

Kant on Sex and Marriage: What Kant Should Have Said

by

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B.A., University of Guelph, 2009

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## **Supervisory Committee**

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## **Abstract**

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This thesis examines Kant's claims about the morally problematic nature of sexual desire and activity, as well as the necessity of marriage in order to allow for permissible sexual relations. It shows that, based on Kant's assumptions regarding the problematic nature of sex, his own solution, marriage, does not allow for permissible sex. My work then proceeds to explain the position Kant should have taken on this matter based on the Formula of Humanity as well as perfect duties to self and other. Finally, it suggests that sexual pleasure can involve a temporary suspension of humanity, and thus be morally problematic.

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## Introduction

“Kant’s views about sex are, to put it mildly, bizarre, in part at least either the views of a bachelor or the views that made him a bachelor.” --Paul Guyer.<sup>1</sup>

In this thesis, I am going to discuss Immanuel Kant’s views on sex and marriage, explain what I think is right and wrong about these views, and then attempt to develop a Kantian account of permissible sex that is intuitively plausible. Kant thought sex was inherently morally problematic and only permissible within a heterosexual marriage. He had some remarkably conservative, even hostile, things to say about our sexual desires as well as the activity itself. That he thought about sex in this way will make sense to anyone familiar with biographical details of Kant’s life. Indeed, it is said that he died a virgin. If all you knew about Kant’s moral theory were his views on sex and marriage, then you would rightly wonder why he is considered to be such a great philosopher and also why his theory was so influential for modern day ethics.

Kant is right to be suspicious of sex, for it can be, although it is certainly not inherently, morally problematic, and Kant’s belief that sex can only permissibly occur within a heterosexual marriage is a long held notion which many people continue to endorse. This belief implies that sex that does not occur within this context is immoral, but it is not at all clear that this proscription is based upon plausible moral principles, and a religious or cultural reason which proscribes a certain behavior is not a good reason to think that that behavior is immoral for anyone who lacks the relevant religious or cultural assumptions. Although sex can be morally problematic, it is not so problematic that it

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<sup>1</sup> Guyer, Paul. *Kant*. London: Routledge. 2006. p 276

requires the traditional solution of heterosexual marriage, and it can permissibly occur without the intervention of religious or civic institutions.

Many of the issues traditional sexual morality considers to be immoral are, upon closer inspection, not morally problematic at all. It is important to consider which negative judgements regarding sexual activity and sexual preferences are based upon plausible moral principles and which are not. We judge people based on their sexual preferences, the frequency with which they engage in sexual activity as well as the number of and kind of partners they have. Some of these judgements will be based on moral principles, for instance a negative judgement regarding rape, but what about possible negative judgments regarding consensual sex between strangers, or homosexuality, or fetishism? People may judge based on what they take to be moral grounds but that are, actually, not moral grounds at all and that are closer to simple disgust or to a more complex, negative feeling regarding the object of their judgement. They may think that in itself certain sexual behaviours and practices are immoral. I doubt the people who make these judgments consider their intuitions on these matters; it is hard to be impartial or objective on any subject, and sex is no exception. We are enculturated to think that sex should be one way or another, and that it should occur with certain conditions present and certain other conditions absent, but it is not clear that one can easily rule out what might be labelled “perversions” by some, based on moral principles. Instead, according to plausible moral principles, many “perversions” are not in themselves immoral.

Sex can be morally problematic in a variety of ways and many otherwise morally decent people have, at one point or another in their lives, been tempted to do something

they otherwise know to be wrong in an attempt to satisfy their desires. We are, after all, only human, and our desires and physical urges can have a powerful influence over us. Our hunger, for instance, could grow in intensity to the point where we can no longer rationally consider our options and we may even contemplate stealing from another person. Sexual desire is similar to hunger, but, unlike hunger, the object of our sexual desire is most likely going to be another person, and this means that, unlike the food we desire (my apologies to animal rights activists), the other person, simply as a person, places moral constraints on our activity. People are autonomous agents who can deliberate as to which activities they should participate in, and their consent to be treated a certain way can, and usually does, have a morally transformative power. Sex is, in principle, no different from other activities that are made permissible through consent. This is to say that it is governed by the same moral principles involved in our more general treatment of and interactions with other people and ourselves.

Kant is a great philosopher, and his theory has the potential to explain a great deal regarding our morally problematic treatment of other people as well as how our own self-directed actions may be morally problematic. Kant provides us with a set of conceptual tools and moral principles that allow us to address many problematic ethical issues. In general, the second formulation of the Categorical Imperative, the Formula of Humanity, provides us with an intuitively plausible and robust moral principle that allows us to explain what is right and wrong about many activities. When applied to sex, it for the most part supplies us with intuitively plausible answers. It explains why it is wrong to deceive and coerce people in order that they engage in sexual activity, and it also explains

why it is wrong to engage in certain degrading or dangerous sexual practices even if they are engaged in consensually.

Kant's moral theory has the capacity to plausibly explain what is and is not permissible in sexual activity. It can provide us with judgements based on moral principle, not simply on negative and amorphous feelings like disgust. Kant's moral theory can be applied to sexuality and allow us to understand how sexual activity that violates or degrades agency is wrong. His theory can be interpreted to provide liberal and intuitively plausible answers as to which consensual activities one may permissibly engage in. This may strike some as surprising considering what Kant himself writes on the topic and, in particular, that he rules out consent as a sufficient condition for allowing for permissible sex. However, Kant's views on sex are not clearly implied by his moral theory, and so there is room for interpretation regarding what Kantian moral theory implies when it is applied to potentially morally problematic issues regarding sex.

The application of Kant's moral theory to sex is interesting, because it seems plausible that we ought to consider our agency, or our ability to set ends, as well as the agency of others to be valuable capacities that make us worthy of respect. This is a profound notion Kant developed in his moral philosophy: it is not what a person does with their rational agency that makes them worthy of respect but, instead, merely the fact that a person is a rational agent implies that they deserve respect. Rational agency is a defining feature of persons, and our ability to consider our options and act, or not, or agree to participate in an activity, or choose not to, allows us to shape both ourselves and the world. Through our choices we can make ourselves into the kind of people we would like to be and transform society as a whole. Because of the importance of our rational

agency, even if you are skeptical about Kant's principled moral constraints you may still be interested in the Kantian account of permissible sexual activity that I will present because it is concerned with the ways our sexual activity can compromise or disrespect our own agency, as well as the agency of others, and thus be morally problematic. With this account I describe the position Kant should have taken regarding sexual ethics, one that better accords with his moral theory.

The Kantian account I present in this paper contributes to the currently existing literature on Kant and sex in that it focuses on the ways sexual desire and activity can affect our freedom, or might be thought to affect our freedom, through discussions of topics that have not been adequately considered in the literature. In the first chapter, I examine some general features of Kant's moral theory, and I explain why it is that Kant takes extra-marital sex to be impermissible. Although I cover well-tread ground in this chapter, it is important in that it gives the reader an understanding of the general features of Kant's moral theory that are relevant for the discussions that will occur in the second and third chapters. In the second chapter, I examine Kant's understanding of marriage, which he believes to be a necessary condition in order to allow for permissible sex. In this chapter, I also argue that, based on Kant's hostile views on sex, his solution fails and that Kant's own account implies that even marital sex should be deemed morally impermissible. In the third and final chapter, I present a revised Kantian account of sexual ethics which focuses on the morally transformative power of consent in allowing for permissible sex. I present a plausible account of moral sex based on the relevant aspects of Kant's ethics. I develop this account while remaining conscious of the fact that, in any remotely Kantian account of morally permissible sex, consent by itself could

not be a sufficient condition, for what may be consented to could be impermissible insofar as it violates our perfect duties to self or to others. In the last section of this chapter, I consider the likely possibility that intense sexual pleasure could temporarily limit our agency and thus be morally problematic. I conclude by suggesting that the temporary suspension of agency is, in general, a difficult problem for Kantian ethics.

One thing I should mention before proceeding concerns the role natural teleology played in Kant's ethics. Natural teleology concerns the means ends relations we find in natural processes. It was important for Kant's understanding of sexuality and consequently his understanding of sexual ethics. Kant's contention was that we cannot help but understand our sexual drive as having the natural end of the propagation of the species. This is the proper and natural function of this drive. Misuse of this natural drive, through homosexual sex or through masturbation, is impermissible because doing so is irrational: there is a disconnect between the sexual activity and the reasons for doing it.

While I find Kant's position interesting, this is a topic I do not discuss in my work and I think this merits a comment. One reason I am not interested in discussing Kant's understanding of natural teleology is because of the use he makes of it to condemn homosexuality and masturbation. Indeed, some of Kant's most hateful and misguided rants are based upon the importance of living in conformity with the natural teleology of our biology. Kant's position on these matters is an example of the kind of negative judgement regarding sexual activity that, while complicated, does not proceed from moral principles. So, while I find the history behind natural law arguments for the impermissibility of homosexuality and masturbation fascinating, I do not think that the use Kant makes of teleological considerations in order to argue for substantive moral

positions very convincing. I agree with Kory Schaf's position on the matter. Schaf provides a compelling argument against Kant's use of natural teleology in order to condemn homosexual activity. Schaf's most important claim is that Kant is wrong to think that there is a connection between the supposedly unnatural use of one's sexual capacities and the unethical use of those capacities. Natural teleology serves as a regulative idea with which we understand natural processes, or means-ends relations we find in nature, but it is not objectively valid, or indisputably true, and cannot legitimately serve us in making ethical judgements.<sup>2</sup>

I also do not discuss homosexual sex because I do not think it differs in any morally relevant ways from heterosexual sexual activity. By my interpretation of Kant's moral theory, when homosexual sexual activity is morally problematic it is problematic for the same reasons that heterosexual sexual activity is problematic. I also do not discuss masturbation for similar reasons: when it is immoral it is because it violates a more general perfect duty one has to oneself. In this work, I am concerned with the ways our sexual activity can be morally problematic based on the Formula of Humanity, our self and other regarding duties, and our duty of respect to others and to our self. I take these to be the most relevant features of Kant's thought which we may use to address this issue, and I think Kant's moral theory has a great deal to tell us about both the morally problematic nature of sex, but also about permissible sexual activity.

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<sup>2</sup> Schaf, Kory. "Kant, Political Liberalism, and the Ethics of Same-Sex Relations." *Journal of Social Philosophy*, 32 (3) 2001. p 454. This paper contains an excellent discussion on this topic. Schaf provides other arguments as well for why Kant is wrong to appeal to natural teleology in order to argue against the impermissibility of homosexual activity or relations, but the reason I cite here is the most easily understood. This is a topic that has received a great deal of attention and for other interesting discussions of it see see: Cooke, Vincent (1991). "Kant, Teleology, and Sexual Ethics." *International Philosophical Quarterly* 31 (1). Denis, Lara (1999). "Kant and the Wrongness of 'unnatural sex.'" *History of Philosophy Quarterly* 16(2), and Soble, Alan (2003). "Kant and Sexual Perversion." *The Monist* 86 (1).

## Chapter 1

In this chapter, I will explain why Kant thinks extra-marital sexual activity is impermissible. To do so, I will address some fundamental features of his ethical theory that inform his objection to extra-marital sexual relations. In the first section of this chapter, I will examine the second formulation of the categorical imperative, known as the Formula of Humanity. Specifically, I will explain why Kant thinks people possess intrinsic value as ends-in-themselves, consider what it means to treat a person simultaneously as both a means and an end, and I will also briefly consider the role of Kantian self-regarding duties. In the second section of this chapter, I will examine Kant's understanding of our embodiment and the rights and corresponding self-regarding duties we have over our bodies. This will help us understand why Kant thinks consent between the agents involved in sexual relations is not sufficient to allow for permissible sexual activity. In the third section of this chapter, having laid the groundwork for Kant's proscription against any humanity-negating or humanity-denying activity, I will consider what Kant thought of sexuality itself, and why he considered it to be morally problematic.

### Section 1) Relevant Background Features of Kant's Ethics

In the *Groundwork for the Metaphysics of Morals*, Kant discusses the necessity of something having an absolute or intrinsic value if there is to be a supreme principle of morality and with it an objective system of morality. Kant thought that there must be something of absolute value if there is to be a system of objective morality, for if there were not, then everything would possess value only given certain conditions. If something did not meet these conditions, then that thing would not possess value. The value of all things would be relative because any given thing would possess its value only

because of its relation to conditions, or criteria that are being met, be they spatio-temporal, causal, etc. If there is to be objective or absolute moral value, as opposed to merely relative value, then something must be intrinsically valuable and not merely valuable given certain conditions or relative to certain situations, but unconditionally valuable and so valuable in itself. Kant believed that there is an objective morality and that rational beings, which he also describes as “ends-in-themselves”, possess an intrinsic and absolute value that is unconditioned.

In order to understand why Kant describes rational beings as ends-in-themselves, we should consider the distinction Kant draws between rational and non-rational beings. Rational beings, including humans who are the only rational beings we know of, differ from non-rational beings in that the former but not the latter possess wills. For Kant, the will is a power that only rational beings possess, and with it we can determine our actions in accordance with the idea of certain laws.<sup>3</sup> This means that while everything in nature acts in accordance with laws, rational beings are special in that they can act in accordance with their conception or understanding of laws or rules. Rational beings are free to govern their actions in accordance with the idea of laws in a way that non-rational beings, for instance mechanical systems and animals, are not. A mechanical system abides by natural laws in the sense that it demonstrates the laws of physics, but people can govern their behavior in accordance with their understanding or conception of laws.<sup>4</sup> The upshot of this is that we can be free in our actions while non-rational beings are not free.

