based on a value is challenged by Sensen, who argues that "one can read Kant's positions on dignity and the requirement to respect others without a prior value as their foundation". (2)³

The results of this reading are supposed to be significant, if only because they bring more clarity and coherence in the interpretation of Kant's position. Sensen's interpretation aims to explore the extent to which Kant's theory can be read without reference to a foundational value – and he thinks it can be done "all the way down". (3) As an implication of this reading, Kant's justification of the requirement to respect others would also need no reference to a foundational value, although the task of actually justifying the requirement is one Sensen regards as prepared, rather than completed, in this book. How does the book's argument unfold?

Chapter 1 starts from the plausible assumption that human dignity could be a value all human beings possess. Hence, a closer look at Kant's conception of value would be in order. Since dignity would need to be a special kind of value (which trumps other considerations and cannot be forfeited), the question is whether Kant has such a conception of value. Sensen's claim is that Kant does not have such a conception and, in fact, that, given Kant's Copernican Revolution in moral philosophy, his conception of value does not even make it *possible* for a value to be a foundation of moral requirement.

Kant's point, on Sensen's reading, is that, if anyone tries to ground morality on a value, heteronomy will follow. This is because the starting point would be to explain how the value is discerned and why we should follow it. But something can be discerned either through sensibility or through a feeling. Because they have normative content, values cannot be perceived as values through sensibility. Feelings may have normative content, but they are subjectively conditioned, so cannot be an adequate ground of morality, unless we accept heteronomy. This is why, Sensen concludes in this chapter, Kant regards value as a prescription of reason – "value is something one is committed to valuing by the dictates of one's own reason". (4)

The argument in Chapter 1 shows that dignity cannot be understood as a value with an external character – either spatially distinct from the agent or independent from the agent's practical reason or will. This leaves it open, however, that the kind of value dignity is could be internal to the will. Chapter 2 considers this possibility by discussing several arguments in the literature, more exactly, the arguments by Christine Korsgaard, Allen Wood, Paul Guyer, Richard Dean and Samuel Kerstein. On Sensen's view, such views do not run counter to his interpretation of Kant's conception of value, namely, a conception which does not regard value as a distinct metaphysical property, but as

³ In citing Kant's works the following translations are used – for the *GMS*, I. KANT, *Groundwork of The metaphysics of morals*, in IDEM, *Practical Philosophy*, eds Mary J. Gregor, Allen Wood, Cambridge, Cambridge University Press, 1996, pp. 37-108, and, for the *KpV*, I. KANT, *Critique of Practical Reason*, in IDEM, *Practical Philosophy*, eds. Mary J. Gregor, Allen Wood, Cambridge, Cambridge University Press, 1996, pp. 137-271.

something one is committed to valuing by the dictates of one's own reason. Nevertheless, he thinks the arguments he examines in this chapter fail to establish that a moral conclusion (that one should respect others) can be derived from a value internal to the will.

Chapter 3 presents Kant's account of why one should respect others. According to Sensen, Kant regards morality as based on laws. Value is "secondary to and determined by laws". (5) These laws must be self-legislated (hence, their autonomous character), rather than prescribed by an external authority (which amounts to heteronomy). An external authority, for instance a value external to the will, would need to be justified: why should I act in accordance with this value? By contrast, Kant conceives of the law to respect others as an internal law. Since this law cannot be given by inclination (it would not have the objectivity required by a moral law), it must be given by one's own practical reason or will. Sensen notes that, by analogy with the *First Critique*, where human beings are active constituents of their experience through a priori principles, here moral agents shape their moral world with a priori principles too. The chapter concludes by showing that the Formula of Humanity, which does prescribe respect for others, is one expression of the fundamental a priori principle of morality, the Categorical Imperative.

