

Kant's Formulas of Universal Law

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Kant's idea of the categorical imperative as stating a guiding principle in ethical deliberation that relies fundamentally upon some kind of pure reference to universal law has met with considerable resistance. The basic forms of this resistance can be said to be of two sorts. On the one hand, there is the accusation that the categorical imperative states something that is merely formal and that this formality ensures that it is "empty". We could term this the *content problem*, which suggests that the reliance of the categorical imperative on the statement of the form of universal law appears to leave open a question about how we move from the statement of the form of law, to the *content* of specific duties. Alongside this *content problem* there is a separate, but also important, problem concerning how we could be *motivated* to act according to the categorical imperative, so, we could term this second problem, one concerning the *authority* of the categorical imperative. If the two problems are taken together, then it is apparent that what they require is both a sense of how the categorical imperative could guide us in deliberation such that we could have a more secure sense of what is right than otherwise on the one hand, and, on the other hand, an understanding of the basis for the imperative having for us a real hold that will not be one we can easily ignore. The full resolution of the *authority* problem has to introduce quite a number of elements of Kant's view so I will only here attempt a partial response to it but the response ventured will be grounded on connecting this problem to a demonstration that there are matters that are specifically salient in moral

deliberation that the categorical imperative does help us to have a view of.¹

Two Conceptions of Universal Law

The argument concerning the *content* of the universal law is the one that is primary to understand the *meaning* of what it states and the dispute concerning it can be said to be between those who, on the one hand, view it as entirely “formal” which is the reason why they take it to be “empty” and, on the other hand, those who, instead, view it as containing some kind of “substantive” requirement sufficient for content to be generated. Whilst the general reaction to Kant’s account of universal law shows that the critics of his moral theory take the former view, it is a matter of some surprise to find that many sympathetic to Kant take a similar view. There are three basic ways of stating such a “formal” view, firstly in terms of which the content of the formula of universal law will be simply asserted to be so formal, and, secondly, in terms of which the formula of universal law, whilst admitted to have something substantive about it, will be argued to be falsely derived from a more basic formal principle which is all that Kant can really establish. The third form of objection, by contrast, focuses not so much on the formula of universal law itself, but rather on the variant of it that Kant uses to discuss duties, namely, the formula of the law of nature. This third objection would again have two forms, firstly to the effect that even this formula is generally formal and, secondly, to the effect that the law of nature is insufficient to ground duties. By contrast, the “substantive” reading of the formulas of universal law will require instead that values of pure practical reason are directly built in to the process by which universal law can be understood. In order to test the argument between these conceptions of universal law I will

¹ Essentially the problem I have here described as the *authority* problem is a conflation of two questions, one concerning the nature of Kant’s moral psychology, the other, his deduction of the categorical imperative, though

address firstly the three forms of objection that are stated to the formulas of universal law by those who hold to this formal view prior to turning to providing the outline of an alternative “substantive” conception.

The “Mere Formality” of FUL

The simplest form of the charge against Kant’s account of universalizability focuses specifically on the Formula of Universal Law and its alleged mere or “empty” formalism. The classic source of this argument is Hegel who wrote:

The proposition ‘Consider whether your maxim can be asserted as a universal principle’ would be all very well if we already had determinate principles concerning how to act. In other words, if we demand of a principle that it should also be able to serve as the determinant of a universal legislation, this presupposes that it already has a content; and if this content were present, it would be easy to apply the principle. But in this case, the principle itself is not yet available, and the criterion that there should be no contradiction is non-productive – for where there is nothing, there can be no contradiction either.²

Hegel here assumes a completely formal status to the Kantian injunction about universality and whilst the formula as Hegel gives it does not precisely match any of Kant’s, it is evidently meant to summarise the general idea of the Formula of Universal Law. The oddity of Hegel’s charge concerns the way that his formulation refers explicitly to the consideration of a maxim, and, yet, assumes that mere reference to universality is meant to provide some form of additional content, which the formula fails to give. Since the distinction between the formulation of the maxim and its

² G.W.F. Hegel (1821) *Elements of the Philosophy of Right* (1991 trans. by H.B. Nisbet, Cambridge University Press: Cambridge), §135.

universalization points to the former being given first as one form of content and then as another there can hardly be said to be no content at all involved in the procedure. It is the process of universalization, however, that Hegel thinks should have added an *additional* content and I will argue later that this requirement is in fact met.