Animals are also non-rational beings and their actions are not free, for they are not able to

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<sup>3</sup> Kant, Immanuel. *Groundwork of the Metaphysics of Morals*. Trans. Paton, H.J. New York, Harper Perennial, 1964. p 95

<sup>4</sup> Kant, Immanuel. *Critique of Practical Reason*. trans. Beck, Lewis White. The Bobbs-Merrill Company, Indianapolis, 1956. p XI

base their actions upon conceptions of laws or rules. Instead, according to Kant, their actions are solely determined by instinctual impulses and stimuli which necessitate that they act a certain way.<sup>5</sup>

Because rational beings have the potential to be free or to govern their actions in accordance with their conceptions of laws, they have a fundamentally different kind of value than that possessed by non-rational beings or things. It is important to note that the kind of value possessed by people is incommensurable with the kind of value possessed by things. Non-rational beings have only a relative or conditioned value as means to given ends, and because of this they are mere things. Kant calls the kind of value things have “price”, and one thing can be exchanged for another thing of equal price. Things by themselves have no rights and so agents have no corresponding duties to them directly. Instead, the behavior of an agent towards things is morally constrained only insofar as a certain thing stands in relations to other agents, say as the property of another person, or insofar as certain treatment of a thing will instill bad dispositions in the agent, e.g. mistreating animals, which may in turn lead them to treat people in impermissible ways. The value possessed by persons is fundamentally different from price; persons have an innate and absolute value which Kant calls dignity. It is important to understand that for Kant no thing or collection of things, regardless of their value in terms of price, could ever amount to the value of the dignity of a person. It is a central feature of Kant’s moral system that dignity is inherently possessed by all people, and it is important to note that

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<sup>5</sup> Kant, Immanuel. *Lectures on Ethics*. ed. Heath, Peter and Schneewind, J.B. Cambridge University Press, United Kingdom, 1997. p 125

Kant emphasizes at many points that it is equally possessed by all people regardless of how immoral they have been through their actions.<sup>6</sup>

Kant specifically addresses the issue as to how we ought to treat persons in the second formulation of the categorical imperative, which is also known as the Formula of Humanity. The Formula of Humanity reads “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.”<sup>7</sup> In the *Metaphysics of Morals*, Kant contrasts our humanity with our animality, or our instinctual capacities for both our own individual survival as well as the survival of the species.<sup>8</sup> He describes humanity as “the capacity to set oneself an end—any end whatsoever...”<sup>9</sup> Animals cannot set ends because their behavior is entirely determined by their natural instincts. People, on the other hand, can act freely and can set ends that resist the compulsion their instincts exert on their will. People can even set ends for which they have no sensuous desires at all. Our ability to act freely according to rational conceptions of laws is our humanity, and the Formula of Humanity asks us to treat the capacity for free action that is found in all people never simply as a means to an end but simultaneously as an end-in-itself. It is important to understand that all people are free according to Kant, at least in the sense that everyone possesses humanity. Although it may seem that in many cases a person does not make use of their freedom to act in opposition to their inclinations, the fact remains that they were free to have acted otherwise, and in future situations when they are faced with similar choices they will be able to act in a way that is not determined by their

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<sup>6</sup> Hill, Thomas. “Humanity as an End in Itself.” *Ethics*, 91, 1980. p 86

<sup>7</sup> Kant, *Groundwork*. p 96

<sup>8</sup> Wood, Allen W. *Kantian Ethics*. Cambridge University Press, New York, 2008. p 88

<sup>9</sup> Kant, Immanuel. *Metaphysics of Morals*. Cambridge University Press, United States of America, 1991. p 195

inclinations. Kant is incredibly optimistic regarding the capacity people have to exert their will in the face of their inclinations and to be free.

Before we consider what it means to treat a person simultaneously as a means and as an end-in-itself, we need to consider what it means to treat someone as a mere means. In the *Groundwork for the Metaphysics of Morals*, Kant defines a means as that which “contains merely the ground of the possibility of an action whose effect is an end...”<sup>10</sup> While this definition may initially sound confusing, it makes sense if we think of ground as “cause” and read it as defining a means as the “cause of the possibility of an action whose effect is an end.”<sup>11</sup> We can think of means as objects whose instrumental capabilities can be potentially used to realize effects that are desired as ends. In our daily lives we treat both people and things as means and this is usually permissible. However, regarding our treatment of people as means, Kant tells us that the use of a person as a *mere* means is impermissible, and that people do not exist merely as means for the use of another will. This is because people ought not to be conceived of as only conditionally valuable, or as things that possess value only relative to the instrumental uses others can make of them.

Using someone as a mere means involves treating them as one would a thing or a mechanical system whose sole value is its instrumental ability. This is because when you use someone as a mere means you deny or at least show disrespect for their humanity or their ability to will an end, and in doing so you deny their ability to be the genuine author of their own actions. For instance, if you coerce a person to perform an action or intentionally deceive them so that they will behave a certain way, you treat them as a

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<sup>10</sup> Kant. *Groundwork*. p 95

<sup>11</sup> Kant. *Groundwork*. p 138

mere means. With cases involving coercion, your use of them does not allow them to determine their actions, and in using them you treat them as a thing that will respond appropriately to force. With cases of deception, by intentionally deceiving them and intending that they base their actions upon the information you gave them, which they take to be true, you deny their ability to have ends at all, for you treat their capacity for free choice as a function that will produce a desired output given the appropriate input. Kant is also aware that a person could treat their own humanity as a mere means to an end and in doing so disrespect their capacity to will ends. This happens with any kind of addiction to a pleasurable sensation or passion where the capacity for rational decision making is used to subvert itself and make the agent less free as their will becomes an instrumental tool in the service of their desires.

To treat another person as both a means and an end is to respect the ability they possess to determine their own will and actions. To treat them this way means that you acknowledge their value as a rational being and recognize that they are not a thing to be merely used instrumentally. Kant defines an end in general as “what serves the will as a subjective ground of its self-determination,”<sup>12</sup> and by this he means the desired state of affairs which causes a person to act a certain way. He contrasts subjective ends, which are valuable only relative to the wants and desires of a subject or person, with objective ends that have an absolute value that ought to be recognized by all rational beings. To say that humanity is an end-in-itself or a self-existent end is not to say that humanity is something to be produced, but instead something to be recognized and respected. Recognizing that humanity is an end-in-itself involves understanding that one has an

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<sup>12</sup> Kant. *Groundwork*. p 95

absolute and unconditioned reason to determine oneself to act or refrain from acting in certain ways in situations that will affect people and the humanity within them, whether it is your own humanity or that of another person.<sup>13</sup> Objective ends, or ends-in-themselves, serve as “a condition limiting all merely relative and arbitrary ends.”<sup>14</sup> In other words, that the other person possesses dignity or absolute value sets limits regarding permissible ways we may treat them. So, to use another person without regard for their autonomous agency or their ability to choose their own ends, or to intentionally deceive them and hijack their agency, are impermissible ways of treating another person as they are instrumental uses of people for the realization of relative ends with merely conditioned value.

As a general rule, barring some important exceptions, what allows for the permissible use of another person as a means, and therefore what amounts to treating them as simultaneously a means and an end, is having that person’s freely given and informed consent to be treated instrumentally. In the *Lectures on Ethics* Kant writes “Man can certainly enjoy the other as an instrument for his service; he can utilize the others’ hands or feet to serve him, though by the latter’s free choice.”<sup>15</sup> Having the other person’s consent allows you to treat them as an end-in-itself because by gaining the other’s consent you acknowledge their humanity by allowing them to choose for themselves. Consent generally has a morally transformative power, and what was impermissible treatment of a person or their property without the other’s consent becomes permissible. What is important is that while treating the other as a means,

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<sup>13</sup> Hill. *Kantian Ethics*. p 88

<sup>14</sup> Ibid. p 89

<sup>15</sup> Kant. *Lectures on Ethics*. p 155

provided I have accurately described my end, the other person is free to adopt my end as their own. Thomas Hill gives the example of a rich opera lover hiring construction workers for the construction of a new opera house so that more people will be able to appreciate the opera. It does not matter whether the construction workers care for opera or not, provided they are not coerced or deceived regarding the end their involvement is put towards, the workers are free to adopt the opera lover's end as their own.<sup>16</sup>

As we have seen, Kant believes that due to their humanity every person possesses an intrinsic and absolute value he calls dignity. Furthermore, Kant thinks that we have been entrusted with this value and that we are obligated to respect it in others but also in ourselves. Because of this obligation, we have self-regarding duties that proscribe certain behaviors that would attempt to deny or degrade our inherent value or that would limit our capacity for rationally determined or free activity. Duties to self are not about our own self-interest or what is best for us as beings with needs and inclinations; they are instead concerned with keeping us worthy of our humanity.

Kant divides self-regarding duties into perfect and imperfect duties. Imperfect self-regarding duties require that an agent adopt a general end, but do not require the agent to perform any particular actions at any given instant. Perfect self-regarding duties are important if we are to understand Kant's condemnation of sexual activity outside of marriage. Perfect self-regarding duties morally necessitate that an agent omit from performing certain actions. Kant describes perfect self-regarding duties as "limiting (negative) duties"<sup>17</sup> and he claims that they "forbid man to act contrary to the end of his nature [as a rational being] and so have to do merely with his moral self

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<sup>16</sup> Hill. *Humanity as an End in Itself*. p 89

<sup>17</sup> Kant. *Metaphysics of Morals*. p 215

preservation...”<sup>18</sup> For Kant it is very important that we respect ourselves as beings with unconditioned value and that we not let our dignity degrade into something valuable solely in a relative or conditioned sense.

Perfect duties to self are important for the focus of this thesis, because they proscribe treating oneself in ways that attempt to devalue or degrade one’s humanity. According to Kant, we are not permissibly allowed to treat our person in any ways we so choose. In the *Lectures on Ethics*, Kant claims that self-regarding duties “rest on the fact that in regard to our own person we have no untrammelled freedom, that humanity in our own person must be highly esteemed, since without this, man is an object of contempt...”<sup>19</sup> Kant thought that when we violate our self-regarding duties we show disrespect to our humanity which distinguishes us as beings of a greater kind of value than that possessed by everything else in the world. In attempting to freely follow our animal inclinations Kant claims that “[a person] is lower than the animals, for in that case there arises in him a lawlessness that does not exist among them.”<sup>20</sup> Kant’s idea is that since animals do not possess the capacity to determine their wills based on rational conceptions, and instead have their behavior entirely determined by their instincts, their actions are simply in accordance with the laws of nature. People, however, are able to and ought to act morally, or what is the same for Kant in accordance with laws of freedom, so when we employ our capacity to act freely so that we may follow our animal inclinations we use freedom to subvert itself. If we were to successfully divest ourselves of our humanity, then we would lose our unconditioned value and become a thing with only

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<sup>18</sup> Ibid. p 216

<sup>19</sup> Kant. *Lecture on Ethics*. p 124

<sup>20</sup> Kant. *Lectures on Ethics*. p 126

relative or conditioned value. According to Kant there are many impermissible ways we can use and treat our physical bodies that will show disrespect towards our humanity. In the next section, we will consider Kant's understanding of our embodiment, and the duties we have towards our own bodies.

## **Section 2) Our Embodiment and Duties Towards the Body**

In order to understand why Kant considered sexual activity outside of marriage to be disrespectful to one's own humanity, it is important to understand how Kant envisioned the relationship we have with our body and the obligations we have towards our body. Kant believed the person was composed of an inextricable unity between the body and the self: your person and your body are coextensive insofar as your activity or the activity of another may affect you. Kant writes that "If the body belonged to life in a contingent way, not as a condition of life, but as a state of it, so that we could take it off if we wanted; if we could slip out of one body and enter another, like a country, then we could dispose over the body, it would then be subject to our free choice..."<sup>21</sup> But this, unfortunately, is not the case, and the body is a necessary condition of life as well as a condition of our rational agency. Because of the unity of the person and her body, when we treat our body as a mere means we treat our person and so also our humanity within as a mere means to some relative end.<sup>22</sup>

If we owned our bodies, then we could treat them as we pleased, but Kant thinks that the idea of a person owning themselves is contradictory. This is because he thinks that

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<sup>21</sup> Kant. *Lectures on Ethics*. p 369

<sup>22</sup> Ibid. p 144. Also, Kant does remark that if we were able to move from one body to another as we pleased, and if the body was merely one state of our life as opposed to a condition of life, then we could dispose over our body as if it were a thing. However, Since the body does not stand in a contingent relationship to life, but instead a necessary relationship to life, we cannot treat it as a mere thing.

it is impossible to be simultaneously both proprietor and property. Recall Kant's dichotomy of beings into either persons or things. The person is a necessary condition of ownership, and according to Kant, only things, and not people, can be owned. Kant claims that "a man can be his own master (*sui iuris*) but cannot be the owner of himself (*sui dominus*) (cannot dispose of himself as he pleases)-- still less can he dispose of other men as he pleases -- since he is accountable to the humanity in his own person."<sup>23</sup> There are two related ideas worth noticing in this quote regarding the impossibility of self-ownership in Kantian ethics. The first is that by "his own master" Kant means that a person can be autonomous regarding the determination of their will or, in other words, that because they are rational beings with humanity they have the potential to choose to act in accordance with laws and rational precepts. Since people have humanity they are not things, and although they can determine themselves in accordance with reason they cannot own themselves. This is the second idea worth noticing: we cannot be owners of ourselves, or other people, because, for Kant, ownership implies the right to dispose of the object owned. Kant claims that "One may dispose of things that have no freedom, but not of a being that itself has free choice. If a man... [disposes over his own body], he turns himself into a thing..."<sup>24</sup> Since people, including oneself, possess humanity, one cannot permissibly treat people as things. A person does not own their body in the sense that they may dispose over it as if it were a thing, or as if it was simply a body and not also a person. Instead, Kant thought that we own our bodies in the sense of usufruct, which is to say that we have a certain proprietorship over our body, but may not

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<sup>23</sup> Kant. *Metaphysics of Morals*. p 90

<sup>24</sup> Kant. *Lectures on Ethics*. p 346

permissibly dispose over it in just any way we choose, destroy it, or diminish its capacity for rationally motivated activity.

In the *Doctrine of Virtue* Kant lists three examples of treating one's body as a mere means to a relative end and thus treating one's own person in an impermissible fashion. These are "killing oneself," "defiling oneself by lust," and "stupefying oneself by excessive use of food or drink."<sup>25</sup> In killing oneself, a person uses their humanity to achieve their end of death, while in defiling oneself by lust and in stupefying oneself with excessive food, drink or narcotics, a person uses their humanity as a mere means to satisfy their animal impulses. In all three instances, people use their freedom or rational ability to set ends that negate or limit their freedom, even if it is only temporary as it is in the latter two examples. The fact that these kinds of activity negate the agent's capacity for rational choice is morally problematic, as Kant thought that instances where freedom or humanity is used to abolish or limit itself for arbitrary or conditioned reasons, such as pleasure, show disrespect for humanity. Kant writes that "To annihilate the subject of morality in one's own person is to root out the existence of morality itself from the world, as far as one can..."<sup>26</sup> Kant thinks this is the case because only rational beings can be the cause of moral good through their free and willful activity. To attempt to divest oneself of one's freedom in exchange for pleasure or for the realization of some conditioned good, and so to try and change oneself from a person into a thing, even if it is only temporarily, is to try and diminish the very ground that allows for morality. It is because of this that Kant thinks it is essential that the use one makes of one's body be restricted by rules. These rules are the self-regarding, perfect duties we have to preserve our rational agency

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<sup>25</sup> Kant. *Metaphysics of Morals*. pp 218-222

<sup>26</sup> Kant. *Metaphysics of Morals*. p 219

by treating our capacity for rational agency and so also our body with the appropriate respect. Kant admits that we may do what we must to our own bodies to ensure our own survival provided our activity does not impinge upon the rights of ourselves or others. So, while we may, for instance, sever a gangrenous limb, we cannot dispose over our own body as if it were a thing with merely conditional value. According to Kant, it is a strict self-regarding duty to the humanity in our person that we not dispose over ourselves.<sup>27</sup>

Because of the limited rights we have over our bodies there are certain actions that are impermissible regardless of the fact that one may desire to perform them or the fact that the action will only affect one's own body. That one is acting for the sake of one's own pleasure does not make it the case that one is treating oneself as simultaneously both a means and an end. Instead, when one acts for a subjective end that involves a diminution of one's agency, one is treating oneself as a mere means. The same is true regarding actions that will affect other people, and neither the fact that your action is intended to produce pleasure in the other, nor the fact that they consent to your treatment implies that you are treating them as an end-in-themselves or that you are respecting their humanity. This may make Kant sound puritanical, but it is not the case that Kant leaves no room for pleasurable activity, or denies that it has value. What Kant wants is for the mind to always be in control of the body and for us to be temperate in our indulgences. Kant correctly recognized that the body can have a very powerful influence over the will, and that it can lead agents to act immorally.

