

PARADOXES OF AUTONOMY: ON THE DIALECTICS OF FREEDOM AND NORMATIVITY ‡ *

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This paper revisits the concept of autonomy and tries to elucidate the fundamental insight that freedom and law cannot be understood through their opposition, but rather have to be conceived of as conditions of one another. The paper investigates the paradigmatic Kantian formulation of this insight and discusses the diagnosis that the Kantian idea might give rise to a paradox in which autonomy reverts to arbitrariness or heteronomy. The paper argues that the fatal version of the paradox can be defused if we avoid the legalistic model of autonomy and rather turn to the model of participation in a practice. This leads to a dialectical understanding of the idea of autonomy that preserves the insight that freedom and law are mutually conditioning and simultaneously reveals that they remain in irresolvable tension with one another.

The thought condensed in the term “autonomy” is twofold: in combining law and self, *nomos* and *autos*, the term embodies two ideas at once—the idea that (i) in order for a law to be fully binding it has to be freely self-given; and (ii) in order for a subject to be a free self, it has to express itself in norms. The thought of autonomy articulates the insight that freedom and law cannot be understood if we simply oppose them by defining freedom as freedom *from constraints* and law as that which places *limits upon freedom*. We can only understand what freedom and law truly are if we conceive of them as mutually conditioning. Only a law that springs from freedom is a law *in the true, normative sense*, and only a freedom that expresses itself in terms of laws is freedom *in the true, actual sense*.

In the following I will investigate this twofold idea of autonomy and will try to shed light on some problems that arise in its articulation. (I) I will begin by identifying two problems that direct us towards the idea of au-

‡ The following paper will appear in: *Symposium: Canadian Journal of Continental Philosophy* 17 (2013).

* The research that forms the background for this paper was made possible by a generous grant from the Alexander von Humboldt Foundation. The author is indebted to Christoph Menke, Robert Pippin, Dirk Setton, José M. Torralba, and the members of the Social Thought Colloquium at the University of Chicago for valuable comments and objections to earlier drafts.

tonomy—namely, the problem of the bindingness of the normative and the actuality of freedom. (II) In the second section I turn to the paradigmatic articulation of this idea in Kant’s concept of autonomy. (III) In a third step I consider the claim that Kant’s conception falls prey to a “paradox of autonomy.” This paradox seems to imply that the way in which freedom and law are thought of as conditions of one another is actually self-subverting. (IV) In a fourth step, I want to show that in Kant we find symptoms of the paradox as well as some indications of an understanding of autonomy that seems to avoid the lethal version of the paradox. (V) I will develop these indications further in terms of a dialectical understanding of autonomy that employs a different model for autonomy: not the legalistic model in which the subject is author by means of positing the law and bound by falling under it, but rather the model of participation in a practice. According to this dialectical understanding (VI) the idea of autonomy not only contains the thought that freedom and law are not opposed to one another, but simultaneously implies that they remain in irresolvable conflict with one another.

I. Two Problems

The Kantian idea of autonomy is supposed to solve two problems by treating them together: the problem of understanding the binding character of the normative and the problem of conceiving the actuality of freedom. In order to understand what demarcates the normative, we have to think of it as a “realm of freedom”¹; and in order to understand how freedom might be actual, we have to think of how we might be able to participate in this realm and become inhabitants of the kingdom of ends. To exist under laws of a specific kind and to be free are, according to Kant, ultimately one and the same thing. And by understanding the way in which this is indeed so, we come to know what existence under normative laws and what being free really are. This is, at least at first, a somewhat stunning and counter-intuitive idea, as we tend to think of freedom as freedom from constraint and law as that which restrains our choices. This idea, however, can be made more accessible if we remind ourselves of the two problems that motivate us to tie together the concepts of law and freedom: the problem of the source of normativity and the problem of the actuality of freedom.

¹ For two diverging accounts of the space of reasons as a realm of freedom see Robert Brandom, “Freedom and Constraint by Norms,” in *American Philosophical Quarterly*, vol. 16, no. 3 (1979), 187–96; and Jean-Luc Nancy, *L’expérience de la liberté* (Paris: Galilée, 1988), 49: “The word [freedom] carries ... the very meaning of *logos* ...: the opening of a free space of meaning.”

(1) The *first problem* concerns the question of how to understand the specificity of normative bindingness (*Verbindlichkeit*). It seems obvious that the way in which we are bound by norms has to be distinguished from the way in which we are bound by laws of nature. To be guided in our actions by a norm is not the same thing as to be subject to laws of nature—say, to the law of gravity that keeps us on the ground. One way of understanding this difference and explaining what it is to be guided by a norm is to understand the norm as a “command of a superior,” as Pufendorf proposes in his *On the Duty of Man*²: if we are guided by a norm it is as if we are following an order from a superior. On first inspection, such an account seems to succeed in distinguishing the normative force of a rule from the brute force of a natural law: a norm is something I not only fall under, but something under which I bring myself in obeying it. However, as Leibniz made clear in his critique of Pufendorf, the account faces a serious problem if we direct our attention to the ultimate source of the normative. If we grant Pufendorf’s definition of norms, a duty always amounts to obedience to a given directive. This however means that we cannot conceive of an act of duty as *spontaneous*, not caused by an external, superior instance, but produced by the obligated instance itself. This in turn implies that the ultimate command cannot be understood as an act of duty. Whenever there is no superior—whether accidentally or essentially, as in the case of the highest being, which is defined by not having a superior—duty vanishes completely. This seems “paradoxical” to Leibniz³, because it seems to imply that we cannot speak in normative terms about the highest being, even though the highest being is the very source of all normative constraints: this ultimate source would appear as non-normative. Whatever this highest being does, it can never be said to be either in accord or in discord with duty. This does not concur, as Leibniz points out, with our inclination to praise God for being just (rather than taking him for a mere fact: merely regarding him as the highest force). If we praise God, we allude to a form of justice not dependent upon any decree from a superior being, but rather somehow internal to God’s deeds.

Leibniz goes on to emphasize the fact that Pufendorf cannot help but attest to this different source of normativity when he defines what characterizes an instance as superior. Someone superior “has not only the strength to inflict some injury on the recalcitrant, but also *just cause to require us to curtail the liberty of our will at his discretion*.”⁴ In order to have superiors it is thus

² See Samuel Pufendorf, *On the Duty of Man and Citizen according to Natural Law*, (ed.) J. Tully (Cambridge: Cambridge University Press, 1991), 27–28.

³ G. W. Leibniz, *Opinion on the Principles of Pufendorf* (1706), in *Political Writings*, (ed.) P. Riley (Cambridge: Cambridge University Press, 1972), 70.

