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Between Consenting Adults

Much of Kant's ethics is distant from the ordinary moral consciousness of our day. But one pair of Kantian notions is still widely current. Few moral criticisms strike deeper than the allegation that somebody has used another; and few ideals gain more praise than that of treating others as persons.

But this consensus is often shallow, since there is little agreement about what it takes to use others in morally problematic ways or to treat them as persons. I shall look here at three common conceptions of these ideals, which make little distinction between the two of them. I shall then outline interpretations of both which seem to me more convincing and richer than the commonly accepted ones. On the interpretations I offer the two ideals are distinct, though related. Merely not to be used is not enough for being treated as a person. Making another into a tool or instrument in my project is one way of failing to treat that other as a person: but only one way.

At a certain point I shall return to the Kantian texts to suggest that the sort of understanding of these ideals that I have outlined is at stake there. But the exegetical ambitions are limited. I shall say nothing about Kant's conception of a person and its metaphysical background. I shall not spell out all the textual considerations that lie behind this reading of the Formula of the End in Itself. I merely state and will not try to show that one of these reasons is that this interpretation can make sense of Kant's puzzling claims about the equivalence of the various formulations

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of the Categorical Imperative. I shall not explore Kant's thoughts about using oneself and treating oneself as a person. I shall try only to make plausible a certain understanding of what it is to use others and to treat them as persons. I shall therefore use illustrations from areas of life where we often fear that others are used or not treated as persons, and in particular from presumed sexual and economic uses of others. I shall argue that an adequate understanding of what it is to treat others as persons must view them not abstractly as possibly consenting adults, but as particular men and women with limited and determinate capacities to understand or to consent to proposals for action. Unless we take one another's limitations seriously we risk acting in ways which would be enough to treat "ideal" rational beings as persons, but are not enough for treating finitely rational, human beings as persons.

A second aim is to provide a reading of some central claims of Kant's ethics which does not depend on an inflated view of human cognitive and volitional capacities, does not generate implications which are rigorously insensitive to variations of circumstances, and is not tied to a strongly individualistic conception of agency.

THE PERSONAL TOUCH

One view of treating another as a person rather than using him or her is that it demands a certain tone and manner. If we show indifference to others, we do not treat them as persons; if our interactions are personal in tone, whether sympathetic or hostile, we treat them as persons. On this view employers who are cold or distant with their employees do not treat them as persons, but involved employers do so. A prostitute who does her or his job with uninvolved perfunctoriness is using the clients, and if their manner is similar they use her or him; but if each had a personal manner, the relationship would be personal and neither would use the other.

If this is what it is to treat others as persons and not to use them, neither notion can be fundamental for moral or political thought. We are familiar with uses of others which are cloaked by an involved and concerned manner. A planned seduction of someone less experienced treats him or her as means even when charmingly done. Employers who take paternalistic interest in employees' lives may yet both use them and fail to treat them as persons. Yet relationships without a personal tone may

neither use others nor fail to treat them as persons. An impersonal relationship with a sales assistant may not use him or her in any morally objectionable way, nor fail in treating him or her as other than a person. A personal touch may, we shall see, be an important aspect of treating others as persons. But the notion entirely fails to capture the requirements for avoiding using others and provides a scanty account of treating others as persons.

ACTUAL CONSENT

A deeper and historically more important understanding of the idea of treating others as persons sees their consent to actions which affect them as morally significant. On this view it is morally objectionable to treat others in ways to which they do not consent. To do so treats another as a thing or tool, which cannot, so does not, consent to the ways in which it is used; so fails to treat others as persons, who can choose, so may withhold consent from actions which affect them.

On this understanding of treating others as persons, rape and seduction are decisively unacceptable. The rapist's victim is coerced rather than consenting; and the seducer's victim lacks insight into what is proposed, so neither can nor does consent to it. But many relationships between prostitutes and their clients are not, on this view, morally objectionable, since they are relationships between consenting adults. Similarly, slavery and forced labor and various forms of economic fraud use others and don't treat them as persons, but a contractual relationship like that between employer and employee does not use others or fail to treat them as persons.

This liberal understanding of avoiding using others and of treating them as persons encounters difficulties of various sorts when we consider what consent is.

An initial difficulty is that it is unclear what constitutes consent. In legal and institutional contexts the criteria are supposedly clearest. Here formal procedures supposedly show who consents to which actions by which others. But here too presumptions of consent are defeasible. Even the clearest formulas of consent, such as signatures and formal oaths, may not indicate consent when there is ignorance, duress, misrepresentation, pressure, or the like.¹ Such circumstances may void contracts and

1. Excessive reliance on formal indicators of "consent" suggests doubt whether the

even nullify marriages. Formal procedures for consenting may reveal only spurious consent, so cannot guarantee that everyone is treated as a person in this second sense.

Where formal procedures are lacking, the problem of determining what has been consented to is greater. Various debates about express and tacit consent reflect these difficulties. But the real problem here is not that consent is sometimes given in ways that are implicit rather than explicit, but that it is unclear where consent—even the most explicit consent—stops. A nod to the auctioneer, though “implicit,” conveys a quite precise consent to offering a price increased by a specified amount for a particular lot. At other times the boundaries of explicit consent are unclear. Like other propositional attitudes, consent is opaque. Consent may not extend to the logical implications, likely results, or the indispensable presuppositions of that which is explicitly consented to. A classical and instructive example of this range of difficulties occurs in liberal political debates over how far consent to a particular constitution (explicitly or implicitly given) signifies consent to particular governments formed under that constitution, and how far consent to a particular government or party constitutes consent to various components of government or party policy. The notion of loyal opposition is never more than contextually determinate.