Now, as we saw earlier, it is generally the case that treatment of another person as a means is permissible provided their informed consent is freely given. Provided this

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<sup>27</sup> Kant. *Lectures on Ethics*. p 332

condition is met, you may permissibly use people's labour to achieve your ends, however your behavior must be constrained by the respect you must show for their humanity. But as we shall see in the next section, Kant thought that sexual activity was not the kind of activity that could incorporate humanity affirming attitudes, even if informed consent is exchanged between the parties involved.

### **Section 3) Why Sex is Impermissible Outside of Marriage**

According to Kant, sexual activity outside of marriage is morally impermissible because it is disrespectful to humanity; it necessarily involves the objectification of all participating agents and, because of this, it demotes their status from persons to things. It is disrespectful to the humanity in the agent himself insofar as it necessarily violates self-regarding duties, and it is disrespectful to the humanity of the other insofar as sexual activity cannot express the respect the agent ought to have for the humanity of the other person.

It is worth comparing Kant's proscription of sexual activity with his proscription of self-stupefaction through food, drugs and alcohol. Insofar as sexual activity violates one's self-regarding duty to respect and maintain one's own rational capacities it is similar to self-stupefaction through substance abuse. Both can result in passions or addictions, as many of us are not able to be temperate with indulgences that bring us great pleasure. This is especially the case with sex. As with any other addiction, overindulgence in sexual activity may reduce one's capacity for rationally motivated activity and treat one's own person as a mere means in order to fulfill one's sexual desires. As with other pleasurable activities, we make use of our rational agency in an

attempt to achieve sensuous pleasure, and if we form an addiction to this behavior we subvert our rational capacities in order to achieve this end.

Although the reasons underlying the two proscriptions are similar they differ in an important regard, for while it is possible to be temperate with indulgences in drugs, alcohol, and delicious foods in ways that do not deny or show disrespect for one's own humanity this is not the case with sex according to Kant. By Kant's account, sexual activity categorically violates our self-regarding duty even if one were to only engage in it moderately. According to Kant, it is impossible to remain a person while engaging in sexual activity. He thinks that generally there is "an inner abhorrency and damage to morality in employing the [sexual] inclination... there is something contemptible in the act itself..."<sup>28</sup> Sex differs from other kinds of indulgences in that it is not merely potentially morally problematic because it can be self-destructive, or because some may find it so pleasurable that they cannot engage in it with moderation. Instead, sexual activity is morally reprehensible because it is inherently disrespectful to humanity.

Sexual activity is inherently disrespectful to one's own humanity because it necessitates that one objectify oneself and so turn one's person into a thing for the use of another. In the *Metaphysics of Morals*, Kant defines sexual activity as "the reciprocal use that one human being makes of the sexual organs and capacities of another..."<sup>29</sup> It is important to understand that Kant defines sexual activity in terms of use, for it is included with other kinds of instrumental treatments that one person makes of another. What is more, however, is that sexual activity inherently treats another as a mere means, as it cannot include humanity affirming attitudes or treat another as an end-in-itself.

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<sup>28</sup> Kant. *Lectures on Ethics*. p 156

<sup>29</sup> Kant. *Metaphysics of Morals*. p 96

But why does Kant think sexual activity is any different from other permissible instances where we treat ourselves or others as means to ends but not merely as means to ends? Why is it the case that sex, as opposed to other uses we make of people, involves treating people as mere means or as things even with their informed consent? On the surface it would seem that informed consent between the individuals involved should solve the moral problem, especially as both agents can freely adopt each other's ends as their own and so, at least one might think, treat each other as ends. But, according to Kant, this is not the case. As we saw earlier, consent to undergo a certain kind of treatment allows for morally permissible activity in cases where the activity itself is not inherently disrespectful to a person's humanity. Kant writes that "A person can, indeed, serve as a means for others, by his work, for example, but in such a way that he does not cease to exist as a person and an end. He who does something, whereby he cannot be an end, is using himself as a means, and treating his person as a thing."<sup>30</sup> Sexual activity falls into this category: Kant writes that "In [the sexual act] a human being makes himself into a thing, which conflicts with the Right of humanity in his own person."<sup>31</sup> Kant thinks that sexual activity consists of treatment that necessarily changes the people involved into things, and so it is morally impermissible regardless of whatever consent is given. The fact that both partners give their informed consent to engage in sexual activity does not make it permissible, for inherent in sexual activity is a disrespectful attitude towards humanity, as one cannot permissibly consent to become a thing.

For Kant, the sexual impulse is an appetite that is directed towards the enjoyment of another person insofar as they are a body. Specifically, Kant describes it as an appetite

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<sup>30</sup> Kant. *Lectures on Ethics*. p 124

<sup>31</sup> Kant. *Metaphysics of Morals*. p 96

that is directed towards the “sex” or sexual organs of the other, but I think we can appreciate Kant’s claim more easily if we extend the meaning of sexual organs to include whatever parts of the body a person finds sexually arousing. The sexual appetite is not interested in or directed towards the person as a person, but instead, in their body or at least parts of their body. At any rate, people cannot be objects of a person’s appetite, at least not as persons and only as things. Kant writes that “as soon as a person becomes an object of appetite for another, all motives of moral relationship cease to function, because as an object of appetite for another a person becomes a thing...”<sup>32</sup> As we saw earlier, Kant understood a person as being an inextricable unity between their self and their body, and we cannot treat their body as a thing for our use unless we simultaneously respect them as an end in itself. Kant makes the claim that “it is evident that if someone concedes a part of himself to the other, he concedes himself entirely. It is not possible to dispose over a part of oneself, for such a part belongs to the whole.”<sup>33</sup> According to Kant, due to the unity of the person with their body, we cannot objectify a part of a person’s body, or parts, in this case their sexual organs, as things without objectifying the entire person and so treating the person as a thing. Kant writes that “as soon as anyone becomes an object of another’s appetite, all motives of moral relationship fall away; as object of the other’s appetite, that person is in fact a thing, whereby the other’s appetite is sated...”<sup>34</sup> The sexual appetite turns people into things and things are simply not the kinds of objects that one can have a moral obligation towards.<sup>35</sup> When a person turns themselves into a thing

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<sup>32</sup> Kant. *Lectures on Ethics*. p 163

<sup>33</sup> Ibid. p 158

<sup>34</sup> Ibid. p 156

<sup>35</sup> Christine Korsgaard disagrees with what is involved in sexual objectification and sexual desire. She writes, “Regarding someone as a sexual object is not like regarding him as an instrument or a tool, but more like regarding him as an aesthetic object. But in this case the attitude is not just appreciation but desire

they take themselves out of the moral community, and so no longer deserve the recognition and treatment people deserve.<sup>36</sup>

The problem is that we cannot have rights of disposal over other people, for people are not things and so are not the kinds of beings that one can permissibly have such rights over. According to Kant, in order to make use of a thing for your instrumental purposes you need to have rights of disposal over it, and this is also the case with the sexual use one makes of another person. In the next chapter we will more deeply explore the issue of extensive rights over another person, as it is an important feature of marriage, which is Kant's attempt at a solution to the problem of the objectification of people in sexual activity.

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(MPV 426). Viewed through the eyes of sexual desire another person is seen as something wantable, desirable, and, therefore, inevitably, possessable.” (Korsgaard, 1996, 194) I do not find the passage she cites particularly helpful for her point. It is a reference to the casuistical questions Kant asks regarding sexual immorality. Perhaps she was referring to the sentence from that section where Kant claims that sexual inclination is “pleasure from the enjoyment of another person...” (Kant, 1991, 222) At any rate, while it is true that there are some aesthetic features of a person's body that are at least partially responsible for a person's sexual desire, it is not clear how this affects the instrumental use one person makes of another in sexual activity. For an interesting discussion of this issue, see Papadaki, Lina. “Sexual Objectification: From Kant to Contemporary Feminism.” *Contemporary Political Theory*, 2007, 6, (330–348)

<sup>36</sup> It is a very important question whether it is possible for a person to throw away their humanity, and render themselves a thing. Kant is very insistent at some points that one does actually rid oneself of humanity, and obviously there are some things one can do to oneself that will lessen one's humanity, such as a lobotomy or suicide. At other times he speaks of our humanity as an inalienable feature of our being, and so temporary suspensions of humanity, or instances where one's ability to set ends is, for a time, suspended, seem impossible. For an interesting discussion of this matter, see Thomas E. Hill's “Humanity as an End in Itself.”

## Chapter 2

In this chapter, I will examine Kant's solution to the problem of sexual objectification. Kant thinks that a monogamous and state sanctioned marriage is the only solution that will allow for morally permissible sexual relations. Despite his condemnation of the sexual impulse, it makes sense that Kant would try to provide a solution to this problem, for he believes that our animal natures and instinctual desires are not to be wholly suppressed but merely controlled by our rational selves. Indulging in sensuous pleasure is permissible provided it does not violate any self or other regarding duties. However, Kant's solution is unsuccessful in alleviating the objectifying tendencies he found problematic in sexual activity, and I believe that, in order to be consistent, Kant's ethics ought to demand chastity as a strict duty.

In the first section of this chapter, I will briefly consider Kant's understanding of property rights as well as the rights a person can have over another person. This is important because Kant's understanding of marriage involves an arrangement that he, at times, describes in terms of the reciprocal ownership of those involved and is premised upon his understanding of property. In the second section, I will examine what Kant thought marriage involved, as well as why he thought a state-sanctioned marriage solved the problem of sexual objectification. And in the third section, I will consider some contemporary criticisms of Kant's conception of marriage. I will show that marriage does not overcome the problem of sexual objectification the way Kant thought it did and that, consequently, Kant's system of ethics does not allow for morally permissible sexual activity.

## Section 1) Property Rights

In this section, I will examine the role of the civil state in allowing for the permissible ownership and use of things and people. According to Kant, a civil state is a necessary condition for the permissible ownership and use of external objects such as corporeal things and other people. We do not usually think of institutions as being necessary conditions for the possibility of moral activity, but Kant does not believe that the moral ownership and use of external objects can exist in a state of nature but can only exist in civil society.<sup>37</sup> Within this background context of the legal conditions required for the use of external objects, Kant uses the same form of argument to explain the institutions of marriage and of property.<sup>38</sup> As agents, we need to make use of external objects, and this need introduces a moral requirement for property as a coercive political institution.<sup>39</sup> The same is true regarding our sexual inclination: in order to allow for the permissible use of another person, our sexual need for and use of another person requires a political institution of marriage. Barbara Herman summarizes Kant's argument in the following way: 1) legitimate claims to external objects as property can only exist in a civil society where there is the possibility of the legitimate enforcement of those claims. 2) As agents we must have legitimate claims to external objects in order to effectively use them and have other people recognize that they are excluded from using these objects. Conclusion) We can only make use of external objects in a civil society through the civil institution of property because the effective use of things requires the exclusion of others

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<sup>37</sup> Kant, *Metaphysics of Morals*. p 85

<sup>38</sup> Herman, Barbara. "Is it Worth Thinking About Kant on Sex and Marriage?" in *A Mind of One's Own*. eds. Louise M. Antony and Charlotte Witt. Boulder, San Francisco, Oxford. Westview Press. 1993.

p 53

<sup>39</sup> Ibid. p 53

from using them.<sup>40</sup> In short, we need to have a right to the exclusive use of external objects, which is only legitimately granted in a civil society, in order to make use of them effectively.

Within a civil state, Kant thinks we can permissibly come to have a kind of restricted ownership over other people and, with this ownership, rights over these people. In marriage, the couple come to have the exclusive right to use the sexual organs of the other person. As we saw earlier, we do not have ownership over ourselves. Kant writes that “a man can be his own master (*sui iuris*) but cannot be the owner of himself (*sui dominus*) (cannot dispose of himself as he pleases) -- still less can he dispose of other men as he pleases -- since he is accountable to the humanity in his own person.”<sup>41</sup> However, one can make use of his body and capabilities as means, as well as the bodies and capabilities of others as means, provided he does it in such a way that the people used remain as ends-in-themselves and do not become mere means. In the *Metaphysics of Morals*, Kant writes “That is mine which I bring under my *control*...which as an object of my choice... I have the capacity to use...”<sup>42</sup> A person can only own, and so have a right to use, corporeal things that do not have rights and which people do not have direct duties towards. People cannot be owned in the same way. However, sexual activity involves the use of a person’s body and since permissible use of an external object depends on legitimate claims of ownership, the other person must be in some sense yours if you are to permissibly have the capacity to use them for the satisfaction of your sexual desires.

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<sup>40</sup> Ibid. p 53

<sup>41</sup> Kant. *Metaphysics of Morals*. p 90

<sup>42</sup> Ibid. p 80

According to Kant, there are three kinds of external objects that a person can acquire: corporeal things, the performances of actions by people, and people themselves. Of the last, Kant writes that we can own another person in the sense that we can determine the status of that person and have a right to make arrangements regarding them.<sup>43</sup> Kant describes this last right as a “right to a person akin to a right to a thing”, but this right does not involve a right of disposal over another person, for Kant makes it clear that although this right involves possession of another person, whatever use that is made of them must be made of them as a person and not a thing.<sup>44</sup>

Thus, ownership of one form or another is a necessary condition for the morally permissible use of another person, for you either own the right to a performance of an action or own a right over the person himself. Marriage involves the ownership of another person in a restricted sense, and it is not the same kind of ownership that a person can have over a thing. The kind of ownership you can have over another person is identical to the kind of ownership a person can have over themselves, that is, property in the sense of usufruct.<sup>45</sup> It would be strange to think that there are rights we do not have over ourselves but that we may grant to another to have over us. But since Kant offers no reasons for us to think that a person can come to have more extensive rights over another person than those which that person has over themselves, it seems to be the case that you cannot permissibly treat another any differently from how you can permissibly treat yourself.<sup>46</sup> Having a right to a person akin to a right to a thing is the closest one can get to

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<sup>43</sup> Ibid. p 81

<sup>44</sup> Ibid. p 81

<sup>45</sup> Ibid. p 165

<sup>46</sup> The idea that marriage is a necessary condition for permissible sex is certainly not original to Kant, but compare St. Paul’s understanding of the rights married spouses come to have over each other with Kant’s. Paul writes, “The husband should give to his wife her conjugal rights, and likewise the wife to her husband.

having a right of disposal over another person, but a right to a person akin to a right to a thing does not provide either of the agents with a right of disposal over the other person, for such a right cannot be granted over a person, and can only be granted over a thing. However, Kant does think that the marriage right, and only the marriage right, provides the right to use another person sexually, and in the next section we will consider why Kant thinks that this is the case.

