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Duties to Self, Consent, and Respect in Kant's Moral Philosophy

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Abstract

In Kantian ethics, do we wrong someone when our use of them requires that they violate a duty to self, even when they have consented to that use? In this paper, I answer this question in the negative. Consent that constitutes a violation of a duty to self is impermissible yet normatively transformative. But it also matters how consent was obtained. For example, it matters whether consent is solicited or unsolicited, whether our action amounts to complicity with the violation, and how the act of consent is shaped by the broader contours of the relationship the parties stand in to each other. In Kantian terms, we might fail in our duties of respect to others even when our interactions with them are consensual. So many, but not all, consensual interactions in which one person violates a duty to self are also instances in which they are interpersonally wronged.

Keywords

Consent – duties to self – Kant – respect

Introduction

What, according to Kantian ethics, is the relation between duties to self and our interpersonal moral obligations? Do we wrong someone when our use of them requires that they violate a duty to self, even when they have consented

to that use? In order to get some purchase on these questions, consider the following pair of examples:

Child passenger: Abe and Bianca are driving in a car with Carlos, who is a young child. The windows are closed, and due to a fault cannot be opened. Abe asks Bianca if he can have one of her cigarettes and Bianca agrees. Abe lights up, subjecting Carlos to second-hand smoke.

Second-hand smoke: Abe and Bianca are driving in a car. Bianca has a lung condition that might be aggravated by cigarette smoke. Abe has a moderate craving for nicotine. Knowing this, Bianca tells him that it would be okay for him to smoke and even provides him with a cigarette. As in *Child passenger*, the windows are closed and due to a fault cannot be opened.

In *Child passenger*, both Abe and Bianca perform wrongful actions. Abe wrongs Carlos by subjecting him to harmful second-hand smoke because Carlos is too young to be capable of providing transformative consent to the harm. Bianca participates in Abe's wrongdoing, and is thereby complicit with it, due to the fact that she knowingly provides Abe with the means necessary for him to wrong Carlos.

In *Second-hand smoke*, it strikes me as plausible that Bianca has a duty to herself that she not permit Abe to smoke. Abe only has a moderate craving for nicotine and Bianca has a condition that could be made worse by the smoke. But does Abe act wrongly by smoking? On one hand, we might think that Abe does not act wrongly. The fact that Bianca tells Abe that it is okay indicates that Bianca has consented, and we normally think that this releases Abe from the duty he would otherwise be under not to subject Bianca to the potentially harmful smoke. On the other hand, Bianca violates a duty to self by permitting Abe's action. Due to this, we might worry that Bianca's consent is not normatively transformative. And, even if it was, Abe might still act wrongly, for example due to being complicit in Bianca's wrongdoing.

Contemporary moral philosophy is seeing a resurgence of interest in, and support for, duties to self.¹ As these duties gain acceptance in our moral frameworks, we need an account of how they relate to *interpersonal* morality. Thinking through the Kantian account of duties to self and their violation can make an important contribution to this wider topic. I am going to argue in this paper that, on Kant's account, consent is normatively transformative even when it violates a duty to self, but that this does not always exculpate

¹ See, for example, Kanygina (2022), Muñoz (2020), Schaab (2021b), and Schofield (2021).

actors like Abe.² This is because it matters how, and in what circumstances, consent was obtained. For example, it matters whether consent is solicited or unsolicited, whether Abe is complicit in Bianca's violation of her duty to self, and how the act of consent is shaped by the broader contours of their relationship. In Kantian terms, we might fail in our duties of respect to others even when our interactions with them are consensual. Understood in this way, it will turn out that many, but not all, consensual interactions in which one person violates a duty to self will also be instances in which that person is interpersonally wronged. This conclusion gives us a way of explaining the unease we might experience when confronted by instances of one person benefiting from another's violation of a duty to self, even while we maintain that consent makes a difference to our moral evaluation of such interactions.

My discussion proceeds as follows. Section 1.1 outlines Kant's account of how we violate a duty to self. In Section 1.2, I then discuss a recent proposal by Melissa Fahmy according to which, when we have a duty to self not to perform some action in the pursuit of our discretionary ends, then it is not possible for us to consent to another person doing that thing to us in the pursuit of their discretionary ends. Briefly put, my complaint against Fahmy is that she moves too quickly from a claim that consent would be wrongful to the conclusion that consent is therefore normatively inert. I argue instead that we have the power to release others from the duties they are under even when we owe it to ourselves not to. To anticipate the language that I adopt (and elaborate upon) in Section 1.3, it is impermissible to consent to treatment when that violates a duty to self, but that does not mean that consent to such treatment is impossible.

Section 2.1 offers a brief discussion of Kantian duties of respect. Then, in Section 2.2, I provide two examples of ways in which we violate duties of respect in the context of consensual interactions in which one person violates a duty to self; namely, by soliciting the violation, and by being complicit in the violation. These examples are illustrative rather than exhaustive. That is, they are indicative of the kinds of considerations that we must be attentive to, but do not provide a framework through which we can determine if a person has violated a duty of respect.

Before moving on, let me forestall a possible misunderstanding. Those who write about duties to self are often occupied with the 'waivability objection.'

2 I assume throughout that standard defeating conditions for transformative consent, such as lack of decision-making capacity, coercion, or lack of understanding about the decision, are absent in my discussion. I focus solely on consent by decisionally capable and freely acting agents. I will also assume that agents acting on the consent of others view consent as a morally necessary condition for their action. That is, they would only act when they believe that the other has successfully waived their right.