A second range of difficulties arises when the consent given does not match the activities it supposedly legitimates. Marxist critics of capitalist economic forms suggest that workers do not consent to their employment despite its outwardly contractual form. For workers, unlike capitalists, cannot (at least in “ideal” capitalism) choose to be without work, on pain of starvation. Hence the outward contractual form masks an underlying coercion. Workers choose between employers (in boom times) and cannot choose or consent to nonemployment. Analogously, women in most societies hitherto have not really consented to their restricted life possibilities. A choice between marriage partners does not show that the married life has been chosen. The outward form of market economies and of unarranged marriages mask how trivial the range of dissent and consent is. In a Marxist view bourgeois freedom is not the real thing, and men and women in bourgeois societies are still often treated as things rather

consent is genuine. Consider the widespread European use of “treaties” to “legitimize” acquisition of land or sovereignty by seeking the signatures of barely literate native peoples with no understanding of European moral and legal traditions. Cf. D. F. McKenzie’s discussion of the treaty of Waitangi in “The Sociology of a Text: Orality, and Print Literacy in Early New Zealand,” *The Library*, ser. VI, vol. 6, no. 4 (1984): 333–65.

than as persons. Bourgeois ideologies offer a fiction of freedom. They structure a false consciousness which obscures the extent to which human beings are used and not treated as persons.

A third range of difficulties with taking actual consent as pivotal for treating others as persons emerges when abilities to consent and dissent are impaired. Discussions in medical ethics show how hard it is to ensure that the consent that patients provide to their treatment is genuine. It is not genuine whenever they don't understand what they are supposedly consenting to or lack the autonomy to do anything other than "consent" to what they think the doctor wants or requires. Patients cannot easily understand complex medical procedures; yet if they consent only to a simplified account, they may not consent to the treatment proposed. And their peculiar dependence makes it hard even for those who are informed to make autonomous decisions about proposed treatment. Paradoxically, the case of severely impaired patients may seem easiest to handle. Patients too impaired to give informed consent evidently cannot be treated as persons in this sense. Paternalism may then seem permissible, even required, for those who are, if temporarily, *only* patients. But with less impaired patients we are not so ready to set aside the ideal of treating others as persons. The difficult case is raised by those who are, as Mill would have put it, "in the maturity of their faculties." Even when we are mature we are seldom ideal rational patients. Here we confront the possibility that consent may be spurious even when based on average understanding and a standard ability to make decisions.

It is not only when we are subjects or employees or patients that we have a partial understanding of ways in which others propose to act toward us and an incomplete ability to make decisions for ourselves. Others' apparent consent, even their apparently informed consent, may *standardly* be insufficient to show that we treat them as persons when we interact with them. The problems of the defeasibility and indeterminacy of consent, of ideological distortions and self-deception, and of impaired capacities to consent, are all forms of one underlying problem. The deeper problem in this area is simply a corollary of the opacity of intentionality. When we consent to another's proposals we consent, even when "fully" informed, only to some specific formulation of what the other has in mind to do. We may remain ignorant of further, perhaps equally pertinent, accounts of what is proposed, including some to which we would not consent. ("I didn't know I was letting myself in for that!" we may protest.)

Even when further descriptions are inferable from the one consented to, the inference may not be made; and often we cannot infer which determinate action will enact some proposal. If we want to give an account of genuine, morally significant, consent, we need to explain *which* aspects of actions must be consented to if nobody is to be used or treated as less than a person. An account of genuine consent must then show how the morally significant aspects of plans, proposals, and intentions are picked out as candidates for consent.

HYPOTHETICAL CONSENT

Before considering how this might be done, I shall look at an account of treating others as persons which doesn't require us to know what they consent to. This strategy explains treating others as persons not in terms of the consent actually given, but in terms of the hypothetical consent fully rational beings would give to the same proposal. The strategy has obvious merits.

One merit is that it suggests that at least sometimes actual consent is not morally decisive, even if well informed. Hence it allows for our strong intuitions that even a consensus may be iniquitous or irrelevant (perhaps it reflects false consciousness), and that not everything done between consenting adults treats the other as a person. This approach also deals readily with cases of impaired capacities to consent. Since it appeals to capacities that are standardly lacking, there is, in a way, no difference in its approach to those in "the maturity of their faculties" and to those more gravely impaired. By the standards of full rationality we are all impaired. But we can always ask whether the fully rational would consent.

But these merits are the acceptable face of a serious deficiency in this strategy. If treating others as persons requires only hypothetical rational consent, we may, as Berlin long ago pointed out, find ourselves overriding the actual dissent of others, coercing them in the name of higher and more rational selves who would consent to what is proposed. It seems implausible that treating others as persons should even sometimes be a matter of overriding what others as we know them actually choose.

Other difficulties with this strategy arise from the varied conceptions of rationality invoked. Many conceptions of rationality presuppose a given set of desires. If these are the actual desires of the consenter, appeal to hypothetical consent will not overcome the worry that a consensus may

be iniquitous or reflect local ideology. Yet if there is no appeal to the consenters' actual desires, but only to some hypothetical set of rationally structured desires, then the theory may be too weak to determine what would rationally be consented to. Given that there are many rationally structured sets of hypothetical desires, rational structure alone cannot determine what would rationally be consented to. But there are difficulties in spelling out the content and grounds of a stronger (e.g., quasi-Platonic) account of rational desires that might determine hypothetical consent.

The appeal of hypothetical consent criteria of treating others as persons is to overcome the limitations of actual consent criteria by endowing hypothetical agents with cognitive capacities that extend their understanding of what is proposed. But it is just not clear how far the insight of even the ideally rational reaches. Do they, for example, have a more determinate insight into proposals addressed to them than do those who make the proposals? What do they make of internally incoherent proposals? Which aspects of others' proposals are pivotal for the consent or dissent of the fully rational? A convincing account of hypothetical rational consent has to explain *which* aspects of others' actions must be hypothetically consented to if those actions are not to use others or fail to treat them as persons. This approach cannot exempt us from the need to discover the morally significant aspects of plans, proposals, and intentions that are candidates for consent.

SIGNIFICANT AND SPURIOUS CONSENT

If the notion of consent is to help explicate what it is to treat others as persons, we need an account of genuine, morally significant consent, and to distinguish this from spurious or morally trivial consent. Three preliminary points seem to me significant.

First, morally significant consent cannot be consent to all aspects of another's proposals which may affect me. Any complicated action will be done under many descriptions; but most of these will be without moral significance. Morally significant consent will, I suggest, be consent to the deeper or more fundamental aspects of another's proposals. If I consent to be the subject for a medical experiment which drags on longer than expected, I may have been inconvenienced, but not gravely misled. But my consent will have been spurious, and I will not have been treated as a person, but indeed used, if I consented to a seriously misleading account of the experiment and its risks.