⁴ Pufendorf, *Duty of Man*, 28; emphasis added.

necessary not only to be confronted with someone who possesses the force to exercise coercion, but also to face someone who can show *just cause* to justify his or her power over my person. This just cause binds me independently of his or her being superior to me. It precedes his or her superiority. The real cause of the binding character of norms thus cannot reside in being confronted with the command of someone superior in force. If it is in the form of a command at all that something presents itself to me as normative, it has to be a command by someone whom I *acknowledge* as superior *due to his or her just cause*. The command then does not bind us by means of being a command, but rather by being or giving a *reason*. It gives or is a reason not by coming from a superior, but by appealing to our own reason. Thus, the ultimate cause of the authority of law for Leibniz resides in “precepts of right reason.”⁵

Of course, the question is then how to understand how we are bound by reasons, in contradistinction to how we fall under natural laws. The suggestive point about Pufendorf’s definition of a norm as the command of a superior is that it makes room for the possibility that we might fail to accord with a norm (whereby we do not do nothing but do something wrong).⁶ If norms are commands issued by a superior, they leave open our ability to actively disobey or to fall short of what the command requires of us. To be bound by precepts of right reason must be understood in such a way that room is also left for normative failure and violation. We require a conception that avoids the shortcoming of the obedience model of normativity without giving up its advantages. This is precisely where the idea of autonomy comes in: the concept of autonomy aims to avoid the shortcomings of both divine command theory and traditional natural law by understanding norms not as the commands of a superior but as self-legislated commands⁷: a norm appears as a law, of which I can regard myself as the author, and that I follow neither by mere external obedience (as in the case of a command of a superior) nor automatically (as we do when we are “tied by nature to a uniform mode of behaviour”)⁸, but rather “spontaneously.”

⁵ Leibniz, *Opinion*, 70.

⁶ Cf. the way in which Pufendorf binds our ability to act to our being free—*i.e.*, our being capable of pursuing different courses of action: “For there is no expectation of free action where an agent’s powers are tied by nature to a uniform mode of behaviour; and it is pointless to prescribe a rule to one who can neither understand nor conform to it.” (Pufendorf, *Duty of Man*, 28)

⁷ For the thesis that Kant’s concept of autonomy is informed by the double rejection of “both the traditional natural law position and the divine command theory,” see Robert Stern, *Understanding Moral Obligation: Kant, Hegel, Kierkegaard* (Cambridge: Cambridge University Press, 2011), 74.

⁸ *Ibid.*

— Hence, the concept of autonomy can be understood as a response to the problem of understanding the source of normative bindingness.

(2) The *second problem* leads to the concept of autonomy from the other side, the side of freedom. As normative determinations have to be understood as distinct from arbitrary or natural determinations, so freedom is in need of being distinguished from a mere freedom of choice or the freedom to abstract from any determination, both of which fail to explain how freedom might be actual and effective in the sense of being capable of sustaining itself. In order to understand how freedom can be actual, we have to understand how freedom might manifest itself in positive determinations of its own. The purely negative form of freedom that simply resides in my ability not to let myself be determined by any given limitation, “whether present immediately through nature, through needs, desires, and drives, or given and determined in some other way”⁹ seems insufficient and cannot stand on its own. This negative freedom that derives from the capacity of the will to abstract “from every determination in which I find myself or which I have posited in myself, the flight from every content as a limitation” (Rph, § 5 A) can only result in my making myself indeterminate. Any positive determination made possible by this abstraction can only appear as contingent and can again be dissolved in the name of this negative freedom. This negative freedom of the understanding, as Hegel calls it, can thus only prove its existence by means of the destruction or the abstraction from given determinations and cannot produce any determinations or institutions of its own that sustain themselves. It undermines its own basis, unleashes a “fury of destruction” (Rph, § 5 A), and produces in us, according to a formulation from an early lecture on moral philosophy by Kant (from 1773/74 or 1774/75), fear and “awe.”¹⁰

⁹ G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, in *Werke in zwanzig Bänden* (Frankfurt am Main: Suhrkamp, 1969-1971), vol. 7, § 5, tr. by H. B. Nisbet as *Elements of the Philosophy of Right*, (ed.) A. Wood (Cambridge: Cambridge University Press, 1991), § 5. Hereafter referred to parenthetically in the text as Rph. References will be to the respective section numbers that are used in both editions. “A” indicates a quotation from the “*Anmerkung*” (remark), “Z” a quotation from the “*Zusatz*” (addition), and “N” a quotation from the “*handschriftliche Notizen*” (handwritten notes).

¹⁰ See Immanuel Kant, *Vorlesung zur Moralphilosophie*, (ed.) W. Stark (Berlin: de Gruyter, 2004): “Hence, freedom is something terrible [*was schreckliches*], as the actions [as purely free actions] are not determined at all.” (31; my translation) “If freedom is not restrained by objective rules, the greatest wild disorder will result, for it is uncertain whether man will not use his powers to destroy himself, others, and the whole of nature. I can associate freedom with complete unruliness if it is not necessitated objectively. These objectively necessitating grounds that restrain freedom have to lie in the understanding.” (*Ibid.*, 177; my translation)

The other conception of freedom that suggests itself—a positive freedom that consists in the ability to choose between different inclinations or courses of action—*i.e.*, arbitrary freedom of choice—does not result in destruction; yet it seems questionable to what extent we can regard it as a full *realization* of freedom. Hegel has given an incisive criticism of this conception of freedom. The positive achievement of this freedom of choice is to be seen in the fact that it realizes the freedom of abstraction in a limited fashion, avoiding the fury of destruction. On the other hand, however, it remains dependent on a content or material that is given: the inclinations or options upon which I decide. The content of our free self-determination in this sense “remains purely and simply finite.” (Rph, § 14 A) The conceptually infinite freedom confines itself to a set of given and finite contents from which it then chooses, so that freedom here deals with a content in which it cannot find itself. Arbitrary freedom of choice (*Willkür*) thereby reveals itself to be self-contradictory. Hegel’s own concept of freedom—the “free will that wills itself” (a free will that has itself as its content)—is precisely opposed to the assumption that freedom could realize itself in such externally given contents. Hegel writes: “Because of this content, the will is ... not free although it has in itself the aspect of infinity in the formal sense. None of these contents is in keeping with it, and it does not truly have itself in any of them.” (Rph, § 14 Z) The only way in which freedom might become real on this account is neither by abstracting from any determination nor by choosing from a set of given determinations, but by producing a determination in which it can find itself: realizing itself in a determination that manifests this freedom and its inner infinity.