Chapter 4 returns to the concept of dignity; on Sensen's view, Kant cannot understand dignity as a value that grounds the requirement to respect others, since, as shown in the previous chapters, he does not have such a conception of value. Kant's view of dignity, Sensen points out, is quite distinct, but widespread in the history of philosophy. This is the Stoic conception, according to which 'dignity' refers to the fact that something that has dignity has a higher status than those lacking this dignity. Accordingly, dignity "expresses a relation, that one thing *X* is raised above another *Y*". (6) Kant uses this notion of dignity when he talks about the dignity of a teacher or the dignity of mathematics, but, Sensen asks, does he use it also in the passages in the *Groundwork* and *Doctrine of Virtue*, where he talks about dignity and value? This question is answered in the book's final chapter, Chapter 5.

Chapter 5 offers a close reading of the sections where Kant is understood as defining dignity as an absolute inner value. Sensen argues that there is a way in which this reading can be made compatible with his interpretation of value in Kant. Thus, if value is only an expression of what is commanded by the moral law, and dignity is an expression for value, then dignity would also be commanded by the moral law. Sensen argues, however, that the passages examined in this chapter are more complicated: Kant's claim here is that morality is raised above all other forms of behaviour, since only moral behaviour is commanded unconditionally by the moral law. Hence, dignity in these contexts is not an expression for value, but a claim about morality, namely, that it is elevated. This represents another instance of the Stoic notion of dignity.

Sensen claims various advantages for his interpretation: a fuller explanation than before of why Kant does not ground moral requirements on a value; a new interpretation of the passages preceding the Formula of Humanity, including concepts like 'in itself', 'respect' and 'humanity'; an argument for a fundamentally Stoic conception of dignity in Kant, which shows the coherence of Kant's texts in several respects. First, Kant does not make use of the notion of dignity as a value from which he would inconsistently then derive moral requirements. Secondly, he does not justify morality in two incompatible ways, namely, by reference to the faculty of reason in the third section of the *Groundwork* and to a value, in the second section.

Finally, Sensen outlines his relation to the contemporary paradigm of dignity. The main difference is not in the application of the notion, since Kant is clear one should respect all human beings; the main difference is in the justification of the requirement to respect others. Moreover, the aim is not to show that the contemporary paradigm of dignity is false. The claim is only that the justification of the contemporary paradigm of dignity (as a value that grounds respect) cannot be achieved just by reference to Kant – one would have to look elsewhere; on the other hand, if the question concerns Kant’s account of human dignity, then Sensen’s book shows that Kant offered a different view of dignity and that “there might be advantages to following Kant here”. (7) Kant’s main lesson is that we do not directly perceive a value that would induce respect and that the obligation to respect others is not premised on such an elusive value.

As I said, this is a carefully written and argued for book, which illuminates Kant’s position and offers a novel reading of some key passages in the corpus. It is at the same a very rich and important text and it would not be possible to do it full justice within the confines of this review article. I would however like to make some comments which suggest that Kant’s position may be more complex than Sensen presents it. If I am right, then Sensen’s main conclusions will stand, but the new, more complex position which I advocate will have additional advantages.

2. Which Relation of Priority?

Consider, for instance, Sensen’s view that “Kant does not seem to have a conception of absolute value that is prior to or independent of the moral law”. (51) This is a view which is central for the book and is expressed at various points in the text. But does the truth of this claim not depend on the sense in which we think of this relation of priority or independence? Consider Kant’s famous claim in the *Critique of Practical Reason*:

Lest anyone suppose that he finds an *inconsistency* when I now call freedom the condition of the moral law and afterwards, in the treatise, maintain that the moral law is the condition under which we can first *become aware* of freedom, I want only to remark that whereas freedom is indeed the *ratio essendi* of the moral law, the moral law is the *ratio cognoscendi* of freedom. For, had not the moral law *already* been distinctly thought in our reason, we should never consider ourselves justified in *assuming* such a thing as freedom (even though it is not self-contradictory). But were there no freedom, the moral law would *not be encountered* at all in ourselves.⁴