Second, if another's consent is to be morally significant, it must indeed be his or her consent. To treat others as persons we must allow them *the possibility either to consent to or to dissent from what is proposed*. The initiator of action can ensure this; but the consenting cannot be up to him or her. The morally significant aspect of treating others as persons may lie in making their consent or dissent *possible*, rather than in what they actually consent to or would hypothetically consent to if fully rational. A requirement that we ensure that others have this possibility cuts deep whenever they will be much affected by what we propose. There isn't much difficulty in ensuring that those who will in any case be no more than spectators have a genuine possibility of dissent from their minimal part in a project. They need only be allowed to absent themselves or to express disagreement, distaste, or the like. But those closely involved in or affected by a proposal have no genuine possibility of dissent unless they can avert or modify the action by withholding consent and collaboration. If those closely affected have the possibility of dissent, they will be able to require an initiator of action either to modify the action, or to desist or to override the dissent. But an initiator who presses on in the face of actively expressed dissent undercuts any genuine possibility of refusing the proposal and rather chooses to enforce it on others. Any "consent" the proposal then receives will be spurious, and will not show that others have not been used, let alone that they have been treated as persons.

Third, we need to understand what makes genuine consent to the more fundamental aspects of action possible. But there is no guarantee that any one set of requirements makes genuine consent possible in all circumstances. There may be some necessary conditions, whose absence always makes genuine consent or dissent impossible, and other conditions which are needed to make consent possible only in some circumstances. It is plausible to think that when we act in ways that would *always* preclude genuine consent or dissent, we will have used others. For example, if we coerce or deceive others, their dissent, and so their genuine consent, is in principle ruled out. Here we do indeed use others, treating them as mere props or tools in our own projects. Even the most autonomous cannot genuinely consent to proposals about which they are deceived or with which they are compelled to comply. Even if a proposal would have been welcomed, and coercion or deception is otiose, its enforcement or surreptitious imposition precludes consent.

In other cases a proposal for action may not in principle preclude

consent and dissent, but the particular others affected may be unable to dissent from it, or genuinely to consent to it. A full understanding of treating others as persons should, I suggest, take some account of the particularities of persons. It must allow that we take seriously the possibility of dissent and consent for others who, far from being abstractly autonomous beings, have their particular cognitive limitations and partial autonomy, which affect their abilities to dissent and to consent variously in varying circumstances. We are concerned not only to be treated as a person—any person—but to some extent as the particular persons we are. We are not merely possibly consenting adults, but particular friends, colleagues, clients, rivals, relations, lovers, neighbors; we have each of us a particular history, character, set of abilities and weaknesses, interests and desires. Even when others do not deceive or coerce us, or treat us in any way as tools, we may yet feel that they do not treat us as persons either. There is some point to the thought that being treated as a person needs a personal touch. Not being used may be enough for being treated as a person when our particular identity and specific character are irrelevant, for example in commercial or other transactions with anonymous members of the public. (Even here we may think standards of courtesy must be met.) Still, in public contexts not being used may be the major part of being treated as a person: for if consent and dissent are in principle possible, we can refuse the opportunities, offers, or activities that do not suit us. But where we have specific relations with particular others, being treated as a person may require far more. It may demand that we treat others not impersonally, but to some extent as the persons they are.

POSSIBLE CONSENT: A KANTIAN READING

A shift of focus to possible consent has deep implications. When we see morally required actions as those to which others either actually or hypothetically consent, we implicitly view morality as closely connected to desires. Another's actual consent will usually reflect his or her wants or preferences; and standard modern views of hypothetical consent construe it in terms of actual preferences on which a rational ordering is hypothetically imposed. Yet it seems implausible that treating others as persons can be of *prime* moral importance if it amounts only to avoiding what they don't want or wouldn't rationally want. In a moral theory in which wants are basic, the notion of treating others as persons carries

no independent weight. In Kantian terms we might say that the notion of a person doesn't matter in a heteronomous moral theory. If wants or rationalized preferences are morally fundamental, consent is of derivative concern. It is only within moral theories for beings who can sometimes act independently of desires—who are to that extent autonomous—that the notion of consent carries independent weight. In such theories it is important that consent be possible for others, but of less concern whether what they consent to is what they want.

An account of using others and treating them as persons which starts from the notions of possible consent and dissent reveals the Kantian origins of these notions. The Kantian texts also provide suggestions for explicating, elaborating, and differentiating the two notions.²

Kant's theory of action sees each act as done on a *maxim*, an underlying principle (often, but not necessarily, an agent's fundamental intention) used to guide and orchestrate more specific, ancillary aspects of action.³ The Formula of the End in Itself enjoins action on maxims that

2. References to Kantian texts will be parenthetical, using the following editions: *Groundwork*, trans. H. J. Paton, as *The Moral Law* (London: Hutchinson), 1953, Prussian Academy pagination; *The Doctrine of Virtue*, trans. M. Gregor (New York: Harper & Row), 1964, Prussian Academy pagination; "Perpetual Peace" in *Kant's Political Writings*, ed. Hans Reiss, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1971).

3. For more detailed discussion of Kant's maxims see also Otfried Höffe, "Kant's kategorischer Imperativ als Kriterium des Sittlichen," *Zeitschrift für Philosophische Forschung*, Vol. 31, 1977, pp. 254–84 and O. O'Neill, "Consistency in Action," in *Morality and Universality: Essays on Ethical Universalizability*, ed. N. Potter and M. Timmons (Reidel, forthcoming). The most basic consideration is that maxims are underlying principles, by which subsidiary aspects of action are governed and orchestrated. They must often be inferred from these subsidiary aspects. Even when they are the maxims of individual action, they are not always accessible to consciousness. And some maxims are not maxims of individual agents, but the maxims of institutions or practices. Hence not all maxims are intentions. Nor are all intentions maxims, since trivial and superficial aspects of action are often intended. The Categorical Imperative provides only a test of maxims; but it doesn't follow that anything is permissible provided it is a nonfundamental aspect of action. Since maxims guide subsidiary aspects of action, the latter will be morally required (or forbidden) when they are indispensable (or incompatible) with what is needed to enact and embody a morally worthy maxim in a particular context. Only in drastic conditions will what would otherwise be deeply wrong be legitimated because needed to enact a morally worthy maxim. In wartime Poland Schindler could act on a maxim of protecting some Jews only by enslaving them and collaborating with the Nazis. Cf. Thomas Keneally, *Schindler's Ark* (Hodder & Stoughton, 1982). In prerevolutionary St. Petersburg Sonya Marmeladovna could support and sustain her family only by prostitution. It does not follow that such actions would be either permissible or required to enact fundamental principles of justice or of love outside such very special circumstances.

treat humanity whether in your own person or in the person of any other never simply as a means, but always at the same time as an end (*Groundwork*, p. 429).

