# Aiding the impermissible?
# Kant and the morality of physician-administered euthanasia

Luke J. Davies[*]

## Introduction

It is often assumed that an important first hurdle for any defence of physician-administered euthanasia (PAE) is a demonstration of the moral permissibility of committing suicide, at least in some cases. While the permissibility of suicide does not strictly entail the permissibility of *assisting* another to kill themselves, the impermissibility of suicide does seem to rule out giving assistance. After all, we ought not aid others in performing impermissible actions.

Due to this, Kant's insistence that suicide is in every instance contrary to moral duty would seem to scupper any chance of support for PAE in Kantian morality.[1] Consider:

i. "Although Kant did not address the question of assisted suicide, it follows from his arguments regarding suicide that assisted suicide is impermissible".[2]

ii. "I contend that Kant's argument does not establish an obligation to forego suicide (and *hence*, an obligation on the part of others not to assist in suicide)".[3]

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[1] Altman (2011: ch. 4).

[2] Gunderson (2004: 277).

[3] Cholbi (2018: 144; my emphasis).

iii. "An agent who takes his own life acts in violation of the moral law, according to Kant; suicide, and, by extension, assisted suicide are therefore wrong".[4]

iv. "from the fact that it is permissible for an agent to do something it does not follow that it would be permissible for someone else to assist him [...]. However, the entailment does seem to hold for impermissibility: if the act would be wrong then it would be wrong to assist it".[5,6]

The last passage is not discussing Kantian moral commitments, but the reasoning is the same. If suicide is impermissible, then PAE is ruled out too.

The aim of this paper is to more precisely locate and characterise the wrong of PAE on Kantian grounds. I will argue that physicians do not necessarily act wrongly by acting on their patient's request for aid in dying, even on the assumption that suicide is impermissible.[7] Given Kant's understanding of how we violate duties to self, the physician does not aid the impermissible act of the patient by acting on their request. The patient violates their duty to self by giving consent, and not at the point that consent is acted upon. This is to say that, on the Kantian view, the wrongfulness of PAE is not to be found at the bedside. Rather, it is to be found, if anywhere, in the act of legalisation itself. However, given that the practice does not violate individual rights, it cannot be ruled out according to Kantian principles of justice. The result is that while Kant and Kantians can never fully endorse the provision of PAE due to the impermissibility of suicide, and must condemn the actions of the patient, they need not view physicians as acting wrongly.

[4] Brassington (2006: 571).

[5] Sumner (2011: 85n).

[6] It is worth noting that passages i. and iii. above do not explicitly speak about assisting others to die, but merely make a general claim about the impermissibility of assisted suicide. This leaves it open that they are merely saying that committing suicide is wrong whether one is assisted or not, and abstaining from a judgement about the morality of aiding others to commit suicide. I doubt this is what the authors had in mind. McMahan puts the point well: assisted suicide "is something that is done by those who commit suicide with assistance from others, not what is done by those who provide the assistance. [...] discussions that are said to be about "assisted suicide" are generally not concerned with the permissibility of committing suicide with assistance but instead with the permissibility of providing assistance to others who wish to end their own lives" (2018: 14). I take that to be the case in the examples above.

[7] 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.

To be clear, my focus here is not on the morality of suicide. I will not challenge Kant's claim that suicide is always contrary to our moral duty.[8] My focus here is solely on the permissibility of aiding someone in dying. One consequence of this is that the patient in my discussion will be characterised as a wrongdoer, as they violate a duty to self. This characterisation is lamentable, especially when we consider the circumstances that would lead a person to seek out (and be approved for) PAE in those jurisdictions in which it is legal. But there can be no doubt that it represents Kant's position.[9] Moreover, it is worth asking whether PAE is permissible even when suicide is not. This is because, if the arguments of this paper have merit, they might point the way towards an argument for the permissibility of PAE that does not engage in the thorny question of the permissibility of killing oneself.

## I.

One way to understand the morality of helping another to die, and a natural way to read the passages we started with above, is as follows: since the act of killing oneself is wrong on Kant's view, helping another person to kill themselves is aiding the performance of an impermissible action and is therefore also wrong. This suggestion is able to neatly explain why PAE is wrong whenever suicide is wrong. However, this way of thinking about the morality of PAE isn't available to Kant given the way that he understands violations of duties to self.

