

Kant's 'Bad' Examples*

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Despite the current popularity of 'Kantian' ethical theory, Kant's applied ethical conclusions receive little respect. Kantians provide a variety of reasons for rejecting Kant's own application of his ethical theory, but the justification repeated perhaps most frequently, with varying degrees of bluntness, is that in arguing for his (allegedly) objectionable results, Kant abuses his theory to rationalize prevailing cultural norms.¹ Against this view, I will argue that Kant is not guilty of widespread misapplication of his theory. This paper will consider a number of applied results contemporary Kantians are eager to rid themselves of and show how Kant provides support for each of them by considering the crucial concept of personality. Because of the central role this concept plays in Kant's theory and the strength of the support it provides for his conclusions, it will be difficult for any Kantian theory to jettison Kant's unpopular applied ethics without seriously distorting his understanding of the Categorical Imperative.

By 'personality' I simply mean the property of being a person.² A person, in Kant's terminology is one whose actions can be rightly judged on the basis of moral laws (*MM* 222-223, 227).³ Moral laws come in two varieties: "As directed merely to external actions and their conformity to law they are called *juridical* laws; but if they also require that they (the laws) themselves be the determining ground of actions, they are *ethical* laws" (*MM* 214). Moral laws of either variety are derived from the concept of freedom: juridical laws from "freedom in the *external* use of choice" and ethical laws from "freedom in both the external and the internal use of choice" (*ibid.*). Because personality is defined in terms of rightful judgment under law, there are two conceptions of personality corresponding to the two varieties of moral law: juridical personality and ethical personality. The latter is more often referred to

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by Kant as moral personality, so I will continue to use this term.

Since it is freedom which gives rise to laws and gives them their binding force, freedom is necessary and sufficient for personality. Juridical personality requires what we might call political freedom: “independence from being constrained by another's choice” (*MM* 327). This is why, in the civil state juridical personality is coextensive with (passive) citizenship (*MM* 314). Moral personality, on the other hand, requires *inner*, or “the will's property of being a law to itself” (*G* 447; see also *MM* 223). The type of freedom required for moral personality is also called *autonomy* (*G* 440).

Moral personality is closely related to one of the central concepts of Kant's ethical theory, the concept of *humanity*. As Allen Wood notes, it seems that Kant sometimes sloppily interchanges the two terms.⁴ Humanity is properly understood very broadly as the total set of capacities which gives rise to our ability to set ends (*MM* 386-387).⁵ Moral personality, on the other hand, is to be understood very narrowly as the property of “being the subject of a morally practical reason” (*MM* 434). Humanity gives rise to moral personality, and this is the reason for the dignity of humanity (*MM* 434-435). Nevertheless, it is humanity and not moral personality which is an end in itself.⁶

I will argue that it is a central tenet of Kant's ethical theory that we have a duty to preserve both juridical and moral personality, and that this duty gives rise to many of the claims present-day ethicists find most problematic. The duty of preserving personality arises from Kant's claim that moral laws bind categorically. To diminish or destroy personality in oneself or another would be to escape, or help another escape, the demands of morality. It is therefore impermissible. Applying this reasoning to juridical law, Kant examines the boundaries of permissible contractual and political arrangements, concluding (I) that domestic servitude is permissible (though contractual slavery is not); (II) that the only valid form of sexual consent is marriage; and (III) that the state may justly deny suffrage to women and domestic servants. Turning to the ethical law, Kant uses the same pattern of argument to

establish (IV) the impermissibility of suicide and selling one's organs; and (V) the impermissibility of 'unnatural' sex, including masturbation and homosexuality. I will examine Kant's arguments for each of these doctrines in turn.

I. Servitude

In the *Doctrine of Right*, Kant identifies three specific ways of being “externally mine or yours” (MM 245): property right, contract right, and a “right to a person akin to a right to a thing” (MM 259). When the *Doctrine of Right* was first published in 1797, this last right was immediately controversial, prompting Kant to add a reply to reviewers in an appendix to the 1798 edition (MM 358-361).⁷ According to Kant, “this right is that of possession of an external object *as a thing* and use of it *as a person*” (MM 276). In the appendix, Kant is careful to state that this is a right to a juridical person, as distinguished from the case of slavery properly so-called in which a master has a right to a human being who, as a result of a crime, has forfeited juridical personality (MM 358).⁸ Kant's three examples of rights to persons akin to rights to things are the right of spouses to each other, the right of parents to their children, and the right of a master to a servant. The present section is concerned with the last of these.

The right of a master to a servant takes place within a “domestic society ... formed by a contract” (MM 283). It is important to note that Kant is here speaking of what is *permissible*, that is, what is consistent with right. It is consistent with right, Kant claims, for consenting parties, by contract, to form “a society of unequals” in which a master commands and a servant obeys (*ibid.*). The question at issue is, what are the limitations of such contracts? Kant begins by defining the sort of contract he takes to be permissible:

Servants are included in what belongs to the head of household, and, as far as the form (the *way of his being in possession*) is concerned, they are his by a right that is like a right

to a thing; for if they run away from him he can bring them back in his control by his unilateral choice. But as far as the matter is concerned, that is, what *use* he can make of these members of his household, he can never behave as if he owned them (*ibid.*).

Although the right of a head of household is similar to a property right in that it is exclusive and does not depend on physical control, the servant must nonetheless be used “without infringing on his personality” (*MM* 359). Juridical law requires that he be treated as an end in himself, so that his rights as a juridical person are still respected.

Kant goes on to argue that the agreement must be limited in this way because the idea of a servant forfeiting his juridical personality by contract is incoherent:

it is only by a contract that [the master] has brought [his servant] under his control, and a contract by which one party would completely renounce its freedom for the other's advantage would be self-contradictory, that is, null and void, since by it one party would cease to be a person and so would have no duty to keep the contract (*MM* 283).

Only juridical persons have obligations under juridical law. A contract is a way of placing oneself under a particular obligation of juridical law. However, personality requires freedom. A contract of slavery is a contract to renounce one's personality, and thus it would be a contract to render oneself incapable of being obligated by contracts. In this way, a slavery contract voids itself.