What Hegel's comment picks out is that the relationship between maxims, universalization and contra-diction is the crux of the Formula of Universal Law. Given that the formula builds on the relationship between a maxim as stated prior to universalization and its status subsequent to universalization it is also evident that the process of universalization is the nexus of the alleged contradiction emerging. What Hegel's summary leaves out, however, is the means by which the process of universalization is connected to the agent who has a maxim which is by incorporation of the reference to universality entering the willing of the universalised maxim as is clearly stated in the two versions of FUL that are given in the *Groundwork*. In the first version in the first part of the work Kant writes: "I ought never to proceed except in such a way *that I could also will that my maxim should become a universal law*" (Ak. 4: 402). Since incorporation of the reference to universality into the maxim at the point of willing it is the nexus of the alleged contradiction that can result with maxims that fail the test it is striking that Hegel's summary misses this reference. Further, the canonical statement of FUL in *Groundwork* II is also emphatic in the inclusion of the reference to incorporation of universality in the willing of the maxim:

"There is only a single categorical imperative, and it is this: *act only according to that maxim through which you can at the same time will that it become a universal law*" (Ak. 4: 421).

The reference in this version of FUL to temporality is noteworthy and includes at least a sense of reflexivity being

involved in the process of incorporation of the reference to universality in the formation of the maxim. Attention to the wording of FUL is surely sufficient to show that a “merely” formal idea of it is not an accurate account of it since not only is there the two-fold presence of the “matter” included in the maxim but the process of incorporation of the reference to universality into the maxim has to happen by means of “willing” the maxim and the contradiction that is alleged to result with the failed maxim is evidently a contradiction within the process of such willing and not merely within universality itself as Hegel’s citation appears to suggest.³

Although implicit appeal to Hegel’s objection is apparent in quite a number of contemporary responses to Kant’s account of universal law, the objections that are most common, when looked at carefully, elaborate subtly different ways of arguing against Kant’s procedure than Hegel did. What’s more, a much more common reaction to FUL is not that it is strictly speaking “merely formal” but that, whilst containing substantive content precisely through its references to willing and to maxims, it does so by introducing this substantive content on top of a merely formal commitment to universalization and hence that Kant, whilst stating something substantive, does so illegitimately.

The Problematic “Derivation” of FUL

This second type of objection to FUL accepts the idea that it does contain something substantive but disputes the right of Kant to have this substantive element included in his account of universal law. Stephen

³ I think there is another way of reading Hegel’s objection to that I have given here whereby what the citation from him is really stating is that there is no action-guiding principle distinct from the formulation of universal law. Such a principle would be the missing element that would connect Kant’s general statement to the specific matter of duties. There is in the rest of the paper a general argument also against this way of understanding Hegel’s argument though, naturally, in lieu of a detailed discussion of the relationship between the categorical imperative and specific duties, this is incomplete.

Engstrom describes this objection well writing: “Kant appears to slide *from* the merely formal and undisputed principle that a rational being should conform its will to any universal law it can recognise as valid for it as such...*to* the substantive and questionable principle that such a being should act only on maxims it can will as holding universally, for all rational beings”.⁴

The basic claim is thus that Kant starts by a simple appeal to a principle of practical rationality involving universal rules and moves from this to a normative principle that invokes criteria of permissibility and that the latter, whilst substantive, does not follow from the former. The reason for the charge is that Kant first refers, both in introducing the first form of FUL in *Groundwork* I, and, when mentioning the canonical form of it in *Groundwork* II, to the simple “universal conformity of actions with law” (Ak. 4: 402) and this is alleged by those who put this objection to be logically distinct from the requirement that only acting on maxims that can hold universally be a basis for permissibility. Allen Wood describes the difference as one between a principle of practical rationality on the one hand and an action-guiding principle on the other describing the latter as inclusive of a sense of “collective rationality” that relates to coordination of agents and “requires the agent to be concerned with the desirability of the universal adoption of a maxim”.⁵

This objection is, however, a very peculiar one in taking Kant to want to affirm a principle of universalizability that is

⁴ Stephen Engstrom (2009) *The Form of Practical Knowledge: A Study of the Categorical Imperative* (Harvard University Press: Cambridge, Mass), p. 5. Part of the difference between the two is meant to be whilst an egoist could accept the former principle they would reject the latter. The appearance of this figure of the egoist here is itself interesting, suggesting, as it does, a possible ultimate reference back to Henry Sidgwick’s notion of the “dualism of practical reason”.

