

# Duties to self and being used merely as a means

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## I Introduction

What, according to Kantian ethics, is the relation between duties to self and the Formula of Humanity (FH) prohibition on using others “merely as a means” (G 4:429)?<sup>1</sup> 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 example:

*Friendship sacrifice:* X is a doctor suffering from an ailment that causes mild, short-term discomfort. A blood transfusion from X’s friend Y will relieve this discomfort but will also take 20 years off Y’s life. Y agrees to X performing the transfusion and thus relieving his discomfort.<sup>2</sup>

It strikes me as plausible that Y has a duty to herself that she not submit to the transfusion. After all, X is only suffering from mild, short-term discomfort,

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<sup>1</sup> References to Kant’s works refer to the abbreviated title, volume, and page-number of the German (formerly Prussian) Academy of Science edition of his collected works, commonly known as the *Akademieausgabe*. Abbreviations used throughout are as follows: G = *Groundwork for the Metaphysics of Morals*; MM = *Metaphysics of Morals*; Mo/Vig = Vigilantius lecture notes on moral philosophy. Full references can be found in the bibliography.

<sup>2</sup> This example is modified from Tadros (2016: 267).

and the transfusion will significantly shorten Y's life.<sup>3</sup> X also uses Y as a means. But does X use Y *merely* as a means? This is not just an interpretative question concerning two central features of the Kantian moral system; it is also interesting and important in its own right. There are an increasing number of defences of duties to self in contemporary moral philosophy.<sup>4</sup> As these duties gain acceptance in our moral frameworks, we need an account of how they relate to *interpersonal* morality. Here I begin to develop such an account by examining the relation between duties to self and the formulation of the categorical imperative that has often been taken to best capture the spirit of Kant's ethics.

The central claim I defend is that there is no necessary connection between uses of a person that require them to violate a duty to self and uses of them merely as a means. This is so for two reasons. First, in Kantian ethics the proper site of moral evaluation is the maxims of our actions. Moreover, it is possible to act on a permissible maxim when using someone even if that use requires them to violate a duty to self. Second, consent is normatively transformative even when the activity being consented to involves the violation of a duty to self. To anticipate the language I adopt (and elaborate upon) below: it is impermissible to consent to being used in a way that violates a duty to self, but that does not mean that consent to such uses is impossible. These two claims provide complementary perspectives from which to approach the question of the relation between duties to self and being used merely as a means. The first addresses the question from the perspective of the agent in the interaction, and asks about the permissibility of their conduct. The second addresses the question from the perspective of the patient, and asks what control they have over the moral features of the interaction.

My discussion proceeds as follows. §2 introduces Melissa Fahmy's argument that duties to self can be used to identify rights against others that cannot be waived or alienated through acts of consent. When one person

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<sup>3</sup> On Kant's view, this would most likely fall under duties that one owes to oneself as an animal and a moral being; in particular the duties requiring self-preservation (see MM 6:420).

<sup>4</sup> See, for example, Schofield (2021), Schaab (2021), Kanygina (2020), Muñoz (2020), Cholbi (2018), and Hills (2003). For the now classic statement of scepticism about duties to self, see Singer (1958).

uses another in a way that violates one of these rights, they use them merely as a means on her view. §3 argues against this account. §3.1 argues that violating the right of another (consent-insensitive or not) is neither necessary nor sufficient for using them merely as a means. §3.2 argues against the claim that duties to self impose limits on normatively transformative consent by drawing a distinction between impermissible and impossible consent. Jointly these arguments support the main claim of the paper: uses of a person that require them to violate a duty to self are not necessarily uses of them merely as means.

## 2 The FH prohibition and duties to self

Fahmy (2023) provides the most explicit and extended treatment of the relationship between duties to self and being used merely as a means in Kant's moral philosophy. Indeed, it is to my knowledge the only such treatment in the Kantian literature. Fahmy's reading of Kant has two central parts: 1. a duty-based account of using someone merely as a means, and 2. a claim that duties to self help us to identify rights held against others that cannot be waived or alienated by valid consent. Each of these parts provides an interesting and illuminating entry point into thinking about the relationship between duties to self and the FH prohibition. Let me say a bit about each.