Here there are two separate aspects to treating others as persons: the maxim must not use them (negatively) as mere means, but must also (positively) treat them as ends in themselves (cf. *ibid.*, p. 430).

Kant describes the first sort of failure as action on maxims to which no other could possibly consent, and the second as pursuit of ends another cannot share. He writes of such a case:

The man whom I seek to use for my purposes by such a (false) promise cannot possibly agree with my way of behaving to him, and so cannot himself share the end of action (*ibid.*, p. 429).

The failure is dual: the victim of deceit *cannot agree* to the initiator's maxim, so is used, and *a fortiori cannot share* the initiator's end, so is not treated as a person. Similarly with a maxim of coercion: victims cannot agree with a coercer's fundamental principle or maxim (which denies them the choice between consent and dissent), and further cannot share a coercer's ends. (Victims may *want* the same ends as their coercers; but that is not the same as sharing those ends, for one who is coerced, even if pointlessly, is not pursuing, nor therefore sharing, ends at all.) Those who are either deceived or coerced are then *both* used *and* not treated as persons.

It does not follow from this that nothing done in acting on a maxim of deception or coercion can be agreed to or shared by those deceived or coerced. On the contrary, deception standardly works by revealing subsidiary intentions or aspects of action, which misleadingly point to some underlying maxim to which consent can be given. Deception only works when the underlying intention or proposal is kept obscure. The deceiver's actual maxim therefore cannot be consented to. A maxim of coercion does not have to be obscure—it may be brutally plain—but clearly denies victims the choice between consent and dissent.

While the boundaries of coercive action are often unclear, we can agree on central cases involving physical force, dire and credible threats and institutionalized forms of domination such as slavery. But here too victims can and do consent to many of the coercer's subsidiary intentions. It is always hard to know when "going along with" what is coercively proposed

becomes collaboration with the coercer. (Rape trials are instructive.⁴) And it is hard to tell just when an ostensibly deceived party becomes a conniving party. But while such complexities make judgment of actual cases hard, they don't alter the point that a maxim of deception or coercion treats another as mere means and not as a person, even if the victim becomes so involved in the initiator's action that we judge that he or she has become a collaborator or accessory.

The second part of Kant's account of treating others as persons urges us not merely not to use them as means, but to treat them as "ends in themselves." By this he doesn't mean that others should be our goals or purposes. Only what we aim for, including what we desire, can be a goal or purpose. This sort of subjective end depends on us for its existence. Others who exist independently of our action can't be subjective ends, but only ends in themselves. Ends in themselves may provide us with grounds of action not by being the *aim* or *effect* of action, but by constituting *limits* to our actions (*Groundwork*, p. 428).⁵ Others may limit my action by being autonomous beings whose maxims guide their projects and activities to their varied ends. To respect a limit of this sort cannot be thought of on a spatial analogy of avoiding certain areas, for the varying activities of others take place in the world that we share, and not in discrete spatial capsules (as libertarians might prefer). Not to treat others as mere means introduces minimal, but indispensable, requirements for coordinating action in a world shared by autonomous beings, namely that nobody act in ways others cannot possibly consent to, so in principle precluding their autonomous action. To treat others as ends may also require action when dissent is in principle possible, but those who are actually involved have limited capacities to dissent.

The negative requirement of not using others can be stated in some

4. In more than one way. In this area remarkably exacting, but varied, conceptions of what constitutes evidence of dissent are put forward. Cf. Carole Pateman, "Women and Consent," *Political Theory*, Vol. 8 (1980): 149–68. Cf. also her discussion of some inadequacies of "consenting adult" accounts of prostitution, in "Defending Prostitution: Charges Against Ericsson," *Ethics* 93 (1983): 561–65.

5. See Thomas Hill, "Humanity as an End in Itself," *Ethics* 91 (1980–81): 84–99. Hill's analysis of the Formula of the End in Itself is acute and instructive. However, he suggests that it has the advantage that it needs no interpretation of the notion of a maxim (p. 91). But the question of whether we are using others, or treating them as persons, is as sensitive to how we describe what we are doing as the question whether what we propose could be universally done.

(no doubt incomplete) abstraction from the particular features of other rational beings (“the problem of justice can be solved even for a ‘nation of devils’ ” [*Kant’s Political Writings*, p. 112]), but we can give only an indeterminate account of the “positive” requirements for treating others as ends in themselves. Whenever treating others as persons goes beyond not using them, we must take into account “humanity in their person,” i.e., their *particular* capacities for rational and autonomous action.⁶ This can be done with vacuous ease for abstractly rational beings. But human beings, while they are creatures of reason rather than instinct, are yet only limitedly rational beings, of whose capacities for autonomous action we can give no determinate account in the abstract. Hence the only abstract account we can give of the “positive” maxims on which we must act in treating other men and women as persons are very general policies. But these “wide” duties to share others’ ends (and develop talents) can have determinate implications in particular contexts.

The “positive” aspects of treating others as ends in themselves require action on maxims of sharing others’ ends. It is not enough when we deal with other human beings (as opposed to abstract rational beings) to act on maxims with which they can possibly agree, whatever their ends. It is also necessary to adopt maxims which “endeavour to further the ends of others” (*Groundwork*, p. 430). To treat human beings as persons, rather than as “ideal” rational beings, we must not only not use them, but must take their particular capacities for autonomy and rationality into account. Since other humans have varied ends, are precariously autonomous and rational, and far from self-sufficient in other ways, sharing even some of their ends may make varied demands. Kant claims that these demands can be grouped under the headings of respect and love (or beneficence). He repeatedly uses physical metaphors to express the ways in which these two sorts of demands differ:

6. Hill construes “humanity” as “including only those powers necessarily associated with rationality and the ‘power to set ends,’ ” *ibid.*, p. 86. The reading offered here takes this point of departure but also stresses, as we must for instructive consideration of “wide” duties, that human rationality and autonomy are quite limited. Only so can we understand why Kant thinks both that others are limits, ends which are to be “conceived only negatively—that is, as an end against which we should never act” (*Groundwork*, p. 437), and that there are positive duties to such ends. Where rationality and autonomy are patently incomplete we act against them if we assume that they are not and fail to support them. Cf. O. O’Neill, “Paternalism and Partial Autonomy,” *Journal of Medical Ethics* 10 (1984): 173–78.