Many of the duties to self that Kant defends are formulated in terms of prohibited actions (killing or maiming oneself, servility, drunkenness). However, the wrongfulness of a particular action is not to be understood in terms of bringing about certain consequences, even including one's death or intoxication. I will focus on the duty prohibiting suicide. Kant says that we violate this duty when we try to bring about our death for the sake of any end whatsoever.[10] This means that it will sometimes be compatible with the prohibition on suicide to perform an action even though you know it will lead to your death — i.e., when death is a foreseen

[8] See 4:429, 6:421, 6:81n, 15:973, 22:296, 27:373, and 27:628. See Cholbi (2010; 2018) for an argument that Kant's claims leave open the possibility of permissible suicide in some cases. I leave this interesting proposal aside in what follows.

[9] For discussion of Kant's arguments against the permissibility of suicide, see Cholbi (2000), Korsgaard (1996), Gunderson (2004), Wood (2008), Brassington (2006) and Uleman (2016).

[10] In the *Metaphysics of Morals* Kant says we violate the duty when we attempt to kill ourselves for the sake of a merely relative end, an end of inclination (6:423). However, in the *Religion* he claims that "one cannot dispose of oneself and one's life as a means, *whatever the end*, and thus be the *author* of one's death" (6:81n, first emphasis mine). This rules out killing oneself even for the sake of a moral end.

but unintended consequence of the action. For example, in the second *Critique*, Kant describes a person who is told they must give false testimony or else suffer "immediate execution".[11] The point here is about the relation between freedom and the moral law. The person in this situation judges "that he can do something because he is aware that he ought to do it".[12] Important for us, however, is the fact that the person would not violate a duty to self by refusing to give false testimony, even when they know this will lead to their death. They don't aim for their death by performing the action and so are not the 'author' of it.[13]

That we need to focus on the ends a person is pursuing (their aim in acting) is a familiar feature of Kant's ethics and philosophy of action. For Kant, there can be no free action without a maxim, and we differentiate the actions that are performed by an agent on the basis of their maxims. Maxims specify the agent's ends;[14] they are the 'subjective principle' of the action.[15] Identical external behaviours can be the result of different maxims, and so we cannot tell the action a person is performing just by seeing their externally manifesting behaviour.[16] A maxim makes the difference between theft and an honest mistake, between trespass and being lost. So, in order to make a moral appraisal of a person's conduct we need to appeal to their maxims (and thus their ends). To come back to Kant's 'gallows man': if he refuses to lie *because he wants to die*, he violates the prohibition on suicide. If he refuses to lie because lying is wrong, he does not.

It is the centrality of maxims that explains why unsuccessful attempts to perform actions prohibited by duties to self are themselves violations of those duties. It is possible to violate a duty to self even if the prohibited action never occurs. For example, consider a person who tries to commit suicide as a way of avoiding some suffering they foresee, and thus for the sake of a relative end. In order to achieve their end, they decide to stab themselves. Unbeknownst to them, however, the knife they use is a harmless stage prop with a plastic, retractable blade. While they cause themselves no harm at all by their attempt, they have still violated their duty to self. Their maxim, "I kill myself to avoid future suffering", is not made permissible by the ineffectiveness of the means they chose for the achievement of their end.

Some acts of consent also constitute violations of duties to self. To see

[11] 5:30.

[12] ibid.

[13] 6:81n: "For one may indeed dare something at the risk of losing one's life, or even endure death at the hand of another, when one cannot avoid it, without betraying an irremissible duty". See also 27:629 and 27:376.

[14] 6:389.

[15] 4:401n.

[16] 4:407.

how this is so, first consider a case of consent that constitutes the violation of a duty to another. For example, let's say that I promise you that I won't lend anyone my copy of the second *Critique*. Subsequent to making the promise, a friend asks if they can borrow it for an upcoming seminar and I tell them they can. While I have a duty to you not to lend the book out, my consent is normatively transformative; my friend would not wrong me by taking the book. However, I wrong you in giving them permission. This wrong is explained by the fact that I make it permissible for my friend to take the book when I said that I wouldn't. I break my promise in giving them permission, and so act wrongly, even if they don't end up taking the book to the seminar.