### 2.1 A duty-based account of using someone merely as a means

In setting out her account of the FH prohibition, Fahmy follows Pallikkathayil (2010) in claiming that using someone merely as a means is "normatively complex" (2023: 58). By this she means that a determination of whether someone was used merely as a means requires an appeal to additional normative content, in particular to the duties owed to the person who was used. Some of these duties will be determined by Kant's political philosophy and actual political decision making, and others will be determined by our broader ethical theory. Here is an example to illustrate this.<sup>5</sup> Imagine that you are getting ready to leave your house and trying to decide how warmly to dress. In order to make a decision, you look out

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<sup>5</sup> Due to Pallikkathayil (2010: 127), quoted by Fahmy on p.58.

the window to see what people on the street are wearing. By doing this, you have used the people on the street as a means to your end of dressing appropriately. To determine if you have used them merely as a means on Fahmy's view will require, for example, asking whether there is a right to privacy that is being violated by the way you are looking at them. Since it is unlikely that a right to privacy (or any other right) would prohibit this kind of use, we ought to conclude in this case that it is not use of the people merely as means. The central claim of this account is that, in order to know whether X uses Y merely as a means, we need to know what X owes to Y more broadly. This requires that we situate our account of what it is to use others merely as a means within the context of our moral theory more generally.

With this in mind, the following are necessary and sufficient conditions for using someone merely as a means on Fahmy's view:

X uses Y merely as a means if and only if (1) X uses Y as a means and (2) X's use of Y violates either a consent-sensitive duty that X owes to Y or a consent-insensitive duty that X owes to Y. (2023: 58)

That is, X uses Y merely as a means if and only if X violates a duty owed to Y in his use of her.<sup>6</sup>

## 2.2 Consent-insensitive duties

An important element of Fahmy's definition of using another merely as a means is the inclusion of consent-insensitive duties. These are duties owed to others whose corresponding rights cannot be waived or alienated by the right-holder.

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<sup>6</sup> If we read the FH prohibition as telling us that we have a duty not to use others merely as a means, then Fahmy's view, as stated, will lead us to conclude that we have a duty to fulfil our duties. This is a strange result, which I believe speaks against the proposal as an interpretation of Kant. This account also has the result that the FH prohibition does not tell us anything about the content of our ethical obligations; it does not illuminate those obligations, but merely relies on moral conclusions settled elsewhere. This does not sit easily with Kant's discussion in the *Groundwork*, which at least seems to appeal to the FH prohibition in order to determine and explain our moral obligations. I leave these problems aside in what follows.

Fahmy maintains that duties to self can be helpful for identifying some of our consent-insensitive duties.<sup>7</sup> Her suggestion is that actions that we could not do to ourselves in the pursuit of our own ends without violating a duty to self are actions that we cannot consent to another doing to us in the pursuit of their ends. Let me make two clarifications about this suggestion, which will also help to clarify the scope of my interests here. First, Fahmy's view is not that a duty to self must correspond to all of our consent-insensitive duties. There may be directed duties that others are under whose corresponding rights we cannot alienate or waive but which are not related to our duties to self.<sup>8</sup> Since I am interested solely in the relationship between duties to self and being used merely as a means, however, I leave these additional consent-insensitive duties aside.

Second, it is not the case that all duties to self correspond to consent-insensitive duties. For example, it is likely that imperfect duties to self operate on consent in a different way to perfect duties to self. Imperfect duties to self (like all imperfect duties) allow of exception "to the advantage of inclination" (G 4:421n; see also MM 6:446). That is, they permit some latitude in the way they are fulfilled. For instance, Kant claims that we each have an imperfect duty to self to perfect our talents. We may do this in numerous ways; for example, by learning an instrument, improving our language skills, or taking a poetry composition class. We may also do that now or in the future. While we must have the end of perfecting ourselves on Kant's view, morality does not specify exactly how to go about doing this.<sup>9</sup> This is unlike perfect duties to self, which include no latitude in their required acts or omissions; they involve commands such as "do not maim yourself" and "do not permit others to disrespect you". Given this, it is significantly less likely that single instances of being used by another would involve the violation of an imperfect duty to

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<sup>7</sup> In doing this she is following Tadros (2016). In this paper, I focus on Fahmy's discussion rather than Tadros', since Fahmy's project is one of determining the relevance of duties to self to our understanding of FH. She therefore provides a direct answer to the question I am interested in addressing in a way that Tadros does not. See Kerstein (2008) and Formosa (2017: 80-88) for discussions of treating yourself merely as a means, a topic I do not treat here.