⁵ Allen W. Wood (1990) *Hegel’s Ethical Thought* (Cambridge University Press, Cambridge and New York), pp. 135-6, 165-6. The citation about the requirements of an agent comes, however, from Henry Allison’s summary of Wood’s view. See Henry Allison (1991) “On A Presumed Gap in the Derivation of the Categorical Imperative” in H. Allison (1996) *Idealism and Freedom: Essays on Kant’s Theoretical and Practical Philosophy* (Cambridge University Press: Cambridge and New York), p. 146.

separate from the categorical imperative and then wishing to derive the categorical imperative from it. The basis of the claim, as made influentially by Bruce Aune, is that the general appeal to universality differs in “practical import” from the specific reference to the categorical imperative such that one cannot be derived from the other.⁶ However, as Henry Allison has recently argued, this view abstracts from the details of Kant’s accounts in *Groundwork* I and II. In *Groundwork* I Kant begins with the “good will” and the arrival at the formula of universal law towards the end of this section is still related to the discussion of the good will. The argument of *Groundwork* I is thus summarised by Allison as grounded on the claim that the maxims of an agent with a good will must not merely conform to universal law (as would be sufficient for Wood’s alleged “principle of practical rationality”) but must be adopted precisely due to their conformity to universal law.⁷ The details of the argument in *Groundwork* II are different since here Kant is concerned with the conception of imperatives in general and arrives at the notion of what a categorical imperative has to contain on the basis of this consideration. In the latter case, however, the claim that it is only maxims that conform to universal law that are permissible arises from the analysis of what the formula of universality would contain and this is due to the point that such a formula is not simply being stated as a general reference to universality but, rather, includes some sense of what is meant in adopting the formula. This is part of why Kant later discusses duties, a discussion which is beyond the scope of this investigation. It is, however, clear that the formula is not simply stated for the sake of reference to universality alone in either version since the reason it is introduced is precisely to connect to the argument about maxims and so Kant could at no point be meaning to simply state a requirement of mere universality.

⁶ Bruce Aune ((1979) *Kant’s Theory of Morals* (Princeton University Press: Princeton), pp. 28-34.

⁷ Henry Allison (2011) *Kant’s Groundwork for the Metaphysics of Morals: A Commentary* (Oxford University Press: Oxford and New York), pp. 139-40.

Prior to moving on from this point, however, it is worth pointing out that the claim that there is a problem with Kant's derivation does not in itself support a merely formal view of FUL but, rather, requires that FUL be seen as *substantive*. In this respect, even should Kant's derivation of FUL be faulty in the way suggested, this would not support the charge of mere formality but would instead involve agreement with the view that FUL goes beyond anything merely formal. So this extension of the Hegelian challenge does not support its practical import.

The "Mere Formality" of FLN

I have referred in passing to the relationship of Kant's notion of universal law to duties but it is worth pointing out that FUL is *not* directly connected to duties in the *Groundwork* II account of examples.⁸ What is instead articulated as what Kant terms "the universal imperative of duty" is instead the subtly different Formula of the Law of Nature, which is introduced very swiftly after FUL into the argument of *Groundwork* II. This formula is given as: "*so act as if the maxim of your action were to become by your will a UNIVERSAL LAW OF NATURE*" (Ak. 4: 421). Further, this formula is related to the four examples that follow. However, whilst this formula is not equivalent in terms of what it says to FUL and does appear to be motivated by Kant in relation to duties in a way that he is more chary of admitting with regard to FUL, there are problems with seeing the two formulas as stating anything substantively different. Kant refers to nature "according to form" (Ak. 4: 421) when he introduces FLN, a point that suggests that FLN is itself purely formal after all and, if this is so, then it follows, as Richard Galvin puts it, that:

⁸ It is, however, related to the example of false promising in *Groundwork* I: Ak. 4: 402.

“The appeal to the laws of nature does not give us license to bring new considerations to bear in FLN; if it is legitimate to bring a consideration in when testing a maxim using FLN, that consideration should also be legitimate when using FUL”.⁹

On this view there is nothing of content added to FUL by FLN and if there is a problem of formality with regard to the former it will afflict the latter to equal degree. It follows, however, if one adopts the view that FUL, by reference to maxims and willing, does incorporate something that goes beyond a “merely formal” idea then FLN will, assuming its equivalence with FUL, do the same thing. This is a minimal defence of FLN but it is all that is required to deflect the formal reading of it. Subsequently I will develop a much more substantive sense of what is possible by means of FLN but the most minimal reading of it, that sees it as essentially formal in its equivalence to FUL, turns on the reading thereby given of FUL and thus far we have seen no reason to take this most minimal reading as leading to a view of FLN as merely formal.