Here Kant claims two relations of priority, which go in opposite directions, between the *same* relations: freedom and the moral law. Thus, on the one hand, epistemically, the moral law is prior to freedom, since we first become aware of freedom under the condition of the moral law, that is, we first

⁴ „Damit man hier nicht *Inkonsequenzen* anzutreffen wähne, wenn ich jetzt die Freiheit die Bedingung des moralischen Gesetzes nenne, und der Abhandlung nachher behaupte, daß das moralische Gesetz die Bedingung sei, unter der wir uns allererst der Freiheit *bewußt werden* können, so will ich nur erinnern, daß die Freiheit allerdings die *ratio essendi* des moralischen Gesetzes, das moralische Gesetz aber die *ratio cognoscendi* der Freiheit sei. Denn, wäre nicht das moralische Gesetz in unserer Vernunft eher deutlich gedacht, so würden wir uns niemals berechtigt halten, so etwas, als Freiheit ist (ob diese gleich sich nicht widerspricht), *anzunehmen*. Wäre aber keine Freiheit, so würde das moralische Gesetz in uns ganz *nicht anzutreffen* sein.“ (KpV AAV 4)

become aware of the moral law, and only after that do we become aware of freedom. On the other hand, however, ontologically, freedom is prior to the moral law, given that, without freedom, we would not encounter the moral law in ourselves. In other words, there is first freedom and, then, the moral law; without freedom, the moral law would not exist for us.

Consider now the important role that freedom plays in Kant's philosophy. As Sensen notes, "Kant's morality is all about freedom. It is grounded in freedom, and requires the protection of freedom. One should treat free beings as if they are free". (140) When a moral theory requires that a particular element (in our case, freedom) be protected, this implies that that element is valued. In its turn, this strongly suggests that we can regard freedom as a value and that Sensen regards this value as the ground of Kant's morality. The only way in which this can be made compatible with his other important claim that Kant's moral law is independent from and prior to values is if we understand these relations of dependence/independence as distinct – as I suggested, epistemic and ontological.⁵

Sensen does discuss this aspect of Kant's ethics in Chapter 3, in the context of an analysis of the justification of the Categorical Imperative. (113-15) He does read Kant's claim concerning freedom as the *ratio essendi* of the moral law, as an indication of how Kant answers the first part of what he takes to be the twofold question of the justification of the Categorical Imperative (namely, the question of whether there is a Categorical Imperative and whether it is binding). Freedom is a condition of the possible existence of the Categorical Imperative, and the fact that there is a Categorical Imperative is an implication of the fact that freedom cannot be lawless. All this is correct, but the point which could be re-emphasised here is that, in this way, Kant is clear that freedom is ontologically independent from and prior to the moral law and the Categorical Imperative.

This priority goes in the opposite direction of that Sensen tries to establish (the moral law is independent from and prior to any value, including freedom). This is a priority which is still compatible with Sensen's interpretation, since we are talking about different *senses* of priority, but two other implications are more important in this context: that the moral law may not always be prior to values in Kant, and that any position of priority established for the moral law needs to be supplemented with a specification of the sense in which the moral law is prior.

Leaving the discussion of freedom aside for a moment and returning to the question of the relation between moral law and values more generally: there might be *one* sense in which Kant does not have a conception of absolute value that is prior to and independent of the moral law – and this, I think, is the normative sense. This is, I take it, the sense in which Sensen claims that there is no normatively forceful and independent value available, from which we can derive normatively forceful moral requirements with a law-like character. In other words, the normative force of what we value is given by the moral law and it is the moral law which tells us what it is that we should value. Yet, as we have seen from the discussion of the relation between moral law and freedom, a relation of normative dependence of value on the moral law does not exclude the possibility of a sense (in our case, the ontological one) in which a value may be independent from and prior to the moral law.

⁵ I make haste to add that the main point I need to make here is not that Sensen implicitly regards freedom as a value; rather, the main point is only that it is not sufficient to say that the moral law is prior to values in Kant, since there are various possible relations of dependence and the moral law might not be prior in all such cases. I am making the same point also a bit later, but it is a point worth emphasising.