<sup>8</sup> Fahmy gives the duty not to exploit others as an example (2023: 49). On this suggestion, one person's consent to an exploitative arrangement is never sufficient for waiving the duty that others are under not to exploit.

<sup>9</sup> For helpful discussions of imperfect duties to self, see Denis (2001) and Johnson (2011).

self and thus provide grounds for claiming that consent to that use is invalid. In what follows I concern myself exclusively with perfect duties to self.

Let us now return to *Friendship sacrifice*. If we apply Fahmy's account of the FH prohibition, we can conclude that, since Y could not choose to take 20 years off her life without violating a (perfect) duty to self, she also cannot consent to X using her in such a way that results in this. This means that X uses Y merely as a means by violating a consent-insensitive duty that he owes to her. This also answers the question with which we began. At least some duties to self impose limits on the way that others may use us because they make it the case that consent to certain forms of use are not normatively transformative.

### 3 Duties to self and interpersonal wrongs

I now want to raise doubts about both parts of Fahmy's reading of the FH prohibition, and thus of her account of the relationship between duties to self and using another merely as a means. In doing so, I will argue that there is no necessary connection between uses of a person that require them to violate a duty to self and uses of them merely as a means. §3.1 challenges the duty-based account of using someone merely as a means on the grounds that it does not make sufficient reference to maxims. On Kant's view, whether or not one person uses another merely as a means must make reference to the maxims of that person. Since the duties to self of the person being used might not feature in the maxims of the agent, such duties do not determine whether the person was used merely as a means. §3.2 argues against the idea that duties to self can be used to identify consent-insensitive duties. It is possible to consent to being used in a way that violates a duty to self. Despite the impermissibility of this form of consent, it is nevertheless possible to release others from their duties.

#### 3.1 Maxims and permissible conduct

There are kinds of interactions in which (i) one person uses another merely as a means even without violating a duty owed to them and (ii) a person's use of another violates a duty owed to that person without using them merely as a means. That there are examples of such interactions tells us that the

duty-based reading of the FH prohibition cannot be correct. What this view misses is a reference to the maxims of the agent whose action is being evaluated. Once we acknowledge the centrality of maxims, however, we see that one person might act on a permissible maxim while using another even when that use requires the other to violate a duty to self.

A note before continuing. Fahmy couches her view in terms of the duties that X owes to Y. Below, I have instead switched to speaking about Y's rights.<sup>10</sup> I take this to be justified on the grounds that my discussion exclusively concerns *directed* duties (G 4:429). When X has a directed duty to Y, X's duties are the correlates of Y's rights. This means that, if X does not violate some particular right of Y, then X does not violate the duty owed to Y that is the correlate of that right. With that in mind, let me now turn to the examples.

Examples of type (i) include uses of another that take no account of the consent of that person. That is, uses of a person that would go ahead regardless of whether the person consented. Consider:

*Dictator:* A dictator is forcing some of his subjects to take part in medical experiments. These experiments involve use that a person could in principle consent to, but no consent is sought. Out of altruism, one subject makes sure to be selected for the experiments (she knows where people are taken from and waits there). When in the presence of the dictator, she communicates her consent to the treatment.<sup>11</sup>

Here it is plausible to think that the subject's rights of bodily integrity, and other rights of hers protecting against non-consensual subjection to medical experimentation, are not violated by the performance of the experiments by the dictator.<sup>12</sup> After all, she acts in such a way that she will be selected, she

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<sup>10</sup> One result of this is that the criticisms that I raise below will also apply to rights-based accounts of the FH prohibition, such as that developed by Pallikkathayil (2010).

<sup>11</sup> This example is modified from Kleingeld (2020: 393).

<sup>12</sup> Though other rights of hers may be violated, such as the right to not live in a society in which subjects are kidnapped for medical experiments. It may also be the case that the subject acts wrongly in consenting to participate in, thus perhaps expressing affirmation of, a wrongful practice. What is important for my discussion above, however, is merely that the dictator does not wrong the subject in the performance of the experiments on her due to the subject's consent.

consented to the treatment, and her rights were consent sensitive (meaning that they are rights that can be waived by valid consent). Despite this, I want to suggest that the dictator uses the subject merely as a means. This is because the consent of the subject is not sufficiently related to the dictator's conduct; the dictator would have performed the experiment regardless of whether the subject consented.<sup>13</sup> If this judgement is correct, it is possible to use another merely as a means without violating their rights by that use.