FLN and the “Content” Problem

More immediately serious as a challenge to FLN is less the accusation of “mere formality” than the charge that it is not a “fertile” formula, fertile, that is, in terms of enabling derivation of duties. This point is made by Henry Allison who claims that: “any set of duties that could be derived from FLN would be remarkably thin and uninteresting” and by Allen Wood who argues that the appeal to FLN rules out “only one maxim at a time” and is insufficient to show that a kind of action contrary to duty

⁹ Richard Galvin (2009) “The Universal Law Formulas” in T.E. Hil (ed.) (2009) *The Blackwell Guide to Kant's Ethics* (Wiley-Blackwell: Oxford), p. 59.

could not be permissible “on some other maxim”.¹⁰ This challenge to FLN is to the effect that whilst it might provide us with a basis for assessing the permissibility or otherwise of maxims it is not the ground for a derivation of duties.¹¹ Noticeably, however, this objection assumes a relationship to duties, if it were to be a “fertile” one, would have to consist in a detailed demonstration of how the “set of duties” would arise. There is room for doubt that any part of Kant’s procedure could have this form, whether in reference to FLN or any other of his formulas, so that if ruling this out is thought to be sufficient to show that FLN is not a “fertile” formula then it may prove too much.

Rather than think of the claim Kant is making about FLN’s connection to the “content” of duties in terms of a detailed account of the many different types of duties there are it may well be preferable to articulate a conception of it that is grounded instead on seeing it as providing the basis of a procedure of moral judgment. Essentially this entails that whilst Allison and Wood may be correct in arguing that FLN is not the ground of a detailed table of ethical judgments, that it would also be wrong to adopt this as a model for its “fertility”. What would make FLN a “fertile” principle would rather be how it shows a substantive problem with a certain type of relationship to maxims and that this relationship will be one that will extend further than Wood thinks, further, that is, than merely ruling out only one maxim at a time and thus telling us something about permissibility after all of certain kinds of action. The way this could work would be precisely through the reference to laws of nature being part of a way of stating a maxim and this way of stating it being the basis for a procedural test. Such a procedural test might well, thus, after all, be the ground for a substantive reading of FLN and I will now turn

¹⁰ Henry Allison (2011) *op. cit.*, p. 180 and Allen W. Wood (2007) *Kantian Ethics* (Cambridge University Press: Cambridge and New York), p. 71.

¹¹ Wood *ibid* speaks of a “deduction” of duties not arising from FLN but I take it he really means a “derivation” of duties since Kant has said nothing to suggest a “deduction” is here indicated but does refer to “all imperatives of duty” being “derived” from FUL “as from their principle” (Ak. 4: 421).

to setting out the ground for thinking that the categorical imperative procedure, as involving a relationship between formulas of universal law and maxims, is one that can be said to have substantive content and this is precisely because the Kantian discussion of universalization is not, despite widespread impressions to the contrary, merely formal or empty of content.

The Substantive View of Kant's Formulas of Universal Laws

It is notable that proponents of a generally “formal” reading of Kant’s formulas of universal law focus on a conception of these formulas that distinguishes them sharply from Kant’s reference to autonomy and one of the reasons for this move is due to a conception of how the tests of maxims that are proposed by reference to the process of universalization is assumed to need to work if there is anything specific to the formulas of universal law. Christine Korsgaard expresses this conception well when she states that the tests that arise from the application of the formulas of universal law to maxims “must not employ a notion of rational willing that already has moral content”.¹² It is worth adding that is not only the sense that we need a non-moral notion of “rational willing” that is at work in the merely formal readings of the formulas of universal law but also a general sense that both rationality and universality would have to be conceived of in a way that lacked moral content if there is deemed to be anything specific provided by the formulas of universal law.

It is this conception of the reference to universalization that leads readers sympathetic to Kantian ethics to assume

¹² Christine Korsgaard (1985) “Kant’s Formula of Universal Law” in C. Korsgaard (1996) *Creating the Kingdom of Ends* (Cambridge University Press: Cambridge and New York), p. 80. Korsgaard’s methodological reason for this claim is that “although the contradiction tests by themselves do not show us why immoral action is irrational, the notion of rational willing which they presuppose must be one that can be used at the later stage of the argument” (80).