So, duties to others can be violated by acts of consent. The same is true of duties to self. Consider self-promising, which functions analogously to the other-regarding case above. I will assume that it makes sense to say that we can make promises to ourselves, and that we thereby generate a duty to self to do what we promised.[17] For example, I promise myself that I will work through the weekend in order to get ahead on the term's teaching preparation. Having made myself the promise, a friend asks if they can come around to watch the Big Game on Sunday and I say yes, precisely because I want to get out of doing the work. Here I violate the promissory duty to self, even if the friend doesn't show up in the end. This is because I make it permissible for another to interfere with the completion of the activity I promised myself I would complete.[18]

Now consider a different kind of example. Kant claims that we have a duty to self not to forfeit the respect we are owed from others.[19] We should not permit others to treat us disrespectfully. But imagine that I am very eager to be noticed by a certain group of people. In order to get that attention, I convince a friend to demean me in front of them so that I can gain their sympathy. In enlisting the help of my friend, I consent to being demeaned.[20] Now imagine that the plan falls through. The people whose attention I desire don't show up at the time I expect and my friend never acts on my consent. I have still violated my duty to self. Just as above, the duty is violated in giving consent and not at the point

[17] For scepticism about this assumption, see Hills (2003). For recent defences of the possibility of self-promises, see Muñoz (2020) and Schaab (2021).

[18] If you are unconvinced that this is a violation of the promissory duty, imagine an equivalent case with a promise made to another. For example, you promise your partner that you will spend the weekend with them and but then respond affirmatively when your friend asks if they can use your place to watch the Big Game. Your partner has reason to be resentful of the fact that you've given your friend permission even if they don't show up in the end.

[19] 6:435. For discussion see Hill (1991).

[20] We consent to another's action both by explicitly giving permission and by making requests or issuing directives (see Dougherty 2021: ch. 9).

at which the consented-to action takes place. In this way, giving consent that isn't acted upon can be explained in terms similar to those of a failed attempt. In consenting to be disrespected, I seek to use prohibited means for the achievement of my ends. That my deployment of those means was unsuccessful does not alter the fact that this way of going about achieving my ends is impermissible.

So, it is possible to violate a Kantian duty to self by giving consent. Just as above, the violation of the duty is not to be explained in terms of the completion of the prohibited action (i.e., in terms of another person *acting on* the consent). Rather it is explained in terms of giving the other person license to perform an action that they ought not be permitted to perform. This means that, when the person acts on the consent they have received, they are not contributing to the violation of the duty to self. The violation has already occurred.[21]

We can now see that, given the way in which violations of duties to self are to be understood on the Kantian account, acting on the consent of a patient who asks for PAE is not aiding the patient's impermissible action.[22] For Kant, the patient violates their duty to self by consenting to being killed by the physician and not at the point at which the physician acts on their consent. That this is so can be seen from the fact that the patient would violate their duty to self even if the physician ends up not acting on that consent. Recall that the natural understanding of the wrongfulness of PAE, assuming the impermissibility of suicide, was that it aids the impermissible act of another. Kant's account of consent that constitutes a violation of a duty to self demonstrates that this cannot be his explanation of the wrong.

Indeed, given the Kantian analysis as I've presented it, it seems as though the physician might not act wrongly at all in administering PAE on the basis of their patient's request. This is because, in consenting, the patient has waived the duty that the physician is under. As we have seen, the patient's duty to self is violated precisely by making PAE an available action for the physician. That the patient must be viewed as violating a duty to self on a strict Kantian account does not change the fact that their action alters the duties that the physician is under.[23]

[21] See Davies (2024) for a more detailed discussion of consent and violations of duties to self in Kant.

[22] Cholbi (2018: 150) makes a similar point to this, though he focuses on the question of whether the prohibition on suicide is enforceable. He argues that it is not on the Kantian view, as we only satisfy the duty if we have the right ends and no one can coerce us into adopting specific ends. This raises a further question about legalisation, which I address below. My discussion differs to Cholbi's by focusing on the relation between consent and violations of duties to self.

[23] For Kant, the possibility of consent is governed by principles of Right and the permissibility of consent is governed by principles of virtue. I argue that we lack grounds

With that said, the conclusions of my argument so far are simply that the physician does not wrong the patient (due to the patient's transformative consent) and that the physician isn't aiding the patient's impermissible action. This leaves open the possibility that the physician acts wrongly in some other way by administering PAE. In the remainder of this section, I address the worry that the physician acts wrongly, not by actively contributing to the patient's wrongdoing but by expressing approbation of it by following through on the consequences of that wrongdoing. In this way, we might understand the physician who acts on their patient's consent as committing a kind of expressive wrong.