To be even more precise, in places, Sensen does discuss the possibility of a metaphysically independent absolute value, that is, a value which would exist whether or not a moral law existed, but I think his conclusions concern mainly a relation of normative priority. My suggestion, then, is that he could acknowledge the existence in Kant of a view of an ontologically independent value, which is *prior to the moral law*. Perhaps some instances in the literature where Kant is read as placing a value as a ground for moral requirements can be understood as prompted, if not justified, by this relation of ontological priority. Moreover, unsurprisingly, other relations of priority are possible (and I suggest one later on) and they could reflect the tendency of some interpreters to attribute to Kant a value-based account of moral requirements.

Let us move on now to an even more striking fact: that the moral law is independent from, and prior to, values in the normative sense does not exclude the possibility that a value be in some sense (and conceivably even in a *normative* sense) dependent on the moral law and prior to the moral law. This paradoxical fact obtains if the relation of dependence is one of *mutual* dependence. For instance, while one could say that biologically a child is dependent on her parents, semantically a child and her parents are mutually dependent and we can understand as a feature of what it means to be a parent the fact that he or she has at least a child; this indicates a relation of semantic mutual dependence, which leaves it open whether I take one or the other of the relata to be more fundamental than or prior to the other (that is, whether I explain 'parent' in terms of 'child' or the other way around).

H. J. Paton considers this as a possible relation between the moral law (or the will as determined by the moral law) and values (or moral goodness). Nevertheless, starting from an interpretation similar to Sensen's, he does not develop this position; according to him:

a rational will [determined by the moral law] and goodness may be definable only in relation to one another, like 'right' and 'left', or 'above' and 'below'. This view is clearly worthy of exploration [...]; but even this view he [Kant] would probably consider a mistake since it treats goodness as co-ordinate with a rational will instead of subordinate to it and derived from it.⁶

Hence, the possibility of a relation of mutual dependence between a value and the moral law is considered by Paton as worth examining, but he quickly abandons it as not corresponding to Kant's view of the moral law as independent from and prior to goodness. The aim of Sensen's book is primarily an interpretative one and, as already mentioned, he offers an interpretation of Kant according to which there is no independent value which can ground the moral law, but the moral law is prior to and independent from values. As a result, he, too, can be seen as legitimately rejecting Paton's alternative.

It is not entirely clear to me, however, that Kant is so dismissive of this alternative. He clearly seems to be in many instances, but a relation of normative mutual dependence between the moral law and a value (goodness) is compatible with a claim that the moral law is independent from and prior to goodness, *if we merely* start with the moral law and derive goodness from it. When I say, 'if we merely start', I have in mind the fact that, given a relation of *mutual* dependence between, say, A and B, there is no reason for me to start with A or B. This is unlike the situation when either A or B

⁶ H. J. PATON, *The Categorical Imperative. A Study in Kant's Moral Philosophy*, London, Hutchinson, 1947/1970, pp. 111-2.

would have priority over the other, and then I would have reason to start with the element which does have priority.

In what follows, I will focus on one important passage from the *Groundwork*, where Kant seems to suggest that moral goodness (as an end in itself which is necessarily an end for everyone) is prior to the Categorical Imperative.

3. 'End in Itself'

Consider the following claim:

if [...] there is to be a supreme practical principle [...], it must be one such that, from the representation of what is necessarily an end for everyone because it is an *end in itself*, it constitutes an *objective* principle of the will and thus can serve as a universal practical law.⁷

Here, Kant seems to regard the moral law as an objective principle constituted from the representation of an end, which, as an end in itself, is necessarily an end for everyone. The direction of derivation here goes from goodness (as an end in itself, that is, that which is necessarily an end for everyone) to the moral law. This suggests that goodness is a value independent from and prior to the moral law, a ground from which the moral law is derived. Yet, if the moral law is the ground from which all values are derived, as Sensen claims, and there is a value (goodness) from which the moral law is derived, then the only way in which Kant's account does not collapse due to its inner contradictions is if the moral law and goodness are mutually dependent or, as Paton puts it, co-ordinate, and we have here a situation where we have different starting points – Sensen chooses to begin from the moral law, whereas Kant, in the quotation above, chooses to start from moral goodness (as an end in itself, which is a necessary end for everyone).