Both abstract negative freedom and freedom of choice thus fail to make understandable how freedom might become real. While limitless negative freedom seems incompatible with any order whatsoever, the freedom of arbitrariness (*Willkür*) seems to be a reduced form of freedom that does not get beyond the contingent choices at hand and fails to endow the very contents of the choice themselves with the form of freedom. If we cannot overcome this difficulty, we are stuck in an opposition between a limitless freedom that endangers institutions in general and a restricted freedom that reduces freedom to arbitrariness and manifests itself in the mere contingency of our states of affairs. The problem, then, is how to render intelligible a type of freedom that transcends the limitless freedom of abstraction without reducing freedom to its restrained form of arbitrary choice. In the 18th century, we find the intimation of such a form in Rousseau’s conception of liberty as self-rule: “obedience to the law one has prescribed to

oneself.”¹¹ In the *Social Contract*, Rousseau describes how man, by leaving the state of nature and entering the civil state, abandons his natural liberty—an unlimited right to everything—, but thereby gains a new, positive freedom: civil and moral liberty, by means of which he becomes master of himself, an autonomous being. Thus, in this civil and moral state man transforms his unlimited freedom not only into a restricted liberty to possess or to choose, but also into a *liberty of self-determination*. The entry into a civil and moral state for Rousseau does not designate a mere restriction of a pre-existing unlimited freedom, but aims at describing a transformation or reinvention of freedom in the form of an *enabling obedience*: an act of self-determination in which the individual is not subjected to a sovereign separated from her, but subjects herself to something she herself, in part, authors.¹²

Rousseau’s conception of self-legislation points to the fact that it is not only the question of the binding character of the normative, but also the question of the actuality of freedom that leads to the thought of autonomy. While the bindingness of the normative requires freedom and self-determination at its foundation in order to be distinguishable from both the bindingness of a command backed by force and necessary natural laws, the actuality of freedom seems to require that we determine ourselves by means of self-prescribed laws, rather than simply abstracting from or choosing among given determinations. The problem of normativity and the problem of freedom *both* direct us to the concept of self-determination.

II. Autonomy: The Very Idea

Influenced by the idea of laws of reason prominent in the rationalist tradition, as well as the idea of freedom vivid in Rousseau’s writings, Kant puts forward the paradigmatic formulation of this new co-determination of freedom and normativity. In his *Groundwork of the Metaphysics of Morals*, Kant claims with great aplomb: “If we look back upon all previous efforts that have ever been made to discover the principle of morality [*Prinzip der Sittlichkeit*], we need not wonder why all of them had to fail.”¹³ They had to

¹¹ Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings*, (ed.) (tr.) V. Gourevitch (Cambridge: Cambridge University Press, 1997), 54.

¹² “Each individual, by contracting, so to speak, with himself, finds himself engaged in a two-fold relation: namely, as member of the Sovereign toward private individuals, and as a member of the State toward the Sovereign.” (Rousseau, *The Social Contract*, 51)

¹³ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, in *Kant’s Gesammelte Schriften*, (ed.) Königlich Preußische Akademie der Wissenschaften (Berlin: Reimer/de Gruyter, 1900-), 4:432, tr. by M. Gregor as *Groundwork of the Metaphysics of Morals*, (ed.) M. Gregor (Cambridge: Cambridge University Press, 1997), 4:432. Hereafter referred to paren-

fail because they did not tie duty and freedom together in the way that Kant goes on to propose. In these previous attempts, it was seen, as Kant continues, “that the human being is bound to laws by his duty, but it never occurred to [the authors of these attempts] that he is subject *only to laws given by himself but still universal* [*nur seiner eigenen und dennoch allgemeinen Gesetzgebung unterworfen sei*] and that he is bound only to act in conformity with his own will, which, however, in accordance with nature’s end is a will giving universal law.” (GMS, 4:432) We can solve the problem of the first principle of morality (*Prinzip der Sittlichkeit*) if we take into account that the subject is only bound by laws she has given to herself, in laws that spring from her autonomy. That something is my duty does not stem from the fact that it conforms to the command of a superior. It springs from the fact that it conforms to a law that is in accord with my very own reason to such a degree that not only do I agree to this law, but, moreover, I can regard myself as its author. Kant writes, “Hence the will is not merely subject to the law *but subject to it in such a way that it must be viewed as also giving the law to itself and just because of this as first subject to the law* (of which it can regard itself as the author).” (GMS, 4:431) The will is only subject to the law insofar it can be viewed as giving this law to itself. That is to say, only the laws that—in some sense—spring from the will itself can be regarded as normatively binding (and not merely externally restricting). This is, as one must admit, a new way of demarcating the realm of the normative and of defining what constitutes a norm as binding. Kant does not stop at ruling out the idea that a norm becomes binding only because a superior commands it or because we arbitrarily chose it.¹⁴ He also objects to the idea that a norm is constituted as binding by being in some sense in agreement with the subject’s nature, be it her sensible *or her rational nature*. Kant is very explicit about this remarkable point that distinguishes him from the rationalist tradition. If we are moved to act by a certain object that interests us due to our sensible or rational nature, the ultimate law is given by nature and *thus does not bind us in a normative way*, it binds us only—as Kant puts it—externally or heteronomously:

thetically in the text as GMS. Page references will be to volume and page of the *Akademieausgabe*, which are also given in the margins of the English edition (volume:page).

¹⁴ With regard to arbitrary choice Kant writes, “*Heteronomy* of choice ... not only does not ground any obligation at all but is instead opposed to the principle of obligation.” (Immanuel Kant, *Kritik der praktischen Vernunft*, in *Kant’s Gesammelte Schriften*, 5:33, tr. by M. Gregor as *Critique of Practical Reason*, [ed.] M. Gregor [Cambridge: Cambridge University Press, 1997], 5:33. Hereafter referred to parenthetically in the text as KpV. Page references will be to the volume and page of the *Akademieausgabe*, which are also given in the margins of the English edition [volume:page].)

For, because the impulse that the representation of an object ... is to exert on the will of the subject in accordance with his natural constitution belongs to the nature of the subject—whether to his sensibility ... or to his understanding and reason ...—it would strictly speaking be the nature that gives the law; and this, as a law of nature ... is always only heteronomy of the will; the will would not give itself the law but a foreign impulse would give the law to it by means of the subject's nature, which is attuned to be receptive to it. (GMS, 4:444)

So Kant is very clear that for something to be normatively binding in the truest sense, it cannot motivate me through its conformity to my *given* nature, but only by the fact that it corresponds to a law that the will has given to itself, uninfluenced by any external incentives or obstacles. What the rational will can autonomously decree is negatively defined by the will's not being determined externally. It is positively defined by the very idea of the law itself: the will can autonomously decree anything it can will as a universal law. Everything that can determine the will in a normatively binding way has to take on, or be adopted into, the form of such a law. For something to motivate us rationally—to become a rational incentive (*Triebfeder*)—it has to be adopted into a maxim, or, as the English translation of the *Religionsschrift* has it, the will “cannot be determined to action through any incentive *except so far as the human being has incorporated it into his maxim* (has made it into a universal rule for himself, according to which he wills to conduct himself).”¹⁵

Thus, Kant puts forward a new idea of normative bindingness that founds the bindingness of the law on our freedom of rational self-determination: our ability to incorporate a determination in the form of a law and give a law to ourselves. This conception simultaneously contains a new idea of freedom. Freedom is neither the mere ability to make ourselves indeterminate and to abstract from all given determinations (although this element is indeed contained in Kant's view)¹⁶, nor is it just the ability to

¹⁵ Immanuel Kant, *Religion innerhalb der Grenzen der bloßen Vernunft*, in *Kant's Gesammelte Schriften*, 6:24, tr. by G. di Giovanni as *Religion within the Boundaries of Mere Reason*, in Kant, *Religion and Rational Theology*, (ed., tr.) A. Wood and G. di Giovanni (Cambridge: Cambridge University Press, 1996), 6:24. Hereafter referred to parenthetically in the text as REL. Page references will be to the volume and page of the *Akademieausgabe*, which are also given in the margins of the English edition (volume:page).