Kant identifies three concrete limitations imposed by the requirement that the personality of the servant be respected: (1) “the contract ... can ... not be such that his *use* of them would amount to *using them up*,” (2) “the contract cannot be concluded for life but at most only for an unspecified time, within which one party may give the other notice;” and (3) “children are at all times free” (*ibid.*). Kant does not further explain the meaning of the first requirement, but he does note that “it is not for [the master] alone to judge about this, but also for the servants” (*ibid.*). It seems that the idea Kant has in mind is that the servant must have concluded the contract for the furtherance of his own ends, and must therefore be judge of whether his servitude continues to serve those ends. When a servant concludes that she is being 'used up' in her master's service, she may demand to be returned to full freedom in

order to pursue her own ends again. Kant indicates that (2) follows from (1). From the phrasing of (2) it is not clear whether a fixed-term contract is permitted, but it is clear that a lifetime contract is not permitted and an 'at will' contract is.

To these requirements we may add, consistent with Kant's theory, that a master does not have the right of life and death over a servant, nor the right to beat her, nor even to publicly insult her. If these sorts of restrictions were not included, at least implicitly, in the contract of servitude, the contract would infringe upon the servant's juridical personality and so void itself.

Juridical personality requires external freedom, and the purpose of external law is to protect and promote that freedom (*MM* 231). Consistently with the freedom of all, Kant claims, I may use my freedom to grant another a right to my person. This is a right to exclusive use of my labor and the fruits thereof. It is distinguished from mere employment (“letting and hiring”) by the fact that a domestic servant “agrees *to do whatever is permissible* for the welfare of the household” (*MM* 360-361), whereas employment is “granting another the use of my powers for a specified price” (*MM* 285).

Kant does not provide an explicit argument that this type of servitude is consistent with right; he is more concerned to show that contractual slavery is not. What Kant is attempting here is to establish the *boundary* of what is permitted. One ought to be able to form any contract which is consistent with the external freedom of all. A contract to which I agree cannot violate my freedom, since I freely determine myself to it. Therefore, any internally consistent contract that is not prejudicial to the rights of any third party is permissible. A contract of slavery is self-contradictory, but Kant finds no contradiction in domestic servitude.

II. Natural Sex

While Kant's claims about the permissibility of domestic servitude may seem strange coming

from a thinker who places so much emphasis on autonomy, his claims about sexuality are even stranger. Kant claims that not only concubinage, prostitution, and polygamy but *even ordinary non-marital sexual consent* constitutes a self-contradictory contract in the same way and *for the same reason* as slavery. The only agreement with respect to my sexuality that I can make without agreeing to be deprived of juridical personality (and thereby contradicting myself) is the marriage contract.

Any discussion of this issue must begin from Kant's definition of “sexual union” as “the reciprocal use that one human being makes of the sexual organs and capacities of another” (*MM* 277). According to Kant, “the end of nature” in sexuality is the “begetting and bringing up of children” (*ibid.*), but human beings typically have another end, namely, enjoyment (*MM* 278). In typical instances of sexuality, individuals use each other as means to enjoyment.

Because sexuality involves the use of another as a means, it is permitted by the Categorical Imperative only if the other is treated at the same time as an end (*G* 429). In an earlier lecture on the subject,⁹ Kant explains why he holds that sexual partners ordinarily do not treat one another as ends:

Amongst our inclinations there is one which is directed toward other human beings. They themselves, and not their work and services, are its Objects of enjoyment ... We refer to the sexual impulse ... [A]s soon as a person becomes an Object of appetite for another, all motives of moral relationship cease to function, because an Object of appetite for another becomes a thing ... as soon as that appetite has been stilled, the person is cast aside as one casts away a lemon which has been sucked dry (*L* 163).

It has been suggested that this view of sexuality is too pessimistic.¹⁰ However, it is indisputable that human sexual behavior sometimes occurs as Kant describes it.¹¹ Furthermore, Kant gives an account of the exact circumstances in which these objectionable behaviors occur: “Natural sexual union takes place either in accordance with mere animal *nature* ... or in accordance with *law*” (*MM* 278). This is a description of sexuality “in accordance with mere animal nature” and not of sexuality in general.

For sex to take place “in accordance with mere animal nature” is for it to lack any distinctively

human element. In the lectures, the distinctively human element Kant is concerned with is “human love,” which here seems to be primarily a form of compassion (*L* 163). Kant tells us that “*taken by itself* [sexual desire] is a degradation of human nature” (*ibid.*, emphasis added). However, sexual desire need not be taken by itself; it “can enter into close union with [moral love] under the limiting conditions of practical reason” (*MM* 426).

It is clear that even “under the limiting conditions of practical reason” the elements of desire for the other and enjoyment of the other are not eliminated here so that the other is still treated as a means. However, Kant believes that under these conditions – and only under these conditions – it is possible to treat the other at the same time as an end and so to avoid violating the Categorical Imperative. Kant's argument can be understood as follows:

- (1) Sex involves the use of the other's sexual attribute.
- (2) It is impermissible to use what one has no right to.
- (3) One cannot have a right to the sexual attribute of another without having a right to the whole person, “since a person is an absolute unity.”
- (4) I can acquire a right to the person of another only by giving the other the same right to my person.

Therefore,

- (5) Sex is permissible only when each party grants the other a right over his or her person (*MM* 278; cp. *L* 167-168).¹²

Kant calls the condition described in (5) 'marriage' and it is this condition which, Kant believes, makes it possible to treat a sexual partner as an end in himself.

Premises (1), (2) and (3) are defensible (though not uncontroversial) and easily understood.