A person commits an expressive wrong when the meaning expressed or intended by their action is morally impermissible. Expressive wrongs are not a function of the consequences of the action, but rather are a function of the action *qua* expression of a set of beliefs or attitudes.[24] A person acts wrongly, for example, by acting in a way that expresses a lack of equal respect for a group or individual. This is what happens in hate speech, which in most cases depicts its target as lacking the basic moral standing of the speaker.[25] According to an expressive analysis, hate speech is wrongful (at least in part) due to what it expresses, and this wrongfulness is not reducible to or explained by the harmful consequences that arise from that expression.

Kantian ethics is attentive to the expressive nature of action. For example, Allen Wood has suggested that what the Formula of Humanity[26] "fundamentally demands of our actions is [...] that they express proper respect or reverence for the worth of humanity".[27] An action that expresses contempt for humanity, in oneself or another, will be wrongful even when it fails to bring about any negative consequences. We have already seen this in the case of failed violations of duties to self above. The person who attempts to kill themselves for the sake of avoiding future suffering thereby expresses that they do not ascribe the dignity to rational agency that Kant thought they must, or else that they do not respect that dignity. This is not to say that Kantian concerns align completely with the contemporary discussion of expressive wrongs, or that Kant should be viewed as an early advocate of expressive theories of wronging so described. A central feature of the contemporary discussion, at least in legal theory, is that an action's meaning is set by the social, historical, and linguistic context of the speaker,

for thinking that consenting to die is always inconsistent with principles of Right below (II.i).

[24] Anderson (1993: 32-37), Khaitan (2012) and Sunstein (1996).

[25] Waldron (2012: 57).

[26] "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means" (4:429).

[27] Wood (1999: 141).

such that, for many instances of action, the expressive meaning of that action will be objectively determinable.[28] This feature of the expressive aspect of action is necessary for it to be amenable to legislative control. For Kant, however, the expressive meaning of an action will be given by the agent's maxim and practical reasoning, which is not accessible to others (or even fully to the agent themselves).[29] The socially determined meanings of the action will only be relevant insofar as they are incorporated into the agent's practical reasoning. In most cases it seems these will align, but they will not always do so. For that reason, the contemporary and Kantian accounts differ in how they attribute expressive meaning to an action.

We can view physicians as committing an expressive wrong in Kantian terms insofar as their action expresses approbation of their patient's decision. By acting on their patient's consent and helping to realise the patient's intended outcome, physicians might be taken to thereby show support for the violation of their duty. Again, this is not a way of helping the patient to violate a duty to self. However, it does aid the patient in bringing about the outcome they hope will result from that violation and in this way supports it. Insofar as this shows support for a violation of the dignity of humanity, it is impermissible in Kantian ethics. This indicates that even if the physician does not wrong the patient, and does not aid the patient's impermissible act, they might nevertheless act wrongly.

I will return to this below (II.ii), but it is worth saying now that Kantian principles of justice solely concern whether individual rights are violated.[30] This means that interactions in which one party acts wrongly but does not violate the rights of another should not be prohibited in the Kantian state. Since the kinds of expressive wrongs that we are concerned with here are not ones in which the physician wrongs their patient (it is expressive wrong*doing* rather than expressively wronging another), it will turn out that even if physicians committed such wrongs by acting on their patient's consent, this would not provide grounds for a legal prohibition on PAE according to Kantian principles.

So, a legalised scheme of PAE is not ruled out by the physician's potential expressive wrongdoing. But it is also the case that legalisation could also help to assuage our concerns about such wrongdoing. In order to see how, consider the following example:

> PAE is legal in the Canadian province Ontario. In that province, physicians are bound by the 'Professional Obligations and Human Rights' policy of the College of Physicians and Surgeons. This document states that "physicians must

[28] Khaitan (2012: 4)

[29] 4:407.

[30] 6:236.