Examples of type (ii) — examples in which one person violates the rights of another without using them merely as a means — are best illustrated by instances of incomplete information. Consider the following modification of *Friendship Sacrifice*:

*Secret Friendship Sacrifice*: Like *Friendship Sacrifice*, but in this case Y is a haematologist who knows that the transfusion will take 20 years off her life. X does not know this but trusts that Y would make him aware of such detrimental side effects — they are friends after all! Y does not tell X about the side effects and X performs the transfusion. X would not have performed the transfusion if he had known the effect it would have on Y.

We are assuming for now that duties to self can be used to identify some of our consent-insensitive duties.<sup>14</sup> Since Y has a duty to self not to undergo the transfusion, that also means that her consent isn't normatively transformative. Thus, X violates Y's right in this case. On Fahmy's view, this means that X uses Y merely as a means. However, I want to suggest that, given the details of the case, this judgement isn't justified. We are imagining that X would not have performed the transfusion if he had known the effect it would have on Y's life. X's use of Y was appropriately connected to Y's (expression of) consent, and X would not have used Y in the way he did had he known that the consent was invalid. If this judgement is correct, it is possible to violate the rights of another without using them merely as a means.

<sup>13</sup> If we have a robustness condition built into our account of rights, such that we violate the rights of another if our action only accidentally doesn't wrong them (i.e., in a number of close possible worlds our action would wrong them), then the action of the dictator would violate the subject's rights. I leave this complication aside in what follows, since there is nothing to suggest that Kant's account of rights includes such a condition.

<sup>14</sup> I challenge this assumption below, see §3.2.2.



Both *Dictator* and *Secret Friendship Sacrifice* cause trouble for Fahmy's duty-based reading of the FH prohibition. They suggest that not violating the duties that one owes to another in one's use of them is neither necessary nor sufficient for using them merely as a means. Both of these examples point to the fact that whether a person uses another merely as a means must be connected to the practical reasoning and in particular to the maxims of the agent. Even if some of our perfect duties to self correspond to consent-insensitive duties, that does not mean that the use of another that involves the violation of a duty to self is necessarily use of them merely as a means. In this way, the consent-insensitive rights of others are like many other rights they possess; it is possible to violate them while acting on a permissible maxim.<sup>15</sup>

Let me substantiate this objection by turning to an adjacent systematic concern for Fahmy's reading of the FH prohibition. This is that Kant says that the various formulations of the categorical imperative are "fundamentally only so many formulae of the selfsame law" (G 4:436). One plausible way of understanding this is that the formulations of the categorical imperative are extensionally equivalent.<sup>16</sup> They issue the same commands, but do so by appeal to different considerations that help to "bring an idea of reason closer to intuition" (ibid.). Fahmy's reading of the FH prohibition will struggle to account for this. This is because the other formulations of the categorical imperative make explicit mention of maxims. The formula of universal law (FUL) requires that one only act in accordance with maxims that could be willed as universal laws (G 4:421), and the formula of the kingdom of ends (FKE) requires that one only "act in accordance with the maxims of a member giving universal laws for a merely possible kingdom

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<sup>15</sup> Cases in which a person acts on a permissible maxim but nevertheless violates the right of another are familiar. Innocent trespasses are one example of this. I might fail to realise that the land I am on is owned and that the objects on it are someone's property. Even so, if I damage the property, I owe the owner the cost of the damages. In cases of defamation, I might act on the maxim of collecting the best evidence and only publicising possibly damaging information when I have good grounds to do so. However, in many jurisdictions, this will not protect me from owing compensation to those whose good name I have marred if it turns out I am wrong. Defamation does not require "the defendant's lack of care with respect to [the contested claim's] truth or falsity" (Ripstein 2016: 191). See also Ripstein (2009: 380-81) and Newhouse (2016: 67-68).

<sup>16</sup> See Allison (2011) and Bader (2023).

of ends" (G 4:439). The details of these formulations need not concern us here. What matters is that both FUL and FKE require an agent to act in accordance with specific maxims. This is a problem for Fahmy because, as we have seen in the discussion above, there is no consistent link between whether one's actions violate a duty owed to others and whether one acts on a permissible maxim.<sup>17</sup> The dictator acts on an impermissible maxim but does not violate the rights of the volunteering subject. In *Secret Friendship Sacrifice*, X acts on a permissible maxim but violates Y's rights in doing so. Fahmy's reading of FH thus sets it at odds with FUL and FKE.