Furthermore, Kant is clearly committed to them. The problem is to understand just what the state of

marriage is supposed to be, and how it uniquely permits one to have a right to the person of another without thereby violating her personality. Kant does answer this question, but his meaning is far from obvious: by mutual acquisition of the whole person, “each reclaims itself and restores its personality” (*MM* 278). As a result of the indivisibility of the person, “[t]he sole condition on which we are free to make use of our sexual desire depends upon the right to dispose over the person as a whole” (*L* 166). This, however, would be “a contract by which one party would completely renounce its freedom for the other's advantage,” that is, it is just like the “self-contradictory” slavery contract (*MM* 283). Indeed, Kant explicitly applies this reasoning to the cases of prostitution, concubinage, and morganatic marriage.¹³ In that discussion, Kant declares that “a person who has concluded such a contract could not rightfully be held to the fulfillment of her promise if she regrets it” (*MM* 278-279). These contracts are self-voiding slavery agreements because they are contracts which are supposed to give someone a right to the other's sexual attribute, but this right presupposes “the right to dispose over the person as a whole,” and therefore undermines the personality of one party.

The limitation on servitude was that the contract “can ... not be such that his [the master's] *use* of them [the servants] would amount to *using them up*” (*MM* 283). This concern is echoed with respect to marriage in Kant's appendix where non-marital sex is said to be “*cannibalistic* in principle (even if not always in effect)” because the woman finds herself “consumed by pregnancy and perhaps fatal delivery” and “the man by exhaustion of his sexual capacity” (*MM* 359-360).

On Kant's view, two persons cannot consent merely to “the reciprocal use ... of sexual organs and capacities” apart from marriage (*MM* 277). Because a person is an absolute unity, granting such rights involves granting a right to one's person. Where one's person is ignored and only sexual gratification is considered – that is, in sexuality “according to merely animal nature” – a person is treated as a thing.

The question that arises next is whether it is really the case that all non-marital sex is “according to merely animal nature.” This, in Kant's view, is true, but trivially so: marriage is *defined* as “[s]exual union in accordance with law,” and “[n]atural sexual union” is divided exhaustively between “union in accordance with mere animal *nature*” and union “in accordance with *law*” (*MM* 277).¹⁴ This is a stipulative definition. Any variety of sexual consent which is in any way one-sided is a self-voiding slavery contract, and any variety of sexual consent, even if it is perfectly symmetrical, which does not explicitly take the whole person into account, is also self-voiding in that it makes both persons into things. Whatever sort of agreement relating to sexuality is left after these are eliminated Kant calls 'marriage.' No other contract related to sexuality can be justly enforced by the state.

Marriage, according to Kant, involves mutual acquisition of the whole person, considered as a person. By this mutuality, “each reclaims itself and restores its personality” (*MM* 278). This is further elaborated in the lectures:

I have given myself up as the property of another, but in turn I take the other as my property, and so win myself back again in winning the person whose property I have become. In this way, the two persons become a unity of will (*L* 167).¹⁵

Being 'my spouse' is one way of being rightfully mine. “That is *rightfully mine* ... with which I am so connected that another's use of it without my consent would wrong me” (*MM* 245). In the case of marriage, the right in question is a *complete* right to the other's person. Thus any use I make of my person – that is, anything I do, think, will, etc. – without the consent of my wife wrongs her. It is clear that under ordinary circumstances, if someone had this sort of right over me, I would lack personality. I therefore cannot agree to come into such a state. However, if I also acquire *the same right* over my wife, then her consent is one of the uses of her person to which I have complete right, so that if she consents to my action (or withholds consent) without *my* consent, she wrongs me. In this way, “the two persons become a unity of will,” and I regain the same rights with respect to myself which I had

initially.

It is this “unity of will” that is necessary for permissible sexuality. However, certain external arrangements are necessary to bring it about. For instance, spouses must have “equality in their possession of material goods” (*MM* 278). This follows directly from the unity of will: what can be done with my property is all and only what I will, and I may will only that to which my wife consents. Furthermore, the sharing of property helps create the condition in which “[w]hatever good or ill, joy or sorrow befall either of them, the other will share it” (*L* 167).¹⁶

Kant is here far from endorsing prevailing cultural norms. On Kant's view, *every* marital disagreement is a violation of right, and the rights in question are perfectly mutual. Furthermore, sexuality is *only* permissible in the context of this complete unity of will. Failure to achieve such unity of will undermines the purpose of legal marriage in creating a context for permissible sexuality and is thus ground for divorce (*L* 169).¹⁷ It may appear that by allowing divorce whenever unity of will cannot be achieved Kant's sexual ethics is less demanding than the traditional Christian view according to which sexuality is permissible only within marriage and divorce is highly circumscribed or completely disallowed. However, contrary to this appearance, Kant's view is even *more* demanding than the traditional one: on Kant's view, it is just as difficult to form a marriage, and far more difficult to maintain one. On the traditional view, one forms a marriage by a religious ceremony and, while violation of certain marital duties (e.g., fidelity) may render divorce *permissible*, no such violation will automatically dissolve the marriage or render sex impermissible. On Kant's view, if the unity of will is broken, sex again becomes a threat to personality. Furthermore, while one could, in principle, marry and divorce with great frequency, a marriage one *intended* to later resolve would not involve a complete acquisition. Marriage is a “union . . . for *lifelong* possession of each other's sexual attributes” (*MM* 277, emphasis added).

After completing his argument for monogamy, Kant identifies two ways in which the general outlines of the marriage contract could be modified. The first is relatively unproblematic: “as for [material goods owned in common], the partners are still authorized to forgo the use of a part, though only by a separate contract” (*MM* 279). At the end of the section, however, we find the following passage:

If the question is therefore posed, whether it is also in conflict with the equality of the partners for the law to say of the husband's relation to the wife, he is to be your master (he is the party to direct, she to obey): this cannot be regarded as conflicting with the natural equality of a couple if the dominance is based only on the natural superiority of the husband to the wife in his capacity to promote the common interest of the household, and the right to direct that is based on this can be derived from the very duty of unity and equality with respect to the *end* (*ibid.*).

