

## *Legislating the Moral Law*

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### I. Introduction

Kant believed that the moral law is a law that the rational will in some sense legislates. He regarded this thesis as an important philosophical discovery, and it first appears with the introduction of the Formula of Autonomy, whose central idea is that of “the will of every rational being as a will that legislates universal law”. [Gl 431]<sup>1</sup> Thereafter he refers to the rational will as legislating or giving law to itself, as the author [*Urheber*] of the laws to which it is subject, and as bound only to its own legislation, or will. The will is “subject to the law in such a way that it must be regarded also as legislating for itself and only on this account as being subject to the law (of which it can regard itself as the author).” [Gl 431] “Man...is subject only to his own, yet universal, legislation and...is bound only to act in accordance with his own will, which is, however, a will purposed by nature to legislate universal laws.” [Gl 432] The “ground of the dignity” of rational nature is that “a rational being obeys no law except what he at the same time enacts himself”, “obeys only those laws which he gives to himself”. [Gl 434, 435. Cf. 440] The “moral law interests us because it is valid for us as men, since it has sprung from our will as intelligence and hence from our proper self.” [Gl 461] Finally, Kant defines the autonomy of the will as “the property of the will through which it is a law to itself (independently of any property of the objects of volition).” [Gl 440. Cf. 447. ] Presumably the law which the autonomous will gives to itself is the moral law. As one might say, the rational will is a law to itself, and the moral law is that law.<sup>2</sup>

Several distinct claims are embedded in these remarks. First, there is what I shall refer to as the “Legislation Thesis”: that the moral law, and the requirements to which it leads, are laws that the rational will legislates.<sup>3</sup> One also finds the “Sovereignty Thesis”: that rational agents are bound only to laws which they have given, or laws of which they can regard themselves as legislators. My

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primary concern is with the Legislation Thesis, and I want to raise two general questions about it. (1) What does Kant mean when he says that we are the legislators of the moral law, or of the moral requirements to which we are bound? In what sense is the moral law, or are moral principles, legislated by the rational will? (2) What role does this thesis play in Kant's theory? My hesitation over the framing of the first question suggests alternative readings of the Legislation Thesis. Is it that "we legislate the moral law", or that "the rational will legislates the moral law"? The first reading suggests that we as individuals arrive at and will moral principles through rational deliberation. The second suggests that the willing is done "impersonally" by the rational will—for instance, that moral principles are principles that every rational agent necessarily wills in virtue of being rational, or which in some way derive from the nature of rational willing.

The central issue raised by the first question is how to combine Kant's pronouncements about the autonomy of the will and the will's own legislation of the moral law with the necessity and universal validity of moral requirements. The presence of these two strains in Kant's moral theory is both a defining characteristic and a deep source of tension. Given the necessity and universality of moral principles, one is not free to decide for oneself upon the content of morality; nor is it a matter of voluntary choice whether one is bound by moral considerations (though one must choose whether to comply). But if the concept of legislation is to have any connection to its ordinary meaning, one must preserve the idea that laws are brought into existence through a legislative agent's positive acts, and that these acts are the source of their authority. If the notion of "legislating" or "giving law" is to apply, the legislator must have authority to decide what to enact as law (i.e., to decide upon its content). Even when a legislator only has authority to enact laws meeting certain conditions, what is law is undetermined prior to the legislator's enactment. In addition, the legislator's enactment must create law, in the sense that it creates binding reasons for subjects to act in certain ways, which they did not have prior to that act. A law may require the performance of actions which there are independent reasons to perform; but once the law is enacted, subjects have a reason for performing those actions that they did not have before. Simply put, the fact that it has been enacted as law is now a reason for them to act in the required way, whatever that may be. Where significant external constraints determine the content of legislation, and where the reasons to comply with a body of principles exist prior to the legislative enactment, the agent in question does not exercise sovereignty, in any interesting sense.

Many people think that this tension can only be resolved by weakening one of these two strains. Some hold that Kant ought to have given up his views about the objective validity of moral principles.<sup>4</sup> Others assume that, in the end, Kant's remarks about self-legislation should be understood metaphorically. However, I believe that a satisfactory account of Kant's theory should aim to combine these two strains in an uncompromising way, and thus would like to find a fairly literal

reading of the “legislation” of moral principles which is consistent with moral objectivity. Where we are forced to settle for a looser interpretation, the selection of this metaphor should have a point: the resulting picture of moral deliberation should preserve the main features of legislation.

As far as the second question is concerned, there are different roles that one might ascribe to the Legislation Thesis. One might think that it is a thesis about the source of the content of morality—e.g., that the content of morality originates in our legislation rather than in God’s, or in a prior order of intrinsic values. Or it may play an essential role in saying why we are bound and ought to give authority to the moral law. Many of Kant’s remarks suggest the latter, and most people assume that the Legislation Thesis is used to establish the authority of moral requirements. Showing that a principle of conduct is a law which one has given to oneself, or which represents “one’s own will”, would seem to settle any questions as to why one should obey. However, in the final section I will argue that the Legislation Thesis is not introduced to explain why we are bound to the moral law. While it may function as a supporting lemma in a longer argument, it does not directly establish the authority of the moral law, Kant’s remarks notwithstanding.

Before turning to the interpretive options in Kant, it may be useful to consider briefly how these questions apply to Rousseau, since both his views and language influenced Kant. Rousseau’s primary concern in *On the Social Contract* is to set out conditions of legitimacy for coercive social and political arrangements. Laws are legitimate only when they represent the general will, and to do that they must, among other things, be self-imposed. “The people that is subject to the laws ought to be their author... .”<sup>5</sup> Rousseau understands self-legislation in the political sphere quite literally as involving active participation in the legislative process. The sovereign, or final legislative authority, is the collective body of all citizens,<sup>6</sup> and public deliberation must be structured so that all citizens have equal access to and input into the legislative process.<sup>7</sup> Moreover a law cannot be put forward as representing the general will unless the legislative process has actually been carried out.<sup>8</sup> In sum, the concept of the general will establishes the conditions that a system of laws and coercive arrangements must satisfy, and one is the complex requirement that laws be enacted by an open legislative process in which there is full participation by those subject to them. Presumably the fact that a norm has been enacted by this legitimizing process, and thereby has title to express the general will, is what makes it a law.

Why, according to Rousseau, must laws be enacted by the collective body of all citizens (express the general will) to be legitimate? His intention to reconcile “what right permits with what interest prescribes” indicates that his conception of legitimacy comprises different elements. First, a system of law must protect certain natural and privately formed interests of individuals, and thus be in their rational self-interest. But legitimacy also requires more directly moral conditions. For example, his concern to show how freedom and subjection to law can

be combined indicates that laws must preserve the freedom and independence of each citizen.<sup>9</sup> Self-legislation plays an importantly different role in relation to each aspect of legitimacy. In regard to the first, the requirement that laws be self-legislated has only instrumental value; that is, it is a way of ensuring that a further and independently definable constraint is met. The concern here is that a system of laws protect certain natural, private interests of individuals (e.g., their interest in self-preservation). Since individuals are good judges of their interests and strongly motivated to further them, placing legislative authority in the hands of those subject to the laws may be the most reliable way of satisfying this condition. Considerations of both information and authorization are involved here. Active citizen legislators will frame laws with their own interests in mind. Moreover, they will not approve laws which fail to protect them. But if the protection of these natural interests were the sole requirement of legitimacy, and if this could be achieved without citizen participation in the legislative process, then laws enacted by a non-democratic process could be legitimate. The same point holds for the bearing of self-legislation on certain conditions of equity and fairness—for example, that laws benefit and restrict all citizens equally, or that they do not impose restrictions without good reason. Public deliberation in which all citizens participate equally would uncover inequities in proposed laws, and would prevent their acceptance. Thus the requirement that laws be self-legislated could be a means to seeing that other, independently definable conditions (e.g., equal benefit, etc.) are satisfied. But if one's sole concern were to fulfill such substantive requirements, and if one could do so in a legislative process without citizen participation, the results of this process would be legitimate and give no one cause to complain.

By contrast, there is a direct connection between self-legislation and the preservation of freedom and independence. Since laws are coercive, they will only be consistent with individual freedom and independence if they somehow combine freedom and subjection. For Rousseau one is not free if one is subject to the will of another, or bound to the dictates of an external authority; one must obey only one's own (true) will.<sup>10</sup> It follows that a system of laws must be self-imposed in order to have legitimacy. When this is achieved, freedom and subjection to law have been combined, one obeys only one's own will, and, in being bound only to a system of law that meets these conditions, each citizen has a "guarantee against all personal dependence" on the arbitrary will of another.<sup>11</sup> Since the second element of legitimacy is more central to Rousseau's political view, the principal implication of being bound only to one's own legislation is that one is free: "the impulse of appetite alone is slavery, and freedom is obedience to the law one has prescribed for oneself."<sup>12</sup>

The fact that a system of laws is self-legislated, and thus preserves freedom and independence, is a necessary condition of its legitimacy. But it plays no singular role in explaining why one ought to comply with it. For Rousseau, once one has shown that a system of legislation is legitimate, no further question

remains as to why one should comply. One can hold that the reason to obey any given law is the fact that it is a properly enacted law, and is a proper expression the general will. Thus, whatever shows that it is legitimate (i.e., that it expresses the general will) exhausts what there is to say about the reasons for compliance.<sup>13</sup>

The point I wish to make is this. For Rousseau, the fact that you had a role in enacting a system of laws is not a further reason why it binds you, and has no special bearing on why you ought to obey, over and above the contribution made by this fact to its legitimacy. What binds you, and gives you reason to comply with the law, is the fact that it is a properly enacted law. A necessary condition of its being properly enacted is that you had an active role in the legislative process. But the fact that a system of laws is self-legislated is one of several conditions that work together to determine what makes them legitimate expressions of the general will, and has no particular significance apart from this context. If, for example, a serious question arises as to why you should comply with a particular law, it will not be answered merely by citing your legislative role. You will want to know what made it a good law to have enacted. It would seem that the proximate reasons for complying with particular laws will be the reasons that guided the sovereign body (of which you are a part) in the process of their enactment. The reasoning that led you to enact the law should now give you reason to comply.