To be sure, Sensen discusses this passage (again, in Chapter 3). He does suggest that it might be read as asserting that “there must be an end underlying the Categorical Imperative” (100). Nevertheless, he eventually argues that it is not an indication of a relation of mutual normative dependence between goodness and the moral law, let alone an indication of the normative priority of the former over the latter. His argument is that, in this context, ‘end in itself’ has a descriptive, not a normative sense. More exactly, “Kant uses ‘end in itself’ to express that human beings are not completely determined by external causes, but are free” (104).

Hence, “Kant uses ‘end in itself’ as the ground of the imperative in a descriptive sense” (100). To be sure, Sensen acknowledges that the expression ‘end in itself’ is often used in normative statements: “A human being (as an end in himself) ‘must [...] always be regarded *at the same time as an end*’ or ‘may not be used merely as a means’”, where Sensen is quoting *GMS AA IV 428* (101). This, however, he adds, is not so much the use of the expression (‘end in itself’) with a normative sense, but the statement of some normative requirements connected with the expression. What, according to

⁷ “Wenn es denn also ein oberstes praktisches Prinzip [...] geben soll, so muß es ein solches sein, das aus Vorstellung dessen, was notwendig für jedermann Zweck ist, weil es *Zweck an sich selbst* ist, ein *objektives* Prinzip des Willens ausmacht, mithin zum allgemeinen praktischen Gesetz dienen kann“. (*GMS AA IV 428*)

him, Kant means by the expression 'end in itself' has a descriptive sense (not being completely determined by external causes), as mentioned above.

Consider the way in which Kant concludes the argument above concerning the constitution of an objective principle starting from the representation of what it is an end for everyone: "The ground of this principle is: *rational nature exists as an end in itself*" (GMS AA IV 428) Here, Sensen notes, by "this principle", Kant refers to the Categorical Imperative, whereas "*rational nature exists as an end in itself*" means that rational nature is free. Hence, the conclusion is that freedom is the ground of the Categorical Imperative. It may seem that the Formula of Humanity ("*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means*"⁸) is justified by reference to this end in itself. This impression may be reinforced by the fact that this discussion occurs just before Kant offers the Formula of Humanity.

Nevertheless, on Sensen's reading, the Formula of Humanity only "expresses what the Categorical Imperative says ("*act only in accordance with that maxim through which you can at the same time will that it become a universal law*"⁹) in relation to ends or using the language of ends". (112) In other words, the expression 'end in itself' is not used to justify the Formula of Humanity, but to indicate that freedom is "the ground of the Categorical Imperative". (105)¹⁰ In its turn, this means that the validity of the Formula of Humanity depends on the justification of the Categorical Imperative. (113)

As we have seen, for Sensen, the justification of the Categorical Imperative depends on two questions: whether there is such an imperative and why the imperative is binding. (115) To be sure, the existence of the Categorical Imperative is already grounded in freedom, as we have seen above. This grounding, however, is ontological, rather than normative. So, if we are to justify the normative aspect of the Categorical Imperative (as Sensen puts it, if we are to show that "it is not one principle among others, but it is necessitating and a constraint regarding our inclinations" – 115), then we need some standard (a foundational value or principle) to ground it.

At this point, however, Sensen tells us that we should not expect a justification in this sense (that is, a justification of the moral command, for instance, to respect others, a command implicit in the Categorical Imperative) over our inclinations; rather, "the question is why the moral law appears to human beings as a command at all". (115) The answer he provides to this is Kant's familiar distinction between the moral law and the Categorical Imperative, between the law which purely rational beings follow as a matter of course and the imperative upon which imperfectly rational beings like us ought to act.