We should not lose sight of the question Kant is trying to answer in this passage: is this arrangement “in conflict with the equality of the partners?” Kant's claim is that this question is not answered by his theory but depends on certain empirical facts.¹⁸ In particular, husband and wife come together in marriage toward a certain end – Kant has suggested that this may be the “begetting and bringing up of children” or “the pleasure of using each other's sexual attributes” (*MM* 277) – and they are free and equal with respect to this end. *If* it were the case that this end, which Kant here calls “the common interest of the household,” were best achieved by the wife conforming her will to her husband's with respect to the means, this would be one way of achieving unity of will. This much is not so implausible: if a couple is agreed as to the end to be achieved, and one partner is better equipped to select the most effective means than the other, then it will be appropriate for the second partner to conform his will to that of the first. Kant goes further than this, however, in considering a situation in which positive law prescribes the universal obedience of wives to husbands. Kant claims that this is permissible under two conditions: (1) that husband and wife have equality with regard to the selection of the end, and (2) that, as a result of the husband's “natural superiority,” he is always better able to

determine the best means. Kant is plainly wrong to believe that (2) is satisfied (*Anth* 310), and we may criticize him on this ground. However, were these two conditions to be satisfied, the requirement that a wife obey her husband would not amount to an external constraint on the wife's freedom to set ends and to pursue them by the best means available to her. As such, the arrangement would not undermine her juridical personality.

To this point we have said very little about who may enter into marriage, other than that both parties must be juridical persons and their personality must remain intact. However, Kant's definition of marriage includes an additional requirement: marriage is “the union of two persons *of different sexes* for lifelong possession of each other's sexual attributes” (*MM* 278, emphasis added). Prior to entering on the discussion of marriage, Kant indicates that he is talking only about “*natural* use.” This is contrasted with “unnatural use [which] takes place either with a person of the same sex or with an animal” (*ibid.*). Kant says nothing to indicate that homosexual sex (or bestiality) undermines *juridical* personality. Rather, it “do[es] wrong to humanity in our own person” – that is, it violates *moral* personality. The reason Kant disallows homosexual marriage is not that such an agreement would be self-voiding, but rather that marriage is, by definition, the sort of contract that creates a context for morally permissible sexuality and, according to Kant, homosexual sex is never permissible.¹⁹ Kant's argument for the impermissibility of homosexual sex is found in the *Doctrine of Virtue* and will be discussed in section V, below.

III. Suffrage

A person can be “subject to no other laws than those he gives to himself (either alone or at least along with others)” (*MM* 223). A 'civil condition' is the condition in which persons make laws “along with others” and coerce compliance with those laws. Such a condition is necessary in order to secure

rights (*MM* 312). Since each individual's “dependence on laws arises from his own lawgiving will,” entering a civil condition does not involve a loss of freedom (*MM* 313; see also 316). Every citizen – that is, every juridical person in a civil state – must have two attributes: (1) “lawful *freedom*” and (2) “civil *equality*” (*MM* 314). The former is defined as “the attribute of obeying no other law than that to which he has given his consent” and the latter as “that of not recognizing among the *people* any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other” (*ibid.*). These two attributes are necessary and sufficient for juridical personality. However, Kant adds a third attribute of citizens: “the attribute of civil *independence*, of owing his own existence and preservation to his own rights and powers as a member of a commonwealth, not to the choice of another among the people” (*ibid.*). Those who have this last attribute are called “civil persons” or “active citizens” and it is only they who have the right to vote. Juridical persons who lack civil independence are called “passive citizens.”

On this basis Kant excludes from suffrage a truly enormous class of individuals, including domestic servants, children, and, notoriously, “all women” (*ibid.*). This claim is clearly problematic. John Ansbro has gone so far as to argue that it undermines Kant's entire emphasis on equality and creates a deep inconsistency between Kant's political theory and his moral theory.²⁰ Although there is no shortage of good reasons to object to these limitations on suffrage as a matter of public policy, I will argue that, at least with regard to the consistency of Kant's theory and his status as a defender of the freedom and dignity of the individual, the picture is nowhere near as bleak as Ansbro paints it. To see why, it is necessary first to examine Kant's justification for denying suffrage to these groups, and then his argument that merely passive citizenship is consistent with juridical personality.

Civil personality is described as the “attribute of not needing to be represented by another where rights are concerned” (*ibid.*). However, Kant claims, those who do not manage their own affairs *do*

need to be so represented. There are three classes of persons who cannot exercise their rights directly and independently: minors,²¹ domestic servants, and women. The case of minors is relatively unproblematic. A domestic servant is not the manager of his own affairs. He “agrees *to do whatever is permissible* for the welfare of the household” (*MM* 360-361). Kant apparently believes that voting in a particular way is 'permissible' in the relevant sense. Therefore, the servant gives up his ability to “act from his own choice in community with others” which is necessary for suffrage (*MM* 314). In marriage, the case is similar: neither party can act independently of the other, and the couple can therefore have only one vote, to exercise jointly, with one representing the other. That the state is permitted to prescribe that the husband always do the representing follows from certain false empirical premises which Kant accepts.²²

There are two problems with the above account. The first problem is that Kant has not provided a justification for his method of counting votes. A married couple is a unity of will and neither can vote independently of the other, but why does their united will count as one vote rather than two? Kant has very little to say by way of justifying the principle of majority rule, let alone what counts as a majority. In another work, he indicates that “the actual principle of being content with majority decisions must be accepted unanimously” in entering the civil condition (*TP* 79). As such, it would seem that the method of vote counting is determined by the social contract and not by natural law. The second problem is more pressing: Kant says that *all women* – evidently including unmarried adults – lack civil independence (*MM* 314). This is rendered the more baffling by Kant's claim that a condition for passive citizenship to conform with principles of right is “that anyone can work his way up from the passive condition to an active one” (*MM* 315).

There is no avoiding the conclusion that Kant has made a mistake here. If absolutely all women lack civil independence, then there is a class of passive citizens who cannot work their way up to active

citizenship. It is therefore preferable to find a reading on which women are not consigned to passivity simply in virtue of being women. Such a reading is, in fact, available. Jane Kneller points out that under Prussian law at the time of writing, a woman was a ward of her father until marriage and of her husband thereafter.²³ All of these women lack civil independence. There would, of course, still be some women (wealthy women with no surviving male relatives) who would have to be admitted to have civil independence, but these would be few in number. The most charitable supposition is that Kant simply did not think of these cases. If Kant considered all women in his own time to be under the 'guardianship' of a man, this suggests that women *as a class* would have to be accorded certain other legal rights and freedoms – essentially, the right to manage their own affairs – before it would be appropriate to give them the vote. In fact, Kneller argues that in “What Is Enlightenment?” Kant is implicitly committed to the claim that it is possible, and indeed desirable, for women as a class to 'work their way up' in just this way.²⁴ In the *Anthropology* Kant also indicates that the status of women improves as greater degrees of 'civilization' are achieved (*Anth* 303-304).