## **Section 2) Marriage and Why it is Supposed to Make Sex Permissible**

In this section, I will examine Kant's understanding of marriage and what he thinks marriage does to address the fundamental problem regarding the impermissibility of sexual activity. As we saw in the previous chapter, Kant thinks that extra-marital sex is wrong because the people involved lose their humanity and become things. If sexual activity is ever to be permissible, according to Kant, it must occur in such a way that allows the people involved to retain their humanity and to remain as persons during the act. Kant thought a state sanctioned marriage was a necessary condition in order for this to happen. He describes marriage as being sexual union in accordance with principle. It is "the union of two persons of different sexes for lifelong possession of each other's sexual attributes."<sup>47</sup>

Marriage is not merely an option but a necessity if a couple is to engage in morally permissible sexual activity, and to help understand why Kant thinks this is the case we should consider an important and related claim he makes. Kant writes that "the sole condition, under which there is [permissible] freedom to make use of one's sexual

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For the wife does not have authority over her own body, but the husband does; likewise the husband does not have authority over his own body, but the wife does." (1 Cor 3-5) It seems as though a Pauline marriage does involve giving the other greater rights over oneself than one has over oneself.

<sup>47</sup> Kant. *Metaphysics of Morals*. p 96

impulse, is based upon the right to dispose over the whole person.”<sup>48</sup> This is important because Kant appears to be saying that in order to engage in moral sexual relations we need to have a right that he has repeatedly denied that we can ever have over ourselves or another person, that is, a right to dispose over a person.<sup>49</sup>

Kant makes this claim regarding the necessity of having a right to dispose over another person in a lengthy discussion in the *Lectures on Ethics* regarding the immorality of extra-marital sex. Earlier, in this same discussion, he makes it clear that people are not things and so cannot be their own property. Because of this, it follows that people cannot be the property of other people either, for you only have a right to dispose over things in your possession and you cannot dispose over people in the same way. To be charitable to Kant we should assume that he is not straightforwardly contradicting himself when he says that a person can come to have rights to dispose over another person. Indeed, the description he gives of this right supports this interpretation: “The right to dispose over the other’s whole person relates to the total state of happiness, and to all circumstances bearing upon that person.”<sup>50</sup> Judging from this quote, this right allows a person some control over the decisions of another person, but Kant does not claim that once you have this right over someone you can treat them as a thing. This interpretation is also supported by the fact that in the *Metaphysics of Morals* Kant claims that when we come to own another person what we *really* own is that other person’s status, that is, the right to make arrangements regarding them.<sup>51</sup>

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<sup>48</sup> Kant. *Lectures on Ethics*. p 158

<sup>49</sup> See *Metaphysics of Morals*, p 90, and *Lectures on Ethics* pp 124, 144, 147,157, 158, 341, 343, 349

<sup>50</sup> Kant. *Lectures on Ethics*. p 158

<sup>51</sup> Kant. *Metaphysics of Morals*. p 81

What is most important, though, is that however far-reaching this right of disposal is in terms of allowing one person to influence the will of another or to make their arrangements for them, it is still a more restricted or limited right than the right of disposal which we can have over a thing we own. This must be the case, because we have no obligations towards things in the way that we do towards people, and these obligations impose restraints on our behaviour towards them. Because of this, when Kant claims that we can come to have a right to dispose over another person, he must mean that we can have this right over another person insofar as they are a person possessing humanity as opposed to a right to dispose over them as if they were a thing. According to Kant, having the restricted right of disposal over another person is what allows you to permissibly make use of their sexual organs, and you can only get this right over the other by giving and having them accept this same right over yourself.

A necessary consequence of having this restricted right of disposal over another person is that their life and yours become intimately interwoven, for you give them this same right over yourself. In this arrangement, you have a degree of control over the decisions they make and they have the same degree of control over the decisions you make. Kant thinks that we give this right to another person, and acquire it from this other person, only through marrying them. He writes that “if I yield myself completely to another and obtain the person of the other in return, I win myself back; I have given myself up as the property of another, but in turn I take that other as my property, and so win myself back again in winning the person whose property I have become. In this way the two persons become a unity of will.”<sup>52</sup> By a unity of will, Kant simply means that

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<sup>52</sup> Kant. *Lectures on Ethics*. p 159. Kant says much the same in the *Metaphysics of Morals*: “There is only one condition under which [permissible sexual activity] is possible: that while one person is acquired by the

married spouses engage in shared decision making. This follows from each of them having a limited right of disposal over each other, for each spouse has the right to direct the conduct of each other and they must now make their decisions together.<sup>53</sup> If what I said earlier is correct regarding the impossibility of a person being the property of another person, and so therefore the impossibility of a person having a full right of disposal over another person, then when Kant describes the spouses as becoming each other's property, he must mean that the other person becomes our property in a restricted sense, and that we only gain a restricted right of disposal over them.

The idea of married spouses becoming each other's property in this restricted sense is also supported in the section on the "Marriage Right" found in the *Metaphysics of Morals*. Here, Kant describes marriage as involving both people acquiring the other "as if it were a thing". By this, he means that the person may be considered and treated as a thing in certain respects, but not in others, for they are a person and not a thing. Kant goes on to claim that "this *right against a person* is also *akin to a right to a thing* rests on the fact that if one of the partners in a marriage has left or given itself into someone else's possession, the other partner is justified, always and without question, in bringing its partner back under its control, just as it is justified in retrieving a thing."<sup>54</sup> The restricted right of disposal that the partners gain over each other through marriage entails control over the other person, and as this quote suggests a great deal of control, but even so, nothing suggests that marriage entails full rights of disposal over another person as a

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other *as if it were a thing*, the one who is acquired acquires the other in turn; for in this way each reclaims itself and restores its personality. But acquiring a [part] of a human being is at the same time acquiring the whole person, since a person is an absolute unity." (Kant, *Metaphysics of Morals*. p 97)

<sup>53</sup> Papadaki, Lina "Kantian Marriage and Beyond: Why it is Worth Thinking about Kant on Sex and Marriage." *Hypatia*. 25 (2). 2010. p 284

<sup>54</sup> Kant. *Metaphysics of Morals*. p 97

thing. The runaway spouse may not, for instance, be permissibly disposed of, and must still be treated as a person with dignity.

Kant claims that the reciprocal and restricted ownership of marriage allows for permissible sexual relations between the agents. Extra-marital sex is wrong because it involves people losing their humanity and becoming things. The unmarried lovers try to allow merely a part of their person, their sexual organs, to be temporarily owned and used while denying the other the rest of their person (e.g. a say over their happiness or the choices they make in their life). During extra-marital sex the agents throw their humanity away by giving it to another who, outside of a unity of will, is unable, and perhaps unwilling, to accept it. In marriage, however, their humanity is not lost according to Kant; they each give themselves completely to the other, including all of their assets and most importantly their humanity. In doing so each part with their humanity and would become things were it not for the fact that they each gain ownership of the other person whom they gave themselves to. They each reclaim that which they parted with from the other and, in doing so, regain their own humanity and remain persons during the sexual act. Barbara Herman describes the reciprocal ownership in the following way: “I give myself (or right over myself) and you give yourself; but since you have me, in giving yourself to me you give me back to me. And so on...”<sup>55</sup> Herman calls this process “romantic blending”.

This recouping of humanity happens only in state sanctioned marriage, and not in committed monogamous relations or informed consensual affairs. In the latter two kinds of cases, although one might assume permissible sex is possible if the two partners share

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<sup>55</sup> Herman. “Is it Worth Thinking About Kant on Sex and Marriage?” p 60

their entire person with the other, the fact that the relation is only temporary is problematic according to Kant. He does not go into great detail regarding this difficult objection to his theory, that is, why a temporary unity of will could not occur outside of marriage, but he does say that in temporary relationships “one would never have a right to possession of the other as an exclusive property, but only a temporary use of the other’s substance...”<sup>56</sup> Even if both unmarried parties have given themselves over to each other completely, including all of their assets, so that they each possess the whole person of the other, since there is nothing guaranteeing that this process will continue to occur it is impermissible. Kant thinks that the involvement of the state as an external and coercive force must be present in order to allow for permissible sexual activity within a committed monogamous relationship. Kant wants the law to guarantee the lifelong restricted ownership of the agents involved; marriage is a legal contract that obligates the two parties to surrender their persons exclusively to each other for the rest of their lives.

### **Section 3) Why Marriage Does not Solve the Problem**

In this section, I will consider two criticisms of Kant’s solution. Specifically, the criticisms focus on the idea that reciprocal and restricted ownership through marriage could make sexual relations permissible. The first criticism is given by Donald Wilson in his paper “Kant and the Marriage Right,” and the second is given by Lina Papadaki in her paper “Kantian Marriage and Beyond: Why It Is Worth thinking about Kant on Marriage.” Although I disagree with aspects of both of these criticisms, they involve interesting discussions that will serve as grounds from which I will show that Kant’s own

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<sup>56</sup> Kant. *Lectures on Ethics*. p 379

solution, the sole solution he thought was possible to the problem of sexual objectification, does not solve the problem he envisioned.

Donald Wilson finds the reciprocal transfer of rights that Kant claims to occur through marriage difficult to understand, but insofar as he does understand it he thinks there is a contradiction involved which prevents it from functioning as a practical solution to the problem of sexual objectification. Kantian marriage, as a reciprocal transfer of rights between two people, is supposed to realize a “moral condition” that “serves to block the problematic failure of regard associated with sexual appetite by confining permissible sexual activity to a context in which each party views the other not merely as an object of use but also as another person...”<sup>57</sup> But Wilson thinks that Kantian marriage involves giving the other rights that we do not have, for we do not have the requisite right to dispose of our person for sexual purposes. Wilson claims that “If a self is not the kind of thing which can properly be owned by someone, it seems to follow that we cannot permissibly either dispose of ourselves, or acquire the person of another, in the reciprocal transfer that Kant envisages.”<sup>58</sup> Since we cannot permissibly dispose of ourselves, the problem as to how to get ourselves back from the other ought never to even arise, for we cannot give ourselves to them in the first place nor can we take from them what it is impermissible for us to receive, that is, their person and their humanity. In short, this means that all sexual activity is impermissible if it necessitates those involved having rights over themselves and others which they cannot permissibly come to have.

Wilson’s criticism of the reciprocal rights giving process of Kantian marriage focuses on the superficial contradiction involved in Kant’s theory. This contradiction, in

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<sup>57</sup> Wilson, Donald. “Kant and the Marriage Right.” *Pacific Philosophy Quarterly*. 85, 2004. p 110

<sup>58</sup> *Ibid.* p 111

short, claims that we do not own ourselves and cannot permissibly come to own another person, but that through marriage we can grant rights of ownership over ourselves to another person and in turn permissibly make use of the sexual organs of that other person. However, I believe that this line of criticism does not fully appreciate the nuanced sense of ownership, and so also the attendant and limited rights of disposal, that Kant thinks marriage involves. As I mentioned in the last section, Kant would be caught in this obvious contradiction if he were to claim that we cannot permissibly own another person and that through marriage we can permissibly own another person. This criticism would be correct if this were the whole story, but I believe the shortcomings of Kant's view are more complicated than Wilson's criticism recognizes.

In order to further explain this, it will help if we consider Lina Papadaki's treatment of Kant's marriage solution found in "Kantian Marriage and Beyond." Papadaki focuses on the mechanics of the reciprocal ownership of the married individuals that is said to make sexual activity permissible. Papadaki thinks that while Kant's claim that a person can come to own, and so have a right to dispose over, another person may seem paradoxical, the paradox is resolved if we interpret ownership to mean having control over that other person. Papadaki agrees that Kantian marriage involves reciprocal and equal giving on the part of both agents involved, "each allowing the other to completely own his or her person (body and self)."<sup>59</sup> She then points out the problem that arises if we interpret Kant's conception of marriage as involving the ownership of another person. She thinks this interpretation is problematic because in the *Lectures on Ethics*, just two pages prior to a discussion of marriage, Kant is explicit that a person is

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<sup>59</sup> Papadaki. "Kantian Marriage and Beyond." p 279

not their own property and that they cannot permissibly be owned by anyone else.<sup>60</sup>

Interpreting Kant's conception of marriage as involving ownership over another person (the way Wilson's criticism does) makes it appear paradoxical, for according to Kant, and as Papadaki correctly points out, it "is conceptually impossible to be both a person (proprietor) and a thing (property), yet the spouses achieve their "romantic blending" through being each other's properties and proprietors."<sup>61</sup>

Papadaki thinks there is a more charitable interpretation of Kantian marriage that avoids this paradox. She thinks that we can avoid the paradox if we interpret ownership through marriage the way Korsgaard interprets it, that is, as having some control over another person's actions. As we saw in the second section of this chapter, this seems to be a plausible way of understanding the ownership of another person that is involved in marriage. In this arrangement, the right of disposal one spouse has over another allows them to stop the other from doing a particular action, or more generally to stop them from living their life a particular way, as well as demanding that they perform certain actions, or more generally to ensure that they live their life with you in a particular way. Papadaki writes that "Each spouse, then, in becoming the other's property, is not reduced to something. Rather, he or she remains someone, yet someone to be controlled by the other spouse..."<sup>62</sup> Marriage, understood in this sense, allows for people to be owned in the sense of controlled, remain as people and avoid becoming things. Papadaki then claims "Since the spouses manage to get away with being each other's properties without

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<sup>60</sup> Ibid. p 281

<sup>61</sup> Ibid. p 281

<sup>62</sup> Ibid. p 283

reducing themselves to the status of objects, it seems that Kant's view on the impossibility of being both a proprietor and property does not hold in marriage."<sup>63</sup>

Absent from Papadaki's discussion, however, is how ownership as control that is granted over another through marriage allows for the permissible sexual use of the other person as a thing. She seems to assume that the control one agent has over another in marriage allows for permissible sexual activity, but I believe that this assumption is unwarranted because even in Papadaki and Korsgaard's interpretation the limited right of disposal that marriage implies is insufficient to allow the spouses to permissibly make sexual use of each other. In other words, their method of resolving the ownership paradox still fails to clarify how marriage allows for sexual activity between the married couple. For in their interpretation it is not the case that the spouses have an unlimited right of disposal over each other that would allow them to permissibly treat each other merely as things for their use. Further explanation is required to show how the limited right of disposal in marriage allows for the permissible treatment of one's spouse as a mere means or a thing.

But it seems that this explanation is impossible to give based on Kant's writings on the matter, for as with other instances where one person has a right to a person akin to a right to a thing, such as with one's servants or one's children (Kant's examples), in marriage the person must be treated as a person and not as a thing. Kant describes this right as allowing "possession of an external object *as a thing* and use of it *as a person*."<sup>64</sup> This implies that although the spouses in marriage have a limited right to dispose over each other, it is not the case that they may use each other as mere means or things, for as

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<sup>63</sup> Ibid. p 283

<sup>64</sup> Kant. *Metaphysics of Morals*. p 95

we have seen all that this right amounts to is having a degree of control over the other's actions. So, while the spouses are to be influenced and controlled by each other, they must still be treated as people, or in ways that do not deny or limit their humanity or status as persons.