> not promote their own spiritual, secular, or religious beliefs when interacting with patients or impose these beliefs on patients" and that "when physicians are unwilling to provide certain elements of care for reasons of conscience or religion, an effective referral to another healthcare provider must be provided to the person". An effective referral is one that is timely and "made in good faith, to a non-objecting, available, and accessible physician, other health care professional, or agency." These requirements also apply to the province's provision of PAE, there called 'Medical Assistance in Dying' (MAID).[31]

These regulations structuring the actions of physicians significantly reduces their personal responsibility when thinking about the expressive meaning of their action. The action physicians take as a member of their profession is structured by the legal apparatus of the province and not their private decisions or beliefs. Indeed, it is a requirement that physicians not impose their own "spiritual, secular, or religious" beliefs when interacting with patients. To put the point another way, a physician in Ontario merely acts on their professional mandate when referring their patients to MAID. They do not act in a private capacity, but a public one. As such, their action does not express their personal belief, but is rather a representation of the laws and statues that govern their actions in this context.

This has some support from Kant's claims in 'What is Enlightenment?', in which he states that those who hold civil positions must obey despite disagreeing with their mandate. A citizen must pay their taxes even if they find them unjust, and a clergyman must preach the creed of the church they serve even if they disagree. Moreover, "there is nothing in this that could be laid as a burden on his conscience. For what he teaches in consequence of his office as carrying out the business of the church, he represents as something with respect to which he does not have free power to teach as he things best, but which he is appointed to deliver and prescribe in the name of another".[32] A physician who is approached by a patient who wants to access MAID does not have free power to turn them away, as that physician acts in the name of another.

Thus, when PAE is legalised in the way that it has been in Ontario, the legalisation itself helps to alleviate some of the *ethical* concerns raised by the practice. This will not eliminate the possibility of a physician's wrongdoing. Even when their action is structure by the law governing

[31] Information here available at: https://www.cpso.on.ca/en/Physicians/Policies-Guidance. Accessed October 31, 2024.

[32] 8:38. There are limits of course. Kant claims of a clergyman who disagrees with the creed of the church, that if there was something "contradictory to inner religion present in" the teachings "he would have to resign" (ibid).

their profession, a physician might still commit expressive wrongs in their private capacity or act contrary to their mandate.[33] However, it does indicate that a physician who acts according to their mandate does not, in so acting, violate one of their ethical duties. Physicians thus do not necessarily act wrongly when they aid their patients to die within a legal context in which those patients are entitled to that treatment option.

## II.

In this section, I consider two objections to PAE on Kantian grounds. The first says that physicians wrong their patients in cases of PAE because no one can successfully consent to being killed by another. The second says that due to the fact that the availability of PAE constitutes a temptation for some to violate their duties to self, it should be legally prohibited. I argue that neither of these objections rules out a legalised scheme of PAE on Kantian grounds. However, the second draws attention to the fact that instituting the practice must be viewed as wrongful given the impermissibility of suicide. It indicates that the wrongfulness of PAE on Kantian grounds is to be located in its legalisation, despite the fact that the practice is consistent with Kantian principles of justice and, as we have seen, physicians do not necessarily act wrongly by participating in it.

### II.i Consenting to die?

A first objection is due to Arthur Ripstein. He claims that it is impossible for one person to successfully consent to be killed by another on Kant's view. If correct, this would undermine my claim that consent to be killed by another is wrongful for the person who gives it but still normatively transformative (something I have until now been assuming). Physicians would wrong their patients by administering PAE, and the practice would be prohibited in a Kantian state. While Ripstein's argument concerns consenting to be killed in general, I will restrict my response to the context of PAE.[34]

Ripstein's argument begins with a treatment of the impossibility of slavery contracts. He says: "the problem with slave contracts is that slavery

[33] In the BBC documentary *Better off Dead?* a Canadian physician is interviewed by the UK disability activist, and opponent of PAE, Liz Carr. The physician understands that she must act according to her mandate, and has aided the death of patients whom she thought could have been helped by different medical interventions. The viewer (or at least this viewer) is left uneasy by the level of pleasure that she takes from her job though, citing how grateful her MAID patients are to her and how physicians always prefer to have grateful patients. The enthusiasm for the work that she does sits uneasily with her admission that sometimes she thinks that patients choose to die for the wrong reasons.

[34] Ripstein explicitly applies his general analysis to PAE (2009: 142n).

is the annihilation of legal personality: the slave becomes an object, fully subject to the master's choice. As such, the slave is incapable of undertaking obligations, because she has no rightful power to bind herself".[35] On Kant's view, the outcome of a slavery contract would be that one of the parties to it ceases to be the kind of entity that can be bound by contractual obligations.[36] This argument relies neither on the ethical impermissibility of servility nor on the violation of any other duty to self. Instead, it focuses on the form of interaction presupposed by slavery contracts.