It is a feature of duties to self that the same agent is both the right-holder and duty-bearer. This serves to distinguish genuine duties *to self* from merely self-regarding duties that are owed to others, such as the duty that I have to stay fit if I am a firefighter. This duty refers to me, but it is owed to the constituents served by my fire station.³ The dual standing of bearers of duties to self raises the worry that, with respect to any particular duty to self, the agent would be able to waive their right and thus release themselves from the duty. After all, we often take right-holders to have the choice to enforce or waive their rights against others. Given this, we might think that there is little point in saying that the person was duty-bound at all. What sense can we make of someone being under a duty if they could release themselves from it whenever they wanted? The waivability objection is thus a significant first hurdle for any account of duties to self as it appears to undermine the very coherence of such duties.⁴

The waivability objection is not the concern of my discussion. We have to distinguish between i. the question of whether it is possible to waive the duties that others owe to us even when we owe it to ourselves not to and ii. the question of whether it is possible to waive a duty to self and what that tells us about such duties. On the view developed below, my consent to waive certain duties that others owe to me is impermissible because it violates a duty to self. In order to draw that conclusion, it must be the case that my duty to self is not also waived by my action. If it was also waived, there would be no duty that my consent was violating. In this way, my discussion is downstream of most treatments of duties to self. It assumes that we can make sense of such duties and asks what follows from that in terms of how we must relate to others.

1 How to Violate a Kantian Duty to Self

1.1

Kant defends a wide variety of duties to self.⁵ These include, to take a few examples, prohibitions on suicide, self-mutilation, servility, “defiling oneself

3 See Timmermann (2006, 506).

4 For various responses to this objection, see the references in fn.1 as well as Hills (2003). For the now classic statement of the waivability objection, see Singer (1958). Kant raises and addresses this objection at 6:417–18; see Bojanowski (2019) and Timmermann (2013) for reconstructions of Kant’s solution.

5 In what follows, references to Kant cite the volume and page number of the German (formerly Prussian) Academy of Science edition of his collected works, commonly known as the *Akademieausgabe*. Details of the translations used can be found in the bibliography. All emphasis is in the original unless otherwise noted.

by lust" (6:424), and drunkenness. In performing actions such as these, we fail to treat ourselves with the respect owed to our humanity.

Entities possess humanity by virtue of their capacity for morality (4:435, 5:87, 6:434–35), and humanity has dignity and is an end in itself. Ends in themselves are one of the two radically different kinds of ends in Kant's moral philosophy, the other being 'relative' or discretionary ends.⁶ In general, an end determines how an agent should act (4:427). Relative ends are given to us by inclination and are states of affairs to be brought about by our action. They are merely conditionally valuable.⁷ The satisfaction of the sum total of our relative ends is our happiness (4:399, 8:282–83). In contrast to this, ends in themselves are existing entities, i.e., persons, that restrict the ways in which we may pursue our relative ends (4:427–30). Ends in themselves have unconditional value. They are elevated above mere things, which are valuable only insofar as they are useful for bringing about some relative end (4:434–35). A person is "not to be valued merely as a means to the ends of others or even to his own ends" (6:435) but is a "supreme limiting condition" (4:431) on our pursuit of ends. In addition to this, all persons have an equal moral status and can demand recognition of that status from others (6:435, 6:462). We violate a duty to self when we act in a way that destroys, degrades, or impairs the source of our dignity (i.e., our capacity for morality) and when we act in a way that is inconsistent with our equal moral status.⁸

With this general picture in mind, let me make two clarifications about how to violate a Kantian duty to self. First, while Kant often speaks of duties to self proscribing certain actions, such as suicide and self-mutilation, it is not simply the choice to perform an action that will lead to one's death or loss of a body part that is ruled out. Kant is rather ruling out the performance of a specific action for the sake of a particular end. Consider the prohibition on suicide. What Kant rules out in his discussion of suicide is not choosing any action that will lead to one's death, but rather seeking to use one's death as a means for bringing about a merely discretionary end (6:423).⁹ We might be unlucky enough to find ourselves in a situation in which we have to choose between acting immorally and acting in a way that we are certain will lead to our death,

6 For discussion, see Bader (2023, 172–74) and Wood (2020, 213).

7 For two different accounts of the conditional value of relative ends, see Bader (2015) and Korsgaard (1996, ch. 4).

8 For detailed accounts of Kantian duties to self, see Denis (2001) and Timmons (2021, chs. 10–12).

9 Kant explicitly mentions discretionary ends in his discussion in the Doctrine of Virtue and self-love in his discussion in the *Groundwork*. We might think that this leaves open the possibility of killing or mutilating oneself for the sake of a non-discretionary (i.e., a moral) end such as helping another (Formosa 2017, 86–87 and Timmons 2017, ch. 7). On my reading

for example, if we are shipwrecked and others have already occupied the only lifeboat to its maximum capacity. Assuming that our choice in this situation is either to force ourselves onto the lifeboat, thus sinking it and damning us all, or trying to swim ashore knowing that it is too far, we do not violate a duty to self by choosing to swim (27:629, 27:376).

Second, unsuccessful attempts to perform actions prohibited by duties to self are themselves violations of those duties. That is, a person can violate a duty to self even if the proscribed action never occurs. Take drunkenness as an example. We can imagine that a person sets themselves the end of drinking enough to forget their woes. In pursuit of this end, they very quickly drain the bottle of liquid in front of them labeled 'gin.' What they do not realize in doing so is that it is a non-alcoholic gin alternative, and so it fails to have the desired effect. Such a person, on Kant's view, still violates the duty to self prohibiting drunkenness because their action indicates that they privilege escaping from their troubles even at the cost of dulling their rational capacities. Similarly, a person who tries and fails to commit suicide violates the duty of self-preservation, even if they cause themselves no damage at all.