We can bring this problem into greater relief by turning to juridical duties, which belong to Kant's political philosophy. These are a subset of the duties that Fahmy believes must be taken into consideration when determining whether one person uses another merely as a means. The central feature of juridical duties is that they concern the relation between the *external actions* of distinct individuals (MM 6:230). An action is juridically permissible just in case it does not interfere with the external freedom of another. This requirement can be satisfied regardless of the maxim of the agent; the actions that I perform can be consistent with the external freedom of others regardless of the ends I have in acting (see MM 6:225, 6:230-31 and 6:388). The upshot of this when we turn to Fahmy's reading of the FH prohibition is that I might satisfy the ethical requirement of not treating others merely as a means regardless of my maxims. This will happen when, in my use of others, I do not violate the juridical duties that I owe to them. On such a reading, we cannot make sense of Kant's claim that FH, FUL and FKE are different formulations of a single categorical imperative.

There is a further reason for wanting to incorporate maxims into the moral evaluation of actions, which becomes clear when we turn to Kant's theory of action. According to that theory, there can be no free action without a maxim, and we differentiate the actions that are performed by an agent

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<sup>17</sup> Fahmy's view might seem to be justified by the text. Kant does not mention maxims or universalisation in the discussion of FH and so we might think that this formulation of the categorical imperative is not concerned with these features of an agent's action (see Timmons 2017: 51-52 for an argument to this effect). However, if we are to take Kant's comment at G 4:436 seriously, then we need a way of understanding this formulation as also concerned with these things. My suggestion is that whether one using another merely as a means is, in part, a function of the person's beliefs and practical reasoning. This focus brings maxims and universalisation into the picture.

on the basis of their maxims.<sup>18</sup> This is because the maxim specifies the end towards which the agent is aiming in acting (MM 6:389); it is the ‘subjective principle’ of the action (G 4:401n). It is not the case that each maxim has a corresponding act-type to which it is related, and so two instances of the same act-type might have different maxims (and relatedly, we cannot infer the maxim from the act-type, see G 4:407). This indicates that in order to evaluate a person’s conduct (as opposed to their externally manifesting behaviour), as we do when making ethical appraisals of their action, we need to appeal to their maxims. Consider two shopkeepers, each of whom gives their customer the right change in an interaction and so performs the same act-type. One shopkeeper acts honestly, while the other seeks to cheat their customer but fails due to giving the right change by mistake. Since there was no violation of the customer’s rights in either case, the actions are both juridically permissible. However, ethically, the two actions differ significantly. The first shopkeeper acts on a maxim that can be universalised and the second does not. Insofar as we leave out consideration of maxims, we also leave out an important dimension of moral evaluation in Kantian ethics.

Let’s now return to the FH prohibition. What the above discussion tells us is that whether one person uses another merely as a means has to be determined (at least in part) by the maxims of that person. This is because it is the maxim that determines the nature of the agent’s conduct and thus the way that they use the person with whom they are interacting. This, I think, gets us to a plausible result in the examples under discussion. In *Secret Friendship Sacrifice*, we ought not judge that X used Y merely as a means because we have posited that X’s conduct embodies the right set of attitudes towards Y and Y’s consent. X did not use Y merely as an instrument for the achievement of his ends, or as an entity that imposed no constraints on his action. It may be that X violated a right of Y in performing the transfusion, but that does not mean that X treated Y merely as a means.<sup>19</sup> In *Dictator*,

<sup>18</sup> For helpful related discussions, see Audi (2016: esp. ch. 3), Timmermann (2000), O’Neill (1989: ch. 8.), O’Neill (2014), Korsgaard (1996), and McCarty (2009: ch. 1.).

<sup>19</sup> It is important to keep in mind that the transfusion is not the end of the moral story. Actions do not happen in isolation and a full moral account of the interaction in *Secret Friendship Sacrifice* would also require a discussion of how X and Y should proceed following the transfusion; for example it would have to include a discussion of how X should respond when finding out the effect that the transfusion had on Y. X might owe Y an apology, for example. For a discussion of these kinds of considerations and their place in Kantian ethics,

the dictator does use his subject merely as a means. We explain this by the fact that he views his subject merely instrumentally for the achievement of his ends.