Ripstein claims that this argument can be extended to cases of consenting to being killed by another:

> Consensual murder requires that one person taking the life of another is a term of the agreement, and so that one person relinquish any claim to resist with right the force that the other uses. As we saw, you can only agree to some action by another person by giving another person a right to do that thing, which is equivalent to undertaking an obligation to permit the other to do it. Victim cannot undertake an obligation to permit himself to be treated as an object; if he is an object, he can have no obligations. Thus the victim is both a person and a thing, which is normatively impossible.[37]

The idea is the following. When I give you a right to do something to me, "I am under an obligation in the sense that my freedom is constrained; I may no longer treat your acts as aggression against me".[38] If I've given you permission to do something to me (i.e., touch my hair), I would wrong you by pushing you away as if in self-defence when you did that very thing. When the action in question is being killed by the other, this means that consent amounts to undertaking an obligation to allow oneself to be killed. Moreover, Ripstein claims that "murder [...] is a form of biological slavery, since the murderer decides whether the victim will continue to exist".[39] By undertaking an obligation to permit another to kill us, we are allowing them to decide whether we will continue to exist.

This argument is significantly weakened when we distinguish between the obligations we undertake when we waive rights (as we do when consenting to PAE) and the obligations we undertake when we transfer rights (as we do in slavery contracts). In cases of waiver, we make an action or omission available to another that they otherwise have a duty (to us) not to perform or omit. In waiving a right, we also undertake an obligation not to

[35] ibid., 135.
[36] 4:428, 6:241, 27:601-02.
[37] Ripstein (2009: 140).
[38] ibid. 118.
[39] ibid. 140.

respond to the action of the other in certain ways, for example by treating the action as unlicensed aggression against us. But this obligation does not entail that the other gets to decide for us whether the consented-to action will occur. In standard cases at least, we retain control over the rights we waive, and may revoke the permission given to another should we choose to do so.[40] Once we have consented, consent-receiver is not duty bound to omit the action. But neither are they entitled, simply by virtue of having their duty waived, to the successful completion of the action. This is because waiver does not create a claim right in consent-receiver that the consented-to action take place.

A contract is different. In the case of a contract, consent-giver does create a claim right in consent-receiver that corresponds to a duty in consent-giver to perform or omit some action. Failing to act in the way agreed to would wrong consent-receiver. Consent-receiver also has control over whether the action occurs due to the fact that they can choose to enforce or waive their claim against consent-giver.[41] If PAE was modelled along the lines of a contractual transfer, then it would be true that the physician would be able to choose for the patient. But this is not the best way to characterise the practice. Rather, patients are best understood as waiving their rights, and thus retaining the possibility of revoking their consent without wronging the physician. Indeed, that patients may revoke consent is a central feature of the practice of PAE, and of consent in medical settings more generally. The obligations that patients incur when consenting to PAE are thus unlike those they incur in slavery contracts.

Ripstein might object that this does not address his central concern, which is that the *form* of the interaction is one that requires consent-giver to have the status of both 'thing' and 'person'. We might think that this, and not the obligation one incurs, is why consenting to being killed by another is ruled out on the same grounds as slavery contracts. An important part of Ripstein's argument for this claim is that "two people can only act together in a way that is consistent with their freedom provided that they unite their purposes while preserving their separate purposiveness".[42] Both consensual killing and slavery contracts fall foul of this requirement on Ripstein's view, and this explains why both are ruled out on the same grounds.

However, merely focusing on the preservation of purposiveness ob-

[40] See the discussion in Simmons (1993: ch. 5). Ripstein notes this (2009: 117n), but it does not feature in his discussion of consenting to be killed. This might be because he focuses on contractual obligations, and so on obligations that primarily create claims in others (rather than liberties).

[41] I leave aside the question of whether we can contract to waive a right in the future, such that we would wrong another if we did not waive the right at some specified future time. For a related discussion, see Liberto (2018).