An important implication of this is that some ways of stopping a person from performing a prohibited action will not count as stopping them from violating a duty to self. For example, the person set on drunkenness buys a bottle of real gin. When they go to get a glass and some tonic water, a friend switches the bottle for a non-alcoholic gin alternative, and the person drinks that instead. In this case, the friend does not stop the violation of a duty to self. They merely make it the case that the violation does not involve actual drunkenness, and so is less bad in terms of its effects. The friend might have reason to switch the bottle, but that reason cannot be that, in switching it, they thereby stop the violation of the duty to self.

1.2

Let us now turn to the question of consent and duties to self. As mentioned above, Melissa Fahmy (2023) has recently argued that at least some duties to self

of Kant, this too would be ruled out on the basis that perfect duties, such as those prohibiting suicide, have priority over imperfect duties of beneficence (see also Timmermann 2005). Kant's view on this, however, is complicated. This is indicated by the following passage from the second *Critique*: "The action by which someone tries with extreme danger to his life to rescue people from a shipwreck finally losing his own life in the attempt, will indeed be reckoned, on one side, as a duty but on the other and even for the most part as a meritorious action; but our esteem for it will be greatly weakened by the concept of duty to himself, which seems in this case to suffer some infringement" (5:158). I leave the question of how to adjudicate between duties to self and duties to others like beneficence aside here.

in Kant's moral philosophy correspond to 'consent-insensitive' duties – duties owed to others whose corresponding rights cannot be waived or alienated by the right-holder.¹⁰ Fahmy's suggestion is that actions that we could not do to ourselves in the pursuit of our discretionary ends without violating a duty to self are actions that it is impossible for us to consent to another doing to us in the pursuit of their discretionary ends.

The most direct textual evidence to which Fahmy refers in support of the idea of consent-insensitive duties is the following passage from Kant's discussion of servility in the Doctrine of Virtue: "Humanity in his person is the object of the respect which he can demand from every other human being, which he must also not forfeit" (6:435). On Fahmy's reading of this passage, Kant is claiming that we lack the normative power to waive the duties of respect owed to us by others (2023, 51). The idea is that, since we have a duty to self not to forfeit the respect which we are owed by others, we cannot successfully consent to disrespectful treatment by another. Applying this reading of Kant to *Second-hand smoke*, we get the conclusion that it is impossible for Bianca to consent to Abe's treatment. In this way, Abe's treatment of Bianca bears some similarity to his treatment of Carlos in *Child passenger*; he wrongs both of them by smoking even if they (attempt to) give him permission.

One benefit of Fahmy's reading is that it sits well with the claim that an individual may not be in control of whether certain uses to which they are put are ones that demean or disrespect them. For example, some practices might contribute to demeaning the group of which the individual is a member (and thus also the individual) due to social structures over which the individual has no control. Considerations such as these are sometimes raised in feminist discussions of the permissibility of pornography. Some argue that even when women freely agree to participate in the creation of pornographic content, that participation nevertheless contributes to undermining their own equality in the society of which they are a part. Such self-effacing action, we might think, is incompatible with genuinely transformative consent. Similar claims have been made about the practice of so-called 'dwarf tossing,' which was banned in France for violating human dignity even when those involved freely agreed to participate.¹¹ We might thus think that some forms of treatment might not be made permissible by consent due to the fact that morally relevant features

¹⁰ Fahmy's proposal is inspired by Tadros (2016). In my discussion, I focus on Fahmy's discussion rather than Tadros', since Fahmy's project is one of determining the relevance of duties to self to consent in Kant's moral philosophy.

¹¹ See West (2022) for an overview of different perspectives on the permissibility of pornography. For a critical discussion of 'dwarf-tossing,' see Rosen (2012). For Kant on duties of respect, see 6:462.

of the situation are not consent-sensitive. Fahmy's understanding of Kant re-enforces this conclusion.

Despite this possible strength, I do not think that Fahmy gives us the best reading of Kant. In the remainder of this section, I offer both textual and systematic reasons for thinking that consent that constitutes a violation of a duty to self is normatively transformative despite being impermissible. In Section 1.3, I suggest one way to draw the distinction between impossible and impermissible consent on Kantian grounds that does not appeal to duties to self.

To begin, it is significant that in the central passage Fahmy cites in support of her reading, Kant claims that we *must not* consent not that we *cannot* do so. Here is the passage in the original German: "Die Menschheit in seiner Person ist das Object der Achtung, die er von jedem anderen Menschen fordern kann; deren er aber auch sich nicht verlustig machen muß." Kant sometimes uses 'cannot' (kann nicht) and sometimes uses 'must not' (muß nicht) in his discussions of violations of duties to self and related topics (cf. 6:424, 6:462, 6:464, 27:601–02, 27:386). If he had consistently used 'cannot,' then we would have to conclude with Fahmy that he thought that consent that constitutes a violation of a duty to self is *impossible*. However, his switching between the two phrases more likely indicates a belief that consent is transformative yet impermissible. Otherwise, he would have consistently used 'kann nicht.'¹²

In addition to this, some of Kant's claims would be difficult to make sense of if we read him as asserting the impossibility of consent in these contexts. For example, he is reported to have said in some of his lectures that "a man cannot [kann nicht] dispose over himself, he is not entitled to sell a tooth, or any of his members" (27:386). Kant is referring here to the grisly practice of live-tooth transplantation or the selling of teeth by the poor in order to make dentures for the rich.¹³ Despite his use of 'cannot' in this passage, it is implausible to read Kant as claiming that it is impossible to sell a tooth to another. Rather, consent is normatively transformative, but the transfer is impermissible due to the fact that it violates a duty to self (see also 6:423). Similarly, in the published

¹² Thanks to Janis Schaab for discussion on this point.