Kant is committed to the undefended claim that a single will should never have more than one vote. Since women, minors, and domestic servants cannot will independently, they cannot vote. In the case of women, the inability to will independently is due to contingent social circumstances (and there are exceptions which Kant seems not to recognize), in the case of minors it is temporary,²⁵ and in the case of domestic servants it is by a voluntary contract that can be dissolved at will. It is necessary next to examine Kant's further claim that “this inequality is ... in no way opposed to their freedom and equality *as human beings*” (*MM* 315). That there be no such opposition is critical because a violation of the “freedom and equality” of passive citizens would make them into juridical things so that they would no longer be bound by juridical law.²⁶

A citizen obeys “no other law than that to which he has given his consent” (*MM* 314). A *passive*

citizen, however, needs to be “represented by another where rights are concerned” (*ibid.*). In every case, the passive citizen has a representative (a husband, parent, or master). If he had no representative consenting to the law by participating in the democratic process, the passive citizen would not be bound by it. In addition to the requirement of democratic consent, positive laws must be consistent with natural laws (*MM* 315).²⁷ If these two constraints are satisfied, then the freedom of passive citizens is protected and they retain their juridical personality.

IV. Suicide and Material Self-Mutilation

We turn now to the ethical law and the concept of moral personality. Moral personality arises from the self-prescription of immutable laws (*G* 446-447). As such, autonomy – the ability to select one's own ends and the means to them – is the criterion of moral personality. The Categorical Imperative has its source in this conception of autonomy and demands that autonomy be respected. Kant's actual use of the Categorical Imperative, and especially the Formula of Humanity,²⁸ shows that it specifically commands that we not *diminish* or *destroy* moral personality in ourselves or others.

In the problematic section entitled, “A Human Being's Duty to Himself as an Animal Being” (*MM* 421), Kant calls the diminishment or destruction of one's autonomy “willful *physical death* or killing oneself” (*ibid.*). This is not, as it might first appear, a definition of suicide; rather, suicide is just one of several prohibited actions subsumed under it.²⁹ Kant goes on to explain that this offense

can be thought as either total, suicide (*suicidium*), or only partial, mutilating oneself. Mutilating oneself can, in turn, be either *material*, *depriving* oneself of certain integral, organic *parts*, that is, maiming oneself, or *formal*, *depriving* oneself (permanently or temporarily) of one's *capacity* for the natural (and so indirectly for the moral) *use* of one's powers (*ibid.*).

The concern of the present section is with suicide and 'material self-mutilation.' The following

section will discuss 'formal self-mutilation.'

Kant's argument against suicide bears a striking resemblance to the argument against contractual slaver discussed above: “A human being cannot renounce his personality as long as he is a subject of duty ... it is a contradiction that he should be authorized to withdraw from all obligations” (*MM* 422). An obligation from which one can unilaterally withdraw is, Kant insists, no obligation at all (*MM* 417). Suicide represents just such a withdrawal – a renunciation of personality, and so of one's moral obligations.³⁰

This is relatively unproblematic. However, Kant goes on to write:

To deprive oneself of an integral part or organ (to maim oneself) – for example to give away or sell a tooth to be transplanted into another's mouth, or to have oneself castrated in order to get an easier livelihood as a singer, and so forth – are ways of partially murdering oneself. But to have a dead or diseased organ amputated when it endangers one's life, or to have something cut off that is a part but not an organ of the body, for example one's hair, cannot be counted as a crime against one's own person – although cutting one's hair in order to sell it is not altogether free from blame (*MM* 423).

Suicide is prohibited because it involves withdrawing from one's moral duty, and self-maiming constitutes a sort of partial suicide. It is in this light that the distinction between organs, which cannot be removed (except for the preservation of the whole) and mere parts must be understood: an 'organ' is any part of the body such that its removal might diminish our ability to pursue morally obligatory ends. To understand how this is supposed to work, suppose that I have signed a contract with you which obligates me to push a certain button with my right index finger at precisely 11:00 every morning. If I intentionally severed my right index finger, I would violate my obligation by intentionally undermining my ability to perform.

The obligations of morality are 'categorical:' they cannot be escaped. Furthermore, they require me to adopt certain ends as my own. If, for the sake of “some discretionary end” (*ibid.*), I artificially restrict the means available to me for the pursuit of obligatory ends, I violate my duty.

Moral personality requires the ability to set one's own ends and the means to them. By arbitrarily restricting my choice of means, I diminish my moral personality.³¹ I may not actively diminish my moral personality in any degree without thereby withdrawing from my obligations, and if I was permitted to do this, they would not be obligations at all. Even a tooth, Kant insists, could be used in the pursuit of obligatory ends and therefore may not be removed arbitrarily. Hair, on the other hand, is not generally useful in the pursuit of obligatory ends (or so Kant supposes) and may therefore be cut without any violation. A dead or diseased organ may even endanger my life, so that removing it actually promotes personality.

Two problems remain: first, may I maim myself in the pursuit of some obligatory end? Second, what is to be said about Kant's closing remark that “cutting one's hair in order to sell it is not altogether free from blame?” Kant asks questions analogous to the first of these in the “Casuistical Questions” at the end of this section. Although he does not answer these questions, it seems that they are intended to suggest that “deliberate martyrdom” is “an act of heroism” when the good to be achieved is great enough and, therefore that one may, for instance, be permitted to give her kidney to save the life of another (*MM* 423-424).