that the “matter” of it must be found rather in the Formula of Humanity. However, there is an alternative view of the point of the reference to universalization that sees it as of a piece with Kant’s notion of autonomy and regards both as part of his general picture of pure practical reason, a picture that includes alongside a procedural conception of such reason a substantive sense of what is required for such reason to provide us with the basis of a serious moral philosophy. Before looking at the outline of such a view lets first remind ourselves of a number of features of Kant’s conception of universalization that the stress on mere formality leaves out of consideration. Firstly, Kant, when introducing the notion of universal law in the first part of the *Groundwork*, also discusses a respect requirement in relation to the law, which refers to respect for the law. This requirement is also related, in ways I will introduce in a moment, both to the idea of the “typic” in the *Critique of Practical Reason* and to the way in which there is a general appeal to consideration of persons already at work in the mere reference to universal law even without consideration of the Formula of Humanity. In addition to this respect requirement there is also the sense of an over-riding relationship to law introduced by Kant that suggests no other consideration can have the same weight as this. This notion of reference to law as having an over-riding character is not explained if the law in question is conceived of merely formally. With regard to requests for “content” from the reference to law the overall argument will proceed by demonstration of how the general background of pure practical reason is built into the formation of the appeal to universal law and that this background assures a form of content, one that is further enriched by the introduction of material from maxims.

Kant's "Typic"

The move from FUL to FLN is not clearly explained in the *Groundwork* and looking at the move between these formulas will prove useful in understanding how the procedure of the categorical imperative is meant to work. For these purposes it is useful to turn from the *Groundwork* to the *Critique of Practical Reason* where the introduction of FLN is explicitly marked as a form of practical schematization of the law. When Kant so introduces FLN he states it in a different manner to that given in the *Groundwork* writing: "The rule of judgment under laws of pure practical reason is this: ask yourself whether, if the action you propose were to take place by a law of the nature of which you were yourself a part, you could indeed regard it as possible through your will" (Ak. 5: 69).

This formulation of FLN is one that gives it as a judgment under laws of pure practical reason. This formulation is put in a hypothetical form and the result of this is that it becomes evident that it is a test not of the permissibility of maxims but of their *possibility*. What would make something a *possible* law of nature? In responding to this question Kant introduces here a set of examples of maxims and indicates the rationale for assuming that they could not be *possible* laws of nature:

If *everyone* permitted himself to deceive when he believed it to be to his advantage, or considered himself authorised to shorten his life as soon as he was thoroughly weary of it, or looked with complete indifference on the need of others, and if you belonged to such an order of things, would you be in it with the assent of your will? Now everyone knows very well that if he permits himself to deceive secretly it does not follow that everyone else does so, or that if, unobserved, he is hard-hearted everyone would not straightaway be so toward him; accordingly, this comparison of the maxim of his actions

with a universal law of nature is also not the determining ground of his will. Such a law is, nevertheless, a *type* for the appraisal of maxims in accordance with moral principles. If the maxim of the action is not so constituted that it can stand the test as to the form of a law of nature in general, then it is morally impossible. (Ak. 5: 69-70.)

The question that is posed here concerns, whether a world constituted by certain types of laws of nature, is one that we could will to be a world we would wish to be part of? This question is what arises by thinking of the universal law as one that is a law of nature.

Leaving aside specific questions about the examples Kant here appeals to I want to focus on what illumination of consideration of cases has apparently been introduced by the device of the “typic”. A law thought of as a law of nature would not merely be one that applied universally it would also so apply *of necessity* and it is this element of unconditionality that is specific to thinking of the law as part of the constitution of the nature of this world. If this element of unconditionality is one that we would not welcome in terms of how actions are structured then it is indicative of a problem with the maxim that would, transposed into being the basis of a universal law of nature, create the problem in question. This is one part of the reason for the device of the “typic” , whose purport is to ask us to assume that the maxim in question is not a “private” affair in the sense of being something that gets adopted as the basis of action just this once, but rather has the standing of being an objectively binding rule for how we proceed in relation to each other. If this is the first part of the reason for reference to the typic, there is, however, also an important and more immediately *practical* reason for its introduction. Laws of nature are not merely *not* private, in the sense of having general applicability, they are also not “private” in the sense of being openly, and generally, understood to apply. Such laws are, that is, *public* in their character.

In adopting maxims of *secret* deception and *unobserved* lack of beneficence we are not *actually* comparing the maxims of our action with the law of nature. This lack of *actual* comparison permits resort to a way of reasoning grounded on viewing the maxim that is being followed as one that is alright, as far we are concerned, precisely given that it is *not* going to be universally followed. And, Kant suggests that this point suggests a problem with the willing at work in adopting these maxims. The problem is well brought out by a question that Kant asks in the Doctrine of Virtue, a question of a piece with that indicated in the introduction of the “typic” in the *Critique of Practical Reason*. This question is specifically introduced as a “touchstone for deciding whether something is or is not a duty of virtue” but it can serve as well for indicating the general nature of the type of question at work in Kant’s appeal to universal laws. This question is: “How could a maxim such as yours harmonize with itself if everyone, in every case, made it a universal law?” (Ak. 6: 376).