¹³ For a discussion of these practices in late eighteenth-century England, see Blackwell (2004). Readers of *Les Misérables* will recognize the theme. In Book 5 chapter 10, Fantine, desperate to pay for the medical treatment she believes her daughter needs, sells her front teeth and hair to raise the money. The choice to do this is depicted as the point at which she gives up on herself: "She had lost her shame; she lost her coquetry. A final sign. She went out, with dirty caps. Whether from lack of time or from indifference, she no longer mended her linen. As the heels wore out, she dragged her stockings down into her shoes" (Hugo 2016, 170).

Doctrine of Virtue, Kant claims that just as a person cannot give themselves away for any price, “neither can [kann] he act contrary to the equally necessary self-esteem of others, as human beings, that is, he is under obligation to acknowledge, in a practical way, the dignity of humanity in every other human being” (6:462). Here, Kant claims that we cannot act contrary to the dignity of humanity in others, and explains this in terms of being under an obligation to refrain from such action. He cannot plausibly be understood as claiming that it is not possible for our actions to be contrary to the dignity of humanity (and nor, given the context, is he making a point that dignity survives its violation). For this reason, Kant’s texts speak more strongly in favor of the position being defended here, namely that consent that constitutes a violation of a duty to self is impermissible yet still normatively transformative.

Fahmy’s proposal also introduces a problematic asymmetry between duties to self and duties to others.¹⁴ Consider a consensual interaction in which we violate a duty owed to others. For example, let us say that I promise you that I will not lend anyone my copy of the first *Critique*. Subsequent to making the promise, a friend asks if they can borrow it for an upcoming seminar, and I tell them they can. Owing to my promise, I am not at liberty to lend my book out. However, it would be implausible to suggest that due to this, I fail to grant the relevant permission to my friend. I wrong you by breaking my promise, but my friend does not wrong me by taking the book. Additionally, if my friend knows that I have made the promise to you, then they act wrongly by asking to borrow the book. If I agree despite my promise, then my friend is also complicit in my wrongdoing and wrongs you due to that complicity. However, they do not wrong *me* by taking the book because it is possible for me to grant them permission even when doing so violates my promise to you. Here, it is important to stress that my wrongdoing occurs when I give consent to my friend not when the action that I have consented to occurs. When I permit my friend to borrow my copy of the first *Critique*, I break my promise to you regardless of whether my friend takes the book to the seminar. I break my promise by making borrowing the book a permissible option for my friend when I said I would not. This remains true even if my friend instead chooses to withdraw the book from a library.

There is good reason to think that Fahmy would agree with the substance of this analysis. She considers a case of loaning out a piece of property in a way that amounts to participation in a “scheme of deception,” saying: “There

14 I am grateful to Joseph Bowen both for discussion on this topic and for sharing his draft paper ‘Consenting to the Unconsentable’. The concern for symmetry in our treatment of consent involving violations of duties to self and to others is due to Bowen.

is certainly a sense in which you *should not* engage in any wrongful conduct. However, you nonetheless *can* give normatively transformative consent to that use. If you loan the deceiver your property, he has not committed theft and has not wronged you. Your consent was normatively transformative in this case even though, morally, you should not have consented” (2023, 53). She thus agrees that being duty-bound not to consent does not necessarily entail that our capacity to consent is undermined.¹⁵

At least in the case of other-regarding duties, our consent can be normatively transformative yet wrongful. This is what leads to the problematic asymmetry in Fahmy’s position. She owes an explanation for why duties to self undermine genuine consent in a way that duties to others, such as promissory duties, do not.¹⁶ It is difficult to see how such an explanation could be forthcoming. Why should a failure to respect one’s own humanity undermine transformative consent when a failure to respect the humanity of another does not? Respect is owed to oneself and to others on the same basis, and so additional reasons need to be given for the different ways in which they impact upon our (attempts to) consent.¹⁷

By viewing consent as normatively transformative even when it constitutes a violation of a duty to self, we do not saddle Kant with this asymmetry. Just as some acts of transformative consent might constitute wronging another, so too some acts of transformative consent might constitute a violation of a duty to self. As we have seen, it does not matter if the action consented to does not

15 On this, see also Hurd (1996, 123–24). For a different view, see Steiner (1994, 60n). He maintains that a necessary condition for the exercise of a normative power is the liberty to exercise it, so that when one lacks the liberty to exercise a power, one lacks the power. The examples given above speak strongly against Steiner’s view.

16 Fahmy contrasts the case of complicity described above with selling oneself into slavery (2023, 53). I agree with her that selling oneself into slavery is impossible. However, as I argue in Section 1.3, this impossibility is not best understood in terms of our having a duty to self not to sell ourselves into slavery. Moreover, Kant’s explanation for the impossibility of voluntary slavery does not suffice as an explanation for why selling a tooth or consenting to second-hand smoke is impossible, and so additional grounds need to be provided for the impossibility of the latter two actions. On my reading, the explanation for the impossibility of slavery need not apply to practices like selling a tooth since Kant never intended to suggest that consent to the latter is impossible. Böser (2024), following Fahmy, also takes Kant to provide a unified explanation of the impossibility of actions such as selling oneself into slavery and selling one’s organs. My arguments below apply equally to her position.

17 When we talk about respect for others, we might be speaking about i. our *esteem* for their achievements (6:449; cf. Darwall 2005), ii. the moral feeling of respect for the law (5:71–89), or iii. the specific duties which we are under not to exalt ourselves over others (6:449–30; cf. 2.1 and Sensen 2013, 356). In my discussion above, I have in mind waiving specific duties not to exalt ourselves over others.

occur. On my reading of Kant, Bianca violates a duty to self just by making smoking an available option to Abe. And, given that Bianca has consented, she waives the duty that Abe is under to refrain from smoking. It may be the case that Abe still wrongs Bianca due to being complicit in her wrongdoing, but the possibility of consent already suggests that Abe's treatment of Bianca is importantly different to Abe's treatment of Carlos in *Child passenger*. Consent makes a moral difference to how we ought to evaluate the interaction.