The second question is rather more difficult. However, it can be understood by reference to Kant's claims about sexuality in the Doctrine of Right. There Kant argued that “acquiring a member of a human being is at the same time acquiring the whole person, since a person is an absolute unity” (*MM* 278). If I cut my hair *in order to* sell it, then I give another a right over my hair while it is still a part of me, and thus forfeit my personality. If Kant's claim is read in this way, he needn't be seen as prohibiting cutting my hair *and* selling it, but only cutting my hair *in order to* sell it. The prohibition on removing even non-integral body parts in order to sell them will be absolute, since it implies an invalid grant of rights over myself to another.

V. Unnatural Sex and Formal Self-Mutilation

Kant discusses two types of formal self-mutilation: “Defiling Oneself by Lust” and “Stupefying Oneself by the Excessive Use of Food and Drink.” This section will focus on the former vice as it is the most problematic.

Kant begins his treatment of lust with a discussion of teleology. Sexuality, he says, has the natural end of procreation, by which he means that it is necessary, in order to understand human sexuality, to consider it “by analogy with an intelligent cause, and so as if it produced human beings on purpose” (*MM* 424). This, however, is a mere analogy: we ought not to posit *actual* purposiveness.³²

“What is now in question,” Kant continues,

is whether a person's use of his sexual capacity is subject to a limiting law of duty with regard to the person himself, or whether he is authorized to direct the use of his sexual attributes to mere animal pleasure, without having in view the preservation of the species (*ibid.*).

That this is still a live question indicates that it is not resolved either by Kant's statement in the *Doctrine of Right* that “it is not requisite for human beings who marry to make [procreation] their end” (*MM* 277) or by Kant's claim in the section “On Duties to Oneself As Such” that “[t]he first principle of duty to oneself lies in the dictum 'live in conformity with nature'” (*MM* 419). On the one hand, the fact that intentionally non-procreative sexual behavior can be consistent with right does not entail that it can be consistent with virtue. On the other hand, the command to “live in conformity with nature” evidently does not require adopting nature's ends as our own.³³

After identifying the question at issue, Kant defines several terms related to the topic at hand. The most important part of this discussion, for present purposes, is “unnatural lust.” Kant's definition of unnatural lust here is sometimes taken to refer specifically to masturbation.³⁴ However, I believe Kant intends the definition of 'unnatural lust' given here to be equivalent, at least extensionally, to the

definitions he gives elsewhere (e.g. *MM* 277, *L* 169-170). The definition in question runs as follows:

“[I]ust is called *unnatural* if one is aroused to it not by a real object but by his imagining it, so that he himself creates one, contrary to [natural] purpose; for in this way imagination brings forth a desire contrary to nature's end” (*MM* 425; 'natural' inserted by translator). Kant has already indicated that “unnatural [sexual] use takes place either with a person of the same sex or with an animal of a nonhuman species” and that these actions “do wrong to humanity in our own person” (*MM* 277).

Because duties to oneself are not part of juridical law (*L* 117), the *Doctrine of Right* did not include any explanation of *why* these actions are opposed to perfect duties to self. This is what Kant proposes to do here.

How are homosexuality, bestiality, and (according to *L* 170), masturbation all encompassed by this definition, and what does this have to do with their (allegedly) being “contrary to natural instinct” (*ibid.*)? According to Kant, “it is a property of reason that with the assistance of the power of imagination it can concoct desires not only *without* a natural drive directed to them but even *contrary* to it” (*Hist* 111).³⁵ This analysis is explicitly applied to sexual desire (*Hist* 112-113; see also *L* 124). The suggestion seems to be that human beings are implanted with natural drives or instincts which direct us to particular objects, but the imagination has the ability to present surrogate objects for the fulfillment of these desires in place of the natural ones. Kant says that the object of our natural sexual desire is the genitalia of the opposite sex (*L* 164). Cases of unnatural sex are cases in which the imagination substitutes another object (an artifact or human or animal body part) as the object of sexual desire.³⁶

While any analysis of homosexual attraction will be controversial, this analysis is particularly problematic. Kant takes homosexuality to depend on the faculties of reason and imagination which, he says, animals lack. However, homosexual behavior has been documented in a number of animal

species.³⁷ It is possible that either the animal cases are different from human ones, or that Kant is wrong about animals lacking reason and imagination. In fact, it seems likely that other higher mammals have the capacity to choose new food items which Kant describes.³⁸ There is also another empirical question about human homosexuality which is problematic for Kant's position: do homosexuals have the experience of at first being attracted to the opposite sex, then later conjecturing that their sexual desires might instead be fulfilled by a member of the same sex? Even if this is a common experience, that may well be due to cultural pressures and expectations.

Nevertheless, if one is committed to a teleological view of nature – even a teleology as weak as Kant's – then this position will not be entirely without plausibility. If there is any example of natural teleology to be found, surely the direction of sexuality toward procreation is such an example.

It is of note that, on this view, the 'naturalness' of sex is not dependent on the possibility of conception or the couple's belief in or consideration of such a possibility. Rather, nature directs our sexual desire toward the opposite sex and, by so directing us, nature helps to ensure that the human race continues. Any desire which is so directed is in accordance with nature, regardless of whether the end is actually furthered in one particular case.

Kant has already argued in the *Doctrine of Right* that making natural sexual use of another outside of marriage violates a perfect duty to the other, and allowing another to make natural sexual use of myself violates a perfect duty to myself. What Kant now wants to show is that unnatural sex *always* violates a perfect duty to the self. Kant does not treat this as following trivially from the unnaturalness of the act. Rather, he frankly admits that “it is not so easy to produce a rational proof” of the wrongness of these actions (*MM* 425). His position, it would seem, is that both unnatural and “merely unpurposive” sex acts are violations of perfect duties to the self, but that only unnatural sex acts are “violation[s] in the highest degree” (*ibid.*). He is, however, unprepared to offer a proof of this position.

“The *ground of proof*,” he writes, “is, indeed, that by it man surrenders his personality (throwing it away) since he uses himself merely as a means to satisfy an animal impulse” (*ibid.*).