Even in marriage the sexual use of another person denies their humanity, for the limited right of disposal does not permit the use of another person as a mere thing. If this is the case according to Kant's ethics, then all sexual activity is morally impermissible. One objection to my argument would be to claim that marital sexual activity is permissible because the unity of will that is produced through marriage transforms the nature of the use of the person in sexual activity. The reciprocity involved in marital sex does not deny or limit the spouse's humanity or status as persons the way that non-marital sex does. But how it does this, in a way that informed consent fails to, is an important question, and I do not believe that based on Kant's conception of sexual activity as inherently objectifying there is a way to make sex permissible. Consider the following quote from the *Metaphysics of Morals*. "In [the sexual act] a human being makes himself into a thing, which conflicts with the Right of humanity in his own person."<sup>65</sup> The objection, of course, accepts this claim and then goes on to say that in marriage it is permissible because we regain our humanity through the process of reciprocal ownership. What the objection does not consider, though, is the fact that according to Kant, even in marriage, we are not permissibly allowed to turn ourselves into things or mere means for the use of another. The right that we need to grant another is impossible to permissibly grant, and so the process of recouping our humanity is

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<sup>65</sup> Ibid. p 96

impossible. Another important quote is Kant's admission about marital sex: "the permitted bodily union of the sexes in marriage [is] (a union which is in itself merely an animal union)..."<sup>66</sup> Even in marriage there is nothing essentially different about the reciprocal objectification and use that occurs between the two partners, it is instead merely condoned when it should not be.

When we consider what the limited right of disposal involves, especially the fact that it does not imply that we may permissibly make use of people as mere things, as well as the inherently objectifying tendencies Kant thought were involved in sexual desire and sexual activity, it is not clear how marriage helps alleviate the noxious aspects of sexual objectification and makes sexual activity permissible. Kant's own solution to the problem, the one arrangement in which he claims it can be permissible, does not work because he described sexuality with such condemning terms to begin with. Because of this it seems that there can be no permissible sexuality based upon Kant's writings on the matter. The next question, which I will ask and attempt to answer in the next chapter, is: based upon his moral theory what position should Kant have taken regarding sexual activity?

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<sup>66</sup> Ibid. p 221

### Chapter 3

In this chapter I will present a revised Kantian account of the morality of sex in which the transformative power of voluntarily-given informed consent allows for permissible sexual activity outside of marriage. This account is to be distinguished from Kant's own account, which, as we saw in the previous chapters, claims that marriage is a necessary condition for permissible sex but that ultimately implies that all sex is impermissible. Kant's own account suffers from several difficulties, and I believe we do well to forget most of what he himself writes on the topic. Nevertheless, I believe his moral theory provides us with the conceptual framework to develop a plausible Kantian account of sexual ethics which condones sexual activity between unmarried, autonomous and consenting individuals, although not without some important qualifications.

The Kantian account I am presenting, unlike Kant's own, does not assume the worst about sex, but still recognizes that sexual activity can be morally problematic. This revised account differs in an important way from Kant's own account in that I do not think that an agent's sexual activity necessarily diminishes or violates anyone's humanity or capacity for rational self-determination. Kant is wrong to think that this is the case. Instead, according to the revised Kantian account I am presenting informed consensual sexual activity can be fully compatible with treating the humanity of everyone involved as both a means and as an end.<sup>67</sup> With this account, I present the position Kant should

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<sup>67</sup> There is an important difference between determining what counts as voluntarily-given informed consent and thinking that a morally transformative kind of consent could exist and could solve the problem of the instrumental use of another person's body for sexual purposes. I adopt the latter supposition, argue that consent can have this morally transformative power, and do not consider many interesting and difficult issues that are involved in theorizing about consent. For two excellent discussions regarding the various issues involved in consent, see Onora Oneil's "Between Consenting Adults" *Philosophy and Public Affairs*,

have taken regarding the necessary conditions that allow for the permissibility of sex and also the various ways sex can be morally problematic.

In the first section of this chapter, I will review what I wrote earlier about Kant on the notion of consent between autonomous individuals, and why he thinks consent is not sufficient for permissible sexual relations. In the second section of this chapter, I will examine Martha Nussbaum's theory of objectification. Her work features an excellent discussion of Kant's understanding of sexual objectification, and my examination of her work will show that, although sexual activity is necessarily objectifying, objectification is more complex than Kant assumed, and that the instrumental use one person makes of another during consensual sexual activity does not necessarily involve a degradation or violation of humanity. In the third section of this chapter, having shown that sexual activity is not inherently humanity degrading I will present my revised Kantian account of permissible sexual activity which argues that consent is necessary but not sufficient for permissible sexual relations. I will do this by examining the ways in which treatment of a person can be humanity degrading or disrespectful of their humanity even with their consent, for consensual sex can involve treatment that is impermissible because it violates one's perfect duties. In the third section I will also discuss sadomasochistic sexual activity and show that it can be permissible in this account. Finally, in the fourth section I will examine whether sexual desire or sexual pleasure could be humanity degrading insofar as each involves a temporary suspension of humanity. It is difficult to believe that either of these is morally problematic in and of itself, but if either one is

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14 (3), 1985. Also, see the first chapter of Alan Soble's *Sexual Investigations*. New York University Press, United States of America. 1996

temporarily humanity degrading, then it will be found to be morally problematic according to a consistent Kantian account of permissible sexual relations.

### **Section 1) Review**

In this section I will briefly discuss Kant's distinction between people and things and I will review why he thinks consent is insufficient to allow for permissible sexual relations outside of marriage. As we saw in the first chapter, Kant believed that people possess dignity due to their humanity, or their ability to determine their actions in accordance with the concept of laws, as opposed to non-rational beings which simply act in accordance with laws. This is an important distinction in Kant's ethics, as it is morally reprehensible to treat a person merely as a thing because that involves treating what is in fact an end-in-itself as having lesser value as a mere means to an end. Kant thinks sex involves treating a person merely as a thing, and so the fundamental reason why sexual objectification is impermissible is because it involves treating the humanity of the people involved in degrading ways and is therefore a threat to human freedom.<sup>68</sup> According to Kant, we treat the other as a mere thing for our use during sexual activity. Kant is correct to say that sex involves the instrumental use of another person as a thing, but he is wrong to assume that the sexual use of a person implies that they are being treated merely as a thing and not at the same time being accorded the respect due to a person.

As I have stressed earlier, Kant believes that, generally, having the other person's freely given and informed consent allows for the instrumental use of that person as a means provided no perfect duties are violated in the process. Consensual activity is

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<sup>68</sup> Brake, Elizabeth. "Justice and Virtue in Kant's Account of Marriage." *Kantian Review*, 9, 2005. p 61

permissible provided the people involved do not cease to exist as ends-in-themselves.<sup>69</sup>

However, according to Kant, during sex one person becomes the object of the other's appetite, and as such is a thing. That we give our permission to be treated as a thing and that the other gives us permission to treat them as such does not make it permissible, for, as with suicide, we ought not to consent to treatment that degrades our humanity or is otherwise disrespectful to our humanity.

I agree with Kant that we should not consent to treatment that degrades or disrespects our humanity, nor should we ask others to consent to such activity, but a person's humanity is not necessarily degraded or even disrespected during consensual and extra-marital sexual activity. In order to understand why this is the case, we need to consider what is involved in sexual objectification and why Kant was wrong to assume that all instances of sexual objectification are degrading or disrespectful of humanity.

## **Section 2) Nussbaum on Objectification**

In this section, I will discuss Martha Nussbaum's understanding of objectification. Through this discussion I will show that sexual objectification is not necessarily humanity degrading or disrespectful. Nussbaum shows that there are many ways we can treat someone as an object and that while some forms of objectification are always morally bad, others, depending upon the context, can be morally neutral or even good.<sup>70</sup> She presents a list of seven notions that are involved in objectification, but for our

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<sup>69</sup> Kant. *Lectures on Ethics*. p 124

<sup>70</sup> Note that while Nussbaum shows that objectification is a complex concept that is not necessarily morally problematic, I do not believe that she successfully shows that there is substantially more involved in the context than consent between the parties involved. Because of this, her hesitancy to condone casual sex is unwarranted, for this can be permissible so long as there is mutual consent between the parties involved.

purposes we need only look at numbers one, two, and seven as these are the morally problematic features Kant associated with sexual objectification and use:

1. *Instrumentality*: The objectifier treats the object as a tool of his or her purposes.
2. *Denial of autonomy*: The objectifier treats the object as lacking in autonomy and self-determination.
7. *Denial of subjectivity*: The objectifier treats the object as something whose experience and feelings (if any) need not be taken into account.<sup>71</sup>

As we have seen, an agent's freely given and informed consent to engage in an activity or be treated in an instrumental fashion can have a morally transformative effect in Kant's system, but the other two notions are more problematic, and it seems that consent does not necessarily have the same power to transform these objectifying ways of treating people into treatment that is morally unproblematic. So, we should compare the first of these notions, instrumentality, with the latter two, denial of autonomy and denial of subjectivity relative to the consent of those who are objectified to see if it can make a moral difference in terms of the treatment of those people. The instrumental treatment of other people is only potentially problematic for Kant, for we can permissibly use people as tools for our purposes, or as means to our ends, provided they remain as ends. Recall Hill's example of the rich opera lover hiring construction workers to build her new opera hall.<sup>72</sup> The workers serve an instrumental purpose for the opera lover, and provided she does not deceive them as to their involvement, or coerce them in some way to work on her project, she makes it possible for them to freely adopt her end as their own and she treats them as means and simultaneously as ends-in-themselves. The construction

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<sup>71</sup> Nussbaum, Martha. "Objectification." *Philosophy and Public Affairs*, 24(4), 1995. p 257. The other four are: 3. Inertness: The objectifier treats the object as lacking in agency, and perhaps also in activity. 4. Fungibility: The objectifier treats the object as interchangeable (a) with other objects of the same type, and/or (b) with objects of other types. 5. Violability: The objectifier treats the object as lacking in boundary-integrity, as something that it is permissible to break up, smash, break into. 6. Ownership: The objectifier treats the object as something that is owned by another, can be bought or sold, etc.

<sup>72</sup> Hill. "Humanity as an End in Itself." p 89

workers' freely given and informed consent allows the opera lover to permissibly treat them in this instrumental fashion.

Consent does nothing to make autonomy or subjectivity denying treatment permissible, and these notions will always be morally problematic. As we saw in the first chapter with the example of suicide, this kind of treatment is not something a person can permissibly consent to, for consenting to a denial of one's autonomy involves using one's freedom to set an end that negates or degrades freedom and one's own ability to set ends. It is also difficult to see how one could permissibly consent to subjectivity denying treatment. This is because it seems very closely linked to a denial of humanity, at least insofar as a person's feelings and experiences informs their desires and therefore the ends they adopt.<sup>73</sup>

According to Kant, the instrumental treatment one makes of another person during sex is central to the problem of sexual objectification, and this instrumental treatment implies a denial of autonomy and a denial of subjectivity. However, the sexual use one person makes of another person can be separated from the denials of autonomy and subjectivity, and a person can become an object of sexual use for another while still remaining a person. In her paper, Nussbaum gives an example of instrumental use that one person makes of another person's body that does not turn that person merely into a thing and so allows them to remain a person. Because of this, Nussbaum and I both take the treatment in her example to be permissible, though Kant would most likely disagree.

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<sup>73</sup> A counterexample to this is the surgeon who extinguishes subjectivity as well as autonomy by anaesthetizing a patient in order to perform surgery. We can explain the permissibility of doing so in my Kantian account by pointing out that this activity is done to preserve the humanity of the person anaesthetized; they remain alive, as an autonomous agent with humanity, as opposed to dying.

Nussbaum writes, “instrumentalization does not seem to be problematic in all contexts. If I am lying around with my lover on the bed, and use his stomach as a pillow there seems to be nothing at all baneful about this, provided that I do so with his consent..., provided, as well, that I do so in the context of a relationship in which he is generally treated as more than a pillow. This suggests that what is problematic is not instrumentalization per se, but treating someone primarily or merely as an instrument. The overall context of the relationship thus becomes fundamental...”<sup>74</sup>

Kant would think this treatment was impermissible, unless the couple were married, but by my understanding of the perfect duties we have to our humanity, as well as the duties we have to others, he would be wrong to judge it as such. His argument against this treatment could be based on the idea that the person, as a unity with their body, cannot permissibly be partially objectified. In this case, the entire person ends up being treated as a pillow or a thing, including their humanity, and this treatment is disrespectful to their humanity. However, I do not think that such treatment is disrespectful to the person or their humanity, for the person has consented to this treatment, so their freedom is implicated in the treatment and they have made the other's end their own. What is more, there are no disrespectful attitudes expressed on the part of the objectifier or the objectified. One can easily imagine a modified example in which consent does not make similar treatment permissible because it is accompanied by attitudes and expressions which are disrespectful to the person, but I wish to hold off

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<sup>74</sup> Nussbaum. “Objectification.” p 265. Alan Soble suggests we replace the phrase “use his stomach as a pillow” as well as the following occurrence of the word “pillow” in Nussbaum’s quote with the phrase “use his penis for sexual pleasure” and the word “penis” as this makes the example more focused on the problem of sexual objectification and use. (Soble, Alan. “Sexual Use and What to do About it” in *Philosophy and Sex*. eds. Baker, Robert. and Wininger, Kathleen J. Prometheus Books, Amherst New York. p 283) I agree that Soble’s suggestion focuses the problem, and I also think that what Nussbaum has to say about her example remains accurate even if we substitute the words.

from discussing disrespectful treatment for the present moment and leave it for the next section.

For the moment, I want to consider whether the treatment described in Nussbaum's example could be humanity degrading or denying; that is, whether it could violate the negative duty we have to the humanity of the other person, that is the duty to refrain from violating their freedom. In a footnote to this section, Nussbaum alludes to the matter as to how this use of another person's body could violate her perfect duties towards him, but she does not follow this line of thought very far. Nussbaum writes, "One way of cashing this out further would be to ask to what extent my use of him as a pillow prevented him from either attaining or acting on important capacities with which he identifies his well-being. Am I preventing him from getting up to eat? From sleeping? From walking around? From reading a book? And so forth."<sup>75</sup> These considerations speak to a more general concern regarding how her treatment affects the freedom of the other person, and for my purposes the most important question to ask is whether her treatment limits or degrades his capacity to act freely according to his humanity. Her use of him as a pillow for comfort, or even her use of his penis for sexual pleasure, is not humanity degrading as his capacity to set ends or for rationally motivated activity is not degraded. Again, we can think of modifications to Nussbaum's example that would make it the case that her treatment involved placing limitations on his freedom: say if she had coerced him into assenting to such treatment, or if she had deceived him in some way. If it were the case that her use of him did result in a degradation of his ability to set ends, or somehow limited or violated his freedom, then it would be impermissible to treat him this

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<sup>75</sup> Nussbaum, "Objectification." p 265

way even if he consented to such treatment. However, since there is no degradation of humanity in this case, her use of him as a thing allows him to remain a person. In other words, her use of him as a pillow, or as a penis, allows him to remain an end-in-himself while serving as a means to her subjective end of comfort or pleasure.