According to him, the Categorical Imperative needs no further justification or rather his aim is not to provide such a systematic justification:

⁸ „Handle so, daß du die Menschheit, sowohl in deiner Person, als in der Person eines jeden andern, jederzeit zugleich als Zweck, niemals bloß als Mittel brauchst“. (GMS AA IV 429)

⁹ „...handle nur nach derjenigen Maxime, durch die du zugleich wollen kannst, daß sie ein allgemeines Gesetz werde“. (GMS AA IV 421)

¹⁰ Again, this is a place where Sensen could have easily indicated a possible reason for the interpretations which read Kant's moral philosophy as grounded in a value: the Categorical Imperative is grounded (ontologically) in freedom or, as Kant formulates it, in "what is necessarily an end for everyone". (GMS AA IV 428)

The law interests us because it is valid. It is valid because it has a genuine source that it not external; an external source could not ground a necessary and universal law. [...] Is Kant too optimistic on this point? Again my aim is not to defend him systematically. Kant himself does not seem to argue for the claim that even the most hardened scoundrel wishes to be moral. (117)

I agree with Sensen that the source of the moral law cannot be external, since an external source could not ground a necessary and universal law. I also agree that a valid law would interest us. But I am not too clear how we, including the most hardened scoundrel, are to be interested and moved by the law, if we have no way to justify its validity. As we have seen, one way to see this justification is, in Sensen's words, as an explanation of why it is not one principle among others, but it is necessitating and a constraint regarding our inclinations. (115) Yet, according to Sensen's argument, we cannot provide such a justification, since the moral law is the first normative reality.

Perhaps we do not need this justification; as he suggests, perhaps we are naturally inclined to be moral and, then, all we need is to identify the moral law, the source of the moral requirements. In other words, instead of expecting to see a justification in terms of the criterion in virtue of which the moral law has normative force, perhaps it is sufficient to follow a relevant decision procedure for the identification of the normatively forceful law.¹¹ I do not think it is sufficient – in fact, I think it leads to heteronomy. Yet, for the sake of the argument I will assume it need not.

According to Sensen's account, we can identify the moral law without providing a justification, since all we require is the relation of ontological dependence between freedom (the end in itself) and the moral law. Given that this is a relation of ontological, and not normative, dependence, the normative primacy of the moral law, which is central to Sensen's interpretation, is maintained. Recall that the end in itself, as freedom, is regarded as a descriptive presentation of the notion of an end in itself, one which has no normative content. When Sensen presents this descriptive content of the end in itself, he claims it refers to the fact that we "are not fully determined by causal law. [...] 'End in itself' is a technical term that gets its meaning from its contrast to 'mere means'". (103) This is indeed a descriptive (and negative) definition. But Sensen offers also a positive and augmented view of the 'end in itself' ("someone is an end in himself in virtue of freedom and the capacity for morality" –

¹¹ I am using here Mark Timmons's distinction between a moral criterion and a decision procedure for the identification of a normatively forceful standard. (M. TIMMONS, *Decisions Procedures, Moral Criteria, and the Problem of Relevant Descriptions in Kant's Ethics*, in «Jahrbuch für Recht und Ethik», V, 1997, pp. 389-417; M. TIMMONS, *The Philosophical and Practical Significance of Kant's Universality Formulations of the Categorical Imperative*, in «Jahrbuch für Recht und Ethik», XXIII, 2005, pp. 313-334.) To illustrate this, consider an act-utilitarian moral theory. The moral criterion of this theory is usually given by facts about the utilities of actions. For a hedonistic account of utility, we are interested in the production of pleasure and pain. One decision procedure for this utilitarian theory will of course be derived directly from the moral criterion: we calculate the utilities of various alternatives in a given situation and decide in this way on whether the actions considered should be performed. Calculating the utilities of various possible courses of action may however be impracticable. Yet, we may have good evidence to think that, given human limitations in performing correct utility calculations, we are more likely to perform utility maximising actions if we simply maximise our own well-being. Hence, we may have evidence to think that an egoistic decision procedure will provide better guidance than the decision procedure directly derived from the hedonistic criterion. The egoistic principle of maximising my own well-being will be a *mere* decision procedure for the hedonistic version of classical utilitarianism.