The principle of *mutual love* admonishes men constantly to *come nearer* to each other; that of the *respect* which they owe each other to keep themselves at a *distance* from one another (*The Doctrine of Virtue*, p. 447).

Policies of respect must recognize that others' maxims and projects are *their* maxims and projects. They must avoid merely taking over or achieving the aims of these maxims and projects, and allow others the "space" in which to pursue them for themselves. Respect for others requires, Kant thinks, that we avoid contempt, mockery, disdain, detraction, and the like and that we show others recognition (*ibid.*, pp. 461–68). Policies of practical love or beneficence require us to recognize the needs particular others have for assistance in acting on their maxims and achieving their ends. Love requires us to adopt maxims of "active practical benevolence (beneficence) which consists in making another's happiness my own" (*ibid.*, p. 451). To do this is to make the other's ends, whose achievement would constitute his or her happiness, in part my own. Such beneficence includes assistance to others, generosity, active sympathy, and conciliatoriness and the avoidance of envy and malicious joy (*ibid.*, pp. 451–60).

However, the Kantian conception of beneficence is from the start antipaternalistic. The duty to seek others' happiness is always a duty to promote and share others' ends *without* taking them over, rather than a duty to provide determinate goods and services or to meet others' needs, or to see that their ends are achieved. Beneficence of this sort presupposes others who are at least partly autonomous and have their own ends. The tension between beneficence and treating others as persons, which is central to many discussions of paternalism, is absent from Kant's account:

I cannot do good to anyone according to *my* conception of happiness (except to young children and the insane) but only according to that of the one I intend to benefit (*ibid.*, p. 453).

What remains is, as Kant indicates, the unavoidable tension between love and respect. We experience it every time we try to work out how to share others' ends without taking them over.⁷ It is a tension that has no general

7. But what will count as a good resolution? One guideline might be this: the underlying principle of action should be one that subordinates sharing ends to leaving another with ends that can be shared. Hence only nonfundamental failures of respect may be part of

solution, but can be resolved in particular contexts. Kant's wide duties specify no rules of action for all rational beings, for the ways in which sharing others' ends can perhaps be exemplified would differ wholly for other sorts of rational beings (imagine beings who are psychologically impervious to one another, or less dependent on the physical world than we are), and will in any case differ greatly for human beings with varied ends.

The overall picture which this reading of the Formula of the End in Itself generates is that a morally worthy life must be based on maxims of justice (including noncoercion and nondeceit), of respect, and of love. Such a life neither uses others (by acting on maxims which preempt consent or dissent), nor fails to share others' ends (by acting on maxims which either disregard or take over those ends or lend them no support). In each case it is our *fundamental* proposals, principles, or basic intentions that must meet these conditions. We neither do nor can make it possible for others, even for others closely affected, to consent to or dissent from *every* aspect (or even every intentional aspect) of what we propose; nor can we lead lives in which we at all times help all others achieve all their ends. Justice and respect vary with circumstances, and beneficence is in addition unavoidably selective. Nevertheless there are occasions when action of a specific sort is required: there are contexts and relationships to others in which to do nothing would be sufficient evidence that the underlying maxim or principle is unjust or lacking in respect or nonbeneficent. Although love and beneficence are unavoidably selective, this does not mean that when we act on these maxims we can neglect all the central projects of lives with which ours are closely involved.

MORALLY WORTHY MAXIMS AND CONSENTING ADULTS

If this reading of the Formula of the End in Itself is to be more than Kantian exegesis, it should help us to think about using others and failing to treat them as persons. The classical examples of presumed sexual and economic use of others, in particular, should be illuminated. But there is one further difficulty in pursuing this thought.

loving action (e.g., presuming to make a minor arrangement or commitment for another which he or she will likely want made; Sonya Marmeladovna's sacrifice of self-respect out of love for her brothers and sisters); but where lack of respect is fundamental the supposedly loving action will cease to be so.

Kant's analysis of treating others as persons leads him, in the first instance, to claims about maxims of morally worthy action. His fundamental moral categories are those of moral worth and lack of moral worth rather than those of right and wrong. Right and wrong, the categories of "legality," are, in his eyes, derivative from those of morality.⁸ Right action conforms in outward respects, but perhaps only in outward respects, with what is morally worthy. Specifically obligatory action not merely conforms outwardly to what moral worth requires, but is mandated (in those circumstances) by some maxim of moral worth.

Yet we have seen that no determinate outward performance either conforms to or is prescribed by maxims of sharing others' ends. "Wide" duties do not have determinate outward manifestations. Even "strict" duties may be performed in outwardly varying ways. For any underlying principle or maxim will have to be enacted or embodied in different ancillary aspects of action in differing situations. How then can we get from a Kantian account of not using others and sharing their ends—of morally worthy action—to a view of what is right or wrong to do? How, in particular, can a Kantian account help us to think about particular sexual or economic problems? Isn't it likely that there is no timeless sexual or economic morality for abstractly autonomous beings? (And no sex and no economics.)

Yet we may have got a great deal of what we are likely to need. For we need to understand what would be right or wrong in actual, determinate situations. Kantian maxims do not entail rules or prescriptions for all possible contexts. Since a maxim is the *maxima propositio* or major premise of a piece of practical reasoning, it is not there that we should look for details about determinate situations. But when a maxim is supplemented by an account of a particular situation—the minor premise of practical reasoning⁹—we may discover which sorts of outward performance are required, compatible, or proscribed in that situation. We may, for example, find that in *these* circumstances there is no way in

8. Cf. *Groundwork*, 397ff.; *The Doctrine of Virtue*, 218–20 and O. O'Neill, "Kant After Virtue," *Inquiry* 26 (1984): 387–405.