We can bolster this conclusion with the following considerations. When we engage in a consensual interaction, we are acting together, though not necessarily by performing a *joint action* (but we might also do this, as when we agree to participate in a three-legged race).¹⁸ Rather, we act together in the sense that we recognize the actions of the other as in some sense representing our choice. We take ownership of those actions and responsibility for their consequences. Some ways of acting together involve the pursuit of impermissible ends or the deployment of prohibited means. I give you a boost over the garden fence so that you can rob the house. You lend me your car so that I can run drugs across the border. I give you a bottle of gin after our AA meeting. In each of these examples, we are acting together in a way made possible by consent, but we nevertheless act wrongly in doing so. The impermissibility of the action that we undertake together does not in itself settle the question of whether we can consent to undertake it. That is, consensual interactions do not require that the agents have adopted permissible ends (6:230). This suggests that the limit of consent on a Kantian account is not given by whether what we do together is morally permissible but rather by whether each of us can justifiably understand the actions of the other as representing our choice. This applies just as well to cases of consent in which we violate a duty to self as it does to cases in which we violate duties to others. There are thus both textual and systematic grounds for believing that, in Kantian morality, consent can be normatively transformative even when it constitutes a violation of a duty to self.

1.3

I have suggested that we sometimes consent to forms of treatment or actions that we ought not make permissible. In doing so, we act wrongly. In this section, I suggest a way for thinking about the distinction between impermissible and impossible consent that does not rely on an appeal to duties to self. Kant does not draw this distinction explicitly. To my knowledge, he never offers a

¹⁸ Here I am drawing on Ripstein (2009, ch. 5).

sustained discussion of the difference between impermissible and impossible consent. For this reason, some reconstruction on his behalf is necessary.

The clearest example in Kant of impossible consent is his claim that we lack the power to sell ourselves into slavery. On Kant's view, a slave is someone who has given up their legal personality, which includes all of their rights, entirely to another. This gives a slave the normative status of a thing, the kind of entity that imposes no constraints or limitations on our action (6:241). As we have seen, things are distinguished from persons, who have dignity and who are the subjects of rights and duties (4:437, 6:434–35). The problem with selling oneself into slavery is that things cannot owe obligations. So, since slaves are things, and things cannot owe obligations, we lack the power to bind ourselves by slavery contracts.¹⁹ Here is what Kant says: “a contract by which one party would completely renounce its freedom for the other's advantage would be self-contradictory, that is, null and void, since by it one party would cease to be a person and so would have no duty to keep the contract but would recognise only force” (6:283).²⁰ In this passage, Kant does not appeal to a duty to self-prohibiting selling oneself into slavery. Rather, he claims that no slavery contract could be valid due to the transformation which it purports to affect. This does not mean that we are unable to act *as if* we had sold ourselves to another. It is possible that we behave as though we have a master, and this might violate our duty not to act as though our rights count for nothing or our duty not to be servile (see 6:236, 6:434–37; Hill 1991). The supposed master might also be able (physically or psychologically) to coerce us. However, it is impossible to successfully transfer all of our rights to another by means of a

19 Kant thinks that we can be made a slave by committing a crime (6:283, 6:330–31). This does not raise the same set of problems, since in cases of wrongdoing we forfeit our rights against others and do not seek to bind ourselves voluntarily to the terms of a contract. This has the consequence that a person might be able to make themselves a slave by choosing to commit a crime that they know will lead to them being made a slave. So while we might lack the capacity to sell ourselves into slavery, it seems that it is possible to choose to become a slave in other ways.

20 While Kant mentions a ‘self-contradictory’ relation in the passage quoted above, this should not be taken to invoke the ‘contradiction in conception’ test as it is found in the *Groundwork*. Contradictions in the *Groundwork* occur when we attempt to universalize impermissible maxims. In the case of impossible consent, the question is whether the agreement we are attempting to enter into with another has “inconsistent terms” (Ripstein 2009, 136). Looking at impossible consent in this way already rules out appeal to our duties to self in determining the limits of consent. Duties to self concern the universalisability of our maxims over our lifetime (see Glasgow 2003) and not the form of the relation that we stand in to others. Thanks to Elisabeth Widmer and an anonymous reviewer for pressing me to clarify this.

contract, and any use of coercion purporting to enforce such a contract cannot be rightful.²¹

To my knowledge, Kant never explicitly states that we have a duty not to sell ourselves into slavery and nor should he have. We should hesitate to describe ourselves as under a duty to omit some action that it is impossible for us to perform. We should rather think about the impossibility of consent in terms of attempting to stand in a form of relation to another not licensed by our normative categories and concepts. What goes wrong with voluntary slavery contracts is that we attempt to simultaneously occupy the mutually incompatible normative statuses of ‘thing’ and ‘person’. In general, some of our normative categories or concepts are such that they restrict the actions available to us even though we do not relate to those restrictions as imperatives. Here is a different example to help illustrate this. Given the way that we understand the concept of ‘ownership,’ it is impossible for me to successfully transfer what belongs to you to another without your consent. It is of course possible (though impermissible) to steal your property or to physically give it to another without your permission, but I cannot make it the case that your property *belongs* to another without your say-so. Due to this, it makes little sense to say that I am duty-bound not to affect a rightful transfer of your property to another without your permission. Such an action is simply ruled out by the nature of ownership.