## II. Some Approaches to the Legislation Thesis

This section considers some possible interpretations of the Legislation Thesis. All have textual support and contain ideas that belong in an account of the Legislation Thesis, but as they stand they are incomplete.<sup>14</sup> The sections that follow develop how this thesis should be explicated.

The idea that we legislate the moral law for ourselves may grow out of Kant's views about rational agency. A central component of Kant's conception of free choice is what Henry Allison has called the "Incorporation Thesis".<sup>15</sup> Kant held that an incentive never determines the will except through a choice made by the individual, which is to be understood as the spontaneous adoption of a maxim. The root idea is that choice is guided by normative considerations, and that nothing can become an effective motivating reason for an agent except by his or her taking it to be one. We get a picture of choice as guided by general principles which agents adopt (incorporate or take up into their wills), and take to have some kind of normative force both for themselves and for others. Since normative considerations may be experienced as constraints by imperfectly rational agents, this conception may include the idea that in choosing, I lay down principles for myself. When maxims are viewed as "self-imposed rules", all rational choice may be thought to involve some kind of self-legislation.<sup>16</sup>

From this conception of rational choice one might extract different versions of the Legislation Thesis. The first would bear on the origin of the content of the moral law, while the second and third would offer accounts of its authority.<sup>17</sup>

(a) *Moral legislation as Wille as legislating for Willkür*: Kant's distinction between *Wille* and *Willkür*, as a distinction between the legislative and executive functions of the will, leads explicitly to a view about the structure of the self within which reason plays a legislative role.<sup>18</sup> Kant assigns *Wille* the function of laying down principles to regulate the adoption of maxims by *Willkür*. He writes that “laws proceed from the will [*von dem Wille*]*—maxims from the power of choice [Willkür],*” and that *Wille*, “which does not look to anything beyond the law itself, cannot be called either free or unfree, since it does not look to actions but rather, in an immediate way, to legislating for the maxims of actions... .” [*MdS* 226] The view may be that every individual's practical reason contains a legislative component, by which one wills a body of normative principles. (Here there are evident parallels with Rousseau, who appears to hold that each individual has a general will, in addition to one's private will, that wills a body of principles aimed at the common good). The Legislation Thesis would then trace the content of morality to the activity of *Wille* by the claim that *Wille* legislates the moral law for *Willkür*.

Until more is said about what guides the legislative activity of *Wille*, this interpretation of the Legislation Thesis simply raises further questions. On what grounds does *Wille* will its laws? What discretion does *Wille* have in its law-giving? Here the tension between autonomy and objectivity becomes apparent. If *Wille* is unguided and “just wills” certain laws, then almost anything could be willed as a moral principle. But that is incompatible with the objectivity of morality and would make its content arbitrary. On the other hand, if *Wille* must will a fixed set of principles, or if the content of its legislation is determined by prior considerations of rationality, then it will not be a sovereign legislator.

(b) *The Legislation Thesis as grounding the authority of moral requirements*: One might hold that, given the motivational structure of a free will, the Legislation Thesis is needed to explain how moral principles can have authority for individuals. According to Kant's Incorporation Thesis, an incentive or motive can only determine a free will through a choice by the agent. One might think that this implies that a principle or requirement can bind a rational agent only through an act of the agent's will (choice, commitment, acceptance, etc.)—that is, that rational agents are bound to self-given laws *because* they legislate them, and that some act of the individual's will is a necessary condition of that individual having an obligation.<sup>19</sup> We might call this the “Principle of Individual Sovereignty”.

Let me note two general problems with this line of thought. First, if one recognizes a distinction between justifying reasons and motivating reasons, it is not clear that Kant's Incorporation Thesis implies either the Sovereignty Thesis or the Principle of Individual Sovereignty. Grant that a consideration can only motivate me by my taking it to be a reason. Still, this does not rule out the possibility of considerations which do in fact justify, whose authority I ought to, but fail to acknowledge. The fact that I can only be motivated to act through my

taking some consideration to be a good reason does not imply that no consideration can provide a justification except through an act of choice or recognition on my part.<sup>20</sup> Conversely, it is worth noting that one can “take up into one’s will” a principle given by an external authority, by regarding it as a good reason for action. Thus, if the claim that a rational agent acts only from self-given laws is read as a motivational thesis, it need not entail that the agent is the ultimate source of their authority.

Second, and independently, it is not clear how the Principle of Individual Sovereignty can be squared with the universal validity of moral requirements. To maintain this principle, while holding that moral requirements are valid for all rational beings, Kant must show that every rational agent performs the relevant act of will (necessarily wills moral principles). Can that be done? Since I do not wish to defend this interpretation, I will not pursue the question. But once one allows that not everyone engages in the relevant act of will, one is led to the “anarchist conception” which would make the validity of moral requirements a matter of voluntary commitment.<sup>21</sup> This is certainly not what Kant intended by the Legislation Thesis.

(c) *Moral legislation as willing acceptance of and identification with moral principles*: A third possible approach, while conceding the difficulties of reconciling autonomy of the will with the universal validity of moral requirements, might focus on Kant’s assertion that moral requirements bind agents in such a way that they must be viewed as legislating them. [Cf. *Gl* 431, discussed below.] The idea might be that if one sees oneself as bound to moral requirements in the way that Kant thinks we are, one must view them as originating in one’s own will.<sup>22</sup> Moral requirements are rationally grounded requirements that bind unconditionally. Someone bound in this way must understand their basis, and as a result be strongly disposed to acknowledge their authority over the entire range of sentiment and action. Such an agent views moral requirements as a set of commitments that cannot be given up without a sense of loss. That I am so bound is a conclusion about what I have reason to do, to which I am led by my own conscientious reasoning. As an imperfectly rational agent who does not automatically follow the conclusions of reason, I experience moral principles as constraints. Nevertheless I fully acknowledge their authority, and as a result, find that in my clearer moments I am willing to accept the obligations to which they lead. Moreover, since I see my ability to act from moral reasons as representing my higher self, I do not experience morality as a body of external constraints.

According to this approach, the Legislation Thesis is a metaphorical rendition of the fact that one’s grasp of the rational basis of moral requirements leads one to acknowledge their authority and impose them on oneself, and to identify with them, with the result that they are not experienced as externally legislated. However, if our “legislation” of moral requirements amounts to no more than the above process of rationally based acceptance and identification, it is not clear why it should be thought of as a process of legislating. Moreover, this account

does not rule out the possibility that moral principles originate in some authority or set of values external to the will. A rational intuitionist or a natural law theorist might argue that our understanding of the rational basis of moral requirements has the same motivational effect. But such a theorist would certainly reject Kant's Legislation Thesis.

One might attempt to strengthen this account by asking what could explain the fact that I feel bound in the above way. One could argue that neither the will of God, an order of intrinsic values, or objective relations between objects grasped by intuition (etc.) can explain the authority of moral requirements in the proper way. I can always ask why I should be bound to any of these, but in reflective moments, I find that it makes no sense to ask why I should fulfill my moral obligations. The only remaining explanation of these obligations is that moral principles in some sense originate in my reason and are self-imposed. However, mightn't the intuitionist or natural law theorist also hold that grasping the external basis of moral requirements leads to a comparable process of acceptance and identification, and that agents who fully grasp this basis will see no sense in asking why it is a ground of obligation.<sup>23</sup> These considerations aside, this interpretation says only *that* moral requirements must be (viewed as) self-legislated, without saying what that means, or without providing detail about the way in which we legislate the moral law. But rather than develop this issue further, I will now outline an interpretation of the Legislation Thesis that attempts to fill this gap.

### **III. Subject in Such a Way that One Must be Regarded as Legislating**

There are two distinct senses in which we may be said to legislate the moral law, that, taken together, preserve the objectivity of moral requirements and the autonomy of agents. The reason that there are these two senses is that there are two levels of principle that are candidates for being legislated, and that a different sense of legislation is appropriate to each. First, there is Kant's general formal principle—the Categorical Imperative. Second, there are the substantive moral principles and requirements that are arrived at (or as we might say, “enacted”) by deliberation guided by the Categorical Imperative. Rational agents legislate substantive moral requirements in this sense: one is bound to these requirements in such a way that one models the legislator from whom they receive their authority (the source of their authority). This is because one is bound to such requirements by the process of reasoning that makes them laws. The sense in which the rational will “legislates” the Categorical Imperative is seen in the idea that the rational will is a law to itself, as it is understood by Kant: the Categorical Imperative is the law that emerges from the very nature of rational volition. In the next three sections I develop these ideas, and use them to interpret the Legislation Thesis.