Nussbaum thinks that the context in which sexual objectification takes place is important, and she is skeptical that sex in certain contexts, although consensual, would be permissible. Regarding casual and anonymous sex she asks “in the absence of any narrative history with the person... how can one do more than use the body of the other as a tool of one's own states?”<sup>76</sup> According to Nussbaum, in order to be permissible, sexual objectification and use need to occur in a relationship in which the people involved are treated as more than mere sexual objects. Consent for Nussbaum is necessary, but it alone is not sufficient to make sexual activity permissible. I agree with both of these points and think that they are important features of a Kantian account of permissible sex. However, Nussbaum and I disagree regarding what it means to treat someone as a *mere* sexual object as well as whether it can be permissible to have sex with a person outside of an abiding relationship. For her, it is only within the context of an abiding, loving and mutually respectful relationship that allows for autonomy affirming and respectful sex, but I think restricting sexual activity to this context is too strict, for it is an unnecessary condition for the permissible sexual use of people.<sup>77</sup>

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<sup>76</sup> Nussbaum, Martha. *Sex and Social Justice*. New York, Oxford University Press, 1999. p 237

<sup>77</sup> Alan Soble points out an interesting problem with Nussbaum's restriction: “If noxious sexual objectification is permissible or made into something good only in the context of an abiding, mutually respectful relationship, engaging in sexual activity may not be employed in getting a relationship underway. The persons may not engage in sexual activity early in their acquaintance, before they know whether they will have such a relationship, because the objectification of that premature sex could not be redeemed or cleansed.” (Soble, Alan. “Sexual Use and What to do About it.” p 286)

Nussbaum asks how we can do more than make instrumental use of the body of the other person during sex that occurs outside of an abiding relationship. She wants to know how anonymous sexual partners could treat each other as more than mere sex objects. But in the Kantian account I am developing in this chapter, there is nothing wrong with using the body of the other person for sexual pleasure provided one has his or her consent and provided what is consented to is not humanity degrading or disrespectful. In order to show this more clearly, consider a nonsexual example of instrumental treatment that is neither degrading nor disrespectful. One example might be a person using the services of a massage therapist. In this example, one person uses the body of another person for a subjective end, pleasure or the cessation of pain, with the consent of that person, but these two people could be complete strangers with no previous history and their activity would be entirely unproblematic. This is because, whether you are using the other's body for sexual pleasure or for working tension out of your muscles, seeking and obtaining the other's consent to engage in that activity, and immediately ceasing the activity if the consent is withdrawn, treats the person as more than a mere instrumental object or as a mere means. Treating a person as a mere sex object would be to treat them as a mere means, as a thing and not a person, and would be impermissible. But attention regarding what the other person chooses, coupled with respect for what they choose, can ensure that they remain a person while they become a sex object that is used instrumentally. The relationship condition that Nussbaum wants would not prevent one from treating the other as a mere means, and this treatment would be impermissible in the context of a relationship as well as outside of it. What is ultimately of importance is the consent that is exchanged, as well as the nature of the activity that is consented to, not

that this consent occurs in the context of an abiding relationship. Consent can allow two autonomous people, with little or even no history with each other, to engage in permissible sexual activity.<sup>78</sup>

### **Section 3) A Revised Kantian Account of Sexual Ethics**

In the previous section, through my discussion of Nussbaum's work, I showed that consensual sexual activity does not necessarily limit or degrade one's humanity, and thus is not inherently impermissible. Kant was wrong to think sexual activity necessarily has a detrimental effect on our humanity. However, sex can be morally problematic in a number of ways, and Kant's moral theory can do a good job of explaining why this is the case. In this section, I will proceed to show that consent, although necessary, is not by itself sufficient to allow for permissible sexual activity in my Kantian account. Indeed, consent, by itself, could not possibly be sufficient for an authentically Kantian account of permissible sexual activity. This is because the perfect self-regarding duties and the duties of respect that we ought to have for others require that what is consented to be respectful to the people involved. In the course of arguing for this point, I will nevertheless argue that sadomasochistic sexual practices are neither degrading nor

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<sup>78</sup> I recognize that lack of history with the other person does present the epistemic difficulty of knowing whether or not the other person's consent is truly voluntary and informed. For it is true that it may be the case, as one might have otherwise found out through getting to know them, that, for one reason or another, they are unable to give valid consent to engage in sexual activity. However, I still do not think this means that a relationship or history with the other is necessary. For the same concern could be raised about lovers in a relationship, and there could still be an epistemic concern that the consent was genuine even in an abiding relationship. I also agree that there are some contextual features that are relevant to the permissibility of sexual activity. For example, if one or both of the agents were already in a relationship with another person, then this is a contextual feature that makes it impermissible. The sexual activity in this case is itself not humanity degrading but is still impermissible because one person is breaking a promise they owe to a third party. Another issue might be whether they are capable at the time to give consent, for instance if they are intoxicated.

disrespectful, although they may appear that way, and can be permissible according to my Kantian account.<sup>79</sup>

### **a) Treatment that is Disrespectful but not Humanity Degrading**

Certain kinds of treatment can be disrespectful to a person's humanity without actually imposing any limitations on that person's ability to act freely. Such treatment is impermissible as it violates our duty to show a minimum degree of respect to others. According to Kant, respect is the acknowledgement that all people are ends-in-themselves and, as such, impose negative duties of non-interference. The duty of respect is a further development of the perfect duties one has to other people. The latter duties demand that you ensure that your exercise of freedom is compatible with that of everyone else's in accordance with universal law. In other words, these duties demand that you do not violate or infringe upon the humanity of others. The duty of respect goes beyond the duties of right, however, as the duty of respect also prohibits treating another person in ways that are disrespectful even though they do not violate that person's freedom. It is impermissible to be disrespectful to another person as you must acknowledge the worth of the humanity in all people and hold them all in the appropriate esteem because of their inherent worth. According to Kant, respect is to be understood as "the *maxim* of limiting our self-esteem by the dignity of humanity in another person..."<sup>80</sup> The upshot of this is

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<sup>79</sup> The relevant contrasts to the position I espouse here are libertarian sexual ethics which argue that consent is sufficient to allow for permissible sexual activity. For a good example of this, see Igor Primoratz's "Sexual Morality: is Consent Enough?" *Ethical Theory and Moral Practice*. 4 (3), 2001. For the most part I agree with Primoratz's discussion, and in many cases it seems that consent is sufficient. However, he fails to mention whether consent retains its morally transformative power when it comes to consensual humanity degrading activity. This latter problem makes me think consent is insufficient and I agree with Seriol Morgan who argues that since humanity degrading activity may be eroticized, it remains morally problematic despite being consented to. See Morgan's paper "Dark Desires." *Ethical Theory and Moral Practice*. 6 (4), 2003.

<sup>80</sup> Kant. *Metaphysics of Morals*. p 244

that we must not be arrogant, or think we possess a greater worth than others, and we must not demand that others think less of themselves relative to our worth.

All people have the same inherent dignity and must be treated accordingly, but in sexual activity one person may eroticize their dominance over the other and express their disdain for them. In an emotionally abusive relationship, an arrogant person could ask, or perhaps demand as a condition of the continuation of the sexual activity, that the other recognize his own inferiority and the arrogant person's superiority. People ought not to admit to possessing lesser value relative to another, because for Kant all people possess dignity in equal measure, and we must not forfeit the respect that others owe us.

However, Kant correctly recognizes how powerful and influential sexual desire can be, and it seems plausible that one's desire could lead one to consent to such treatment and agree to recognize one's own diminished worth in the face of the other's arrogance. This kind of disrespectful treatment of the other does not limit their freedom in any obvious or immediate way, and it may not in turn result in or lead to treatment that violates the other's freedom. However it remains the case that this kind of treatment is disrespectful, as it involves openly judging a person to be of less value than they actually are, and it is morally impermissible even though it is consented to.

It is important to note that according to Kant we have no perfect or narrow duty to *feel* respect for the other, or hold them in high esteem, we simply have a perfect duty to refrain from acting towards them in ways that express our negative judgement of them.<sup>81</sup> While it is true that disrespectful feelings towards another could lead one to treat the other in disrespectful and thus impermissible ways, our actions and our feelings are two

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<sup>81</sup> Ibid. p 255

different things for Kant, as our feelings are not under our control in the same way that our actions are.<sup>82</sup> In the *Doctrine of Virtue* Kant writes “Love is a matter of *feeling*, not of willing, and I cannot love because I *will* to, still less because I *ought* to (I cannot be constrained to love); so a *duty to love* is an absurdity.”<sup>83</sup> Because of this neither a feeling of respect, as in holding the other in high-esteem, nor a feeling of love is necessary for permissible sexual activity in my Kantian account. Provided the feelings one person has towards another, whatever those feelings are, do not result in disrespectful or humanity degrading treatment, then it does not affect the permissibility of their consensual sex.

#### **b) Humanity Degrading Treatment that is also Disrespectful**

Consensual sexual activity can be humanity degrading in that people can consent to be treated violently, or even mutilated or killed during sexual activity. The fact that these activities are consensual does not make them permissible, and they remain impermissible for they are humanity degrading. What I take to be of interest, however, is that consensual humanity degrading sexual activity can be distinguished from sadomasochistic sexual practices; the latter are not necessarily humanity degrading nor disrespectful to humanity and can thus be permissible.

A person could desire to have their freedom permanently restricted or violated during sexual activity and as a result have their humanity degraded. Some extreme cases of this involve the desire to be killed or mutilated for sexual pleasure.<sup>84</sup> Condemning consensual, sexual mutilation in a Kantian account is a fairly straightforward matter: as

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<sup>82</sup> Dillon, Robin S., "Respect", *The Stanford Encyclopedia of Philosophy (Fall 2010 Edition)*, Edward N. Zalta (ed.), URL<<http://plato.stanford.edu/archives/fall2010/entries/respect/>>.

<sup>83</sup> Kant. *Metaphysics of Morals*. p 203

<sup>84</sup> For an interesting discussion on this topic, read Lisa Downing's "On the Limits of Sexual Ethics: the Phenomenology of Autassassinophilia." *Sexuality and Culture*. 8(1), 2004. Downing argues that autassassinophilia, or consensual sexual killing, is permissible if euthanasia is permissible.

we have seen, according to Kant we do not have a right to dispose over our body, and therefore our person, as if it were a thing, and anything we do to our bodies that limits our ability to set ends in accordance with reason is a violation of our humanity and therefore impermissible. These kinds of cases are examples of people using their freedom in order to set an end that limits their ability to set ends. Kant describes any act that disposes over the body and that is not done in the service of the agent's overall health, and therefore their humanity, as a partial suicide.<sup>85</sup> Both partial and full suicides are impermissible for Kant, and just as we cannot permissibly consent to suicide, we cannot permissibly consent to be mutilated or killed for our own sexual pleasure. However, consensually inflicting physical pain on someone, or consensually physically restraining someone during sexual activity can be permissible activities and require closer attention.

Certain sadomasochistic practices (henceforth referred to as S&M) are interesting to consider in this regard because they appear to involve humanity degrading and disrespectful treatment. I think S&M should be understood in much the same way as other role playing exercises such as stage acting; it involves temporarily adopting a role or persona that is set down afterwards. S&M does not involve the limitation of the participant's freedom, although it does involve a semblance of a limitation of the freedom of the person who is restrained, nor does it involve disrespectful treatment but instead merely a semblance of disrespect. Supporters of S&M claim that the practice is based upon the participants' informed consent, and I take the consent in these practices to be very morally transformative, for it allows the participants to be treated in ways that would be torture were it not for the permissible context provided by their informed consent. The

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<sup>85</sup> Kant. *Metaphysics of Morals*. p 218

participants use a signal agreed upon before the commencement of the activity called a “safe word” if they want the activity to stop; this signal functions as a veto against the continuation of the activity as well as a discarding of the dominant and submissive roles the participants had assumed. If this signal were to be given during an S&M performance, and the activity did not stop, then it would cease to be S&M and immediately become torture. In the same way, during consensual sex if one person asked the other to stop and they did not, then it would immediately become rape.<sup>86</sup>

Sadomasochistic practices appear to be humanity degrading in that the participants can be physically restrained. But if it is S&M the people are practicing, as opposed to torture, then their freedom or agency has not in fact been diminished and it only appears to be, for they can call for the cessation of the proceedings if they feel so inclined. It is not analogous to voluntarily enslaving oneself to another, although to an outside observer it may appear this way; S&M involves only a semblance of freedom being limited. Being restrained in S&M is analogous to the example Nussbaum gives of the man being used as a pillow by his lover. It is analogous in that one can ask the same series of questions regarding how one’s treatment of the other impacts their freedom. In both cases the treatment does not negatively affect the other’s freedom and the person who is being used or restrained can ask the other to stop treating them in a way that limits their freedom.

Although more problematic, I believe the infliction of mild pain, such that it does not disfigure or otherwise permanently damage the person, can also be made permissible

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<sup>86</sup> Some well known apologists for S&M include Pat Califia, who wrote *Lesbian Sadomasochism Safety Manual*, Alyson Books, Boston, 1988, Jay Wiseman, who wrote *SM 101: A Realistic Introduction*, Greenery Press, Oregon, 2001 and Philip Miller and Molly Devon, who wrote *Screw the Roses, Send Me the Thorns: The Romance and Sorcery of Sadomasochism*, Mystic Rose Books, Connecticut, 1995.

during sexual activity provided it is consented to. This kind of treatment is problematic because we are not morally permitted to dispose over our bodies as we so choose, and damage to the body can damage our ability to carry out ends and so indirectly affect our ability to be moral. In other words, damage to the body can limit our freedom. However, provided the painful treatment does not damage the body in any significant way, and has only a temporary rather than a lasting effect, then the treatment does not dispose over the body in any morally problematic way, and so does not affect the person's ability to set ends and carry them out.

It is important that we are able to distinguish the kinds of disrespectful treatment that I mentioned earlier from sadomasochistic treatments which I think are permissible. Both kinds of treatment involve saying disrespectful things, but in one the disrespectful utterances speak to a general disrespect that permeates the relationship whereas in what I take to be the benign versions of S&M the disrespectful expressions are not taken to be meant literally. Instead, the disrespectful expressions are understood as simply being a part of the performance that only occurs within the S&M context and does not permeate the rest of the relationship. In my account, S&M is a permissible role-playing game, and the institutionalized version of S&M contextualizes the treatment as part of this game and thus makes it permissible.

One might object by claiming that S&M involves treatment that is inherently disrespectful despite the fact that it is consensual and does not violate the freedom of those involved. This objection could be based upon the idea that the self-abasement involved in S&M practices is inherently disrespectful to the people involved. Because of this, it seems that if we have a desire to be sexually submissive and dominated by

another, we ought not to realize this desire nor should we agree to treat others in this subordinate fashion even if they desire such treatment. In the *Lectures on Ethics* Kant claims that self-abasement turns a person into an object of contempt and that when we renounce the respect others owe us we “voluntarily make ourselves an object of contempt in the eyes of others, and since we are simply violating a self-regarding duty, we dispose over ourselves to the shame of humanity, and are acting contrary to the right thereof.”<sup>87</sup> Kant also writes “He who so *grovels* that he lowers himself, does not feel his own worth, though the other is distinguished only by an empty title, which depends merely on illusion.”<sup>88</sup> People who think low of themselves and express their own self-contempt do not recognize their own innate value, the value of dignity which is equal in all people, and thus they disrespect their own person.