9. Contrary to a whole tradition of Kant commentary, Kant has a lot to say about the minor premise in practical reasoning, especially in *The Critique of Judgement*. For recent discussions see Hannah Arendt, *Lectures on Kant's Political Philosophy*, ed. Ronald Beiner (Chicago: University of Chicago Press, 1982); Beiner's interpretive essay in the same volume and his *Political Judgment* (London: Methuen, 1983); O. O'Neill, "The Power of Example," *Philosophy*, forthcoming.

which *that* sort of action could be compatible with justice; or on the other hand, that in *this* situation we must, if fundamentally committed to a maxim of love or respect, include something of *that* sort. The conclusions of such reasoning will not be unrestricted; they will hold good not for rational beings as such, nor even for the human condition, but for quite specific human conditions. But when we act this is just what we need to know. We do not need to know what it would be to refrain from detraction or to be generous in all possible worlds, but only how to discern what would be respectful or generous in particular situations. Casuistry is indispensable in all movements from major premise to decision, and all claims about what is obligatory, permissible, and forbidden hold only for determinate contexts. Even when we have reasons for thinking that the maxim of some action was itself not morally worthy, judgments of what is obligatory (or merely permissible or forbidden) are made by reference to the outward aspects of action that would have been required (or compatible or ruled out) by acting on a morally worthy maxim in that situation.

TREATING OTHERS AS PERSONS IN SEXUAL RELATIONSHIPS

If this account of using others and treating them as persons is plausible, it should throw light on areas of life where such failures are thought common. One such area is sexual relationships and encounters. We might also hope to gain some understanding of *why* sexual relationships are thought peculiarly vulnerable to these sorts of failure.

Some sexual coercion is relatively straightforward. It isn't hard to see why the victim of rape or of lesser sexual assault is used. However, rape differs from other forms of coercion in that, because of the implicit nature of much sexual communication and social traditions which encourage forms of sexual duplicity, it is unusually hard to be sure when there has been coercion. Also coercion of less straightforward sorts may occur in some sexual relationships and transactions, including in relationships between prostitutes and their clients. Here the outward transaction may be an agreement between consenting adults. But when we remember the institutional context of much (at least contemporary, western) prostitution, including the practices of pimping, brothel keeping, and various forms of social ostracism and consequent dependence on a harsh subculture, we may come to think that not all transactions between prosti-

tutes and clients are uncoerced: but it may not be the client who coerces.

Deception is a pervasive possibility in sexual encounters and relationships. Not only are there well-known deceptions, such as seduction and breach of promise, but varied further possibilities. Many of these reflect the peculiarly implicit nature of sexual communication. Commercial and various distanced sexual encounters standardly use the very means of expression which deeper and longer lasting attachments use. But when the endearments and gestures of intimacy are not used to convey what they standardly convey, miscommunication is peculiarly likely. Endearments standardly express not just momentary enthusiasm but affection; the contact of eyes, lips, skin conveys some openness, acceptance, and trust (often enough much more); embrace conveys a commitment which goes beyond a momentary clinging. These are potent gestures of human emotional life. If insufficient trust and commitment are present to warrant such expression, then those who use these endearments and gestures risk giving false messages about feelings, desires, and even commitments. But perhaps, we may think, at least in sexual relationships which are commercial or very casual or largely formal, it is well understood by all concerned that these expressions have been decontextualized and no longer express the underlying intentions or attitudes or principles that they might express in a more wholehearted relationship. But if such expressions are fully decontextualized, what part are they playing in an entirely casual or commercial or formalized encounter? If the expressions are taken at face value, yet what they would standardly express is lacking, each is likely to deceive the other. Relationship of prostitution, casual sexual encounters, and the sexual aspect of faded marriages are not invariably deceptive. Such sexual relations may be either too crudely mechanical to use or misuse expressions of intimacy, or sufficiently informed by trust and concern for the language of intimacy to be appropriate. But relationships and encounters which standardly combine superficial expression of commitment with its underlying absence are peculiarly vulnerable to deception. Where too much is unexpressed, or misleadingly expressed, each risks duping the other and using him or her as means.

Avoiding deceit and coercion are only the core of treating others as persons in sexual relationships. In avoiding these we avoid clear and obvious ways of using as (mere) means. But to treat another as a person in an intimate, and especially an intimate sexual, relationship requires

far more. These further requirements reflect the intimacy rather than the specifically sexual character of a relationship. However, if sexual relationships cannot easily be merely relationships between consenting adults, further requirements for treating another as a person are likely to arise in any sexual relationship. Intimate bodies cannot easily have separate lives.

Intimacy, sexual or not, alters relationships in two ways that are relevant here. First, those who are intimate acquire deep and detailed (but incomplete) knowledge of one another's life, character, and desires. Secondly, each forms some desires which incorporate or refer to the other's desires, and consequently finds his or her happiness in some ways contingent upon the fulfillment of the other's desires.¹⁰ Intimacy is not a merely cognitive relationship, but one where special possibilities for respecting and sharing (alternatively for disrespecting and frustrating) another's ends and desires develop. It is in intimate relationships that we are most able to treat others as persons—and most able to fail to do so.

Intimacy makes failures of respect and of love more possible. Lack of respect in intimate relationships may, for example, take both manipulative and paternalistic forms. The manipulator trades on the fact that the other is not just a possibly consenting adult, but one whose particular desires are known and may depend in part on the manipulator's desires. One who succumbs to so-called "moral" blackmail could have refused without suffering coercion and was not deceived, but was confronted with the dilemma of sacrificing something central to his or her life—perhaps career or integrity or relationships with others, or perhaps mainly the desire to accommodate the manipulator's desires—unless willing to comply. In intimate relationships it is all too easy to make the other an offer he or she cannot refuse; when we are close to others we can undercut their pursuit of ends without coercion or deceit. Modes of bargaining and negotiating with others which do not make dissent impossible for consenting adults in the abstract, and might be acceptable in public contexts, may yet undercut others' pursuit of their ends in intimate relationships. Here it is peculiarly demanding to leave the other "space" for his or her pursuit of ends. To do so, and so maintain respect for those with whom

10. By this I don't mean merely that sexual desire may include desires that refer to the other's sexual desires, but more broadly that at least some desires in intimate relationships are altruistic in the strict sense that they can be specified only by reference to the other's desires. This allows for hostile intimacy where desire may be for frustration rather than the fulfillment of the other's desires.

we are intimate, requires us to take account not only of the particular interlock of desires, dependencies, and vulnerabilities that have arisen in a given relationship, but also that we heed any wider social context whose modes of discourse and received opinions may systematically undermine or belittle the other's ends and capacities to pursue them. Respect for others—the most basic aspect of sharing their ends—requires the greatest tact and insight when we are most aware of ways in which others' capacities to pursue ends autonomously are vulnerable.