[42] Ripstein (2009: 135).

scures an important difference between slavery contracts and PAE. In particular, it is part of a slavery contract that consent-giver is *subordinated* to consent-receiver, who is consequently entitled to use consent-giver as they wish. Consent-receiver cannot subsequently wrong consent-giver since consent-giver is obliged to act as consent-receiver requires — their action is included in consent-receiver's domain of choice. This is not true of PAE. While consent-giver does not biologically survive the interaction, this is not because they are, or their choice is, subordinated to consent-receiver. That this is so is evident from the discussion above. Consent-receiver merely has a duty to consent-giver waived. This entails neither that consent-receiver is entitled to decide whether the consented-to action takes place nor that consent-receiver is wronged if the consent is revoked. Given that waiver of one duty leaves all others in place, consent-giver is not made a 'thing' for the use of consent-receiver by their consent.

Let me make a further clarification. While Ripstein speaks of the preservation of purposiveness, his stated view is not that our capacity to set and pursue ends provides a normative foundation for relations of Right in Kant's political philosophy.[43] Instead, this capacity is a necessary condition for agents to stand in relations of Right to each other: "In talking about purposiveness, my concern [in *Force and Freedom*] was solely to characterise the manner in which the human beings who stand in relations of right are able to do so because of features that they have apart from those relations".[44] When Ripstein speaks of purposiveness in *Force and Freedom*, he means "to be filling out the idea of choice, in the sense in which innate right provides for its coexistence".[45] But the sense of choice provided by the innate right is a moralised one, according to which our capacity for choice is infringed only when we are hindered from performing an action that we have a right to perform. It is a sense of choice concerned with protecting against instances of being subordinated to the will of another. This means that the mere reduction in our non-relational capacity to set and pursue ends as a result of an interaction with another is insufficient to rule that interaction out on Kantian grounds. Instead, it needs to be the case that our capacity for choice is *wrongfully* reduced by that interaction, and this only happens when our rights are violated. Viewed in this way, while PAE is a form in interaction in which one person's ability to stand in rightful relations to others is reduced completely, it is not thereby a form of interaction in which they are wronged. This is because the patient is not subordinated to the will of the physician.

For these reasons, Ripstein's extension of Kant's argument against slavery to PAE fails. It is not true that in consenting to PAE a patient lets

[43] Ripstein (2010: 317-318).
[44] ibid., 317.
[45] ibid., 317-318.

their physician decide whether they will continue to exist. Nor is it true that in consenting they make themselves a thing for the physician's use. It may be that Ripstein's analysis rules out some forms of consensual killing, but it does not rule out PAE.

### II.ii Availability, temptation, and legalisation

A second objection concerns tempting patients into wrongdoing. We might think that the mere availability of PAE as a legal option constitutes a temptation to violate a duty to self and that this makes the practice wrongful in such a way that ought to rule it out legally. Cholbi makes an argument like this, comparing the legalisation of physician-assisted dying to enabling problematic drinking:

> A person cannot compel a problem drinker to honour her self-regarding duty not to stupefy herself with intoxicating substances. Only the problem drinker can fulfil that duty. But a person can contribute to the duty's not being fulfilled by tempting the problem drinker with alcohol.[46]

Since the fulfilment or violation of an ethical duty depends on the end the agent has in acting, and on Kant's view no one can coerce an agent to adopt a particular end,[47] it is up to that agent whether or not they violate the duty.[48] However, Cholbi argues that the legalisation of PAE is a temptation to violate the duty of self-preservation: "a legal regime that permits assisted dying in effect offers inducements to violate our Kantian duty of self-preservation".[49] Cholbi argues on this basis that PAE should not be legal on Kantian grounds: "That the duty of self-preservation is a non-enforceable duty of virtue might appear to weaken the Kantian claim against the legal permissibility of assisted dying [...]. This inference is mistaken, however. For even if the state could not compel individuals to fulfil their duties of self-preservation by outlawing assisted dying, the law could nevertheless shape attitudes towards assisted dying and hence influence whether the duty in question is fulfilled".[50] Cholbi does not seem to be wrong about the impact of legalising PAE. The European countries and U.S. states that have legalised assisted dying have seen an increase in the overall number of suicides (i.e., including non-assisted suicides) since legalisation when compared to their neighbouring countries/states

[46] Cholbi (2018: 151).
[47] 6:381.
[48] 6:394: "To see it that another does not deservedly suffer this inner reproach [of conscience] is not *my* duty but *his* affair".
[49] Cholbi (2018: 151).
[50] ibid., 150-151.

that haven't legalised the practice.[51] We might therefore think, and I will assume for the purposes of argument here, that legalisation has the effect of legitimising suicide. The question is whether this is sufficient to rule PAE out according to Kantian principles of justice. I think it is not.