What Kant suspects, but cannot prove, which would justify this claim is that non-marital sex cannot be a means to any end of practical reason.³⁹ According to Kant, human choice differs from animal choice in that it is “*affected* but not *determined* by impulses” (*MM* 213). Practical reason is a faculty for selecting ends and the means to them. In performing an action that can achieve no end beyond the satisfaction of animal impulse, one throws away one's personality, treating oneself as a mere animal. This constitutes formal self-mutilation. In the case of heterosexual sex, however, the end of reproduction is available.⁴⁰ Kant does not claim that we must shun animal pleasure. On the contrary, “the preservation of [one's] capacity to enjoy life, though still at the animal level only” is one of the ends of nature aimed at through man's animal impulses (*MM* 420). Kant's claim is simply that we must not, in our animal enjoyment, ever set aside our personality.

In addition to claiming that sexuality pursued for “mere animal pleasure,” when not combined with ends of reason, reduces one to the level of mere animality, Kant claims that when a person engages in unnatural sex, it “debases him beneath the beasts” (*MM* 425; see also *L* 170). Kant tells us that “[f]reedom ... is the inner value of the world. But on the other hand, freedom unrestrained ... is the most terrible of all things. The actions of animals are regular” (*L* 122). A moral person possesses “the inner value of the world.” Lawless freedom, however, is “beneath the beasts.” Natural but unpurposive sex, according to Kant, reduces us to mere animality because we allow ourselves to be determined by animal impulses rather than exercising our freedom. Unnatural sex, however, requires an exercise of freedom: practical reason, in combination with imagination, must make something which is not naturally an object of sexual desire into an object of sexual desire. It is thus an example of lawless freedom. On these grounds, Kant believes that non-marital sex constitutes a “throwing away”

of one's personality. In the case of unnatural sex, moreover, one sinks even “beneath the beasts.”

VI. Conclusion

While some of Kant's ethical claims are less radical or absurd than is often supposed, his claims are nevertheless very conservative and quite demanding. While an ethicist who is only broadly Kantian – that is, one who bases her theory on a principle similar to the Categorical Imperative – could surely escape these conclusions, it is not clear that a strictly Kantian theory can do so. Kant's applications occasionally contain loose reasoning and sometimes make use of questionable or outright false empirical premises, but these mistakes are not so widespread as to justify the tendency among Kantians to disregard Kant's applied conclusions.

The central point for understanding how these claims follow is to understand two conceptions of personality: juridical and moral. Juridical personality requires the external freedom to set and pursue ends and anyone who lacks juridical personality cannot be held guilty for violations of juridical law. This is sufficient to render invalid any contract which takes away the external freedom of one of the contracting parties by prohibiting her from setting and pursuing her own ends.

Is non-marital sexual consent such a contract? If Kant's views about the indivisibility of the person and the object of the sexual appetite are correct, then it is. Kant's views about the indivisibility of the person are significant in understanding the Formula of Humanity: I cannot use any *part* of a person as a mere means. There are, then, two avenues of escape available to Kantians who wish to avoid this conclusion: they may (1) provide an analysis of sexuality that does not involve the use of any part of the other as a means to pleasure (or reproduction, or any other end), or (2) describe some mechanism other than Kant's marriage contract by which I can gain a right to the use of the other without undermining her personality. Neither undertaking is trivial.

In this respect, Kant may seem to go too far in, as it were, enforcing freedom. There are, however, other cases in which he seems not to go far enough: domestic servitude and the marriage contract, and the denial of suffrage associated with them. These show that juridical personality, despite being strong enough to render most sexual agreements invalid, is nevertheless a fairly weak concept. It requires only that I retain the external freedom to set ends and pursue them, whether alone or in coordination with others. Thus in the contract of domestic servitude, I agree to do what my master orders as a means of pursuing my own ends, and as long as I may leave his service when I deem this means ineffective, I retain juridical personality. In the case of marriage, juridical personality is maintained by the mutuality of rights, which results in a *joint* setting of ends and choice of means to them. One individual may elect to choose means by conforming her will to the will of another (her husband) if this is the most effective way of pursuing the end she has chosen by consenting to marriage, namely, “the common interest of the household” (*MM* 279). However, she may not forfeit her power of setting ends, nor may she be restricted from using the most effective method for the selection of means: it is only in the (imagined) scenario where listening to her husband is the most effective method that marital submission may be justly required.

The denial of suffrage shows only that Kantian ethics need not (as far as Kant himself can see) be associated with any particular procedural account of democracy. It is only necessary that the subjects *consent* to the government. They may do this actively or passively, directly or through representatives, and the votes may be counted any which way, provided only that the subjects consent and that their natural rights are respected. The particular method of vote-counting Kant prefers – one vote per will – is not defended in the *Metaphysics of Morals*.

According to Kant's *Doctrine of Virtue*, there is a perfect duty to preserve internal freedom. As a result, we must not willfully destroy any of our natural capacities in the pursuit of any discretionary

end, nor may we willfully impair these faculties, even temporarily.

What is perhaps most controversial is the claim that we may not *set aside* our rational faculties: every action must be a means to some (obligatory or discretionary) end selected by practical reason. To suspend practical reason is to become an animal; to use practical reason with no end in view is to become something worse. Kant's account of 'unnatural' sex as such an abuse of practical reason and his condemnation of “even merely unpurposive” sex will find few adherents today. However, it is incumbent upon Kantians wishing to justify these behaviors to explain not only how they are consistent with proper respect for the other – and so with the preservation of juridical personality – but also what ends of reason they can be directed toward. On Kant's view, the setting aside, for even a moment, of ends selected by practical reason amounts to “throwing away” one's moral personality and is therefore a violation of a perfect duty to the self.⁴¹