Now, it may be that those who believe that duties to self are relevant to whether someone is used merely as a means can accept the conclusion of this section. That is, they could accept that there are cases in which a person is used in a way that requires the violation of a duty to self, but in which we do not want to say that the person is used merely as a means. However, proponents of the connection between duties to self and the FH prohibition might claim that these cases will be rare. Most of the time, we are aware of the moral features of the situations in which we act. For all I have said in this section, it may be that, when X *knows* that Y would violate a duty to self in being used in a particular way, X uses Y merely as a means even when acting with her consent. We could explain this by pointing to the fact that Y's consent isn't normatively transformative when it violates a perfect duty to self. With this in mind, I now move away from considerations of the agent's conduct and onto considerations of the control that the patient has over the moral features of the interaction.

### 3.2 Duties to self and consent-insensitive duties

In this section, I distinguish between impossible and impermissible consent. Some instances of consent to being used by another are normatively transformative despite the fact that consenting is impermissible. Other instances of consent are normatively impossible, but the reason for this is not explained by the fact that such consent would violate a duty to self. Thus, duties to self do not impose limits on how others may treat us (though they might correspond to those limits).<sup>20</sup> Before elaborating upon these claims, let me set out the case for consent-insensitive duties in more detail.

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

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see [Herman \(1993: ch.5\)](#).

<sup>20</sup> I am grateful to Ralf Bader and Joseph Bowen for discussions on the ideas set out in this section.

being, which we he must also not forfeit” (MM 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 we are owed by others, we cannot successfully consent to disrespectful treatment by another. Any disrespectful treatment will thus violate a right we are owed, and on Fahmy’s view this means that uses of a person that include disrespectful treatment will always be uses of them merely as a means. One benefit of this 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 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 fully consent to participate in the creation of pornographic content, that participation nevertheless contributes to undermining their own equality in the society in which they are a part. Similar claims have been made about the practice of so-called ‘dwarf tossing’.<sup>21</sup> We might thus think that some uses of a person might not be made permissible by their consent due to the fact that they cannot change morally relevant features of the situation. Fahmy’s reading of Kant might be seen to give us a way of drawing the conclusion that uses of a person in those contexts are uses of them merely as a means.

However, despite this possible strength, I don’t think that Fahmy gives us the best way to read the relevant passage. This is because Kant is claiming that one *must* not (*muß nicht*) forfeit respect not that one *cannot* (*kann nicht*) do so.<sup>22</sup> Kant was sensitive to this difference (see especially Mo/Vig 27:601-02). There are some duties that he claims we cannot violate and some that we must not violate. Duties that cannot be violated are best characterised as duties whose violation would require an impossible exercise of a normative

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<sup>21</sup> See West (2022) for an overview of different perspectives on the permissibility of pornography. For critical discussion of ‘dwarf-tossing’ see Rosen (2012). For Kant on duties of respect see MM 6:462.

<sup>22</sup> The full passage reads: “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”.

power. Duties that must not be violated are best characterised as duties whose violation would require an impermissible exercise of a normative power. Important for my discussion here is the fact that impermissible exercises of normative powers still successfully alter the distribution of rights and duties — in particular, impermissible waiver of a right held against others still releases the others from their duty.

We can explain the difference between duties that cannot be violated and duties that must not be violated by appropriating Kant's idea of a contradiction in conception.<sup>23</sup> This kind of contradiction is meant to correspond to one of the ways in which a maxim might fail to be universalisable. In particular, contradictions in conception arise if the world of the universalised maxim cannot even be conceived. If the world of the universalised maxim can be conceived but cannot be rationally willed (for example, because it is contrary to our necessary ends as rational entities), then it generates a contradiction in the will (G 4:424). My suggestion is that duties whose violation would require an impossible exercise of a normative power are ones which lead to a contradiction in conception.<sup>24</sup>

The clearest example in Kant of a duty that cannot be violated is the duty

<sup>23</sup> Kant himself does not use this term in the way I set out above. In the *Groundwork* discussion, the distinction between contradictions in conception and contradictions in the will is deployed in order to help him to differentiate between strict and wide duties (G 4:424). This is not what is at stake here, and it is not my claim that duties that cannot be violated are strict and duties that must not be violated are wide. Ripstein (2009: 136) also makes use of the idea of a contradiction in conception in order to explain the limits of consent in Kant. However, my analysis here differs from his in that I am seeking to distinguish between those exercises of normative powers that are impossible and those that are merely impermissible.