To explain the first element of the Legislation Thesis, let me return to the important transitional point in *Groundwork*, II, where Kant writes:

According to this principle, all maxims are rejected which are not consistent with the will's own legislation of universal law. The will is not thus merely subject to the law, but is *subject to the law in such a way that it must be regarded also as legislating for itself* and only on this account as being subject to the law (of which it must regard itself as the author). [G1 431. My italics.]

This statement of the Legislation Thesis expresses Kant's belief that the Formula of Universal Law may be restated as the Formula of Autonomy. Argument for this claim is offered in the three paragraphs following, and is generally thought to run as follows: A categorical imperative lays down unconditional requirements whose authority is not based on any contingent interests in the agents to whom they apply. But if the authority of a principle is not based in any contingent interest or desire, it could only come from the fact that the principle is self-legislated. Thus, we must view categorical imperatives as legislated by those whom they bind. The problem with this rendition of the argument is that it does not make evident *why* a principle whose authority is desire-independent must be legislated by those to whom it applies. For example, it is not clear how anything that Kant has said so far rules out a form of rational intuitionism which accepts objective obligations that apply unconditionally, but which originate externally to the will, and thus cannot be viewed as self-imposed.<sup>24</sup>

Kant's point is a deep one which can be defended, but to do so, we must be clear about exactly what it asserts. First the claim is that one is bound to an unconditionally valid principle *in such a way* that one must regard oneself as its legislator. It follows from the way in which one is bound to an unconditional principle that one must regard oneself as legislating it. Kant means exactly what he says here, and it is by taking this claim quite literally that one sees how to support it. One might think that the reason that one must *regard* oneself as legislator is that one *is* its legislator; but that is the conclusion to be demonstrated. What I shall argue is that someone bound to an unconditionally valid principle bears the same relation to that principle as its legislator would, so that, for all practical purposes, the distinction between subject and legislator collapses. Second, it is worth bearing in mind that this remark occurs within the context of the limited analytical task of saying what the moral law contains if there is such a thing. Just as Kant earlier argues that the concept of a moral requirement is sufficient to yield a statement of the supreme principle of morality [G1 420], here he asserts that it leads to an important fact about the relationship of moral principles to the agents to whom they apply (if there are such agents). The assertion is conditional, and does not yet claim that any moral principles are valid for us, or that they are valid for us because we legislate them. In sum, the claim at issue could be restated as follows:

If an agent is subject to an unconditionally valid principle, that agent is bound to the principle in such a way that he or she must be viewed as its legislator.

How may this assertion be supported? The general idea is this: an agent subject to a principle that applies unconditionally will bear the same relation to this principle that its legislator would, in that the reasoning that would lead a legislator to enact it also explains why an agent ought to comply with it. The process of reasoning that justifies and establishes the principle as valid is also the source of its authority for an agent. The agent is bound to this principle and is motivated to comply by going through the deliberative process that confers validity on the principle and makes it a valid moral requirement—in other words, by carrying out the deliberative process through which a legislator would enact it as law. Such an agent models the source of the principle's authority, and in this way, an unconditionally valid principle collapses the distinction between subject and legislator.<sup>25</sup>

To bring out the intuitive basis of the argument, let us consider a situation in which the distinction between subject and legislator might collapse. Take the example of a (wise) professor setting policies for her course, which include procedures for selecting paper topics, submitting drafts, grading standards, and so on. Her policies and standards are demanding, but since she has taken care to explain their rationale, the students recognize that they are good: they are fair, they serve educational purposes which they accept, and her decisions have been guided by pedagogical concerns. The students are motivated to meet the requirements in different ways: some naively believe that high grades eventually bring great wealth, some wish to avoid the shame of lateness or to maintain favor with their professor, and some rather unthinkingly have the habit of doing whatever their teachers say. But there is a select group whose reasons are more complex. Their primary motive for complying with the professor's policy is that it serves educational purposes which they accept, in a fair way. For them, the policy receives its authority from the same considerations that make it a good policy and led the professor to adopt it. This presupposes that they have gone through some version of the deliberative process which the professor used to evaluate different options in light of their pedagogical value, and these facts indicate certain parallels between students and professor. Their motivation to comply with her policy comes from their going through the process of reasoning that justifies the policy, and led her to enact it. Since they are motivated by their understanding of why it is a good policy, the students use the same rational capacities in complying which the professor used in framing and adopting the policy. This, of course, presupposes that they possess the same rational capacities as the professor. These students do not see the policy as externally imposed, and one might think that their relation to the policy is no different in any important respect from that of their professor.

However this story has to be more complex. What if the students differed with the professor over the merits of the policy; or what if it were not pedagogically best? Though they might question her policies, as long as they recognizably

served pedagogical ends, they would feel bound to accept them, as they ought to. What explains that?

The students recognize (and are prepared to articulate) reasons for teachers to occupy positions of authority, where that implies that a teacher's announcing a policy, or set of requirements, creates an obligation for the class and is a reason for the students to fulfill it. They also realize that the justification for giving teachers this authority implies that its exercise should be guided by pedagogical concerns. The concern with educational aims should orient and structure the deliberative process by which policy decisions are approached, rendering certain features of prospective policies salient, and relevant to the decision of whether to adopt them; in short, it determines criteria for evaluating prospective policies. In light of these beliefs, they recognize a policy as (in their terminology) "valid" for a class when it satisfies this condition: it is announced by someone in a position of authority, who adopts it as a result of a deliberative process guided by a concern for pedagogical value. Once they have ascertained that a policy is valid for their class, they need nothing further to conclude that they ought to accept it. For these students, the policy receives its authority from their understanding of why it is valid—i.e. from the fact that it has been adopted by someone in a position of authority through a deliberative process guided by a concern for pedagogical value. There are two things to note here. To determine that the policy is "valid" in this sense, the students must go through this deliberative process. Thus their assessment of the reasons they have for accepting the policy leads them to go through the deliberative process that the professor used, and which renders it a valid policy. Second, since going through this deliberative process will lead them to look at the substantive considerations for and against the policy, their understanding of its validity will include an understanding of its substantive merits (what makes it a good policy).

These points might be made as follows. If we were to spell out the considerations which motivate these students to comply with their professor's policy, we would end up giving the complete account of what makes it valid for the class. This would include the justification for putting teachers in a position of authority and giving them the right to set policies, as well as the values that guide, and sometimes limit, the exercise of this right. For the students to determine that this right has been properly exercised, they must also carry out this deliberative process, and thus go through the deliberations which led the professor to adopt it. Their motivational state will be given by this rather complex process of reasoning, which gives the full explanation of the validity of the policy. These students enjoy a status comparable to that of their professor, in that they are led to comply with the policy by the reasoning that justifies and confers validity on it.

It is worth noting that the professor best expresses her authority when she adopts a policy which the students can regard as supported by good reasons. Their understanding of its justification will lead them to respect it for its validity

(rather than for contingent reasons). By contrast, a policy that was arbitrary could not carry authority in itself; to gain compliance, it would have to rely on external factors such as sanctions, reward, habits of obedience, etc. Someone in power who enacts a policy that could only gain obedience through such external factors would have compromised her authority, in that her subjects would not be moved by her adoption of the policy, but by the sanctions attached to it. Thus the principle of adopting only policies that can be justified to all of her students, far from restricting the professor's authority, seems essential to preserving it. Someone in power exercises authority when the obedience of her subjects is based on their ability to recognize the soundness of her enactments.

This example points to the argument that Kant needs for his claim that an agent bound to an unconditionally valid principle must be regarded as its legislator. The key point is that a principle that applies unconditionally must receive its authority from the reasoning which explains why it is a valid moral principle. Accordingly, the argument on which Kant relies must work like this: if moral requirements apply unconditionally, they must carry an immediate authority which is independent of an agent's desires. In that case, their authority must derive from the reasoning that explains why it is a valid moral requirement, which a legislator would use to enact it as law. Thus the agent is bound to the requirement by the deliberative process that makes it a law (gives it the status of law). Now, an agent who can be bound in this way must be able to understand and be motivated by the justification of the law, and thus must possess the same rational capacities as would be required of its legislator. Moreover, the agent who is moved by an understanding of why it is a law goes through the same deliberative process as a legislator does in enacting it. In acting from the principle, the agent displays the same volitional state as the legislator. But if the legislator's volitional state is law-creating, the subject's volitional state is law-creating, and the subject may be regarded as legislating. Or as Kant says, one is bound to the law in such a way that one must be regarded as legislating. In this way one can claim that a principle that is unconditionally valid collapses the distinction between subject and legislator (or authority).