This question, in making clear the *unconditional* universality of the appeal to law, suggests that the problem that is manifested with the maxims referred to in the “typic” of *The Critique of Practical Reason* concerns a question of self-consistency of willing. This is what John Rawls has termed “the publicity condition on universal moral precepts” so that acceptable precepts are viewed as “belonging to the public moral legislation” of a moral community.¹³ As Rawls rightly emphasises this publicity condition is what emerges by treating maxims as laws of nature, but it is not the only element that he emphasizes as emergent from reference to the typic, since, as the citation from the Doctrine of Virtue also makes clear, the introduction of the maxim as a universal law of nature once enacted, is not capable (unlike

¹³ John Rawls (2000) *Lectures on the History of Moral Philosophy* (Harvard University Press: Cambridge, Mass and London), p. 171. The reference to a “moral community” echoes part of the discussion of the need to abandon the moral state of nature that Kant makes central in *Religion within the Limits of Reason Alone*, a discussion that could usefully be connected to this one.

political laws) of being repealed. This second aspect of the element of the reference to universal laws of nature is what Rawls terms the “perpetuity condition” of them, which ensures that once they have been taken as laws of a world, the world they govern will thereafter be continuously ruled by them.¹⁴

Once we have aligned the three elements of the appeal to universal laws of nature together we find that the laws in question have a *necessary* status, that they are *publicly* recognised and that they are *perpetual* (incapable of being repealed). This list of characteristics is formidable and demonstrates that the requirements of meeting the test set by FLN are not either “purely” formal or “empty” but rather substantive and, whilst procedural in nature, pose severe constraints on the possible content of possible laws.

Respect for Persons and for the Law

I have given an account of FLN that describes its requirements as having substantive content and as posing constraints on the content of possible laws, which latter would be the ground for, if not a detailed description of duties, at least a procedure for determining the basis under which the candidate status of duties could be tested. However, there is another element to the construction of pure practical reason, that operates in Kant’s account of universal law, and which indicates some of the structure of being able to formulate maxims in conformity with it. This element is part of the general phenomenology Kant articulates in relation to following the law and it leads us to seeing how there is a condition for being able to follow universal laws, which is part of the nature of the agency that is capable of so doing.

¹⁴ This is particularly important for the beneficence case showing, as it would, the way that maxims of indifference would thus be incapable of being overcome and would thus undercut general agential possibilities in a serious way.

In the first part of the *Groundwork*, prior to introducing the first description of the formula of universal law that is found there, Kant goes through three propositions, the third of which I wish here to focus on. It is expressed as a description of duty stating that “duty” consists in “*the necessity of an action from respect for the law*” (Ak. 4: 400). Here we see that Kant’s general idea of duty conforms to the account I have suggested emerges from attention to his description of FLN. Just as universal laws of nature have an unconditional status so the actions commanded by duty are ones that we find it “necessary” to perform. Or, rather, we do so, inasmuch as we possess the disposition of having “respect for the law”.

This introduction of the subjective condition of reference to “respect for the law” is part of the argument Kant gives in the first part of the *Groundwork* for arriving at his formulation there of the first version given of FUL. In this argument, Kant indicates that progressing beyond attachment to empirical feelings, is required if the law is to have force in our deliberations, but this argument is incomplete if there is no sense emergent of how we can be moved to relate to the directives of duty. To be moved to act in dutiful fashion is to find the law a sufficient ground in itself for acting without requiring that anything further be given. This requirement indicates the need to see feeling as not purely a matter of empirical inclination and thus for there to be such an area as practical feeling. However, there are two features of this feeling that I want to bring out as important, and as adding to the sense of the contentful nature of Kant’s appeal to universal law. The first is elaborated in a note to the account of respect in the first part of the *Groundwork* where Kant brings out more clearly what is involved in relating to the law with respect:

What I recognize immediately as a law for myself I recognize with respect, which signifies merely the consciousness of the *subordination* of my will to a law, without mediation of other influences on my sense. The

immediate determination of the will by the law and the consciousness of this is called *respect*, so that it is viewed as the *effect* of the law on the subject and not as its *cause*. Respect is actually the representation of a worth that infringes on my self-love. Thus it is something that is considered an object neither of inclination, nor of fear, even though it is at the same time analogous to both. The *object* of respect is therefore solely the *law*, the one that we impose on *ourselves* and yet as in itself necessary. (Ak. 4: 401n)

There are a number of points in this dense explication of respect for the law but I wish to focus on one principal element. Whilst the subordination of the will to the law produces the feeling of respect for the law on the account given and the law itself is that which is the object of our respect, there is included here the important point that this law, of which we have such respect, stands in a dual relation to the one who is subordinated to it. Kant stresses here the sense in which subordination to the law compromises self-love as he takes such self-love to reside in a magnification of the desires of the self over and above relations with others. Yet, whilst the reference to respect for the law is an indication of a need to surpass the sentiments of self-love, it is, in another way, a kind of indication of the worth of the self, even whilst indicating that this worth is not found in the inclinations, where we usually find it, since the law is itself here stated to be one that “we impose upon ourselves”.