¹⁶ It is an essential element of Kant's idea of freedom that it allows us to abstract from all given external incentives. See, e.g.: Whereas a hypothetical imperative says “I ought to do something *because I will something else*,” “the moral and therefore categorical imperative says: I ought to act in such or such a way even if I did not want anything else. For example, the former says: I ought not to lie if I will to keep my reputation; but the latter

choose between alternatives. Freedom can only become real and actual by expressing itself in the form of laws (of a specific kind). This new concept of freedom has a negative and a positive explication in Kant: in negative terms, freedom can be defined as the property belonging to the causality of a rational living being whereby it can be effective “independently of alien causes determining it.” (GMS, 4:446) Freedom in this sense starts from the ability to abstract from given determinations and to interrupt our being determined by these external causes. Kant admits that this negative definition is seemingly unfruitful and indeterminate, but he claims that a positive definition follows from it: “Freedom, although it is not a property of the will in accordance with natural laws, is not for that reason lawless but must instead be a causality in accordance with immutable laws but of a special kind.” (GMS, 4:446) The positive definition of freedom is thus given precisely by means of the concept of law—not the concept of law *simpliciter*, to be sure, but the concept of a law of self-determination: a law that subjects a being to the very extent that this being can simultaneously be regarded as the author of the law. Freedom is nothing other than “the will’s property of being a law unto itself.” (GMS, 4:447) So whereas “independence” from external determinations is freedom in the negative sense, “lawgiving of its own” (KpV, 5:33) is freedom in the positive sense.

So, to cut a very long story short, Kant defines the concept of a normative law in terms of our freedom of self-determination and defines freedom in terms of our ability to be determined by self-legislated laws (or, to put it differently, the law of self-legislation)—in other words, law by means of freedom, and freedom by means of law. The moral law “expresses nothing other than ... autonomy ..., that is, freedom”; and freedom, on the other hand, is the sole condition under which maxims “can accord with the supreme practical law.” (KpV, 5:33) Kant sums this up by saying that, “a free will and a will under moral laws are *one and the same*.” (GMS, 4:447) This, in fact, is the very idea of autonomy, that freedom and law can only be explicated as two sides of one and the same conception: that of rational self-determination.

says: I ought not to lie even though it would not bring me the least discredit. *The latter must therefore abstract from all objects to this extent: that they have no influence at all on the will, so that practical reason (the will) may not merely administer an interest not belonging to it but may simply show its own commanding authority as supreme lawgiving.*” (GMS, 4:441; translation modified; emphasis added) That is to say: the condition for our being able to determine ourselves is our ability to abstract from any preceding determinations.

III. The Paradox of Autonomy

Even if we might agree that this is indeed a new and very attractive idea, freeing us from an obedience model of normativity and a merely negative conception of freedom, this still leaves us with the question of how we can in fact make sense of the entanglement of freedom and law. Of course, many different issues that have been raised regarding Kant's spelling out of this idea deserve our attention.¹⁷ I want to confine myself here to just one of the most basic objections that concerns the very structure of autonomy. The way in which Kant articulates the idea of autonomy might give rise to a paradox: autonomy understood in Kantian terms seems in imminent danger of reverting into arbitrariness or force, into a freedom without law or a law without freedom.¹⁸

In order to speak of a paradox of autonomy in the full sense, it is not enough simply to point out the way in which Kant's conception is out of tune with the *doxa* of his contemporaries and might have an air of absurdity; moreover, it is also insufficient simply to allude to a vague sense of

¹⁷ To name but a few: the formalism of his moral principle; the abstraction from human nature in the name of a pure rational being; the rigorism of the law; the question of the compatibility of the realm of freedom with the determinism of the realm of nature; the enigmatic unity of the sensible and the intelligible subject.

¹⁸ The way in which the Kantian picture can give rise to such a paradox and the way in which this paradox informs post-Kantian philosophy have especially been developed in works by Robert Pippin and Terry Pinkard. See Robert Pippin, "Hegel's Practical Philosophy: The Actualization of Freedom," in *Cambridge Companion to German Idealism*, (ed.) K. Ameriks (Cambridge: Cambridge University Press, 2000), 192; Terry Pinkard, *German Philosophy 1760–1860: The Legacy of Idealism* (Cambridge: Cambridge University Press, 2002), 59 f., 108, 127, 226 f., 233, 247, 263, 277, 302, 324, 342, 350, 353, 361; Robert Pippin, *Hegel's Practical Philosophy: Rational Agency as Ethical Life* (Cambridge: Cambridge University Press, 2008), especially ch. 3. For an early indication of the thesis that one might understand post-Kantian Idealism as an attempt to unfold or avoid a paradox of autonomy see also Dieter Henrich, "Das Problem der Grundlegung der Ethik bei Kant und im spekulativen Idealismus," in *Sein und Ethos*, (ed.) P. M. Engelhardt (Mainz: Matthias-Grünwald-Verlag, 1963), 382 (on the "paradoxical formula" of autonomy) and Dieter Henrich, "Der Begriff der sittlichen Einsicht und Kants Lehre vom Faktum der Vernunft," in *Kant. Zur Deutung seiner Theorie von Erkennen und Handeln*, (ed.) G. Prauss (Köln: Kiepenheuer & Witsch, 1973), 249 (on the inherent "contradiction" of autonomy). For further elaborations on the paradox of autonomy see the contributions in T. Khurana and C. Menke (eds.), *Paradoxien der Autonomie* (Berlin: August Verlag, 2011); John McDowell, "Self-Determining Subjectivity and External Constraint," in *Internationales Jahrbuch des Deutschen Idealismus*, vol. 3, (ed.) K. Ameriks and J. Stolzenberg (Berlin; New York: Walter de Gruyter, 2005), 21–37; Susan Meld Shell, *Kant and the Limits of Autonomy* (Cambridge, MA: Harvard University Press, 2009), 3, 122–59, 338 ff.; Robert Brandom, "Autonomy, Community, Freedom," in *Reason in Philosophy: Animating Ideas* (Cambridge, MA: Harvard University Press, 2009), 52–77.

tension between freedom and lawfulness. In order for there to be a paradox in the full sense of the word we need to see how the conditions that autonomy seems to require at the same time appear to be conditions of the impossibility of autonomy. This is precisely the sense of paradox that is at issue in the interesting diagnoses of the paradox of autonomy.