Chobli's argument is unsuccessful for two reasons. The first is simply that it rules out too much. Must we legally prohibit *any* activities that might tempt some to violate their duties to self? Should alcohol be illegal since some might use it to tempt others into problematic drinking? Such a conclusion seems to follow from Cholbi's argument and example quoted above, but it is too strong. The immorality of a practice is not sufficient for the permissibility of its enforcement,[52] and we do not normally think that an action's legal permissibility is a sign of its moral permissibility. Cholbi might respond to this by saying that there are some uses of alcohol that are consistent with our duties to self and to others. This means that the state should not prohibit alcohol because in doing so it would rule out many permissible forms of action and this would be unjustified. Cholbi might continue by asserting that PAE is relevantly different to the legalisation of alcohol because PAE is *always* impermissible. There is no instance of a legalised scheme of PAE that is compatible with our moral commitments and this makes a difference. Even so, this response invites the question of whether Cholbi is committed to the claim that tempting someone into problematic drinking should be illegal. While it might be too much to prohibit all alcohol consumption, Cholbi's argument seems to require the legal prohibition of tempting others to violate their duties to self. Again, such a conclusion strikes me as too strong.

This leads to the second problem, which is that, for Kant, the sole purpose of the state is to secure the rights of its members.[53] Moreover, Kant's account of the concept of right is formal, and only takes into account the "external and indeed practical relation of one person to another".[54] Whether the form of an interaction is rightful is a matter of whether one person is subjected to the necessitating and arbitrary choice of another in that interaction.[55] In addition, the adoption of permissible ends in an interaction with another is not necessary for that interaction to be rightful. Kant claims that my actions can be compatible with the external freedom (and thus the rights) of others "even though I am quite indifferent to his

[51] Jones and Paton (2015) and Jones (2022).

[52] As Cholbi recognises elsewhere: "it is not obviously true that we are morally permitted to force others to do what they are morally obliged to do. (My neighbour may have an obligation to save money for her children's college education, but it is not obvious that I am morally permitted to force her to save the money!)" (2011: 73).

[53] 6:256.

[54] 6:230.

[55] 6:237; see also Kleingeld (forthcoming), Ripstein (2009: 142-43), and Wood (2014: ch. 3).

freedom or would like in my heart to infringe upon it".[56] It is not the role of the law to police the aims that we have in interacting with others, but rather to secure our relational freedom against impermissible interference. This is why "the wrongfulness of suicide does not enter the argument"[57] for the legal permissibility or impermissibility of PAE in Kant's political philosophy. We cannot use the fact that PAE might allow some to violate their ethical duties to self or to others as grounds for its inconsistency with Kantian *legal* principles, which are exclusively concerned with external, relational freedom. This does not mean that the Kantian state requires the legalisation of PAE, nor does it specify the form legality must take if the state decides to permit it. However, given that rights are not violated by the practice, we lack the grounds to rule it out on the basis of Kantian legal principles.

Cholbi's argument for the legal prohibition of PAE fails, but it points to the reason that Kantians must be uneasy with the practice. While I have argued that PAE is compatible with principles of Kantian justice, it is not required by them. A state that does not legalise PAE is not depriving its citizens of something to which they are entitled on the Kantian view. This means that the choice of whether to legalise the practice is up to the relevant state officials (either judges, legislatures, or citizens when the decision is made by referendum). Insofar as public officials act within their mandate, I have argued that they do not violate their *ethical* duties since they are not acting for private purposes. But this does not alter the fact that the choice to legalise PAE cannot be seen as other than a choice to legally protect a form of interaction in which one party violates their moral duty. This choice cannot be ruled out on Kantian grounds, but neither can it be fully supported.

## Conclusion

I have argued that, on a Kantian account, physicians do not aid the impermissible actions of their patients when they act on their consent to PAE. Despite the fact that suicide is impermissible on Kant's view, this does not rule out aiding others to die. Moreover, the way in which we legalise PAE can contribute to alleviating concerns we might have regarding potential expressive wrongs that occur by acting on the patient's consent. Legalisation can change the ethical status of the physician's action. This indicates that Kant and Kantians have the resources available to them to support PAE even if they hold Kant's claims about the wrongfulness of suicide fixed.

[56] 6:231.

[57] Ripstein (2009: 143).

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