This double characteristic of the law as something imposed on us and yet as so imposed by us ourselves indicates something surprising in the phenomenology of respect for the law, since the respect in question is also part of recognition of something within ourselves. The account of this in the *Groundwork* is, however, brief whilst in the *Critique of Practical Reason* Kant elaborates upon it at some length and introduces a key element that is not mentioned in the *Groundwork*. This element concerns the way that respect for the law is connected to respect for

persons. Kant writes here of the way in which material self-love is struck down by the way *another person* manifests in their conduct the law:

Before a humble common man in whom I perceive uprightness of character in a higher degree than I am aware of in myself *my spirit bows*, whether I want it or whether I do not and hold my head ever so high, that he may not overlook my superior position. Why is this? His example holds before me a law that strikes down my self-conceit when I compare it with my conduct, and I see observance of the law and hence its *practicability* proved before me in fact. (Ak. 5: 77)

Respect for the law gets manifested in the examples provided by other persons who, in their conduct, demonstrate the law in practice to me. Such comparison is generally unwelcome to us, precisely due to the presence of material self-conceit, yet, if we reflect on the presence in ourselves of the same capacity for following law due to the fact that such law is self-given, we will, in feeling respect for another, see this also as an expression of a form of self-respect. This relationship between respect for persons and respect for the law is what is expressed in a maxim that conforms to the requirements of universality as Kant writes when he states that a maxim is “morally genuine only if it rests solely on the interest one takes in compliance with the law” (Ak. 5: 79). If compliance with the law is an indication of a maxim having moral content and yet such compliance with the law is what also connects persons together in a community of respect then Rawls’ reference to legislation for a moral community has not only ground for being presented as a substantive requirement of FLN but also as indicative of the moral phenomenology involved in following the law. Kant describes duty as requiring action that expresses objective accord with the law “but requires of the maxim *subjective* respect for the law” (Ak. 5: 81).

To summarise the account of respect, Kant's analysis of it indicates a basis for the requirement of maxims conforming to universal law in his specific phenomenology of moral motivation. Such motivation appeals to the subjective determination to follow law as grounded on respect for it but such respect manifests both a dual relation of the one governed by the law to this law and a connection of this person to other persons. The dual relation to the law involves not merely subordination to the law but legislation of this law to oneself by oneself. Further, such an autonomous connection to law is also the basis of connection to other persons, since their example shows me what is involved in such autonomous willing. If, however, Kant could introduce the whole topic of respect for the law in *Groundwork* I before he even invoked specific reference to the formula of autonomy, what this suggests is that Korsgaard is wrong to think that Kant's account of universal law is one that can be stated in a way that is without normative presuppositions. Rather, there is already included in the notion of universal law, an account of the agent who is capable of viewing themselves as under its command, and this account is one that includes a sense of *autonomy*.

Autonomy, Pure Practical Reason and Universal Law

Part of the reason for claiming that Kant's discussion of universal law already includes the normative presuppositions supporting the conception of autonomy is that when Kant arrives at the discussion of autonomy he analyses the requirement of willing universal law and arrives at autonomy this way. As we have seen from the account of respect for the law in *Groundwork* I it is already plausible to arrive at the point that there is involved in the moral phenomenology of universal willing a reference to a sense of personality (both in self and others). Similarly, Kant indicates in *Groundwork* II that the principle of universal legislation requires an understanding of autonomy as when

he writes: “if there is a categorical imperative...then it can only command to do everything from the maxim of one’s will as one that could at the same time have as its object itself as universally legislating” (Ak. 4: 432). This statement includes reference to the same process of reflexivity that is involved in the canonical form of FUL but includes in this reflexivity now not just a requirement of a maxim being willed inasmuch as it conforms to universal law but also the additional sense that the categorical imperative include reference back to its own condition of possibility in the form of autonomous willing. One of the reasons why Kant adopts this claim is that mere subjection to law alone, without an indication that the basis of conformity to it came from self-legislation, will tend to find the basis of the conformity to law to lie somewhere outside the legislator, a tendency that is at work in all heteronomous accounts of morals.¹⁵