The paradox emerges from the *legislative understanding* of autonomy. Autonomy generally requires that we be bound only by laws of which we can regard ourselves as the authors. If we understand this authorship in terms of self-legislation, this will mean that we are subject only to laws that we have, in some sense, *posited* or *legislated*. Insofar as positing or legislating in an autonomous way requires that we have to exclude any influence of both externally commanded determinations as well as determinations instilled in us by nature, autonomy thus seems to rest on an act that is *unbound and unconstrained by any prior determination*. Thus, it seems to be a condition for autonomy that there be an unbound subject that gives herself the law in an originary act, not determined by a pre-existing law. The act by which the subject first gives the fundamental law would thus have to be lawless. However, if the law of autonomy originates from a lawless positing by the subject, it is unclear what should prevent the subject from dissolving the law in a second act and then issuing another one (and so on). The condition of possibility of autonomy—an unbound author of the law—seems to reveal itself as the condition of the impossibility of autonomy: it implies an order of arbitrariness in which the law is not binding *as such but only due to the arbitrary positing of a subject*.¹⁹

This outcome of course suggests that we should ask whether we can think of the act of “authoring” or “legislating” the law differently. The thought of autonomy not only seems to require that there be a subject not externally determined in giving herself the law. It also seems to require that this subject not act arbitrarily. It seems to be a condition of a law of autonomy that the subject must have reasons to issue this law. But if the subject is moved by reasons to posit the law, it seems that there must already be a law in place that gives the subject a reason to issue the law. The condition of possibility of autonomy—a reasoned and non-arbitrary positing of the law—seems to reveal itself as the condition of the impossibility of autonomy: it implies an order of heteronomy in which the self-prescribed law is not binding *as such but only due to a former law that was not self-prescribed*.

¹⁹ The thought of autonomy, therefore, seems to revert to the idea that a norm is the command of a superior. For a critique of this implication of a certain understanding of autonomy in which the obligation of self-consciousness turns out to be “the serving of a master whose commands were arbitrary, and in which it would not recognize itself,” see G. W. F. Hegel, *Phänomenologie des Geistes*, in *Werke*, vol. 3, 321, tr. by A. V. Miller as *The Phenomenology of Spirit* (Oxford: Clarendon Press, 1977), 261.

The diagnosis of this paradox of autonomy naturally raises the question whether it invalidates the very idea of tying the problem of the bindingness of the normative and the actuality of freedom together by means of a conception of rational self-determination. Commentators differ considerably with regard to the question of how far Kant's conception actually falls prey to the paradox of autonomy; however, rarely is it the case that the paradox is taken to reveal that the very idea of self-determination as such is defeated or shown to be null and void. The paradox of autonomy is rather taken as a challenge to further elaborate the concept of autonomy in such a way as to show either that there is no paradox at all²⁰, or that there are ways of making the paradox "conceivable" and "livable."²¹

In the following section I want to show that we find symptoms in Kant's text revealing that he is aware that his conception of self-legislation is in fact in danger of giving way to a paradox. What is more, we find resources in Kant that help us avoid a form of the paradox that would be fatal to the very idea of self-determination. These resources, however, need to be developed in a way that goes beyond Kant. Furthermore, these resources do not dissolve the paradox into a mere tautology of the self being the law and the law being oneself; they demonstrate, rather, that we have to unfold the paradox by means of a conflictual dialectic.

IV. Symptoms and Solutions

Kant's text reveals considerable awareness of the need for the idea of self-legislation to be shielded against being understood as implying either arbitrariness or heteronomy. If one accentuates the fact that the law binds

²⁰ Cf. Sebastian Rödl, "Selbstgesetzgebung," in *Paradoxien der Autonomie*, 91–111; Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996); Christine Korsgaard, *Self-Constitution* (Oxford: Oxford University Press, 2009), 41 ff. Rödl points out that a law of autonomy is not a law we *give* to ourselves but a law we *are* unto ourselves and tries to show that the latter formula does not contain any paradox. Christine Korsgaard describes Kant's idea of autonomy in *The Sources of Normativity* not as including a paradox, but instead as the very answer to a paradox (as solving the regress problem of justification [*Ibid.*, 98]). In her recent book *Self-Constitution*, she concedes that the concept of autonomy seems to include a paradox; it is however not the paradox of self-legislation, but the paradox of self-constitution, which she considers to be only a seeming paradox—a paradox that can easily be solved with the help of Aristotelian insights.

²¹ These are Pinkard's expressions: "The solution had to be to face up to the paradox and to see how we might make it less lethal to our conception of agency while still holding onto it, all in terms of integrating it into some overall conception of agency that showed how the paradox was in fact livable and conceivable." (Pinkard, *German Philosophy*, 227)

the subject only to the extent that the subject herself can be regarded as its author, it does not seem far-fetched to assume that a law can very easily lose its binding quality when the respective subject denies or withdraws her authorship. This clearly threatens to undermine the *binding* character of the law. Kant seems to be moved by this threat to a *call to order*: “We stand under a *discipline* of reason, and in all our maxims must not forget our subjection to it.” (KpV, 5:82) This call seems to imply that there is an element in autonomy that might make us forget our subjection to the law we are authoring. Kant appeals to our humility and asks us to acknowledge that, although “we are lawgiving members of a kingdom of morals ... we are at the same time subjects in it, not its sovereign.” (KpV, 5:82) Kant thus qualifies our authorship of the law in such a way that we are only *members* of a lawgiving body that includes other moral subjects, and that we are never in the position of being the sovereign in the moral kingdom—so never in a position to actually posit a law without being bound by anything or anyone else. The problematic or defensive character of this remark resides in the fact that a sovereign is introduced here at all; its logical position is granted here, and it is only denied that a finite moral subject could ever be in such a position. We are asked not to conceive of ourselves as supreme and unbound lawgivers, yet Kant’s picture *seems to evoke the possibility of such a position*.

The danger complementary to that of arbitrariness is that the moral law in fact binds us in a heteronomous fashion. If—in order to avoid a self-understanding of moral subjects as arbitrary sovereigns—Kant reminds us that we are first and foremost subjects *to* the law, and that the “determining ground of our will” is nowhere else than “in the law itself” (KpV, 70)—so, *not in us as independent of the law*—, we might suspect that we in fact heteronomously depend upon the law and come to believe that the whole talk of self-legislation is just an attempt to persuade us to agree to this rule of force.²² We can see that Kant is aware of this complementary danger when we look at how he struggles to characterize the way in which the moral law is given to us. It is here that Kant evokes the well-known “fact of reason” (*Faktum der Vernunft*). As the moral law is, according to Kant, not so much the determined effect of our will as it is the determining ground of our will, we cannot think of it as an arbitrary or contingent *construction*. However, on

²² With regard to the suspicion that autonomy might be a mechanism of disciplinary power see Michel Foucault, *Discipline & Punish: The Birth of the Prison*, (tr.) Alan Sheridan (New York: Random House, 1975). For the precarious distinction between a form of self-rule that is a mere form of discipline and a form of autonomy that amounts to a practice of freedom, see Foucault, “What is Enlightenment?” in *The Foucault Reader*, (ed.) P. Rabinow (New York: Pantheon Books, 1984), 32–50; see also Judith Butler, “What is Critique?” in *The Political: Readings in Continental Philosophy*, (ed.) D. Ingram (London: Basil Blackwell, 2002), 212–26.

the other hand, it also seems problematic to treat this law as a *given*.²³ If it were to present itself as a given condition of our nature—*e.g.*, as an inborn idea—, we would not be subject to this law only insofar as we are also the authors of it. That is why Kant invents a mode of givenness that lies somewhere in between being a mere *given* (a datum) and a mere *invention* (a construct): it is no datum and no construct, but a *factum* of reason. That is to say, it presents itself to us as an indubitable fact, but not because it analytically follows from a certain given concept or state of affairs, but because it springs from our own reason and is co-extensive with the operations of our reason. As soon as we are willing rational actors at all, this fact is *inevitably* present for us. Hence, consciousness of the moral law is produced by our pure practical reason, not as a contingent product, separable from our practical reason, but as the necessary form of practical reason's operations. Kant writes

Consciousness of this fundamental law [i.e., the categorical imperative] may be called a fact of reason because one cannot reason it out from antecedent data of reason ... and because it instead forces itself upon us of itself as a synthetic a priori proposition that is not based on any intuition, either pure or empirical In order to avoid misinterpretation in regarding this law as given, it must be noted carefully that it is not an empirical fact but the sole fact of pure reason which, by it, announces itself as originally lawgiving. (KpV, 5:31)

The moral law “provides a fact absolutely inexplicable from any data of the sensible world and from the whole compass of our theoretical use of reason.” (KpV, 5:43) A “factum” in Kant's technical use is thus not given as a datum, but as *a given of the will itself* (KpV, 5:55)—a given brought forth by, and consisting of, the will itself.