104), which is presumably reached by following the ontological dependence of the moral law (as a law that addresses us in virtue of our capacity for morality) on freedom.

But I am not sure whether the ontological relation between freedom and the moral enables us to identify (*without recourse to some normative entity*) the moral law. The fact that we are not fully determined by the causal laws indicates indeed that we are free. Moreover, the fact that, on Kant's account, our actions are maxim-based shows that this freedom cannot be lawless. So our free actions will be actions under a moral law. But we are also free when we act on maxims which are not morally permissible. In such situations, we are also responsible agents and this indicates our capacity for morality. Hence, on the basis of a descriptive account of a person as an end in himself – even on the augmented and positive version (namely, the account which considers us free and possessors of a moral capacity) – we cannot really identify the moral law starting from the descriptive notion of an end in itself.

Now, it could be replied, on Sensen's behalf, that any law has a universal character and, as such, presupposes the possibility of universalisation. Moreover, insofar as maxims which are not morally permissible are not universalisable (that is, they are not valid and, hence, cannot be acted upon by all agents), we have already a way of distinguishing the moral law from any law which grounds morally impermissible maxims. This may all be true, but it becomes apparent we need to face a dilemma. For, if we indeed assume that, implicit in the idea of an end in itself, there is already a way of identifying the moral law (as opposed to an evil principle), then we already have a normative element in the notion of an end in itself. Contrary to what Sensen claims, the idea of an end in itself as freedom and moral capacity turns out to be already normatively loaded. If, on the other hand, we do take seriously the claim that 'end in itself' is not a normative entity, then we will not be able to distinguish between the moral law and any other law that might govern our action and that might preserve our freedom without being moral.

This, however, goes against Kant's claim that "if [...] there is to be a supreme practical principle [...], it must be one such that, from the representation of what is necessarily an end for everyone because it is an *end in itself*, it constitutes an *objective* principle of the will and thus can serve as a universal practical law"; or at least it will go against it, if we expect the moral law (the objective principle which will serve as universal practical law) to be derived from the representation of an end in itself as the idea of being free and having moral capacity. This is not Kant's problem, but it is Sensen's: Kant talks about the representation of an end in itself as including "*what is necessarily an end for everyone*"¹², which I take to be the idea of moral validity as universality; by contrast, Sensen does not accept this normative element in Kant's account of an end in itself. If this right, what are the implications?

4. The Weak Priority Thesis

One implication is that there is at least one instance in Kant where a value is normatively prior to the moral law. To be sure, this does not challenge Kant's methodological revolution (his Copernican turn from the traditional strategy of taking an external or empirical good to be the foundational value

¹² My emphasis.

from which the moral law is defined, to the Critical method of starting with an internal and a priori standard on the basis of which particular goods are identified as morally valuable). It does not challenge it, since the end in itself, as the freedom through which everyone exercises her moral capacity, is neither external nor empirical.

It is also not a challenge to a more limited priority claim than Sensen's. According to him, we have what I call a Strong Priority Thesis, according to which the moral law is the first normative reality through which we derive the actions we value. According to the Weak Priority Thesis, which I think is philosophically more convincing, the moral law and the moral good are mutually dependent normatively. This implies that, if we assume that the moral law is the first normative reality, then we can derive the moral good from the moral law, in the way the Strong Priority Thesis claims we should do. But, for the Weak Priority Thesis, starting with the moral law, rather than with the moral good, is simply the result of a decision which is not justified by some normative requirement.