In order to sharpen this suggestion, it is helpful to think about Kant’s distinction between practical principles and imperatives. Practical principles “are propositions that contain a general determination of the will” (5:19). These principles are “objective, or practical *laws*, when the condition is cognised as objective, that is, as holding for the will of every rational being” (ibid.). There are some practical principles that only apply selectively. For example, the rules

21 There may be other forms of consent that are impossible. For example, Ripstein (2009, 140) argues that consenting to be killed is ruled out on the same grounds as contracting into slavery. His argument for this rests on the claim that contracting to be killed by another amounts to undertaking an obligation to allow the other to kill you. But to take on such an obligation is to transform yourself into a thing for that other’s use, and, as we have seen, you lack the power to contract to be made a thing. According to this argument, then, waiving your right not to be killed by another is impossible. I have reservations about this argument, which are due to skepticism that *every* arrangement to be killed by another amounts to an arrangement to be made a thing for their use. At least some consensual killings, it seems to me, might correctly be viewed as expressions of the will of the person being killed and not arbitrary impositions of the will of the other. To use the language from 1.2, even the actions of another that lead to my death might sometimes be represented as expressions of my choice. If this is right, we would need a more fine-grained account of the limits of consensual killing than the one that Ripstein provides.

of a game are practical principles that only apply to the players of that game. Practical laws, to the contrary, hold for all rational beings (including a holy will). Since we are rational beings who are subject to inclination, and thus to desires the realization or pursuit of which may conflict with the demands of reason, we sometimes fail to act as reason requires and thus act immorally (6:379). Due to this, practical laws take the form of imperatives that place constraints on our pursuit of merely discretionary ends (6:481). As Kant says, imperatives “are only formulae to express the relation of objective laws of willing as such to the subjective imperfection of the will of this or that rational being” (4:414). And further, “The very *concept of duty* is already the concept of a *necessitation* (constraint) of free choice through the law. [...] Such constraint, therefore, does not apply to rational beings as such (there could also be *holy* ones) but rather to *human beings*, rational *natural* beings, who are unholy enough that pleasure can induce them to break the moral law” (6:379). That is, a necessary condition for being bound by a duty is that we are so constituted that we can be induced to violate it. This is why a holy will stands under practical laws but not imperatives.

My suggestion is that some normative categories and concepts operate in a manner akin to practical laws that we do not relate to as imperatives. These categories and concepts would still provide a normative standard for our action. That is, they would “make a division within the space of action types” (Lavin 2004, 427), but it would not make sense to say that we have a duty not to violate them.²² This allows us to make sense of the fact that the thing/person distinction and the concept of ownership restrict the actions that are available to us but not necessarily by imposing duties on us. Seeing that our normative categories and concepts restrict our actions without necessarily imposing duties provides us with a way of viewing impossible consent on Kantian grounds that does not appeal to duties to self. Consent is impossible not when it contravenes a duty we are under not to consent, but rather when our normative categories and concepts do not license the form of the relation we are trying to enter into (or the alteration in rights and duties we are attempting to affect).

Again, Kant never explicitly provides a distinction between impossible and impermissible consent. However, we have already seen above (1.2) that there are good textual and systematic grounds for asserting that consent can be impermissible yet transformative, even when the duty violated by consenting

22 An example of a practical law that did not make a division within the space of action types, and so which could not be normative for us, would be ‘Do x or do not do x.’ There is no logically possible action that would violate such a duty, and so no sense in which it could provide a standard for our action. A practical law is normative just in case there is some action that is contrary to it, even if we cannot perform that action.

is a duty to self. Moreover, my suggestion that we understand impossible consent in terms of the non-imperative restrictions on our action imposed by our normative categories and concepts is able to make sense of Kant's clearest example of the limits of consent: the impossibility of slavery contracts.

2 Duties to Self and Kantian Respect

I have argued that consent is normatively transformative even when it violates a duty to self and that this is an example of 'impermissible consent.' The transformative nature of consent is significant for thinking about the relation between duties to self and interpersonal morality. There are many familiar ways in which consent changes morally salient features of our interactions with others. Here are a few examples: it undercuts a reason for interference with the interaction by third parties, potentially including the state. Genuine consent might thus rule out criminalizing consensual interactions in which one person violates a duty to self.²³ When a person consents, they remove a right of complaint to the action which they have consented to. Consent also creates an obligation in that person not to resist the treatment (at least until the point at which they withdraw their consent) and changes the reactive attitudes that are appropriate in response to it. Think again about Carlos in *Child passenger*. When he gets older and realizes what Abe has done (with Bianca's help), he might express his anger and resentment by asking, "how could you do that to me?" No such response is available to Bianca in *Second-hand smoke* without incurring a charge of hypocrisy. Even when the consent is wrongful, it plays a significant role in shaping the morality of the interaction that we should not ignore.

Despite this significance, consent does not cover *all* that we ought morally to care about when thinking about the kinds of interactions under consideration. This is partly due to the fact that waiver of one duty that another owes to us leaves all of their other duties to us intact. This means that while Bianca cannot claim to be wronged by the smoking itself, she might have reason to object to Abe's conduct on some other grounds and to claim that Abe has transgressed another duty he is under. There are numerous ways in which Abe might wrong Bianca or be complicit in Bianca's wrongdoing even if the smoking itself does not wrong her. Bianca's consent only gets us so far in exculpating Abe.²⁴

23 This does not mean that the impossibility of consent entails that we ought to criminalize such interactions; see Tadros (2016).

24 I am grateful to Paulina Sliwa and an anonymous reviewer for pressing me to consider this.

My aim in this section is not to offer an exhaustive account of the ways in which our conduct might wrong others in consensual interactions in which they violate a duty to self. Rather, I will draw on Kant's characterization of a class of duties central to his moral philosophy – duties of respect – in order to provide a lens through which we can identify the morally salient features of our interactions with others that have not been addressed in the discussion of consent.²⁵ I will then illustrate failures of respect with the examples of solicitation of and complicity in violations of duties to self. The result will be that many, but not all, instances of interactions in which one person violates a duty to self will also be instances of interpersonal wrongdoing.