I think we can regard Kant's reminder of a discipline of reason and Kant's attempt to distinguish a form of self-givenness distinct from the givenness of data as two complementary moves that try to avoid the consequence that autonomy turns into either arbitrariness or heteronomy.²⁴ It

²³ In this vein, “*factum*” cannot just mean “fact” (*Tatsache*). It is likely that Kant instead alludes to the juridical meaning of “*factum*” as an act (*Tat* or *Tatbestand*): “*factum*” as the act that has to be stated, ascribed, and judged in a juridical procedure. For a detailed evaluation of the different ways of understanding “*factum*” and the meaning of the genitive “fact of reason” see Michael Wolff, “Warum das Faktum der Vernunft ein Faktum ist. Auflösung einiger Verständnisschwierigkeiten in Kants Grundlegung der Moral,” in *Deutsche Zeitschrift für Philosophie*, vol. 57, no. 4 (2009), 511–49.

²⁴ A further interesting discussion that shows Kant's awareness of a possible paradox of autonomy and his attempt to avoid it is to be found in his discussion of self-obligation in the *Metaphysics of Morals*, where he concedes a putative contradiction in self-obligation

seems to me however that these are symptoms rather than solutions. In his comments on the discipline of reason, Kant seems to appeal to us, to warn us, to remind us of something—thus fighting something that is in fact produced by his own description of self-legislation. And in his explication of a fact of reason Kant admits that what he forms here is a singular conception, explicitly designed as a theoretical construction to provide something that is inevitable, yet given by ourselves: “The thing is strange enough,” as Kant says, “and has nothing like it in all the rest of our practical cognition.” (KpV, 5:31)

Not only do Kant’s works contain defensive moves against the two threats of the paradox—arbitrariness and heteronomy—and thereby acknowledge the danger of the paradox; they also contain formulations of autonomy that deviate from the model of self-legislation and point to ways of unfolding the paradox that avoid invalidating the very idea of autonomy. The paradox is brought to the fore by conceiving autonomy in terms of self-legislation and thereby implying a first instituting act that seems to be

that he then goes on to dissolve by means of re-distinguishing the author and the subject of the obligation, the obligating and the obligated instance: “If the I *that imposes obligation* is taken in the same sense as the I *that is put under obligation*, a duty to oneself is a self-contradictory concept. For the concept of duty contains the concept of being passively constrained But if the duty is a duty to myself, I think of myself as *binding* and so as actively constraining [This] proposition ... would involve being bound to bind myself ... and hence a contradiction. — One can also bring this contradiction to light by pointing out that the one imposing obligation (*auctor obligationis*) could always release the one put under obligation (*subjectum obligationis*) from the obligation (*terminus obligationis*), so that (if both are one and the same subject) he would not be bound at all to a duty he lays upon himself.” (Immanuel Kant, *Metaphysik der Sitten*, in *Kant’s Gesammelte Schriften*, 6:417, tr. by M. Gregor as *Metaphysics of Morals*, [ed.] M. Gregor [Cambridge: Cambridge University Press, 1996], 6:417) This passage amounts to the clearest exposition of the paradox in Kant’s own writing. The dissolution that Kant suggests—that by considering the difference between *homo phaenomenon* and *homo noumenon* I can see that the obligating instance and the obligated instance are in fact not identical—nonetheless immediately raises new questions. Even if we leave aside the dependence of this solution on the validity of transcendental idealism, we have to give an account of how to conceive of the *unity* of the obligating and the obligated subject if we do not want to lose grip on the way in which autonomy implies a certain coincidence of the subject and the object of the law. To emphasize that “anyone who believes in Kantian autonomy is committed to the view that the binding self and the bound are in some sense distinct” as Jens Timmermann does (Jens Timmermann, “Kantian Duties to the Self, Explained and Defended,” in *Philosophy*, vol. 81, no. 317 [2006], 505–30, here 517), does not already amount to a solution, but rather rearticulates a certain problem of Kant’s conception of autonomy: if Kantian autonomy seems to require that I distinguish between binding and bound selves, how can I think of the unity of these two selves in such a way that autonomy is distinct from mere self-subjugation and internalized heteronomy?

either arbitrary and hence open to an infinite series of different institutions or else dependent upon pre-existing reasons that open up a regress beyond the putative first instituting act. The question then is whether we can make sense of our being the authors of the law *without invoking the scene of such a first legislation*. Kant employs two further ways of speaking that seem to aim for exactly that: he says that in having autonomous laws we are subject to our *own* laws and he speaks of the will *being* a law unto itself. These are two alternative formulations of the fact that I am to be regarded as the author of the law that binds me—two formulations that do not invoke the scene of a first positing of a law that is implied by the formulation that we must have “given the law to ourselves.” In order to have laws *of my own* or to *be* a law *unto myself*, it is not directly required that I have in an act—bound or unbound—given a law to myself. The formulation of *my own law* says rather that the laws I follow are constitutive of me, express what I am, and are in this sense my very own (not imposed on me from someone else or by a contingent fact of nature, but articulate “myself,” the being that I am). The formula of *being a law unto oneself* implies that what I am amounts to having the character of a law that might direct my deeds: I do not confront myself simply as a fact, as a set of limiting conditions for future choices, or as a history; I am of such a form that I am *a law unto myself*.

When Kant points out that so long as we are lawgiving we are also subject to the law, he tries to point to a constellation in which we do not give ourselves a law as an unbound subject that henceforth binds itself, but in which we simply *are* a law unto ourselves—a conception in which the obligating and the obligated, author and object of the law cannot be separated.²⁵ Something is autonomous not by freely subjecting itself, but rather only if it is bound by something in which it expresses itself. The freedom of the law does not reside in its origin—in the fact that the subject has given it to herself—, but in the mode of relation between subject and law: the subject is bound by the law to the extent that she can regard the law as her very own, as expressing nothing other than herself.