As an example, assume a situation in which I am bound by a requirement of honesty. The reasons for me to acknowledge this requirement are given by the reasoning that explains why honesty is a duty in this situation. For Kant, the application of the Categorical Imperative gives a principle its moral status; in this case, the fact that the relevant maxims of dishonesty cannot be willed as universal law renders dishonesty impermissible. Thus the reasons to comply with this duty are given by the reasoning that shows why dishonesty cannot be willed as a universal law. In addition to showing *that* the maxim cannot be willed as universal law, the application of the Categorical Imperative will also reveal *why* it fails of universality. Asking whether a maxim can hold as universal law should bring to light substantive features of the action that can be used to explain what is wrong with an impermissible maxim. For example, attempting to universalize a

maxim of dishonesty shows that it relies on the expectations produced by a general background of honesty to induce false beliefs in other agents for the purpose of controlling the outcome of their choices and actions. It is thus a maxim to intervene in the decision-making process of another and to manipulate others by their rational capacities, and fails to respect the sovereignty of other agents over their own decisions and choices.<sup>26</sup> Accordingly, an agent who carries out the universalization procedure is led to an understanding of the moral reasons for and against performing a certain kind of action. My point is that when I am led to act honestly by my application of the justificatory process that explains why it is a duty, I carry out the deliberative procedure by which a legislator would enact the principle of honesty as a law, and display the same volitional state. In carrying out the deliberative procedure that makes honesty a duty, I model the source of its authority.

One might object to this argument that moral requirements are not “enacted” in the same way that political laws and other kinds of policies are, and that it makes no sense to introduce a legislator for moral requirements whom the agent is then to model. Since what is at stake is the propriety of talking about legislating moral requirements in the first place, one cannot assume any legislator of moral principles in advance of the argument we are trying to establish. The response to this worry is to show that the argument can be carried through in all its essentials without reference to any legislator whom the agent models. All that is required is that there be a deliberative procedure which explains what makes a principle a valid moral requirement, or confers validity on a principle, and is in that sense “law-creating”. As long as moral requirements admit of a justification of this sort, there will be a legislative role which the moral agent is suited to step into by virtue of his or her rational capacities.

To recast the argument in those terms: The authority for an agent of an unconditionally valid principle comes from the reasoning that justifies and confers validity on it. In acting from this principle, the agent goes through the deliberative procedure that explains its validity, and makes it a valid principle; one is thus moved by considerations that create law. Since the agent is moved by considerations that anyone can regard as valid, his or her volitional state also carries authority for others. In short, the agent is moved by a process of reasoning that is law-creating, and this renders the agent’s volitional state law-creating. Such an agent gives law through his or her willing.

However, there is a further worry. This argument relies on the idea of a deliberative procedure that has been termed “law-creating”. This process provides the final justification of the principle, confers authority on the act of will and, by extension, on the agent. But this appears to introduce an external source of authority which binds the rational will. Rational agents can only “give law” when they will in accordance with this process of reasoning, and this process, rather than the agent’s will, gives authority to any principles so chosen. Since a legislator bound to an externally given standard is not fully sovereign, one might

ask: in what sense does the will legislate? The response must be that the process of reasoning by which law is created is not an external source of authority, but originates in the nature of rational volition *per se*. For Kant, the final justification of any principle is a formal condition of universal validity—that it can be willed to hold as universal law (has the form of law). What one must now show is that this is not an externally imposed standard, but is the law that emerges from the will's own nature, thus the law which the rational will gives to itself. To do so, I turn to the second element of the Legislation Thesis.

#### IV. The Rational Will as a Law to Itself

In a number of passages, Kant asserts that the rational will is a law to itself.<sup>27</sup> Late in *Groundwork*, II, he makes it clear that the law which the rational will gives to itself is the Categorical Imperative (specifically here the Formula of Universal Law):

...the fitness of the maxims of every good will to make themselves universal laws is itself the only law that the will of every rational being imposes on itself, without needing to assume any incentive or interest as basis. [*Gl* 444]<sup>28</sup>

The idea that the will is a law to itself is arguably the principal theme of the second half of the *Groundwork* (from *Gl* 431 on). I propose to explain it by connecting it to the principal theme of the first half, which is Kant's concern to ground the moral law in reason. Early on, Kant states that moral requirements must originate in reason if they are to have the necessity which ordinary moral thought attributes to them, and then, in two separate places, extracts a statement of the moral law from a conception of practical reason. One passage produces a statement of the Formula of Universal Law, and the other leads to the Formula of Humanity.<sup>29</sup> Each of these guiding themes tells us how the other is to be understood. The way in which the moral law is derived from practical reason reveals what it means to say that the rational will is a law to itself, and if we are to understand how Kant grounds the moral law in reason, we must see how it has this consequence. Kant does not announce in advance that moral requirements can carry necessity only if the moral law is a law of autonomy. He begins by stressing the importance of grounding moral requirements in practical reason, and only later claims to have shown that the moral law is the law which the rational will gives to itself. But it is clear that one extended argument is intended to accomplish both tasks.

These themes are connected by Kant's unusual method of deriving statements of the categorical imperative from practical reason, which might be termed a movement from form towards content. Kant arrives at two versions of the Categorical Imperative in this way, and we understand the sense in which the rational will is a law to itself when we see, in each case, how Kant moves from the stated conception of practical reason to the formula of the Categorical Imperative.

Rather than provide a complete account of these arguments here, I will settle for an analysis of their general structure which will suffice to elucidate this basic idea. I focus first on the derivation of the Formula of Universal Law [FUL], in which the movement from form towards content is most evident, and then touch briefly on the Formula of Humanity [FH].

Here is the territory covered by the first argument. Kant holds that an account of moral principles requires a “metaphysics of morals”, by which he means the inquiry into what can be derived from the concept of a pure rational will, leaving aside empirical information about the conditions of human life. In order to advance to a metaphysics of morals, one must “clearly present the practical faculty of reason from its universal rules of determination to the point where the concept of duty springs from it.” [G1 412] Shortly after characterizing rational agency as “the power to act according to one’s conception of laws, i.e., according to principles”, and the will as “the faculty of choosing only that which reason, independently of inclination, recognizes as being practically necessary, i.e., as good”, [G1 412] Kant is noting the differences between hypothetical and categorical imperatives. Presumably they are the two kinds of objective principle through which practical reason judges the goodness of actions (its *allgemeinen Bestimmungsregeln*). Kant now asks “whether perhaps the mere concept of a categorical imperative may also supply us with the formula containing the proposition that can alone be a categorical imperative.” And indeed it does: “if I think of a categorical imperative, I know immediately what it contains.” [G1 420] Once Kant has in hand the *concept* of a categorical imperative, or practical law, he believes he is in a position to state *the* Categorical Imperative.

The key to understanding how the will is a law to itself is this last move—Kant’s view that the concept of a practical law is sufficient to yield the only principle that can serve as one. By a “practical law” Kant means a principle that can ground normative judgments that everyone can regard as authoritative, to the effect that an action is fully justified (e.g., that an action is good, permitted, required, etc., in an unqualified way). Thus his claim is that from the *concept* of a principle that can ground evaluative judgments that hold unconditionally, one can derive the *principle* by which such judgments can be made in particular instances. The concept of this kind of evaluation is taken to be sufficient to yield a principle by which this evaluative activity may be carried out. Now Kant appears to think that the idea of a practical law is implicit in the nature of practical reason, and since practical laws are principles that apply unconditionally, they should regulate all uses of practical reason. Thus, if Kant’s argument is successful, it shows that the very nature of practical reason is sufficient to yield the regulative principle that is to govern its own proper exercise. Since the ability to guide one’s actions by normative standards of some kind is central to the notion of willing, practical reason and rational volition are intimately tied for Kant. Accordingly, the argument would show that the nature of rational volition is sufficient to yield the highest normative principle that is to govern individual

acts of volition. That is, the nature of rational volition is sufficient to yield the principle that authoritatively governs its own exercise. But that is to say that the rational will is a law to itself.

There are at least two points in this argument where serious questions arise. How is the idea of a practical law implicit in the nature of practical reason, or derived from an analysis of the structure of practical reasoning? Second, how does the concept of a practical law lead to a statement of the Categorical Imperative? We can make some progress here by looking at the connection between rational choice and justification implied by Kant's conception of rational agency. [See *Gl* 412] Kant defines rational agency as the capacity to guide one's actions by the application to oneself of general normative standards; simply put, it is the capacity to act from reasons.<sup>30</sup> This makes practical reason, as the cognitive faculty underlying choice or volition, an evaluative capacity. It is the capacity to construct justifications and to make judgments about the goodness of actions, and rational choice is conceived to be motivated by the justifying reasons arrived at by this faculty. Once one takes practical reason to be concerned with justification, and choice to be motivated by normative considerations, it is natural to introduce the idea of principles whose role in practical reasoning is to ground justifications that are unconditional. Such a principle would determine when an action is fully justified, or good without qualification, and could ground ought-judgments that hold unconditionally. Kant thinks that from the concept of a practical law one can extract the formal conditions that a principle must satisfy in order to serve as a practical law, and that a statement of these conditions should lead to a procedure for determining when they are satisfied by a principle or maxim. If a principle is to play the role of a practical law in practical reasoning it must be universally valid; it must be one that anyone can accept (thus one whose normative force is desire-independent). It must also be fully authoritative: its normative force must override the reasons given by one's desires; and it cannot get its authority from any higher or external principle, but must contain the ground of its own authority in itself.<sup>31</sup> (This implies that its normative force must reside in its form, rather than in its matter.) The FUL should be understood as a procedure for determining whether a principle satisfies these formal conditions, or has the form of a practical law. Roughly one determines whether a maxim has the form of law (and is thus fully justified) by asking whether it is a principle that anyone can regard as fully authoritative—more precisely, by asking whether you can regard the maxim as stating a sufficient reason for action while willing that everyone regard it as stating a sufficient reason for action, without inconsistency.