<sup>24</sup> In this context, we cannot think of contradictions in conception as logical contradictions. This is because we cannot be under a duty whose violation is logically impossible. For example, 'Help the needy or do not help the needy' cannot be a duty for us because there is no kind of action that would count as a violation of it. This means that if duties that are impossible to violate were understood as those whose violation would generate a logical contradiction, they could not be duties at all. Instead we should understand contradictions in conception in normative rather than logical terms — that is, they are normatively impossible. One example of this, which I discuss above, are duties whose violation would require us to possess two mutually incompatible normative statuses. For discussion of logical contradiction and standing under duties, see Lavin (2004). For various accounts of how to understand contradictions in conception in the *Groundwork*, see Korsgaard (1996: ch. 3). I'm grateful to Arthur Ripstein for discussion on this.

not to sell oneself 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 (MM 6:241). Things are distinguished from persons, who have dignity and who are the subjects of rights and duties (G 4:437, MM 4:434-35). The problem with selling oneself into slavery is that things cannot owe obligations. It would violate the reciprocity condition on rights for an entity to have duties to others but not rights against them. So, since slaves are things, and things cannot owe obligations, no one could be bound to the terms of a slavery contract (MM 6:330).<sup>25</sup> From this we can see why the duty not to sell oneself into slavery cannot be violated. The world in which such a duty was violated would be a world in which someone possessed two distinct (and mutually exclusive) normative statuses. Since this isn't possible given our normative categories, we lack the power to oblige ourselves by slavery contracts. 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 a separate duty that we have not to be servile (see MM 6:434-37). The supposed master might also be able (physically or psychologically) to coerce us. However, we cannot successfully transfer all of our rights to another by means of a contract, and any use of coercion purporting to enforce such a contract cannot be rightful.

There may be other powers whose exercise is normatively impossible. 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 permit another to kill you is to make yourself a thing for their use, and, as we have seen, you cannot contract to be made a thing. I am not sure this argument works, because a contract to be killed by another may include significant constraints on how this is done. That is, even when you contract to be killed, you do not necessarily give up all of your rights against the other, and this means that you do not have the status of a thing. However, even if the argument against

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<sup>25</sup> On Kant's view, we can be made a slave by committing a crime (MM 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, we do not seek to bind ourselves voluntarily to the terms of a contract.

contracting with another can be made to work, similar arguments will not rule out waiving the right not to be killed. When we waive a right held against another, we do not undertake an obligation to them, but merely permit them to perform a certain action by freeing them from a duty. Due to this, we do not seek to have the status of both a thing and a person.<sup>26</sup> (The same argument concerning the possibility of waiver cannot be made in the case of slavery, since the waiver of all of one's rights against another would lead to a situation in which the reciprocity condition on rights was not satisfied).

Some exercises of normative powers, however, are not impossible but merely impermissible. Impermissible exercises are those that are successful, but which we have a duty not to (i.e., are not at liberty to) perform. They do not generate contradictions in conception because they do not require a normatively impossible outcome. For example, let's say I make a promise to you that I won't lend my bike to X and subsequently I do just that. In lending my bike, I act in a way that is impermissible; I wrong you by breaking the promise that I made to you. But that does not mean that I have failed to permit X to use my bike.<sup>27</sup> The same is true of promissory obligations that involve bodily rights. Consider: I promise my partner that I won't get a tattoo. After making that promise I go out and get one anyway. Due to my promise, I was not at liberty to do this. However, that does not mean that I was unable to give valid consent to the tattoo artist. If we thought that the impermissibility of the exercise of a normative power was sufficient

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<sup>26</sup> There are some duties that Kant claims we cannot violate that are hard to make sense of. For example, he includes selling one's teeth or hair for money as actions that one cannot (*kann nicht*) perform. My aim here is not to explain the inclusion of duties such as these in the category of those that are impossible to violate. While it is important to take the distinction that Kant draws seriously, we should also allow some significant revision of the specific duties that fall into these categories on a broadly Kantian account. With that said, I do think explanations can be given, at least to a large extent. For example, for Kant, we don't have property rights in our bodies and so don't stand in the right kind of relationship to them in order to transfer a claim to another. This explains the impossibility of selling those parts.