²⁵ Cf. Stephen Engstrom, *The Form of Practical Knowledge: A Study of the Categorical Imperative* (Cambridge, MA: Harvard University Press, 2009). Engstrom reconstructs the Kantian idea of autonomy by means of the special relation of subject and law. Laws of autonomy are distinguished by the fact that the subject and the object of the law coincide. This happens in such a way that the efficacy of this type of law—the fact that it binds its objects—is dependent on the fact that this objects knows this law. “For a law whose efficacy, and so whose very being as a law, depends on its being known by the beings whose existence it can determine is precisely a self-legislated law. Just as practical knowledge is self-knowledge, so practical legislation—the legislation of practical law—is self-legislation.” (*Ibid.*, 136)

In using the formulas of having one's own law and of being a law unto oneself Kant's text opens up the possibility of pursuing an understanding of autonomy in terms of expression (a law subjects the will to the degree that it is expressive of this very will) and in terms of own-ness (being bound by a law to the degree that it is my own). However, Kant himself does not go very far in articulating these relations in any detail: he does not venture to explain how this free relation between subject and law comes about, how we manage to establish and sustain a relation of expression between freedom and law and of own-ness between law and subject. The language that Kant uses in order to flesh out his picture remains mostly legalistic and thus is haunted by the scenes of a first positing of the law and its attendant paradox. It oscillates between depicting the law as a product of sovereign positing and depicting it as a derivation of a merely given fact of our rational nature. In order to develop the different path that is indicated in Kant's text we therefore have to go beyond Kant.

V. From Positing a Law to Appropriating a Practice

Although it is subject to dispute whether Kant indeed falls prey to a paradox that forces us to modify his picture, on the one hand, or already provides the necessary resources to dissolve the paradox, on the other, there seems to be at least some consent amongst commentators that it is *the legalistic conception of autonomy* that has to be avoided. So in order to understand how norms depend on the freedom of those they bind and how freedom depends on norms in which it can express itself and become actual, it seems necessary to leave aside the model of lawgiving. The legalistic image of autonomy has two central implications: (1) depicting freedom by means of the unbound *positing* of a law; and (2) conceiving of normative obligation in terms of being bound by, or falling under, a *law*. Instead of understanding freedom as *institution* we might understand freedom in terms of *acquisition* or *appropriation*; and instead of figuring a binding norm in terms of a formal and abstract *law* we fall under, we might think of it as articulated as a *practice* or a *form of life* in which we participate. Hence, the initiation into, acquisition, and performing of practices can become a competing model in order to think of self and norm, freedom and law, as conditions for one another. This model is supposed to make accessible to us a different sense of the form in which a subject might be authoring the norms that bind it; and it is supposed to make us see how norms can bind a subject in such a way that they thereby constitute the subject's freedom. This model promises these achievements by offering a dialectical account of the relation of freedom and law: instead of binding freedom and law together in such a way that they separate of themselves and decompose into a

freedom without law and a law without freedom, it allows us to see how freedom and law might be *inseparable in their very tension*.

(1) If we do not think of the autonomous law as a law that the subject has legislated, posited, or given to herself, but rather as a law that is the subject's own, then it is clear that we need a deeper understanding of the way in which it is her "own" (as this cannot once again mean that the subject has posited it). One way of understanding this formula suggests itself right away: the law is the subject's own in the sense that it belongs to the subject's *nature*. This answer is not necessarily incorrect, but it urgently requires qualification: if laws of autonomy are our own laws in the sense of laws "deriving from our own nature," this cannot mean: laws of a nature *given to us*.²⁶ It must mean that they are laws of that nature that we ourselves bring forth and sustain, laws of our "*epigenetic* nature"—that is, of a nature that we constitute ourselves. For something to be an autonomous law it is not sufficient that it be a law that springs from the nature of the respective entity, pertains to it specifically, and is in this sense the entity's "own law." For something to be an autonomous law it has to be the entity's own law in a deeper sense: it is a law of something that produces or constitutes itself and is thereby participating in bringing forth its own laws. It is the law of a nature that I constitute myself, or that I—to refer to a term that Kant uses in order to explain the origin of our intelligible character—*acquire*.²⁷

²⁶ We might remember that by formulating the idea of autonomy Kant wanted to rule out not only our being determined by external causes, but also our being determined by objects that attract us due to our given (sensible or rational) nature. It is also useful in this context to remind ourselves of Kant's position on the origin of the determinations of our theoretical reason—the categories. In the *Critique of Pure Reason*, Kant speaks of an "epigenesis of pure reason," in order to indicate that the categories are self-thought a priori ("selbstgedacht"). See Immanuel Kant, *Kritik der reinen Vernunft*, in *Kant's Gesammelte Schriften*, vol. 3, B167, tr. by P. Guyer and A. Wood as *Critique of Pure Reason* (Cambridge: Cambridge University Press, 1998), B167. What he wants to exclude by saying that the categories are self-constituted by reason is not only that they might be derived from experience but also *that they were implanted in us by our Creator*.

²⁷ "The human being who is conscious of having character in his way of thinking does not have it by nature; he must always have *acquired* it." (Immanuel Kant, *Anthropologie in pragmatischer Hinsicht*, in *Kant's Gesammelte Schriften*, 7:294, tr. by R. B. Louden as *Anthropology from a Pragmatic Point of View*, [ed.] R. B. Louden, [intro.] M. Kuehn [Cambridge: Cambridge University Press, 2006], 7:294) See also the *Religionsschrift*: "The human being must make or have made *himself into* whatever he is or should become in a moral sense, good or evil. These two [characters] must be an effect of his free power of choice [*seiner freien Willkür*], for otherwise they could not be imputed to him and, consequently, he could be neither *morally* good nor evil. If it is said, The human being is created good, this can only mean nothing more than: He has been created for the *good* and the original *predisposition* in him is good; the human being is not thereby good as such, but he brings it about that he becomes either good or evil, according as he either

Now, one could object that the requirement that the nature in which my autonomous law resides must be a *self-constituted* nature seems to bring us back to the idea of a self-positing or a self-legislation of the law. The idea of self-constitution is, however, to be taken differently: it does not signify a process of self-positing or self-legislation in which an already constituted author decrees a law and brings herself under it. Rather, it implies a process that is adumbrated in Kant's characterizations of self-organized unities, paradigmatically living beings.²⁸ These beings have a self-organizing character precisely not in the sense that there is an already constituted author who has a representation of the whole in mind and produces the living being accordingly. They organize or constitute themselves in the sense that the parts are "combined into a whole by being reciprocally the cause and effect of their form."²⁹ That is to say that there exists no governing representation of the whole external to the actual being; the whole is rather present only immanently, through the interaction of its parts. Self-constitution signifies not a process of self-positing, but rather, a process in which a whole constitutes itself through the reciprocal determination of its parts.³⁰ If an autonomous law is a constitutive or an essential law of a self-constituting entity, this does not mean that an already constituted subject issues its own law; it means that the law is the expression of its self-constituting process. Laws of autonomy are not posited by me. Instead, I must sustain the laws of autonomy or bring them forth in the way I constitute myself. In so constituting myself I *make* the law my own. With regard to practical self-determination this process of self-constitution is to be thought in terms of the acquisition and participation in a practice, happening alongside the corresponding formation of a practical identity. The process of acquisition and appropriation required for this cannot be exhausted in a purely passive process of reception (a drill or discipline by which I am externally transformed), nor can it be the case that the norm is present and active without my having to participate in realizing it. The norm must become actual in me in such a way that I can eventually refer to it in the first person: that I myself become a "law unto myself."

incorporates or does not incorporate into his maxims the incentives contained in that predisposition (and this must be left entirely to his free choice)." (REL, 44)

²⁸ For the structural analogy between living self-organization and practical self-determination in Kant and Hegel, see Thomas Khurana, "Life and Autonomy," in *The Freedom of Life: Hegelian Perspectives*, (ed.) T. Khurana (Berlin: August Verlag, 2013).