2.1

In thinking about Kantian duties of respect, it is helpful to start with a passage from his discussion of servility.²⁶ He says:

But a human being regarded as a *person*, that is, as the subject of a morally practical reason [...] possesses a dignity (absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them.

6:434–35

There are two important features of Kantian duties of respect that are worth mentioning here, which are both illustrated by this passage. First, respect as it is used in the passage above is not owed to us on the basis of our talents or our character or even our moral virtue. Rather, respect of the relevant kind is owed to us by virtue of the fact that we are subject to morally practical reason.²⁷ Since we are all equally subject to morally practical reason, we are owed equal respect. Duties of respect are thus characterized as duties prohibiting conduct

25 Kant does not believe that we can give a general and a priori account of the way in which our duties of respect must manifest: “The different forms of respect to be shown to others in accordance with differences in their qualities or contingent relations – differences of age, sex, birth, strength, or weakness, or even rank and dignity, which depend in part on arbitrary arrangements – cannot be set forth precisely and classified in the *metaphysical* first principles of a doctrine of virtue, since this has to do only with its pure rational principles” (6:468).

26 In reconstructing Kant's account of duties of respect, I am drawing on Darwall (2005; 2013, ch.11), Sensen (2013), and Wood (2008, 2009). For discussions of the place that duties of respect occupy in the Doctrine of Virtue, see Baron (2002) and Fahmy (2013).

27 That is, Kant is invoking recognition respect and not appraisal respect, to use Darwall's (2005) terms.

expressive of an attitude of moral *superiority* over others – respect is a negative duty “of not exalting oneself above others” (6:449). Failures of respect are failures to treat others as our moral equals.

Kant’s examples of violations of duties of respect are arrogance towards another, intentionally spreading information about another that detracts from their honor (including when what is said is true), and ridicule (6:465–68). Arrogance, for example, is a vice by “which we demand that others think little of themselves in comparison with us” (6:465). One who is arrogant believes they are entitled to treat others with contempt and we are contemptuous of something when we judge it to be worthless (6:462). Defamation is “the immediate inclination, with no particular aim in view, to bring into the open something prejudicial to respect for others,” or “malicious pleasure in exposing the faults of others so that one will be thought as good as, or at least not worse than” them (6:466). Inward beliefs about another’s capacities or status are not in question here. Kant claims that we sometimes cannot help but look down on some in comparison to others inwardly (6:463). Rather, our *conduct* towards others must not evince the attitude that we take ourselves to be superior to them. While much more would have to be said for a full accounting of these vices, they both illustrate that respect is violated by failures to treat another as one’s moral equal.²⁸

Second, duties of respect are *owed to* others, and for this reason, respect can be demanded of us by those with whom we interact (6:459, 6:462, 6:464; Schaab 2021a). When we violate a duty of respect to another, we wrong them. This contrasts with what Kant calls duties of love (or beneficence), the other class of ethical duties that we owe to others “merely as human beings” (6:448).²⁹ Duties of love are broadly duties to acknowledge the ends that others have set for themselves as reason giving for us, and to cultivate a disposition to see things from others’ point of view. They include duties of beneficence, gratitude, and sympathy. While we are duty-bound to act in these ways, Kant thinks that others cannot demand to be the recipients of our beneficent or sympathetic action. To illustrate this, consider the duty to “promote according to one’s means the happiness of other human beings in need” (6:453). There are numerous ways in which we can do this. For example, we can donate money to charity or volunteer our time. Within these options, there are more choices to make, for example between different charities, or between a soup kitchen and a homeless shelter. Since we are permitted to make choices like these in

28 See Fabre (2023) and Fahmy (2013) for helpful discussions of these vices.

29 For more on this distinction, see Baron (2002), Darwall (2013, 266–67), and Pallikkathayil (2010, 131).

determining how we contribute to satisfying the duty of beneficence, and those choices will lead to us helping different people, it cannot be the case that specific individuals can demand to be the recipients of our beneficent actions. The same is not the case with duties of respect, which can be demanded of us by all those persons we encounter.

2.2

So, duties of respect require that our conduct does not express an attitude of moral superiority over others, and others are entitled to demand this equal recognition of their status from us. We paradigmatically violate our duties of respect to others when we use them in ways to which they have not consented. However, even consensual interactions might fail to respect those with whom we interact. I illustrate this here with the examples of solicitation of and complicity in others' violation of their duties to self. These examples are meant to be illustrative rather than exhaustive. They neither represent all of the ways in which we might fail to respect those with whom we consensually interact, nor do I aim to provide comprehensive accounts of the phenomena being considered. Rather, they are meant only to offer some insight into the kinds of considerations that we ought to take into account in interactions in which one person violates a duty to self. They are ways in which we might fail to express our commitment to others' equal moral status even when our interactions with them are consensual.

In *Second-hand smoke*, Bianca's consent to Abe smoking is unsolicited.³⁰ It is Bianca who suggests that Abe smoke, and she provides him with the means for doing so. Not all consent is unsolicited. It is a familiar feature of consensual interactions that those who wish to have a duty which they are under waived ask permission to perform the normally prohibited action. Most of the time, there is nothing wrong with this. Indeed, asking permission is often a way of acknowledging the capacity and entitlement of others to make decisions about how they and their property are to be treated.

With that said, some ways of asking for consent will wrong those whom they target. Due to the fact that we normally think of asking for consent as an expression of respect for others, this might come as a surprise. However, certain requests can be a way of demonstrating that one thinks less of another, or has different standards for them than one does for oneself, or that one otherwise fails to acknowledge them as a moral equal.³¹ To illustrate, imagine that Abe asks

³⁰ For the distinction between solicited and unsolicited consent, see Pallikkathayil (2020).