To be sure, starting with the moral law may be justified by other considerations. For instance, if we give priority to normative standards which are expressed by laws, rather than values, then we will want to start from the moral law.¹³ Moreover, there are good reasons to start with standards expressed by laws, since they offer more precise guidance than values do. There are also some disadvantages, as standards formulated in terms of principles and laws are less flexible and give the impression of rigidity, and the popular view of Kant's ethics still attributes this to him.

Sensen refers to J. B. Schneewind's view, according to which Kant's emphasis on law can be seen as a reaction to the tradition: with the ancients insisting on the good and with the Judeo-Christian and natural law traditions insisting on the primacy of the law.¹⁴ But perhaps the more accurate view is one according to which Kant, as usually, tries to steer a path between these two tendencies and to give moral law and good equiprimordially in the normative sense. This would fit Kant's strategy in the theoretical philosophy and would make his view more interesting philosophically.¹⁵

One final question: does Sensen not raise the possibility of taking an internal and a priori value as a starting point and deriving the moral law from such a value? This is the plan for Chapter 2, and, as already mentioned, he discusses there the constitutivist accounts of several contemporary Kantians. His conclusion is that they cannot justify the moral requirement of respect for others (a requirement implicit in the moral law) in this way. The implication would then be that the moral law, including the requirement to respect others, is a direct command of reason, a first normative reality from which other normative claims follow.¹⁶

However, as I have argued elsewhere (2016), the reason why the constitutivist projects fail to derive the requirement to respect others is different. Briefly put, these projects try to derive substantial moral conclusions from slender normative grounds and, at the same time, do this without recourse

¹³ Sensen acknowledges that this starting point would also need a justification, but he does not provide one and, as we have seen, does not think he needs to provide one.

¹⁴ J. B. Schneewind, *The Invention of Autonomy. A History of Modern Moral Philosophy*. Cambridge, Cambridge University Press, 1998, Chs 22-3.

¹⁵ I suggest this interpretation of Kant in S. BAIASU, *Kant and Sartre: Re-discovering Critical Ethics*, Basingstoke, Palgrave Macmillan, 2011, Ch. 5 §§75-6.

¹⁶ Chapter 5 does point to some arguments to the effect that "everyone does think along the lines of the Categorical Imperative". (117) As explained there, however, the aim is not "to defend Kant systematically", but only "to show that Kant's ideas are not far-fetched". (211)

to parts of the Kantian framework, which may seem problematic (such as, the distinction between synthetic and analytic judgements or the idea of transcendental logic). If they are read, as Sensen does, as trying to derive the normative requirement to respect others from an internal value, then the fact that the constitutivist projects fail can be taken to show that there is in fact no prior foundational value, on which the Categorical Imperative and its moral requirements are grounded. Yet, as I have shown, without such a normative foundational value, it is difficult to account even for the first part of the twofold question of justification, the part about the existence of the Categorical Imperative.

Sensen's defence of the Strong Priority Thesis and his argument concerning the Kantian notion of dignity are offered strong cases in this book. His is a powerfully argued text, with illuminating analyses of some of the key Kantian claims in practical philosophy, and with philosophically convincing and interpretatively accurate conclusions. The implications for the Kantian studies are also significant: making more sense of the coherence of the Kantian corpus, showing the relevance of Kant's arguments for the contemporary vexing issue of human dignity and suggesting an alternative account which may benefit current debates.

I have however questioned Sensen's Strong Priority Thesis, according to which there are no foundational values in Kant on which the Categorical Imperative could depend normatively – we value only what the Categorical Imperative commands as morally permissible and obligatory. By contrast, I have defended the Weaker Priority Thesis, according to which, the relation of normative dependence of values on the Categorical Imperative must be supplemented by a relation of normative dependence of the Categorical Imperative on the value of moral goodness. This shows that the relation between values and the Categorical Imperative in Kant is more complex. While preserving the various good results of Sensen's interpretation (for instance, showing the coherence of the Kantian corpus), an account starting from the Weak Priority Thesis also accounts better for, without however justifying, the existence of so many views according to which dignity, in Kant, is based on a foundational value.