The path just traveled is something like this: A conception of practical reason as concerned with justification introduces the idea of a complete, or unconditionally valid justification and the correlative notion of a practical law. The concept of a practical law is sufficient to yield the supreme practical law, where that states the formal conditions that must be satisfied by any justifying principle

or justified action, as well as the necessity of conforming to these conditions. In this way the nature of practical reason, or rational volition, yields a law that can guide its own proper exercise. I would not claim that what I have said so far makes complete sense of Kant's argument; but here is where we must look if we are to understand how the rational will is a law to itself.

Another route to this conclusion might be as follows. Practical rationality includes the capacity to evaluate actions by constructing justifications with normative force across agents. Though this process allows for creativity and invention, agents will normally have the experience of weighing normative considerations that are fixed independently of their choices. This conception of practical reason and rational choice suggests the highest-order principle of constructing and acting from substantive justifications which all other agents can regard as sufficient through the use of their evaluative capacities. This would be the principle that any individual's exercise of her practical reason must be such that all other agents, through the use of their practical reason, can arrive at and endorse the same evaluative conclusions. Moreover, one ascertains whether individual uses of practical reason meet this standard by asking whether all other rational agents can use their practical reason in the same way to arrive at and endorse the same conclusions. Since in this way individual uses of practical reason are assessed by testing them against the possibility of their universal exercise, the same process of reasoning that went into the initial normative conclusion is now transformed and redeployed to assess itself.<sup>32</sup>

I will now sketch briefly how the rational will is a law to itself in the Formula of Humanity. The introduction of this formula is preceded by a catalogue of rationally chosen ends which is organized around their different forms of value. Kant appears to be focusing on a different aspect of his conception of rational agency, now viewing it as the capacity to set ends for oneself taken to be of value or worthy of choice.<sup>33</sup> As noted earlier, agents may experience the evaluation involved in the adoption of ends as a weighing of reasons and values fixed independently of their preferences and choices. However, the capacity to choose in this way is also a source of value; Kant believes that it possesses an absolute value, which must be respected in all choices. In effect, the absolute value of rational nature constrains its own proper exercise by imposing limits on what ends can be of value, and what ways of pursuing them permissible. The way in which it does so can be expressed in a principle similar to that just given: individual uses of rational nature to place value on and adopt ends for oneself are to be limited by the ability of others to place value on and endorse one's pursuit of those ends through the use of their evaluative capacities. That is to say that one must limit one's exercise of one's rational powers by the condition that others can endorse and come to share one's conclusions through the exercise of their rational powers, and that one's choices can be justified to others in this way. Here is a fairly straightforward sense in which rational nature is a law to itself; rational nature yields a principle that can guide its own exercise.

Two final points. The first component of the Legislation Thesis applies to the substantive moral conclusions arrived at by the Categorical Imperative. In the last section we saw that it is established by further reflection on the concept of an unconditional principle, showing that the FUL can be restated as the Formula of Autonomy. In contrast, the argument that the will is a law to itself does not turn on the introduction of a new formula of the Categorical Imperative, but comes from reflecting on the shape of the arguments by which the FUL and the FH were earlier derived.

Second, if the gaps in the arguments can be filled in, it will be fair to say that the Categorical Imperative is a law which “has sprung from our will as intelligence...”. [G1 461] Is it then a law that we give to ourselves? Since the elements of choice and discretion are absent, it is not a law that each of us gives to ourselves as individuals. Kant’s typical phrasing is quite appropriate: it is the law given by *the* rational will—the law that springs from the nature of rational volition, or practical reason. (You and I have no say in this, but simply find that we have wills with this nature.) This is not a surprising result, for how else would one arrive at a principle that applies with the necessity Kant wants? Even so, this account provides a model that allows for objective necessity without presupposing an external source of reasons or value. It shows how there can be general principles which apply with necessity and create objective constraints on action which are not externally imposed. Moreover, as I will argue in the next section, a general formal principle of this sort is needed to make sense of the notion of “legislating” at the level of substantive constraints, and the requirements set out by the FUL secure, rather than limit, the sovereign authority of the individual rational will.

### V. Legislating the Moral Law

So far I have argued that the Legislation Thesis must be broken down into two separate ideas, one of which captures our relation to substantive moral requirements established by the Categorical Imperative, and the other our relation to the Categorical Imperative itself. First, we are bound to substantive moral requirements in such a way that we must be regarded as their legislators. Since agents are bound to unconditional requirements by the reasoning that explains and confers validity on them, these agents model the source of their authority; in acting from them, they display a legislative will. Second, the way in which the Categorical Imperative is derived from the nature of practical reason shows that the will is a law to itself, and that the Categorical Imperative is that law. That is to say that the nature of rational volition is sufficient to yield a principle that can authoritatively govern its own exercise.

It is time to see how these notions combine to yield an account of moral deliberation which preserves the necessity of moral requirements, while still allowing us to view them as autonomously legislated. We noted initially that for the notion of legislating to apply, law must be created by a legislator’s positive act. First, the (purported) legislator must have discretion over the content of the law, so

that what the law is remains open until the legislative process has been carried out. Second, the enactment of a law must create reasons for acting in certain ways which the subjects did not have before. A sovereign legislator is not bound to any external standard or authority which fixes the content of law, or gives agents reason to conform to it, prior to the legislative process. I will maintain that one can make sense of the idea that rational agents legislate at the level of substantive moral principles and requirements, by showing that there is an interesting analogy between moral deliberation and political legislation. The fit between the two is not perfect at every point, but the parallels are rich enough to warrant Kant's talk of legislating the moral law. The proposal, in brief, is that we regard the Formula of Universal Law as the "constitution" of the rational will. It is the fundamental law that sets out the procedure that agents (citizen-legislators) must follow in order to enact substantive principles as law, just as a political constitution sets out the procedure that a sovereign body must follow in order to create law. Substantive moral requirements and judgments are the results of the proper application of this procedure, and receive their validity and authority from this fact. When agents guide their deliberations and subsequent actions by the Categorical Imperative, they enact their maxims as law (enact law through their wills).

The plausibility of this analogy rests on certain features of the Categorical Imperative. First, the Categorical Imperative leads to a formal procedure for evaluating proposed reasons for action in the form of maxims. This means that it is up to individual agents to initiate deliberation by framing substantive maxims which they then bring to the procedure for assessment. Second, the aim of the procedure is to determine whether an agent's reasons for action provide a justification that anyone can view as sufficient. Since a principle which provides such justifications is a practical law, the Categorical Imperative asks whether the maxim stating the agent's proposed reasons is of the form to serve as a practical law (has the form of law). Since a maxim is always the subjective principle of some agent, it is not yet a practical law. But then, moral assessment, so understood, really is a question of determining whether a proposed maxim can be made into a practical law. Kant thinks that one settles the question by asking whether one can view one's maxim as stating a sufficient reason for action, while at the same time willing that everyone view it as a sufficient reason for action.<sup>34</sup> Finally, it is fair to say that by showing that your maxim *can* be willed as a universal law and adopting it on that basis, you have made universal law. You have used the Categorical Imperative to show that your subjective principle meets the conditions of universal validity, and thereby make it available for use as a practical law. In that way, the Categorical Imperative is a deliberative procedure that confers the status of law on those maxims (or their generalized versions) which it passes.

Now the FUL plays the same role in establishing and structuring the process of moral deliberation that a constitution plays in a legislative process. A constitution establishes a political process by which law may be enacted, and this process provides the final criterion of legal validity. Positive law is created when (and

only when) the legislative process is properly carried out, and what makes something a law is that it has been duly enacted in accordance with this procedure. In addition, a constitution has an enabling function in relation to individuals.<sup>35</sup> In establishing a political process, it creates a sovereign body with which it invests the authority to make law (to confer the status of law on a proposal by taking it through the legislative process). Like a constitution, the FUL establishes a legislative process by which one gives a principle the status of law, and which serves as the final criterion of moral validity. It lays out what one must do to make one's subjective principles of action into valid justifying principles. In showing that a maxim of one's own can serve as a practical law, one frames a principle to which anyone may appeal in resolving matters of justification. Thus, one who acts on the basis of deliberation guided by the Categorical Imperative does give universal law. Finally, since the FUL is a procedure that creates the possibility of giving law through one's will, it confers legislative authority on the individual agent. When one acts from maxims with legislative form, one has framed a principle that anyone must regard as valid. Your taking the principle through the Categorical Imperative procedure gives it the status of law, and creates reasons for other agents to accept its normative implications. Moreover the FUL gives authority to enact law to any rational agent with the capacity to engage in this process of deliberation. (Every rational agent has a seat in Kant's assembly, with the right to bring proposals to the floor, simply in virtue of possessing the relevant rational capacities.)

Since the Categorical Imperative establishes substantive normative conclusions by showing that they meet the conditions of universal validity, it is clear how this picture of moral deliberation secures the objective necessity of moral requirements. But how does it leave room for the essential features of legislation?

The fact that the FUL leads to a formal procedure for evaluating substantive maxims allows for the element of legislative discretion in determining the content of morality. Agents initiate deliberation by articulating maxims, which can be responses to many different kinds of deliberative problems. The question could be one of deciding whether a desirable action is permissible or finding a rationale under which it would be permissible, arriving at a course of action that strikes a reasonable balance between competing values, finding the best response to a problem of moral choice, etc. Individuals must originate proposals of their own, and a good deal of creativity may go into their maxims. Since problems of choice and judgment need not have unique solutions, individuals have discretion over which maxims are taken through the evaluative procedure. The general point is that, while the FUL constrains the results of moral deliberation, its content will depend largely on the maxims which individuals bring to it. In addition, since one cannot say what can result from this procedure of deliberation in advance of carrying it out, the question of content is settled by the application of this procedure.