However, this kind of self-abasement does not necessarily occur during S&M. Again only a semblance or illusion of it occurs, and it is possible for the participants to recognize their own dignity as well as their equality with the other during the performance. I mentioned earlier that S&M is properly understood by focusing on the theatrical nature of the roles assumed by the participants. Outside of S&M, in what I take to be an emotionally abusive relationship, the arrogant person takes themselves to be of greater worth than the other, and the other also recognizes something like this to be true, but the arrogant person possesses dignity in equal measure with the person who grovels and so is not actually any more valuable as a person. The inequality that exists in certain kinds of emotionally abusive relationships is merely an illusion that the couple take to be

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<sup>87</sup> Kant. *Lectures on Ethics*. p 401

<sup>88</sup> *Ibid.* p 16

true.<sup>89</sup> In S&M, however, the participants have agreed to play the parts they are assuming; they have not agreed that one is in fact superior to the other, and they take pleasure in performing within this illusion. The respect that they show for each other, by abiding by the wishes of the other and stopping if that is what the other requests, ensures that they recognize the dominant and submissive roles they assume remain simply as roles to be discarded when the performance is finished. Because of this, S&M does not necessarily involve either arrogant or self-abasing attitudes that Kant is concerned with and can be permissible.

Before we proceed, I ought to explain how even sexual activities that may likely seem disgusting and inherently disrespectful could actually be permissible according to Kantian principles. I am specifically referring to consensually urinating or defecating on or with another person for sexual pleasure.<sup>90</sup> These kinds of activities are problematic in two ways, but I believe that they can be done in a permissible manner in my Kantian account, for they are not *necessarily* humanity degrading or disrespectful. The first reason they might be morally problematic is that they contain risks to the health of those involved. These sorts of activities are analogous to playing with poison, or potentially poisonous substances, but if the proper sanitary steps are taken to minimize the risks, then

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<sup>89</sup> It is possible that a person could be motivated to enter into a sadomasochistic practice because they rank their personal worth relative to another's as being either greater or lesser and desire to experience a respective feeling of power over a submissive other or of submission in the face of another's power. Their external actions, and verbal expressions could be the same as somebody who is merely acting out their role, while for the moment they are not acting at all and take their illusory status as real. However, provided they maintain an external expression of respect for the other and for their wishes, and thus do not violate the other's freedom, I think their actions remain permissible.

<sup>90</sup> For an interesting defense of urinating and even defecating with or on another person for sexual pleasure see Alan Soble's *Pornography, Sex and Feminism*, Prometheus Books, New York. 2002. pp 110-113. Soble is not concerned with developing a Kantian account as to their permissibility, but his discussion is very interesting all the same. In short, he argues that intimacy with another means being well acquainted with the filth, both bodily and mental, of that other person, and that there is nothing wrong with being intimate with another person in these ways.

the people involved do not dispose over their bodies in any overly problematic way. I say overly problematic because consensual sexual activity itself can also be accompanied by health risks, but so can shaking another person's hand as well as many other non-sexual and permissible activities.

The second way these activities can be morally problematic is that they could be disrespectful to the people involved. However, I do not believe these activities are necessarily or inherently disrespectful and think that urinating or defecating with or on another person, when consensually performed, can be done while holding the other person in the appropriate respect and thus in a permissible fashion. One might argue that these are inherently disrespectful activities, regardless of the consent given or the steps taken to ensure that they do not result in a degradation of one's health. According to this objection, these acts are wrong because they represent the person being urinated or defecated upon in a disrespectful manner. One should not consent to this inherently disrespectful treatment, and it remains impermissible despite the consent that is given or even the desire of those who wish to participate in the activity. One could compare this consensual activity to the sharing of a racist joke between friends. Suppose that one of them is a Caucasian and the other is a member of the marginalized racial group referred to in the joke. The Caucasian could ask whether it is ok for him to tell his friend a joke that disparages her race and thus disrespects her, and she may wholeheartedly long to hear it and ask to be told it. She might even find it funny and enjoy having heard the joke, but nevertheless this activity is wrong as it is disrespectful to her even if the two love and otherwise respect each other.

The comparison between the consensual telling of a racist joke between friends and consensual urination and defecation for sexual pleasure is misleading, and the latter is not inherently disrespectful the way that the former is according to a Kantian understanding of respectful treatment. The telling of a racist joke conveys a very specific meaning: people of race X, because of some essential quality they have, are of less value than the race of the teller of the joke. Kant thinks we disrespect ourselves when we allow others to represent us in ways that portray us as less human or less dignified than another person, and any treatment that involves such a disrespectful expression is impermissible. However, when it comes to urinating or defecating on another person it is not at all clear that these activities necessarily involve a negative judgement regarding the value or dignity of the other in the way that the telling of a racist joke does. There could be other meanings involved in this activity, it is at least possible that two people could understand this as an expression of love, and there is nothing that precludes the possibility that the participants think of each other, even during the act, as being equally dignified and valuable persons. An outside observer could interpret these activities as being disrespectful, and they certainly could be meant to be disrespectful and thus impermissible, but to say that they are inherently disrespectful in that they imply that one of the partners is less dignified than the other, seems mistaken.

To claim these behaviours are impermissible because they are inherently disrespectful presupposes that an objective and disrespectful meaning is involved in the activity and that the participants who do not believe that their activity involves this disrespectful meaning are wrong. I am skeptical about how an activity could be inherently disrespectful if it is neither openly disrespectful or mocking. However, it is

easy to think that treating someone in that way *is* mocking them. That through engaging in this activity one of the partners is denying the worth of the other. The idea being that a person with a proper regard for their self-esteem or dignity ought not allow themselves to be covered in another person's excrement, but perhaps this begs the question as to what is involved in a "proper regard" for one's self-esteem. For surely a similar argument could be levelled against oral sex: the person who willingly, or even joyfully, performs oral sex is disrespecting their person and they ought not to do this. But it is absurd to think that oral sex inherently involves a disrespectful meaning. Oral sex certainly could involve this, but it is wrong to say that it necessarily does. It seems, at least, possible that a person can respect both themselves and the other as autonomous, rational agents while engaging in many "disgusting" sexual activities.

### **c) Sexual Passion**

Another reason why sex is morally problematic according to my revised Kantian account is that it is pleasurable enough that a person could develop an addiction for it and this involves subordinating reason in the service of the inclinations. Kant recognized that sex is a very pleasurable sensuous experience; he describes it as "the strongest possible sensible pleasure in an object."<sup>91</sup> As such it can exert a powerful influence on the choices people make. Kant provides an interesting account of addiction through his discussion of the passions, which is found in his *Anthropology*. Kant describes passion as "an inclination that prevents reason from comparing it with the totality of all our inclinations when we are making a choice."<sup>92</sup> A passion for Kant is an "Inclination that the subject's

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<sup>91</sup> Kant. *Metaphysics of Morals*. p 222

<sup>92</sup> Kant, Immanuel. *Anthropology From a Pragmatic Point of View*. trans. Gregor, Mary J. Martinus Nijhoff, The Hague. 1974. p 133

reason can subdue only with difficulty or not at all...”<sup>93</sup> From these descriptions we can see that certain people, who are strongly affected by a passion, may have great difficulty considering the other options that are presented simultaneously with the passion inducing object, and it is as if they are determined to choose in favor of this object. Kant thinks that self-mastery is a very important characteristic that people ought to cultivate in order to establish the power of reason over the inclinations so that, regarding passions, we will not allow habitual indulgences to form such that they cannot be easily overcome if duty demands it. Being addicted to any pleasurable activity or object is problematic for Kant, as addictions involve the subversion of our humanity in the service of the inclinations. This makes us less free, violates our perfect self-regarding duty and can also tempt us to violate the rights of others so that we may acquire the object we desire. Kant writes “no one wishes to have passions. For who wants to have himself put in chains when he can be free?”<sup>94</sup> Despite not wanting to be addicted to something, certain predisposed people can develop humanity-subverting desires towards objects of their appetite. They receive immense pleasure from them, and so do not want to be free from their addiction’s power over the choices they make, despite the fact that their indulgences may be against their prudential best interests. For this reason, Kant thinks that passions or addictions are very difficult to extirpate from a person.

The upshot of all this is that people with addictions to sex ought not to consent to having sex with another person if they are unable to get their desires under their rational control, but also that people who have their sexual desire under control, so that it does not exert as powerful an influence on their choice, ought not to have sex with people that

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<sup>93</sup> Ibid. p 119

<sup>94</sup> Kant. *Anthropology*. p 121

they know to be sex addicts. Kant writes that when “humanity becomes an instrument for satisfying desires and inclinations... it is dishonored and put on a par with animal nature. So the sexual impulse puts humanity in peril of being equated with animality.”<sup>95</sup> This claim is also apt when it comes to addictions generally, and Kant is correct that it is morally reprehensible to allow oneself to subordinate one’s rational ability to set ends by placing it primarily in the service of one’s desires. I think that this kind of addiction is most easily understood by considering certain drug addicts. The people I have in mind are those who have devoted their rational capacity to match the appropriate means to ends in order to satisfy their recurring desire.

#### **Section 4) Sex and Temporary Suspensions of Humanity**

In the remainder of this chapter I will consider whether sexual desire or the pleasure of sexual activity could involve a temporary suspension of one’s own humanity and thus violate a perfect self-regarding duty. Kant claims that sexual activity inherently involves such a suspension, but I do not believe that this is the case. Instead, I think that neither sexual desire nor sexual activity necessarily do this, although I admit that it seems likely that in certain cases they do. In the *Doctrine of Virtue* Kant writes that it is a kind of “formal mutilation” to deprive “oneself (permanently or temporarily) of one’s *capacity* for the natural (and so indirectly for the moral) *use* of one’s powers.”<sup>96</sup> His examples of such “debasements” include overeating, defiling oneself by lust, getting drunk and the use of opium and other psychedelic substances. These involve the temporary

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<sup>95</sup> Kant. *Lectures on Ethics*. p 156

<sup>96</sup> Kant. *Metaphysics of Morals*. p 218

incapacitation of a person's rational abilities and make them unable to realize their agency to its full extent.

Kant claims that sex without any aim of procreation is a formal mutilation. By having sex without any intention to procreate "man surrenders his personality (throwing it away), since he uses himself merely as a means to satisfy an animal impulse."<sup>97 98</sup> I think it is quite possible that all sexual activity, procreative or non-procreative, can be a kind of formal mutilation or a temporary deprivation of one's powers. I have already shown that sexual activity does not necessarily involve a degradation of humanity, but the claim that it can involve a temporary suspension of humanity is a possibility worth considering. If it is the case that all instances of sexual desire and activity involve a formal mutilation, then Kant is correct to claim that sex is inherently humanity degrading and thus impermissible within his moral theory. If this is the case, then the other reasons I have given regarding the ways that sex can be humanity degrading or disrespectful are irrelevant, for these reasons simply overdetermine its impermissibility; they simply make it worse.

But even if we suppose that sex can, but does not necessarily, involve a temporary suspension of humanity, then it is not clear that within my revised Kantian account there is a satisfying way to allow for sexual activity that does this. I think it is possible that, just like a shot of heroin, intense sexual pleasure could cause a temporary suspension of one's humanity. If the intensity of an instance of sexual pleasure were sufficient to cause such a

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<sup>97</sup> Kant. *Metaphysics of Morals*. p 221

<sup>98</sup> Kant provides reasons why procreative sex is permissible within marriage: because it is natural and follows teleological ends that we must suppose were set by nature. However, it is not clear why these acts are exempt from potentially involving a formal mutilation and if so, then they would remain fundamentally impermissible. Because of this I believe that what Kant says about the essential structure of a formal mutilation implies that all sexual acts, procreative or not, can involve a formal mutilation and thus be impermissible.

suspension, then it follows that such pleasure would be morally problematic in my Kantian account.

In this section, I will show how this sort of sexual suspension could occur. I will begin by briefly discussing the humanity suspending power of sexual desire and then I will move onto a more thorough discussion of the humanity suspending power of sexual pleasure. I will try and argue for a commonsensical view which claims that temporary suspensions of humanity caused by intense sexual pleasure can permissibly occur within consensual sexual activity and also within an otherwise humanity affirming lifestyle (or at least one free from an addiction to these particular suspensions). Provided this is the case, then they ought to be considered morally unproblematic. However, I will show that this is an unsatisfying answer in the face of contentions that Kant clearly supports and that seem generally plausible. Because of this, I am reluctantly led to the seemingly bizarre conclusion that sex that is below a certain level of pleasure is permissible but sex that is pleasurable enough to cause a temporary suspension of humanity is impermissible or at least morally problematic.

#### **a) Sexual Desire**

Sexual desire can be a powerful motivating force, and it seems possible that in certain cases it could be powerful enough to temporarily suspend a person's humanity. I believe that this kind of case is relatively rare compared to most instances of sexual desire, but it seems possible that it could have this effect. With their humanity temporarily absent, a person cannot truly be said to act during this time and they, instead, merely serve as a conduit for heteronomous forces and, in this case, their sexual desire. We can understand this potentially problematic feature of sexual desire by considering

Kant's discussion regarding affects. An affect differs from a passion, although a person who experienced an affect may have a greater propensity for developing a passion. Kant describes the difference in the following colorful terms: "An affect works like water breaking through a dam: a passion, like a stream that burrows ever deeper in its bed. An affect works on our health like an apoplectic fit: a passion, like consumption or emaciation."<sup>99</sup> An affect is similar to a passion in that both involve a suspension of humanity in the face of a person's object of desire, but the force an affect exerts over a person is temporary while the force of a passion is recurring and only temporarily abated.

Even if one does not have an overwhelming and recurring passion for sex, one can have one's humanity temporarily overruled or extinguished if one's sexual desire is strong enough at a given time. Kant provides an insightful discussion of this general phenomenon in the *Anthropology*. It should be noted that Kant does not describe overwhelming sexual desire as an affect, but I believe his essential description of an affect also allows us to describe how sexual desire could involve a temporary suspension of humanity. According to Kant, an affect occurs when a person experiences "a feeling of pleasure or displeasure in his present state that does not let him rise to *reflection* (to rational consideration of whether he should give himself up to it or refuse it)..."<sup>100</sup> Under the influence of an affect one is unable to control one's own actions because one cannot reflect upon the affective object, relative to other possible objects of choice.

If a person's sexual desire were to follow this pattern, and so involve a temporary suspension of their humanity, then it would be morally problematic, though not exactly impermissible. It is not simply impermissible because the action is not to be directly

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<sup>99</sup> Kant. *Anthropology*. p 120

<sup>100</sup> Kant. *Anthropology*. p 119

imputed to the person, but instead the affecting object exerts a power over the person's choice and forces an action to occur. However, the person easily affected shows a lack of virtue, for they are not sufficiently in control of their feelings and emotions, and, as with passions, Kant thinks that we have a duty to ensure that we establish and maintain our self-control in the face of our desires and feelings so that they do not become overwhelming. In general, we ought to become the kind of beings that do not allow our rational decision making capacity to be overpowered by our inclinations.