Contexts which make manipulation hard to avoid also offer opportunities for paternalistic failures of respect. Unlike the manipulator, the paternalist does not deploy knowledge of the other and the other's ends to reduce his or her "space" for pursuit of those ends. The paternalist rather begins from a failure to acknowledge either *what* the other's ends are, or that they are the *other's* ends. This failure of respect entails failures to share those ends, for to the paternalist they are either invisible or else not the other's ends but rather the ends to be sought for the other. The paternalist tries to express beneficence or love by imposing a conception of others' ends or interests. Lack of respect is then compounded by lack of love. Those who try to remake or control the lives of others with whom they are intimate do not merely fail in respect, however sincerely they may claim to seek the other's good. Paternalism towards those who have their own ends is not a form of love. However, since it is only fundamental principles of actions (whether plans, proposals, policies, or intentions) that must meet these standards, superficial departure from them when acting on morally acceptable fundamental principles may be acceptable, or even required. The jokes and surprises in which friendship may be expressed do not count as deceptions; but if they were incident to action on other maxims might constitute fraud or serious disrespect or unacceptable paternalism.¹¹

11. A sensitive element of the pattern of casuistry outlined here is determining which principles are the maxim(s) of a given action, and which ancillary. Here counterfactual considerations must always be introduced. We can reject claims that some principle of action is the maxim of a given act when we have reason to believe that, without fundamental changes either in circumstance or in moral outlook, that principle would not have been acted on. A claim to be acting out of friendship rather than disrespect in throwing a surprise party would be rebutted if the party would be thrown even when friendship would require other implementations (the friend is exhausted or ill or bereaved or shy). A claim that demands on another are not coercive but benevolent could be rebutted only if there are good reasons for thinking the actual refusal wholly neurotic, as well as that disregard of the refusal would benefit the refuser. Imposition of, for example, medical treatment or sexual attentions in the face of refusal could be fundamentally respectful and benevolent

Even in intimate relationships not all failures of love are consequent upon failures of respect. It is not only in manipulative and paternalistic action, where others' ends are respectively used and overlooked, that we may fail to share the ends of those with whom we are intimate. Failures of love also occur when the other's ends are indeed respected, and he or she is left the "space" in which to pursue them, yet no positive encouragement, assistance, or support for their pursuit is given. Vulnerable, finite beings do not treat one another as ends *merely* by leaving each other an appropriate "space." Here again detailed knowledge of others and their desires, strengths, and weaknesses offers wider possibilities. The support, concern, and generosity we need from particular others if our pursuit of ends is to be not merely unprevented but sufficiently shared to be a genuine possibility are quite specific. If we are to treat others with whom we are intimate with love as well as respect, we must both see and (to some extent) support their ends.

Avoiding using others and treating them as persons both demand a lot in intimate relationships. Only the avoidance of coercion demands no more than usual here, perhaps because coercion tends to destroy intimacy. Deception remains a possibility in any relationship, and more so where much is conveyed elliptically or by gesture. In brief sexual encounters as well as in commercial and formalized sexual relations the discrepancy of expression and underlying attitude offers many footholds for deception; even in sustained intimate relationships underlying attitudes and outlook can become, as it were, decoupled from the expression and gesture which convey them to the other, so that the language of intimacy is used deceptively. Intimate relationships also provide appropriate settings for manipulative and paternalistic failures of respect and consequent and other failures of love. But the other side of these gloomy thoughts is that intimacy also offers the best chances for treating others as the persons they are.

TREATING OTHERS AS PERSONS IN WORK AND EMPLOYMENT

It is odd that working life is also often thought to involve uses of others and failures to treat them as persons. Here we do not find the features

only if the coercion would be dropped given some evidence that the refusal is not entirely neurotic.

that open sexual and intimate relationships to these failures. In modern employment relations, communication is usually explicit; employers and employees must have some coinciding desires, but need and often have no desires whose content is determined by the other's desires, and may be quite ignorant of one another's specific desires and capacities. Yet there are reasons why this area of life too makes it hard to ensure that nobody is either used or treated as less than a person.

To begin with there are straightforward ways in which we can be used by those for whom we work. Coercion is as vivid a possibility here as in sexual contexts. Sporadic forms include pressganging and underpayment of wages; institutionalized forms evidently include slavery and forced labor. Straightforward deception is also well entrenched in many forms of employment, and includes fraud and trickery of enormous variety. Hence some ways of being used in working contexts are obvious enough. But these are the working relationships that developed economic forms, including specifically capitalism, preclude. Yet it is widely claimed that capitalist and (perhaps) other modern economic forms not merely do not treat workers as persons, but use them.

This claim can be sustained only if there are unstraightforward ways in which workers are used, in which no maxims of coercion or deception can be attributed to any individual. When individuals act on maxims of coercion or deception we have straightforward failures, with which the legal system of capitalist or other developed economic forms can deal, and which the Kantian perspective, even in its standard interpretations, is well designed to detect. But unobvious forms of coercion or deception are harder to grasp.

A principal source of this problem is that the Kantian approach, like the legal frameworks with which it tallies, is standardly interpreted as individualistic. The interpretation of maxims adopted here is, however, too broad to entail individualism; it does not require that maxims be consciously entertained, nor therefore see only the fundamental intentions of individuals as maxims. On this account the guiding principle of any endeavor or practice or institution is its maxim. In many capitalist economic relations, including employment, all individual intentions may be morally acceptable. The capitalist employer may have fundamental conscious intentions to which his employees can indeed consent or dissent, so appears on this score not to treat them in any morally objectionable way. What could be more paradigmatic of an offer that can be refused

than an offer of employment that is, as they say in wage negotiations, “on the table”? If we argue that such offers are either coercive or deceptive, we must take a broader view of maxims, and judge not the principles which particular would-be employers have in mind, but the principles which guide the institution of employment in a capitalist system. The underlying principle of capitalist employment, whatever that may be, may perhaps use some as means or to fail to treat them as persons, even where individuals’ intentions fail in neither way.