<sup>27</sup> Let's say that I sold you the bike but still have it in my possession. Can I then still lend the bike to X? In this case, I lack the power because, while the bike may still be in my possession, the right to control what happens to it has transferred to you by virtue of the sale. This means I no longer possess the relevant claim right that can be waived by a loan. Thus, if I let X use the bike without your permission, I aid X in wronging you.



for not having the power, then that would mean that X would wrong me by using my bike and the tattoo artist would wrong me by giving me the tattoo despite the fact that I expressly gave them permission to do what they did. This looks implausible. It is possible to exercise at least some normative powers even when one is not at liberty to do so.<sup>28</sup> The same is true when the duty violated is owed to the self. There is no reason to think that duties to self operate differently to duties to others in this regard. This means that consent to being used by another is normatively transformative even when it violates a duty to self (except in cases in which the exercise of the power is impossible).

Let's take stock. I have elaborated upon Kant's distinction between duties that cannot be violated and those that must not be violated. Duties that cannot be violated are those that would require an impossible exercise of a normative power. Duties that must not be violated are duties whose violation is possible but impermissible. Returning to the FH prohibition, this means that a person is able to consent to being used in a way that requires them to violate a duty to self when the duty is one that must not be violated (as opposed to one that cannot be violated). While the person acts wrongly in consenting, that consent is still normatively transformative.<sup>29</sup>

But what about the cases of duties to self that cannot be violated? The claim I am defending in this paper is that duties to self do not impose limits on the ways that others may use us. However, there are some cases in which it is impossible to consent to another using us in a way that violates a duty to self. It is reasonable to think that this indicates that duties to self do impose at least some limits on interpersonal interaction. While this is an understandable position, I don't think that it best captures what is going on. That is, we should not endorse the claim that the duty to self *themselves*

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<sup>28</sup> 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.

<sup>29</sup> I am not suggesting that consent will always be genuine or valid, even when it does not generate a contradiction in conception. It may be that there are some rights whose attempted waiver raises the suspicion of lack of capacity on the part of the right-holder. We are entitled to treat with suspicion those who consent, for example, to torture or to have their life significantly shortened for apparently trivial reasons. But, that this is the case does not mean that the right is consent-insensitive. It only means that we are entitled to exercise more caution in certain cases.

imposes a limit on the way that others may treat us. This is because it is not a feature of the duty to self that explains the inability to the exercise of the normative power that would violate it. This is explained instead by the fact that the exercise of the power is impossible. So, while it is true that some duties to self are also duties that it is impossible to violate through acts of consent, it is not the duty itself that grounds this judgement. Thus, while there are limits to consent on the Kantian account, these are not to be understood in terms of the fact that duties to self prohibit some acts of consent.

## 4 Conclusion

The question with which I began was the following. Do duties to self impose limits on the ways that others may use us? I have addressed this question from both the perspective of the agent and the patient in an interaction. From the perspective of the agent, I have argued that X may be acting on a permissible maxim while using Y even when that use requires Y to violate a duty to self. From the perspective of the patient, I have argued that consent to an interaction is normatively transformative even when the interaction requires the violation of a duty to self. The impermissibility of the exercise of the relevant normative power is not sufficient for saying that one lacks the power. Moreover, when one does lack the power, this is not due to the duty to self, but rather due to the fact that the exercise of the power is normatively impossible.

Let me end by making two clarifications about the Kantian position that I have been developing, which also point towards future research to be done on the relation between duties to self and interpersonal morality. First, nothing in what I have argued suggests that a person has reason to act on the consent given by the person whose duty to self is under consideration. It might all-things-considered be better if X does not use Y in such a way that she violates a duty to self. This is compatible with the claim that X does not wrong Y in using Y in ways to which she has consented. In order to more fully integrate duties to self into our moral frameworks, we also need to address the question of how those duties impact our reasons for action beyond considerations of whether one has wronged another.

Second, and relatedly, we might have duties not to enable or participate in

wrongdoing. Indeed such duties seem highly plausible. Given the likelihood of such duties, we might be acting wrongly in using someone in a way that requires that they violate a duty to self. We would be acting wrongly because we would be enabling another to violate one of their duties. Thus, it might be the case that we ought not use others in ways that require that they violate duties to self. Again, the explanation for this is not that we have wronged them, but that we have acted wrongly in some other way.<sup>30</sup> There is thus much that remains to be addressed when thinking about the relation between duties to self and our moral commitments more broadly.<sup>31</sup>

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<sup>30</sup> This, I think, provides the best explanation of the wrongness of certain forms of pornography and the practice of ‘dwarf-tossing’. While individuals are able to genuinely consent to these practices and so are not wronged by those with whom they interact, all of the parties involved nevertheless do wrong by harming the interests of the relevant groups.

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