The second general element of legislation is that a legislator is thought to give other agents binding reasons for action through his will. The fact that he has properly enacted a law is a reason for agents in his domain to accept its normative force. If the principle establishes requirements or prohibitions, its enactment is a reason to fulfill any duties that it creates. If it establishes a permission, its enactment is a reason to regard the actions as ones to which agents have a right. In general, a legislative enactment is taken to settle the shape of the normative landscape for the issue in question. This feature is preserved by the account of moral deliberation, because carrying out the Categorical Imperative procedure resolves the question of what choices are justified in a given situation. When I reason and act from the Categorical Imperative, I have followed the deliberative procedure which makes a normative principle or conclusion valid, and my reasoning binds others to recognize its validity. Since my volitional state is given by the process of reasoning that confers validity on its conclusions, I give others reasons through my willing. Even if my deliberative conclusion is simply that a maxim is permissibly adopted, it makes available justifying reasons for action which cannot be specified independently of this process.

Further questions may remain as to why one is not following an external authority when one's deliberation is guided by the Categorical Imperative. Since the FUL is a principle constraining rational volition which we do not impose on ourselves as individuals, it is worth considering why it does not limit the autonomy, or sovereign authority, of individual agents. Since the FUL is derived from the nature of rational volition, it is not an externally imposed principle. It is the will's own principle, and as an ideal of universal validity or universal agreement, the FUL gives every rational agent rights of participation in the deliberative process. The fact that a deliberative conclusion may not be acceptable to some is a consideration that may have to be weighed by others. (While it may indicate a failure of rationality, it may also force one to conclude that the ideal of universal validity has not yet been achieved.) But the important point to stress is that the FUL invests individual rational agents with a kind of legislative authority. It is a deliberative procedure which enables any rational agent to give law, and to articulate practical principles that all must acknowledge. As such, it creates, rather than limits, the sovereign authority of the moral agent. Perhaps the point can be put as follows: a normative procedure which a legislative agent is bound to follow in order to give law also creates the possibility of exercising authority, because it binds other agents to accept the results of this procedure when properly carried out. Here it is instructive to bear the constitutional analogy in mind: the fundamental law establishes the procedure that must be followed in order to enact law, and sets limits to legislative authority. But it also creates legislative authority and confers it on a sovereign body. Without this law, there is no such thing as authority and no possibility of giving law.

A final question arises from the fact that individuals share a world with other rational agents who can also enact their maxims as laws and whose moral

conclusions one may be bound to accept. Part of the problem is that I must often respect the judgments and choices of others, accept their justifications, and defer to their resolutions of moral problems, and so on. Aren't these situations in which I am bound to a principle which I cannot view myself as legislating? But the arguments of section III provide a way to deal with this question. In arguing that "the will is subject to the law in such a way that it must be regarded as legislating for itself...", Kant's intent is to show that I must be regarded as legislating any moral requirements that apply to my conduct. However, this argument can be generalized to show that the distinction between "subject" and "legislator" collapses in the case of the normative conclusions of others which are unconditionally valid. In such cases, I am bound to accept their normative principles, and their implications for conduct, by the reasoning that led them to adopt them, and which makes them valid. In seeing why I ought to acknowledge their conclusions as authoritative, I go through the same deliberative procedure, and recognize them as decisions I myself could have made.

To conclude, the substance of Kant's Legislation Thesis is found in the following complex of claims. (a) The fundamental law regulating moral deliberation is a principle derived from the nature of rational volition; it is thus the law which the rational will gives to itself. (b) This law leads to an evaluative procedure which assesses an individual use of practical reason by asking whether it is a use of practical reason that all can engage in and regard as valid, rather than by testing it against a given rule. Since the standard for evaluating individual uses of practical reason is the possibility of their universal exercise, this is a procedure in which practical reason need not refer to anything beyond the conditions of its continued exercise. (c) The fundamental law invests all rational agents with authority to enact substantive maxims of action as universal law (to enact law through their wills), and thereby enables them to adopt and act from principles that anyone must recognize as sufficient. (d) Substantive moral principles and normative conclusions are those which individual agents arrive at by the application of the fundamental law, and they apply to individuals in such a way that they may be regarded as their legislators: one is bound by the reasoning that explains why they are valid, one carries out the same deliberative process and exercises the same capacities in acting from a principle as would be exercised in enacting it as law, one's volitional state models the reasoning process that confers validity on the principle, and so on.

## VI. Self-Legislation and Dignity

In this final section, I touch briefly on some questions about the larger role of the Legislation Thesis in Kant's theory. It is commonly assumed that the Legislation Thesis establishes the authority of moral requirements. The thought is that we are bound to moral requirements because they are principles that we legislate. But this cannot be an adequate representation of Kant's view. The Legislation Thesis may be used to argue for the Sovereignty Thesis, that we are bound *only* to requirements that we legislate; and it follows from the Sovereignty Thesis that a

principle cannot bind a rational agent unless it is one which the agent legislates, or of which one can regard oneself as legislator. It would then be a condition on the validity of any moral principle that it be legislated by those to whom it applies. But it does not follow that we are bound to moral requirements simply *because* we legislate them. In this section I will argue that there is nothing extraordinary in this last assertion.

First, given the overall structure of Kant's argument, it cannot be his intention to argue directly from the Legislation Thesis to the authority of moral requirements. The elements of the Legislation Thesis are introduced in *Groundwork*, II, which is an extended analysis of the ordinary concept of duty. The general aim of this section is to state what morality contains if there is such a thing, and the authority of moral requirements is explicitly left unresolved, and deferred until *Groundwork*, III. The arguments for the authority of the moral law certainly rely on earlier results, such as the equivalence of the Formulas of Universal Law and Autonomy. But nothing in *Groundwork*, II could lead directly to the authority of the moral law.<sup>36</sup> In addition, since Kant's argument for the first element of the Legislation Thesis presupposes that moral requirements are authoritative, it cannot be used to argue for their authority.

Second, it is an open question how one can be bound to a principle by the simple fact that one has willed it. An obligation created by the fact that one has enacted a law is only as deeply grounded as the relevant act of will. If one can obligate oneself by one's own legislation, why couldn't one release oneself if one chooses? (Legislators can repeal, as well as enact laws.) If a mere act of will can create an obligation, it would seem that one could bind oneself to almost any principle whatsoever, regardless of content.<sup>37</sup> One might try to persuade an agent to acknowledge the authority of a law by noting the fact he or she has enacted it, but that might best be viewed as an invitation to reflect on what made it worth enacting. The reasoning that led one to enact a law should also give one reason to fulfill any duties which it creates.<sup>38</sup>

Instead of saying that you are bound to a law because you have legislated it, it is more accurate to say that you are bound to the law by the fact that it is a properly enacted law, and then add that your legislative role is part of what makes it properly enacted. Simply citing your legislative role is at best a partial explanation of its validity and authority. One must also say what makes your act of will an act of legislation, and cite the considerations that led you to exercise your powers in that way.

But then what does follow from the Legislation Thesis? Its principle role is to establish the "ground of the dignity of human nature and of every rational nature". [G1 436] What gives the morally good disposition a claim to dignity is

the share which such a disposition affords the rational being of legislating universal laws, so that he is fit to be a member in a possible kingdom of ends, for which his own nature has determined him as an end in itself and therefore as a legislator in the kingdom of ends. [G1 435]

[T]he dignity of humanity consists just in its capacity to legislate universal law... .  
[*Gl* 440]

The connection between the Legislation Thesis and the dignity of humanity must be this. If we assume the absolute priority of moral considerations, the Legislation Thesis implies that rational agents legislate the highest regulative principles that apply to their conduct. Agents with this capacity are a kind of sovereign authority who ought to be accorded dignity. The Legislation Thesis thus explains why rational agents are worthy of moral consideration, as well as indicating what moral consideration requires. In virtue of their role in legislating moral requirements, they are entitled to the respect normally given to a sovereign authority, and should be treated in ways that acknowledge their sovereign status. They are to be treated only in ways that they can accept while at the same time regarding themselves as autonomous—i.e., as free from subjection to any external authority, and as having the power to give law through their wills. A second implication of the Legislation Thesis is that moral requirements preserve human freedom and autonomy, along the lines of Rousseau's famous remark. In acting from duty, we do not submit to any external standard or authority. We act freely, because we act from principles that we legislate.

The authority of moral requirements raises large questions which I cannot resolve here. But having claimed that the Legislation Thesis does not explain why rational agents are bound to moral requirements, I should indicate in closing what does. What I have to say should hold no surprises. If one grants that we legislate moral requirements (as interpreted above), we are bound to them by the reasoning that leads us to legislate them—that is to say, by the reasoning that explains and confers their validity.