The extension of ethical reasoning beyond individual concerns must then use the results of social inquiry. If, for example, we take an idealized Marxist account of capitalist employment, the Kantian approach would generate clear ethical results. On that account capitalist employers, whatever their individual intentions, base their action on a maxim of extracting surplus value (if they did not, employing others would be pointless). Since capitalism aims at profit, it must pay workers less than the value they produce. But this essential feature of capitalism is obscured from workers, who accept deceptive accounts of the terms of their employment to which consent and dissent are possible. But if the principle to which consent is possible (and actually given) is not the underlying maxim of capitalist employment, then this consent cannot show that there has been no deception at a fundamental level. What it can, however, show is that if there has been such deception, then it is, as in the case of the institutionalized coercion of organized prostitution, a deception without an individual deceiver.

Whether the underlying principle of capitalist employment *in fact* has the structure Marxists claim and so makes consent impossible is a further question. Might there not be a nondeceptive form of capitalism, in which the possibility of dissent is ensured by framing offers of employment in terms of the principles which really underlie capitalist employment relations? On this hypothesis workers with fully raised consciousness would have a genuine possibility to dissent from or consent to a maxim of employment which was not ideologically masked, and so would not be used. They would understand that profits would be made off their labor, but could still accept the terms offered. If deceptive forms were all that is wrong with a capitalist maxim of employment, it might be remediable. But on a Marxist analysis coercion lurks behind the deception. When the underlying form of the capitalist maxim of employment is disclosed we supposedly discover that the deception served a purpose (or many pur-

poses), and in particular that it makes an activity that workers (under “ideal” capitalism) cannot choose to avoid except on pain of the coercion of starvation, appear to them as one which they could choose or refuse. Employees will then invariably be used, since they have the possibility of dissenting or consenting only to a principle that isn’t really the underlying principle of their employment at all. Either they will be both deceived and coerced, if they do not see through this offer, or if they see through it, they will not be deceived, but only coerced. In either case they will be used. The underlying maxim of “ideal” capitalist employment requires workers to choose between unemployment without welfare benefit and a wage “bargain” which is backed by this threat.

This argument, of course, depends on accepting a Marxist account of the fundamental maxim of capitalist employment and rejecting ideologically opposed accounts, such as those which view all maxims as specific to individual agents and deny that the market itself can be thought of as grounded in maxims. The argument neither supposes nor shows that the claims made about employment relations in “ideal” capitalism apply accurately to employment relations in actual capitalist economies, where, for example, welfare payments may mitigate or remove the coercive character of threatened unemployment. For present purposes the interest of the sketch is to show *one* way in which workers may be used in the Kantian sense even under systems of employment that ostensibly enshrine the principle of free, hence of possible, consent, and more generally how Kantian ethical reasoning might be extended beyond the private sphere.

In employment, as in other activities, being used is only one way of being treated as less than a person. A great many complaints that workers are not being treated as persons can be traced not to the ways in which they may be straightforwardly or unstraightforwardly used, but to the degree to which contemporary employment practices make a point of treating workers uniformly, and so not as the particular persons that they are.¹² In this matter modern employment practices are wholly different from intimate relationships. Workers in modern (not only capitalist) economies are treated in standard and uniform ways which take little account of differences in ends and capacities to seek them. Where work is “ra-

12. For an account of the nature of working life under modern “scientific” management practices, see, for example, Harry Braverman, *Labor and Monopoly Capital* (New York: Monthly Review Press, 1974). The changes he chronicles are not unique to capitalism.

tionalized” and there is a “rate for the job,” and hours and qualifications are standardized, there are few ways in which employees’ particular ends and abilities to pursue them are taken into account on the job. If doing a job well amounts to doing it like the robot who may replace you, the maxim of such organization of work cannot go far to treat employees as the particular persons they are. In such employment it is not misuse of information about others’ ends or capacities for autonomy, nor intentional failure to share ends, but rather systematic disregard of all particular characteristics that lies behind failure to respect or to share ends. Rationalized work practices treat all workers as persons (qualms about exploitation of employees apart), but take little account of their specific characteristics. This may be partly remedied in the practices of some workplaces, or eased by management or work practices which allow more worker involvement or self-management. But if such arrangements are only a matter of introducing “a personal touch,” they impose outward forms of respect and beneficence without underlying changes that would treat workers as the particular persons they are, and may only introduce paternalistic and manipulative practices into working life.

A larger question in this area is whether working life should be like this. Shouldn’t working life be impersonal? Isn’t this our guarantee against nepotism, favoritism, and other types of personal bias and patronage? Is not justice the sole relevant standard in employment relations? The career open to talents has to be based on maxims of impersonal fairness. But the career open to talents is also the career closed to lack of talent and conducted without concern for the fact that we are not abstractly consenting adults. Perhaps the underlying issue is whether and when the lives of those who work with or for one another can be sufficiently separate for justice to be the only consideration. Mutual respect, solidarity, and assistance that go beyond what the job requires may not be dispensable whenever work is collaborative. Our working relations too are relations with determinate others and not with abstractly rational economic men and women.

CONCLUSIONS

The popular view that we can readily be used or treated as less than persons both in intimate relationships and at work can be sustained in a Kantian framework. In each context we may be faced with proposals

to which we *cannot* (whether because deceived or because coerced) give our consent. But the characteristic ways in which we may be treated as less than persons even when not used are quite different in the two contexts. In intimate relationships everything is there which would make it possible to treat the other as the particular person he or she is, by respecting and sharing his or her pursuit of ends. Here if we fail to respect or to share the other's ends the failure is imputable to us. But contemporary employment relations are set up on principles that are impersonal. Employer and employee have only "relevant" information about one another, and need only slightly coinciding ends. Hence when employees are not treated as the particular persons they are, the failure does not standardly rest with a particular employer, who may correctly think that he or she has done all that an employer should. The demand that employees be treated as ends in themselves and shown respect and beneficence is a political demand for new economic structures, whose "maxim of employment" acknowledges our desire, and perhaps need, to be treated more as the persons we are, and less impersonally. It is a demand which we must take seriously if we doubt that we are, even in the maturity of our faculties, merely consenting adults.