³¹ See also Kleingeld (2020, 404–405), who states: “Kant emphasises that you ought not to use *yourself* merely as a means either and this poses constraints on the types of use to which you are morally allowed to consent. You should not consent to being used as

Bianca whether he can smoke in the knowledge that, if she says yes, she would be violating a duty to self. In doing this, he might be manifesting an attitude of superiority over her by indicating that it is appropriate that she should violate a duty to self so that he may satisfy his craving. To further illustrate this, suppose that Abe would never ask the same of another man, but feels himself entitled to ask Bianca because she is a woman. In this case, the request fails to respect Bianca because it is an instance of misogyny directed at her. While Abe might still take Bianca's consent as a morally necessary condition for his smoking, such that he would not smoke if she refused, he does not treat Bianca's need to violate a duty to self in providing consent as sufficient reason not to seek it. Because she is a woman, he counts the fulfillment of her duties to self for less than the satisfaction of his craving.

Recall that we violate a duty to self when we act in a way that destroys, degrades, or impairs our capacity for morality and when we act in a way that is inconsistent with our equal moral status. Given this, it is plausible to hold that actions that we cannot do to ourselves in the pursuit of our discretionary ends without violating a duty to self are actions that we cannot request of another in the pursuit of our discretionary ends without violating a duty of respect to them. This is true even if consent, once given, releases us from the duty which we would normally be under not to perform the consented-to action.

In response to Abe's request, Bianca might refuse (perhaps indignantly). However, if she decides to consent, then Abe will be complicit in her violation of her duty to self. We are complicit when we knowingly and intentionally participate in another's wrongdoing. Participation in another's wrongdoing can be thought of broadly in terms of supporting, enabling, or promoting it.³² Asking another to violate a duty to self is a way of supporting that violation, and thus constitutes complicity on the condition that the person agrees. When we are complicit in some wrongdoing, we also wrong the person whose right was violated. For example, when I give you a boost over the fence so that you can rob the house, I wrong the owner of the house by helping you. For that

an accomplice in a scheme of deception, for example, and you should not agree to sell yourself into slavery. [...] Agents intending to use others as means in turn ought to take these conditions into account when asking for consent, since they must not ask others for their consent to being used in degrading or otherwise morally impermissible ways" [references to Kant removed]. I take it that Kleingeld is here suggesting that both i. some instances of consent constitute impermissible consent, and that ii. knowing this, others ought not solicit these forms of consent. While I disagree with her about the status of voluntary slavery (see 1.3), the proposal here is very similar to the one I develop above.

32 For Kantian accounts of complicity, see Driver (2015) and Hill (2010). Kant explicitly prohibits tempting others into wrongdoing at 6:394.

reason, we have grounds to say that complicity in another's violation of a duty to self wrongs that person.

Again, it matters whether the complicity is solicited or unsolicited. As we have seen, in *Second-hand smoke* Bianca violates her duty to self *in consenting*, not at the point at which the action consented to takes place. Bianca would violate her duty to self even if her consent did not result in Abe smoking (i.e., if his craving disappeared after she consented). This means that by the time that Abe does smoke, Bianca's violation of her duty to self has already occurred. At least on the unsolicited consent version of this example, Abe's action comes in too late for it to participate in Bianca's wrongdoing. Absent further specification (for example, of Abe's demeanor, of the broader contours of their relationship, etc.), the smoking itself does not support, enable, or promote Bianca's violation of her duty to self. There will also be cases in which consent makes a difference to whether complicity wrongs the person who violates their duty to self. Consider again the situation in which I give you a boost over the fence so that you can rob the house. However, this time, imagine that I am helping the owners of the house to catch you, the wily neighborhood thief. While I am complicit in your wrongdoing, I do not wrong the owners of the house because they have consented to my action. Similarly, consent removes the wrongfulness of complicity in violations of duties to self (even when that consent is impermissible).³³

This is all to say that there are numerous ways in which we might violate duties of respect to those with whom we consensually interact. This is especially the case once we introduce special duties to others, such as duties of care or other duties we owe as a result of the particular relationships we stand in to others. While consent makes a significant difference to the morality of our interactions with others, it will not always make the interaction as a whole permissible (as contrasted against the performance of the specific action consented to).

33 While the examples above are instances in which one person supports the violation of the duty to self of another, it strikes me as plausible that some failures of respect will occur when a person refuses to act on consent that constitutes a violation of a duty to self. For example, Abe might respond to Bianca's unsolicited consent to his smoking by launching into a condescending speech about the value of self-care, and destroy the cigarette that Bianca offered him. That is, certain ways of responding to another's consent, when that constitutes a violation of a duty to self, might fail to respect that person due to being paternalistic. For Kantian accounts of paternalism, see Fahmy (2018) and Cholbi (2018). Thanks to Rainer Forst for suggesting this possibility to me.

Conclusion

I have argued that, in Kantian ethics, consent is normatively transformative even when it violates a duty to self. The impermissibility of the exercise of a normative power is insufficient for saying that one lacks the power. Moreover, when consent is impossible, this is not best explained by our duties to self but rather by the restrictions placed upon us by our normative concepts and categories. Even still, we might wrong others in our consensual interactions with them due to a failure to satisfy a duty of respect owed to them. This occurs when we fail to treat the person with whom we are interacting as a moral equal. Actions such as soliciting consent to violate a duty to self and complicity in another's violations are instances of such wronging. Given the wide variety of actions that count as solicitation or complicity, it will turn out that many, though not all, interactions in which one person provides consent that constitutes a violation of a duty to self will also be interactions in which that person is interpersonally wronged.

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