This thought must be spelled out in different ways, depending on the level of principle involved. A crucial step in Kant's arguments for the authority of the FUL is that it is the principle of a free will.<sup>39</sup> One way to develop this idea is to argue that an autonomous will would adopt the FUL as its fundamental principle. But one should then hold that it is bound to this principle by whatever would lead it to adopt it (rather than by the bare fact that it would or does choose it). And there are good reasons for it to choose this principle over alternatives, since only when it guides its volition by the FUL does it preserve its sovereign status. One can then omit the reference to its act of choice and argue that the FUL is the principle of an autonomous will because it is the principle that establishes and maintains its sovereign status. It is the principle that expresses the nature of sovereignty *per se*. The general authority of moral conduct would then be grounded in our interest in preserving the sovereign status that we have in virtue of our rationality.

We are bound to substantive moral requirements by the process of reasoning that shows that they are valid moral conclusions. This deliberative procedure has the guiding aim of determining whether the reasons offered for a proposed action

are sufficient to justify it to anyone, and in carrying it out one uncovers substantive reasons which determine when an action is choiceworthy. These considerations have a role in explaining the moral status of the action, and thus in explaining why one should recognize the authority of the normative conclusion. One might think that this account binds moral agents to externally given reasons in a way that compromises their autonomy, but that would ignore several things. The guiding aim of moral deliberation is what renders certain features of actions morally salient and relevant as reasons for action, and we have seen that this aim is given by the will's own nature. And as I have tried to show in this paper, the process of reasoning that makes normative conclusions valid gives the rational agent a legislative capacity. Another route to the authority of substantive moral conclusions might also help allay this concern. I have suggested that the FUL is the fundamental principle of an autonomous will because it is the principle through which it establishes and maintains its sovereign status. But the FUL commits one to restricting one's substantive maxims to those that have legislative form (can serve as practical laws). Then it is only by acting from substantive maxims which have the form of law that a rational agent maintains its sovereign status, and enacts law through its will.<sup>40</sup>

### Notes

<sup>1</sup>References to Kant's *Groundwork of the Metaphysic of Morals* are to the pagination in the Prussian Academy edition of Kant's *Gesammelte Schriften*, and are given in the body of the paper where possible. Citations to other works by Kant are to the Academy paging when included in standard translations, otherwise to the Academy paging followed by the page in translation. The abbreviations used are given in the References, below.

By Kant's count this is the third formula of the categorical imperative, though several paragraphs occur before he states it in imperative form. See, e.g., *Gl* 432: "that everything be done from the maxim of such a will as could at the same time have as its object only itself regarded as legislating universal law". It might be stated more clearly: act only from maxims which are such that, by adopting the maxim, one can at the same time enact it as a universally valid principle from which anyone may act.

<sup>2</sup>Cf. also *KpV* 31: "Pure reason is practical of itself alone, and it gives (to man) a universal law, which we call the *moral law*." Through the fact of reason, reason "proclaims itself as originating universal law." [*KpV* 31]

<sup>3</sup>Though I sometimes refer to the main idea behind the Legislation Thesis as "self-legislation", I have not called it the "Self-Legislation Thesis". Though it is suggested by some of Kant's phrasing, I believe it distorts his moral view to say that one legislates "for oneself". In essence the Sovereignty Thesis is that a rational agent is bound only to his or her own legislation—that is, to principles that one legislates in virtue of being a rational agent, however that is to be interpreted. However, the Legislation Thesis holds that one legislates, not "for oneself", but for agents generally: one gives laws for a community of rational agents (a Realm of Ends). One is bound to these laws because they are properly enacted laws that hold for a community of which one is a member.

<sup>4</sup>See, for example Robert Paul Wolff (1973), and more recently, Rüdiger Bittner (1989). Wolff holds that Kant was right to think that human beings are bound to moral principles only insofar as they legislate them, but wrong to think that such principles are necessarily willed by all rational agents. Thus he thinks that there are no universally valid moral principles, and that Kant's position on autonomy should have led him to conclude that valid moral requirements can only arise through freely chosen commitments. (pp. 180–181, 219ff.) Bittner's view is more subtle. He argues that Kant accepts a "principle of autonomy" which imposes two conditions that must be conjointly satisfied by a valid moral principle: that the principle must *actually* be willed by the agent, and that it be *capable* of being universally legislated, or receiving assent from all rational beings. Principles that satisfy

these two conditions would be valid moral principles. But it follows that one is not bound to any principle with which one is unwilling to comply: that one is unwilling to comply shows that the first component has not been satisfied. In this sense, Kant's principle of autonomy implies that there are no "moral demands"; that is, moral demands have no authority for those unwilling to comply with them. (pp. 104–110)

<sup>5</sup>Jean-Jacques Rousseau, *SC* Bk. II, ch. vi.

<sup>6</sup>*SC* Bk. I, ch. vi–vii.

<sup>7</sup>*SC* Bk. II, chs. iii–iv, vi.

<sup>8</sup>In other words, the conditions of generality that a law must satisfy contain certain requirements of procedural justice. For a law to express the general will it is not enough that it be directed at the common good, take the interests of all citizens into account, benefit and restrict all citizens equally, be limited to matters of common interest, etc. Laws enacted by a ruling elite could satisfy these conditions, but could not claim the backing of the general will. In addition, they must be adopted by the right kind of political process (one to which all have equal access, equal input, in which there are no factions, etc.) and this process must actually take place. One might see the general will as the body of legislation that actually results from the operation of a properly structured democratic political process.

<sup>9</sup>*SC* Bk. II, ch. vi, §7; Bk. IV, ch. ii, §§7–8.

<sup>10</sup>*SC* Bk. II, ch. iv, §8.

<sup>11</sup>*SC* Bk. I, ch. ix.

<sup>12</sup>*SC* Bk. I, ch. ix.

<sup>13</sup>It is true that Rousseau's approach to the question of legitimacy is shaped by his recognition that private and public interests may conflict. He holds that a just and stable social order requires both the submission of all citizens to the general will [*SC* I.vi] and the transformation of each individual from a creature moved by private interests into a public-spirited citizen who thinks of him or herself as part of a social whole. [*SC* I.viii, II.iv. and II.vi.] Since this transformation is unlikely to be complete, conflicts between private interests and the general will remain, [*SC* I.vii] and citizens may fail to see their true interests [*SC* II.iii,1; II.vi,10]. Thus Rousseau is concerned to show that the general will is, in some sense, one's true will, and that in submitting to it, citizens obey "solely their own will" [*SC* II.iv,8] and act freely [*SC* I.vii,8; I.viii,4; IV.ii,8]. But the implication is that one of the principal conditions of legitimacy is thereby met.

<sup>14</sup>Thus, I do not mean to reject these interpretations in this section. My doubts about (b) are explained in the section VI, and I think that one can develop a more literal rendition of the Legislation Thesis than that suggested by (c). But the view developed in subsequent sections could be regarded as a way of filling out (a).

<sup>15</sup>See Henry E. Allison (1990, pp. 39–41; Cf also ch. 5). The Incorporation Thesis is stated by Kant at *Rel* 23–24/19.

<sup>16</sup>Bittner develops such an interpretation of Kant's theory of action in his analysis of *Gl* 412: (1989, pp. 96–99). See also Allison (1990, pp. 88, 95–96). Both note that Kant at one point refers to maxims as "self-imposed rules" [*Gl* 438]. Cf. also *MdS* 225: "A maxim... is the principle which the subject himself makes his rule (how he chooses to act)."

<sup>17</sup>At issue here is the distinction between the "seeking out" [*Aufsuchung*] of the moral law (accomplished in the first two sections of the *Groundwork*) and its "establishment" [*Feststellung*] (attempted in the third section). [*Gl* 392] Though the latter is often described as establishing the "validity" of the moral law, I use "authority" for the sake of consistency with terms used elsewhere.

<sup>18</sup>Here I draw on Allison's illuminating distinction between the executive and legislative functions of the will. See Allison, (1990, pp. 129–136).

<sup>19</sup>Bittner endorses such a move, arguing that Kant's conception of action implies that a rational agent always acts from self-given laws, and that this in turn implies that only self-given laws are valid. See Bittner (1989, pp. 96–103, especially p. 96).

<sup>20</sup>Some clarification is in order here, since I want to maintain a deep connection between justifying reasons and motivating reasons. I grant that nothing could count as a justifying reason that would not gain acceptance by, and motivate, a fully rational agent. Kant also held the view that nothing could count as a justifying reason, or valid requirement, which is inconsistent with the autonomy of the will, understood as the will's having sovereignty over itself. That is, valid reasons must be such that a rational agent can acknowledge their normative force and continue to regard its

will as autonomous. But the gap between ideal and actual rational agents warrants a distinction between justifying and motivating reasons.

<sup>21</sup>Versions of this view are seen in Wolff (1973), and in Bittner (1989).

<sup>22</sup>Many of the ideas in this section were suggested to me by Thomas E. Hill, Jr. in conversation. For some of his discussions of self-legislation, see, *inter alia*, “Kant’s Conception of Autonomy” and “Kant’s Conception of Practical Reason” in Hill (1992, pp. 76–91 and 139–146).

<sup>23</sup>For example, consider a natural law or divine command theory that regards moral requirements as God’s will, and grounds the obligation to obey on the fact that he is our creator, to whom we are indebted for our existence. Such a theorist might hold that when we reflect on God’s nature and our dependence on him, we see sufficient reason to conform to his will; indeed that it would be absurd to seek any further reason for why we ought to. He might also hold that we identify with our capacity to submit to the governance of an acknowledged superior. Similarly, a rational intuitionist might hold that one’s grasp of the necessary truths underlying moral obligation have a similar motivational effect, leading one to accept these obligations and impose them on oneself, and that one identifies with one’s capacity to govern one’s conduct in this way. Neither theorist would accept the idea that moral requirements are self-legislated.