While it is true that a person could be overcome by their sexual desire and, as a consequence of this, treat another impermissibly, it also seems that there could be cases where this sort of affective response to another person does not result in any impermissible treatment and the other person may welcome it. We can imagine the desire lovers have for each other, or even the desire two consenting strangers have for one another, as reaching this level and being otherwise morally unproblematic. That is to say, there may be cases where it is only morally problematic if, like Kant, you suppose that the rational self must remain in control at all times, or, in other words, that one never compromise one's potential for rationally motivated activity or allow it to be compromised by external forces. Kant's emphasis on the importance of rational self-mastery implies that, even in otherwise unproblematic cases, this affective suspension of humanity remains problematic.<sup>101</sup> While this particular judgment regarding sexual desire may seem overly strict and unnecessary in order to ensure the respectful treatment of

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<sup>101</sup> The idea that lust is morally problematic is very old; consider what St. Augustine has to say about all lust, not just the overpowering, affective lust my Kantian account finds problematic: "What friend of wisdom and holy joys... would not prefer, if this were possible, to beget children without [lust], so that in this function of begetting offspring the members created for this purpose should not be stimulated by the heat of lust, but should be actuated by his volition, in the same way as his other members serve him for their respective ends?" ( St. Augustine. "Sexual Lust and Original Sin." in *Philosophy and Sex 4th Edition*. Prometheus Books. Amherst, New York. 2009. p 55)

oneself and other people, like the restriction on sexual pleasure, which I will discuss in the next section, it is implied by Kant's moral thought.

### **b) Sexual Pleasure**

As we have seen, Kant understood that sexual activity could involve intense pleasure. It also seems possible that sexual pleasure could cause a temporary suspension of humanity. Alan Soble, as a joke, asks "Is sex an autonomy-killing, mind-numbing, subhuman passion? Yes, but only when it's good."<sup>102</sup> However, Soble does not consider the implications that would follow were his joke true, but he should have. For if this is the case, then it seems that there is no way for a Kantian account to allow for permissible sex that is temporarily humanity suspending due to its intense pleasure. More generally, Kantian accounts that subscribe to the idea that we ought not to degrade our humanity, even temporarily, for the sake of a subjective end, such as pleasure, imply that suspensions of humanity caused by sexual pleasure are morally problematic. That we ought not to temporarily degrade our humanity implies a strange restriction regarding sexual activity, for if sexual activity can cause a temporary suspension of a person's humanity, this alone is not grounds for condemning all sexual activity but instead only condemning sexual activity that is pleasurable enough to cause a person to be temporarily unable to set ends.

First, I will discuss a more reasonable view, one that I ultimately do not find satisfying, which attempts to solve the problem by comparing sexual suspensions of humanity with other suspensions of humanity that Kant takes to be permissible. This view suggests that the temporary formal mutilations that are caused by sexual pleasure

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<sup>102</sup> "Sexual Use and What To Do About It: Internalist and Externalist Sexual Ethics," found in *Sex and Philosophy*. p 270

during consensual and otherwise non-humanity degrading or disrespectful sexual activity are permissible because they allow the agents involved to remain rational and reason-governed individuals. This claim makes a certain amount of sense when we consider that Kant allows a person to dispose over her body provided she does so with the intention of preserving her life and humanity.<sup>103</sup> Kant allows a person to have dead or diseased organs amputated or removed from their body if it endangers their life.<sup>104</sup> He also allows people to go to sleep as part of a healthy and productive schedule. Both having a limb amputated, or an organ removed, and going to sleep involve a limitation of humanity; in the former case it is permanent while in the latter it is merely temporary, but provided they are done in the service of the preservation of a person's humanity they are permissible. In the cases just mentioned, that they are done in order to preserve humanity is obvious: some people need surgery in order to survive and human beings need to sleep in order to maintain their sanity, as well as their life, and thus their rational capacity to set ends.

Perhaps the same can be said about a person's sexual activity, but I do not think so, for it is not obvious that it needs to be done for the preservation of a person's humanity. The argument for this could be analogous to the argument for going to sleep at night: just as human beings need to sleep at night in the service of maintaining a generally humanity affirming life, human beings need to routinely experience humanity suspending sexual pleasure in order to maintain their overall capacity to set ends. If they refuse to realize their own sexual desires in any way, then, like a weariness that comes after a lengthy period of wakeful activity, their desire lingers and does not allow them the

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<sup>103</sup> Kant. *Lectures on Ethics*. p 145

<sup>104</sup> Kant. *Metaphysics of Morals*. p 219

full use of their rational capacities. So, in the service of maintaining their humanity, they ought to occasionally engage in temporarily humanity suspending sexual activity.

I do not find this argument convincing simply because I imagine that there are many human beings that are fully rational, but that do not need to have temporarily humanity suspending sexual experiences in order to remain the reason governed individuals they are. Even for those people who do experience a niggling and constant desire after a lengthy period since they last satisfied their sexual urges, it is not at all clear that a person's rational capacities are threatened by this desire or that their humanity suffers. They may be sexually frustrated, but they remain rational beings, unlike someone who has not slept for several days. What is more, the Kantian account I am presenting does not prohibit all sexual pleasure, and if they can satisfy their sexual urges by experiencing moderate sexual pleasure, which does not degrade their humanity, then this is unproblematic.

Sexual pleasure does not necessarily involve a temporary suspension of humanity. Some sexual pleasure is not sufficiently intense to cause a person to be temporarily unable to set ends, and sexual pleasure that does not cause a temporary suspension of humanity ought not to be morally problematic. I take this to be the case because in the *Lectures on Ethics* Kant writes, "The man who violates neither his duties to himself, nor those he has to others, may enjoy as much pleasure as he has the ability and taste for."<sup>105</sup> So, sexual pleasure that does not involve a person violating duties to themselves or to others should be unproblematic for Kant. The morally problematic kind of sexual pleasure is any sexual pleasure that is sufficiently intense to cause a temporary suspension of

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<sup>105</sup> Kant. *Lectures on Ethics*. p 164

humanity. I do not think that orgasms are necessarily this intense, although I also find it unlikely that any sexual pleasure short of an intense orgasm could cause a suspension of humanity. If orgasms are not necessarily intense enough to cause a suspension of humanity, and occur along a continuum of pleasure where some can cause this suspension but others cannot, then not all orgasms are morally problematic.

Before I proceed to discuss this strange implication, I will summarize the points I have made thus far regarding the Kantian account I have presented. This account denies that marriage is a necessary condition for permissible sexual activity. It is able to do this because it denies Kant's more basic claim that sexual activity is in itself morally problematic. As my discussion of Nussbaum's work showed, sexual activity does not necessarily degrade or limit humanity, and the people involved can remain free and autonomous agents even though they are being used instrumentally by each other. This makes marriage unnecessary: sex is not so morally problematic that it needs to be confined to marriage, or even to a committed relationship. According to this account, it does not matter what attitudes those involved hold towards each other provided they are not manifested in disrespectful expressions or humanity degrading or violating treatment. In this account, complete strangers can engage in sexual activity provided they give voluntary and informed consent and are neither coerced nor deceived into the activity. Consent between the parties involved is, by itself, insufficient to allow for permissible sexual activity, for what is consented to could be humanity degrading, or merely disrespectful, and thus impermissible. Because of this, the activity consented to must not disrespect anyone or degrade anyone's agency even temporarily. Provided the sexual activity does neither of these things it is permissible in my Kantian account. Ultimately,

what is important is that the people involved remain capable of rationally motivated and free action during their sexual activity.

It is the fact that the participants must remain people during sexual activity, with their ability to act as autonomous agents all the while intact, that is responsible for the bizarre implication that otherwise unproblematic sexual pleasure, insofar as it occurs during consensual activity that is not otherwise humanity degrading or disrespectful, can be morally problematic. It seems that what we are left with in my Kantian account is that you can have consensual sex provided it is not so pleasurable that it causes a temporary suspension of humanity. Sexual pleasure in moderation is the key. In this way, it is analogous to other pleasurable, and potentially humanity degrading activities that are to be done in moderation, for instance eating or using intoxicating substances. Provided it does not result in a suspension or degradation of humanity, and it is done with the consent of those involved, then it is permissible.<sup>106</sup>

The general principle that we ought not to temporarily suspend our rational capacity to set ends for the sake of pleasure is plausible. For if we momentarily cease to be an End-in-Itself because of some activity, we ought not to engage in that activity, or at least do so in a way that ensures we remain persons or rational agents. So, while we may not drink alcohol to the point of being intoxicated, we may have a few drinks provided we do not limit our ability to set ends.<sup>107</sup> My Kantian account adheres to the general principle that we ought not temporarily suspend our humanity for the sake of pleasure,

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<sup>106</sup> This further restriction in my revised Kantian account also has the virtue of allowing for procreative sexual activity. That is, if I am correct that orgasms are not necessarily powerful enough to cause a temporary suspension of humanity, then it follows that the sexual stimulus required to procreate is not necessarily humanity degrading and both partners can remain people while they engage in an activity that is required in order to preserve the species. I believe Kant would welcome this further restriction on sex that I have elaborated because it addresses this practical problem.

<sup>107</sup> Kant. *Metaphysics of Morals*. p 223

and so it implies this restriction regarding sexual pleasure. Although I would like to argue that we can overlook this restriction regarding sexual pleasure, but perhaps not regarding other activities, such as the use of psychoactive drugs, I do not see any relevant difference between the two activities insofar as they can both cause a temporary suspension of humanity. More generally, I do not think one can have a Kantian account of any pleasurable activity without including this prohibition against treating one's person as a mere means, and just as one temporarily degrades his humanity when he incapacitates himself with drugs, he temporarily degrades his humanity when he incapacitates himself through intense sexual pleasure. That the latter suspension is significantly shorter than the former does not seem to make a principled difference, and in both cases one's humanity has been set down in the face of pleasure. I believe many Kantians would agree that the humanity within our person, as an objective end, is incomparably greater in value than any subjective end such as pleasure that we may seek, and that therefore we must not sacrifice the former for the latter. Because of this, I think many would be forced to agree that if sexual pleasure can cause a temporary suspension of humanity, then, just like humanity suspending drugs, it is morally problematic.

## Conclusion

It is unfortunate that Kant, a great philosopher, took such a wrongheaded position on sex. What makes matters worse is that his position on this topic does not substantially change during the roughly 20 year period between the *Lectures on Ethics* and the *Metaphysics of Morals*. Because of this, one cannot help but assume that he thought that his position on the matter was correct and that it did not require any more serious thought. As I said earlier, I think we do well to forget most of what he wrote on the matter. Despite this, I agree with Allen Wood when he writes “The sole measure of what might deserve to be called Kant’s ‘greatness’ is how far it is possible for us to learn about *philosophy* from studying his writings (whatever might be the final mix of our agreement and disagreement with what they say). It is a sad form of intellectual bigotry to treat our first, emotional reaction to a philosopher’s isolated opinions as if it were a reliable gauge of that potential.”<sup>108</sup> I believe Kant was, at the very least, correct to think that sex can be morally problematic as, for many people, sexual desire is a powerful motivating force - one that may tempt some to treat others, or themselves, in ways that deny or fail to recognize their inherent dignity as persons. I also believe Kant’s moral theory is versatile enough to provide us with a plausible account of moral sexual activity. Because of this, I think it is worth considering Kant’s ethics regarding sexual ethics, if not his own writings on the matter.

This thesis has shown that Kant’s belief that sex is inherently morally problematic is false, and also that permissible sex does not require marriage as a solution. Instead,

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<sup>108</sup> Wood, Allen. “Kant’s Ethical Thought.” Cambridge University Press, The United States of America, 1999. p 4

consent to engage in sexual activity that is neither humanity degrading nor disrespectful is all that is required, and marriage becomes an unnecessary condition for permissible sexual activity. However, I think the Kantian account I have presented shows that we can learn a great deal about sexual ethics from applying the general features of his moral theory to the issue. Sex can threaten our agential integrity in a number of ways, so we stand to learn a lot about sexual morality by considering it through a Kantian lense. With a Kantian approach to the issue, we can explain the ways sexual activity can be morally problematic, and in doing so we can present a liberal picture which leaves room for a variety of activities that might otherwise be considered degrading or even disgusting. The account I have presented here is able to distinguish those activities that only appear to be humanity degrading from those which are actually degrading and so impermissible. As I mentioned earlier, I think we must be careful to distinguish our physical unease or disgust with an activity, that we ourselves have no desire to take part in, from moral reprobation.

Kant's theory does, however, imply some moral judgements that may seem strange to some, and I can imagine many people deriding his theory as being puritanical in its emphasis on the importance of the autocracy of the rational self over the inclinations, desires and feelings that a person may have and experience. I can imagine this strict emphasis seeming crazy and unnecessary to many. For it may seem that outside of an addiction one can get drunk, use drugs for pleasure, or have sex that temporarily reduces one's ability to set ends without violating one's humanity and so without wronging oneself. However, that a person's capacity to set ends is, ultimately, not negatively affected is not the problem. Instead, the problem is that doing so fails to show a proper valuation of one's capacity to rationally determine one's actions, and so the

individual disrespects himself by engaging in temporarily humanity suspending activity for the sake of a subjective end.

I imagine many Kantian ethicists will disagree or at least be uncomfortable with my conclusion regarding the morally problematic nature of sexual desire and pleasure. I hope that even if they disagree with my argument, they will be sympathetic with the more general idea that temporary suspensions of humanity pose interesting problems for Kant's ethical theory. For there are a variety of activities that seem entirely non-problematic but for the fact that they temporarily involve a diminution of one's capacity to realize ends. For instance, taking an afternoon nap when one does not need to sleep in order to preserve one's rational capacities and, instead, temporarily suspending the very ground of morality just for the pleasure of sleeping. Another instance might be running a marathon, or any other physically exhausting challenge, after which, as with gluttony or intoxication, one is physically, and perhaps also mentally, in no shape to realize as many ends as one otherwise could had one not undertaken the challenge. Maybe simply leaving your cell-phone at home and going out could count as a formal mutilation, for one's agency is certainly lessened despite the cell-phone being a seemingly artificial extension of it. More generally, perhaps any activity where one feels one's sense of self dissolving or disintegrating, this might include meditation or other ecstatic practices, would entail a loss of agency: after all, for a brief time there may not be an agent!

I believe more work on this problematic issue in Kant's ethical theory needs to be done, for it seems that cases such as those mentioned above become problematic when we consider the demand that we must always treat ourselves as both means and ends. In fact, these cases seem to become problematic in a rather straight-forward manner. More

work needs to be done so that we may separate the noxious temporary suspensions of humanity from the benign and explain why they are not morally problematic in a Kantian framework. Given Kant's emphasis that we ought to consider our humanity as incomparably greater in value than our subjective ends I do not think this will be an easy task, however I eagerly look forward to reading attempts to solve this problem in Kantian ethics.

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