Kant also gives the principle of autonomy as stating nothing additional to FUL when he writes: “The principle of autonomy is thus: not to choose in any other way than that the maxims of one’s choice are also comprised as universal law in the same willing” (Ak. 4: 440). This statement requires that the maxims of choice reflect in their formulation the incorporation of universal law as part of their willing but this is exactly what is required by FUL. So the basic statement of the formula of autonomy is no different than that of FUL, which is surely sufficient to state that Kant views autonomy as already included in the very conception of FUL. Should this statement from *Groundwork* II be insufficient to make this point consider also the following from *Groundwork* III:

The proposition: the will is in all actions a law to itself, designates only the principle of acting on no maxim other

¹⁵ So the reference to autonomy is a crucial part of the argument for the *authority* of the categorical imperative as becomes openly evident in *Groundwork* III in one way and in the account of the “fact of reason” in the *Critique of Practical Reason* in another way though this would require detailed discussion elsewhere.

than that which can also have itself as its object as a universal law. But this is just the formula of the categorical imperative and the principle of morality...(Ak. 4: 447)

Here, in the course of his last major argument of the *Groundwork*, Kant affirms clearly that the principle of the will acting according to a self-given law is no other for him than the formulation of the categorical imperative, which latter is here explicitly equated with FUL. So Kant evidently took the principle of autonomy and FUL to be intertwined, which accords with the reading I have just provided of his account of respect for the law as given in both *Groundwork* I and the *Critique of Practical Reason*. Not only is this so but the argument advanced by some formalist readers of FUL to the effect that it has a faulty derivation from a prior principle of simple conformity to universality can be answered by viewing a transition from any such principle to FUL to take place precisely by invocation of the principle of autonomy. The result of such a convergence between FUL and the principle of autonomy is well summarised by Andrews Reath: “the universal laws to which conformity is required are laws for agents with autonomy and that the principle of conformity to universal law should be specified as the principle of conforming to any universal laws that hold for agents with autonomy”.¹⁶

Pure Procedural Practical Reason As Substantive

In conclusion, I am arguing for a substantive view of Kant’s procedure of universal legislation in which FUL and FLN are regarded as involving normative pre-suppositions that, however, are also the basis for a response to maxim formation that places clear constraints on the types of content that could emerge as morally possible. I’d like to

¹⁶ Andrews Reath (2006) “Agency and Universal Law” in A. Reath (2006) *Agency & Autonomy in Kant’s Moral Theory: Selected Essays* (Oxford University Press: Oxford and New York), p. 206.

conclude by summarising what I take these constraints to consist in and how, in general, the procedure of pure practical reason is to be seen.

Kant discusses maxims as the subjective component of volition and they include the matter of choice. Such maxims are, however, to be tested for consistency with universalization where this consistency is one that relates the matter of the choice in question to conditions of general purposiveness. What I mean by the latter is that the maxims, when considered in terms of their potential universalization, have to meet the test of being self-consistent on the part of the one who wills them.

This test of self-consistency relates the universalised maxim to a set of conditions. These conditions are that the maxim will, once universalised, be publicly stated and hence both known and be the basis of conduct generally. In addition to the publicity constraint that is built into the formation of the maxim into a universal rule there also follows the understanding that the rule, once made a law, is not revocable but will instead be a perpetual basis for conduct. This has particular effect on any maxims that relate in their nature to inter-subjective conduct, or, are part of the constitution of the character of a community. The combination of the publicity conditions and perpetuity conditions set some formidable bars on morally possible maxims.

However whilst both publicity and perpetuity conditions are embedded in the operation of FLN the general requirement of autonomy imposes what I referred to earlier as a respect requirement. The way I understand this is that the maxim being willed as universal should at least harmonize with conditions of autonomous willing. This essentially is the basis of the relation between the requirements of universality and Kant's philosophy of right but there is a more demanding way of understanding the relationship between autonomy and the requirement of universalization and this would require that the maxim do more than harmonize with autonomous willing but that it effectively promote the conditions that are best fitted for such willing.

This would require, as Rawls puts it, the understanding of the laws in question as the ground of a moral community and this requirement, one that would be particularly difficult to meet, would be the culmination of the appeal to universality.

The procedure of pure practical reason, then, is one that is not built only on a purely formal adherence to universal law but rather views universal law in terms of a test of ideal self-consistency that presupposes a normative commitment to the conception of autonomy. This ensures that Kantian ethics is not an ideally neutral enterprise that simply attempts to deduce duties from merely formal universal requirements but rather one that relates to the matter at hand in maxims in such a way that it constructs the conditions of there being able to become material for an ideal moral community.