<sup>24</sup>This objection has been raised by several people. See, e.g., Gerald Dworkin (1988, pp. 39–40), and Bittner. (1989, pp. 94–96). I develop the argument given in this section in greater detail in Reath (1993).

<sup>25</sup>The idea of being “subject to an unconditionally valid principle”, or what amounts to the same thing, “being bound by a practical law”, is most naturally applied to moral requirements and prohibitions. However I understand “unconditionally valid principles” and “practical laws” more broadly to include principles of permissibility, and assume that what I say about requirements and prohibitions can be extended to permissions. By an unconditionally valid principle I mean a normative principle stating a requirement, prohibition or permission, where that principle a) is a valid conclusion of moral reasoning, or is validly derivable from moral principles; and b) its normative force is not conditional on any desires or contingent interests, and overrides an agent’s desires when they conflict with the principle. Its being unconditional means that its normative conclusion and implications (e.g., that certain actions in specified situations are required, permitted, good or fully justified, etc.) ought to be accepted by anyone. Such a principle should guide the thinking of reasoners in general. If it holds that an action is morally permissible for an agent, then anyone ought to view that action as fully justified. Of course it also states desire-independent reasons for action which apply to agents in the situations covered by the principle. Requirements and prohibitions bind agents straightforwardly, by giving reasons for performing or refraining from an action that override reasons given by contrary desires. By contrast, permissions hold that an agent is fully justified in performing an action, and bind other agents not to complain or interfere. Unconditionally valid principles bind agents and reasoners in essentially the same way, though of course their action guiding implications can differ, depending on an agent’s circumstances.

It may seem odd to talk about “legislating” principles of permissibility. But clearly legal systems do create permissions (liberty rights), and permissibility is a status that presupposes and is conferred on actions by a system of norms.

<sup>26</sup>I want to hold both that the Categorical Imperative procedure (CI procedure) is the final criterion of right which determines the moral status of any maxim, and that the application of the CI procedure reveals substantive wrong-making characteristics of impermissible maxims. However, the latter may appear to suggest that there are substantive wrong-making characteristics that exist independently of the Categorical Imperative, and that these features of a maxim, rather than the fact that it fails the universalization procedure, are in the end what make it impermissible. Though I cannot give a full treatment of this issue here, some comment is in order. This problem will not arise if the right connection exists between the CI procedure and such wrong-making characteristics (for instance, that a maxim manipulates and attempts to control the decision-making processes of others). First, one would want the existence of these wrong-making characteristics in a maxim to be revealed by the application of the CI procedure. Second, they should be established as *wrong-making* features by certain aspects of the CI procedure, or by the guiding deliberative aim that underlies and leads to the CI procedure. In other words, the account of why they are wrong-making features should not be independent of this deliberative procedure. For instance, the guiding aim of acting from principles that justify one’s actions to any rational agent should render certain features of maxims morally

salient and relevant to their assessment. If the guiding deliberative aim establishes what count as reasons for or against alternatives, then the proper application of the procedure shows that there is sufficient reason for choosing a given alternative—that is, it determines whether it is rationally willed. The fact that it is, or is not, rationally willed by this procedure determines the moral status of the action, but at the same time there is something to say about the considerations that guide this willing. One might decide that one can say either that a maxim of dishonesty is impermissible because it cannot be willed as universal law, or equivalently, that it is impermissible because it aims to manipulate others through their rational capacities and therefore fails to respect their sovereignty over their own choices. But there would be nothing wrong with showing that the Formula of Universal Law [FUL] and the Formula of Humanity [FH] really are getting at the same thing.

For further discussion of the interpretation of the Categorical Imperative procedure see Onora O'Neill (1989, chs. 5–7); Christine M. Korsgaard (1985); and, especially, Barbara Herman, “Moral Deliberation and the Derivation of Duties” and “Leaving Deontology Behind”, in Herman (1993).

<sup>27</sup>Herein lies its autonomy. Kant writes: “Autonomy of the will is the property that the will has of being a law to itself (independently of any property of the objects of volition).” [*Gl* 440. Cf. *Gl* 447].

<sup>28</sup>Cf. also *Gl* 447: “The proposition that the will is in every action a law to itself expresses, however, nothing but the principle of acting according to no other maxim than that which can at the same time have itself as a universal law for its object.” Kant writes:

If the will seeks the law that is to determine it anywhere but in the fitness of its maxims for its own legislation of universal laws, and if it thus goes outside of itself and seeks this law in the character of any of its objects, then heteronomy always results. The will in that case does not give itself the law, but the object does so because of its relation to the will. [*Gl* 441]

In other words, when the will takes as its fundamental principle something other than the FUL (the Categorical Imperative), “it goes outside of itself”—it accepts a law other than the one that emerges from its own nature. In that case, it “does not give itself the law”, because it gives authority to a law taken from an external source.

<sup>29</sup>At *Gl* 412, Kant states that moral principles “should be derived from the universal concept of a rational being in general”, and then gives a conception of practical reason. This leads subsequently to the FUL at *Gl* 421. Beginning at *Gl* 426 we appear to find the same process in somewhat different form. Kant says that if a principle is to serve as a law for all rational beings, it “must already be connected...with the concept of the will of a rational being in general”, and proceeds to state a different aspect of his conception of practical reason, from which the FH appears. The appearance of the Categorical Imperative is somewhat miraculous in each case, and I do not go into these details here.

<sup>30</sup>The normative standards involved include both hypothetical and categorical imperatives. Further discussion is given in Reath (1989, pp. 389, 394–401).

<sup>31</sup>For discussion of the idea that a law cannot get its justification from any external principle, see Christine M. Korsgaard (1989, pp. 326–331). I develop these ideas further in Reath (1993).

<sup>32</sup>This form of assessment, in which a use of reason is tested against the possibility of its own universalization, should be contrasted with one in which one asks whether an agent’s normative conclusion conforms with an independently given rule. In a rule based model of evaluation, a further use of reason is required to test the result of the initial process of reasoning against a given rule, while in the model suggested by Kant’s FUL the reasoning that goes into a maxim is used to assess itself.

<sup>33</sup>This is a now common understanding of the “power of humanity”, or “rational nature” referred to in the FH. See Hill, Jr. (1992, Ch. 2); and Korsgaard (1986).

<sup>34</sup>This interpretation of the CI procedure is a variant of the Scanlon-Pogge interpretation. See T.M. Scanlon (1983) and Thomas Pogge (1989).

<sup>35</sup>Cf. H.L.A. Hart’s discussion of “power-conferring rules” as rules by which duties are created or altered in Hart (1961, pp. 26–41, 77–79).

<sup>36</sup>Since the results of *Groundwork*, II, are all analytic, the authority of the moral law would be analytic too if it followed directly from anything established there. But Kant thinks that the authority of the moral law is a synthetic a priori question. Cf. *Gl* 445–448.

<sup>37</sup>For such reasons, acts of will (acts of consent, rational choice, agreement, etc.) are taken to create obligations only when they occur in the proper context. Both the background conditions of a choice and the reasoning guiding it can be as important as choice itself in explaining what creates an

obligation. Contractarian theories try to derive obligations by asking what rational agents would choose under certain idealized conditions. The choice situation is set up so that the agents are free from certain restrictions (i.e., coercion of various kinds), but also so that the agents are properly responsive to various normative considerations. The contract seems designed to insure that the agents give these considerations due weight, and is a device for seeing what principles they lead to. But then the reasons for setting up the choice situation in this way, as well as the reasons that guide the choice of principles, figure in the justification of the principles. I find this point suggested by Thomas Nagel in (1975, p. 5).

<sup>38</sup>Imagine someone who on a whim commits himself to an arduous task. Is he in any way bound to carry it out? Years later you encounter him struggling with his “self-imposed” burden. Do you admire his perseverance and urge him to continue? In urging someone to persevere in a self-imposed project, one often appeals to the reasons that led the other to undertake it in the first place, but no such rationale is available in this case.

<sup>39</sup>These are given in *Groundwork*, III, and in the second *Critique*. In the first Kant argues that “a free will and a will subject to moral laws are one and the same” [G1 447]; in the latter, that the FUL is “the law which alone is fit to necessarily determine” a free will, and that “freedom and unconditional practical law reciprocally imply each other.” [KpV 29] I am inclined to say that we are bound to the Categorical Imperative by the reasons contained in these arguments, but that might have an unwelcome consequence. Since very few people understand them, it might follow that very few people have moral obligations.

<sup>40</sup>This paper was first presented to a Workshop on Kantian Ethics held in Chapel Hill, North Carolina, in November of 1991. I am indebted to several of the participants for their responses, including Stephen Engstrom, Thomas E. Hill, Jr., Christine Korsgaard, Gerald Postema, Geoff Sayre-McCord, Nancy Sherman and Michael Zimmerman. I also would like to thank Thomas Pogge for written comments on the paper. Finally, I am especially grateful to Tom Hill whose comments on an earlier paper of mine helped shape the thinking that went into this one, and for continuing discussion of this paper and these issues. This paper was written with support from an NEH Grant to spend a year at the National Humanities Center.

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