²⁹ Immanuel Kant, *Kritik der Urteilskraft*, in *Kant's Gesammelte Schriften*, 5:373, tr. by P. Guyer and A. Wood as *Critique of the Power of Judgment*, (ed.) P. Guyer and A. Wood (Cambridge: Cambridge University Press, 2000), 5:373.

³⁰ Kant explicitly parallels this type of immanent organization with forms of organization in the political field—see Kant, *Kritik der Urteilskraft*, 5:375.

(2) It corresponds to this different conception of the subject's authorship—authoring the law by making it my own or by constituting myself in such a way as to bring this law forth—that we have to understand the reality of the norm in a different manner. In Kant's conception, the ultimate law of autonomy that defined the autonomous will was the *mere form of the law as such*: the law that was the will's very own was to choose only that maxim that can be willed as a universal law. The subject's responsibility was thereby to abstract from any given content whatsoever and simply observe the very form of a maxim, investigating whether it could be willed as a universal law without subverting or contradicting itself. This conception has been criticized for its formality insofar as it seems that the abstraction that the test requires makes it impossible for the test to issue any substantive results: everything, or nothing, seems to follow from it. We can only judge if something is apt to be a universal law against the background of a world—and therefore not in abstraction from any contents.³¹ The norms that oblige us do not emerge from a formal universalizability test, but from our participation in concrete practices that we can make our own.

Modelling obligating norms in terms of the constitutive rules of a practice, rather than in terms of abstract and formal laws, puts us in a position to understand how these norms are real and actual. Additionally, this view makes more understandable the sense in which these laws can be the subject's own to a greater or lesser degree and are thus subject to a process of work and appropriation that aims to reach a higher degree of autonomy within a practice. If we consider norms in terms of practices rather than formal laws, we can more easily understand how subjecting oneself to the constitutive rules of a practice is not so much a restriction of freedom (in the sense of an open space of possibilities) as it is a production of freedom—namely, through the constitution of possible courses of action that are brought into existence by the constitutive rules of the practice and the participatory roles it defines. We can understand more fully the sense in which it is true that obedience to these norms can be enabling.³² In terms of practices it furthermore comes to the fore that autonomy cannot be fully articulated by relating one subject to a law, but only by articulating social relations between different subjects in relation to the law.³³ That is to say,

³¹ For this type of criticism see paradigmatically Rph, § 135 A.

³² See Terry Pinkard, "Tugend, Moral und Sittlichkeit: Von Maximen zu Praktiken," in *Deutsche Zeitschrift für Philosophie*, vol. 49, no. 1 (2001), 65–87.

³³ To say this is not to deny that Kant does try to account for the social dimension of autonomy, especially if we consider the *Doctrine of Right* in the *Metaphysics of Morals*. For a reading that stresses the way in which Kant articulates the realm of freedom in its social and institutional articulation see Robert Pippin, "Mine and Thine: The Kantian State,"

in order for a practice to enable me to appropriate it and make it mine, it has to be articulated in terms of a certain social structure.

Thus, if we redescribe autonomy in terms of a subject initiated into a practice, acquiring it and trying to make it its own to such a degree that it is not only subject *to* but the subject *of* a practice (*i.e.*, subject in the sense that it can be regarded as the [co-] author of the practice), this opens up both a richer understanding of what autonomy amounts to and new lines of questioning with regard to both the resulting complex inner structure of the subject³⁴ and the social articulation of autonomy.³⁵ The paradox of autonomy thus does not necessarily lead us into a lethal self-subversion of the idea of autonomy; it seems rather to lead to a different understanding of *autos* and *nomos*, self and law, that produces new insights regarding the way in which they are conditions of one another.

VI. The Dialectics of Freedom and Normativity

Now, the question is: does this re-description dissolve the paradox of autonomy? I certainly think it allows us to avoid the fatal version of the paradox. However, it does not transform the paradox into a mere tautology of self and law, freedom and normativity. A free will and a will under the moral law are *not* precisely one and the same thing—freedom and obligation are rather *two moments of the same constellation*. In this shared constellation freedom can enable the law and the law can actualize freedom only to the degree that they remain distinct and in tension with one another. In order for a free self to recognize a norm as her own and for a norm to determine and express itself in a free self there must be a difference between self and norm. It is the common work, or rather struggle, of freedom and law to overcome the distance between self and practice in order to let them co-determine one another without thereby annihilating their difference. For someone to be a free self it does not suffice to conform to one's own rules—the self must rather constantly liberate itself from what in the law is not its own and try to fulfil or express the law: to 'place' itself in the law.³⁶ And for

in *The Cambridge Companion to Kant and Modern Philosophy*, (ed.) P. Guyer (Cambridge: Cambridge University Press, 2006), 416–46, especially 437 ff.

³⁴ See, *e.g.*, Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford, CA: Stanford University Press, 1997) and Alenka Zupancic, "The Subject of Freedom," in *Ethics of the Real* (London: Verso, 2000), 21–41.

³⁵ See Frederick Neuhouser, *The Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000); Axel Honneth, *Das Recht der Freiheit: Grundriß einer demokratischen Sittlichkeit* (Berlin: Suhrkamp, 2011); Pippin, *Hegel's Practical Philosophy*, Part III.

³⁶ Hegel uses a similar formulation at Rph, § 44.

something to be a lawful practice, it must be more than a set of formal laws that can just be assumed to apply to or to be instantiated by its subjects; it must rather be something that *transforms* its subjects, that enforces and realizes itself against that which in the subject is foreign or resistant to the law. Thus, while the law tries to transform the subject into an expression of the law, subjects must also try to liberate themselves within or in the form of the law. It is only their irresolvable struggle that results in the subjects' becoming authors of a practice that can get beyond the established finite forms of practice, and that results in a practice that is more than a discipline. Subjects can become authors only to the degree that they are thrown into the constitutive rules of the practice, from which they must in turn liberate themselves to a certain degree. Freedom thus exceeds the finite realizations of the law and remains yet to be attained while the law remains intent on sustaining itself against the challenges that it itself evokes. Freedom and law can thus become part of one and the same constellation and condition one another only if they continue to entertain a dialectical relation, or, to put it differently, if they enter into a history. If this is true, then we have—by unfolding the paradox of autonomy—not reached a state of complacency and resolution in which freedom and law have finally become one and the same, their conflict put to rest. Rather, we have re-opened their enabling conflict, which articulates itself in the history of our liberations and determinations.

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