- 1 See, e.g., Mary J. Gregor, *Laws of Freedom* (New York: Barnes and Noble, 1963): 53; Roger J. Sullivan, "Introduction" in Immanuel Kant, *The Metaphysics of Morals*, tr. Mary Gregor (Cambridge: Cambridge University Press, 1996): xii-xiv, xxi-xxii; Lara Denis, "Kant's Ethics and Duties to Oneself," *Pacific Philosophical Quarterly* 78 (1997): 321-348, esp. pp. 327, 331-332. Alan Soble, "Kant and Sexual Perversion," *The Monist* 86 (2003): 55-88 is positively vitriolic: according to Soble, Kant is "committed to defending at any cost his pre-analytic moral intuitions" and "engages in apologetics for the sexual-cultural order, not philosophy" (pp. 65-66). As a result, Kant's views on sexuality are "as deplorable as [they are] astonishing" (p. 56), "glutted with ... absurdities" (*ibid.*), "demented" (p. 66), and "little more than intellectual gay-bashing" (p. 81); by consideration of them, Soble says he will "deflate our pretensions that [Kant] is a Great Philosopher" (p. 56).
- 2 This concept would perhaps be better expressed in English by 'personhood;' however, I have opted for 'personality' in order to remain consistent with the standard translations.
- 3 References to Kant's works are as follows: *Anth*: *Anthropology From a Pragmatic Point of View*, tr. Victor Lyle Dowdell (Carbondale: Southern Illinois University Press, 1996); *G*: *Groundwork for the Metaphysics of Morals*, tr. Mary Gregor (Cambridge: Cambridge University Press, 1997); *Hist*: "Conjectural Beginning of Human History," tr. Allen W. Wood in *Anthropology, History, and Education*, ed. Robert B. Loudon and Günter Zöllner (Cambridge: Cambridge University Press, 2007): 160-175; *L*: *Lectures on Ethics*, tr. Louis Infeld (Indianapolis: Hackett, 1963); *MM*: *Metaphysics of Morals*; *TP*: "On the Common Saying: 'This May Be True in Theory, But It Does Not Apply in Practice'" in *Political Writings*, ed. H.S. Reiss (Cambridge: Cambridge University Press, 1970): 61-92. Page numbers in references for *Anth*, *G*, *Hist*, and *MM* refer to the Akademie editions; all other page numbers refer to translations.
- 4 Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999): 364-366n11.
- 5 See Wood, *Kant's Ethical Thought*, 118-120.
- 6 See Wood, *Kant's Ethical Thought*, 120-121.
- 7 See Mary Gregor, "Kant's Theory of Property," *Review of Metaphysics* 41 (1988): 758n3.
- 8 Kant's permission of slavery as punishment for criminals is clearly also problematic but, for reasons of space, I do not discuss it here.
- 9 These lectures are known only in a scholarly reconstruction on the basis of student notes. The question of how accurately the reconstruction matches Kant's actual teaching is controversial. One reason for supposing that the reconstructions are generally accurate is that, as can be seen in this paper, they help to make sense of Kant's published writings.
- 10 See, e.g., Irving Singer, "The Morality of Sex: Contra Kant," *Critical Horizons* 1 (2000): 175-191; Jane Kneller, "Kant on Sex and Marriage" in Paul Guyer, ed., *The Cambridge Companion to Kant and Early Modern Philosophy* (Cambridge: Cambridge University Press, 2006): 457-461.
- 11 Singer admits this, but believes that Kant's argument requires that sexual activity always have these characteristics. See "Morality of Sex," 179-183. Donald Wilson, on the other hand, has argued that the fact that sexual activity often proceeds in this way is sufficient for Kant's argument to succeed, at least in its broad outlines. See "Kant and the Marriage Right," *Pacific Philosophical Quarterly* 85 (2004): 103-123.
- 12 For a similar reconstruction of the argument, see Vincent M. Cooke, "Kant, Teleology, and Sexual Ethics," *International Philosophical Quarterly* 31 (1991): 6.
- 13 On 'morganatic marriage,' see Wilson, "Marriage Right," 115.
- 14 Discussion of 'unnatural' sexual union must be postponed to section V.
- 15 It is important to note that in the language of the *Metaphysics of Morals* a spouse is not property. Rather, the right to the spouse is to be considered *on analogy with* a property right. The lectures cited in this paper were all given between 1775 and 1780; before Kant had developed his systematic view of the matter and therefore do not use his mature technical vocabulary. Furthermore, since the notes were assembled by Kant's students and probably do not represent verbatim transcripts, it would be unsurprising to find some terminological mistakes.
- 16 For more on this point, see Wilson, "Marriage Right" 114-116.
- 17 Kneller points out that Prussian law in Kant's time already recognized divorce for "irreconcilable differences" ("Kant on Sex," 453); Kant's justification for this ground of divorce seems, however, to differ from prevailing notions.
- 18 Kant's own treatment of these facts can be found in *Anth* 303-311. In that passage Kant argues that unity of will can be achieved only if "one partner [is] superior to the other in a heterogeneous way" (*Anth* 303). Kant's description of this 'heterogeneous superiority' is too complex to be discussed in any detail here.
- 19 One might suppose that, even if it does not count as a marriage, homosexuals could nevertheless create a contract of mutual acquisition analogous to the marriage contract and thereby render sex consistent with right, even if it remains inconsistent with virtue. It seems possible to me that such a proposal might succeed without undermining fundamental points of Kant's ethical theory, and could thus provide a way for Kantians to support 'civil unions' which look very similar to marriages. However, this would suffice only for the legal or juridical permissibility of homosexuality, not for its moral permissibility.
- 20 John J. Ansbro, "Kant's Limitations on Individual Freedom," *New Scholasticism* 47 (1973): 88-99.
- 21 Kant includes under this heading "minors (*naturaliter vel civiliter*)" (*MM* 315). The intent is presumably to include both

- children ('natural minors') and adults legally treated as minors ('civil minors') as a result of, e.g., mental incapacity.
- 22 See section II, above.
- 23 Kneller, "Kant on Sex," 450.
- 24 *Ibid.* 453. Kneller supposes that this implicit commitment is simply at odds with Kant's other writings regarding women. It is also worth noting that in *TP* 78 Kant explicitly claims that women are disqualified from voting simply in virtue of being women. However, in *MM* Kant clearly means to claim that women are denied suffrage for the same reason as servants, so it is necessary to conclude that Kant changes his mind between *TP* and *MM*.
- 25 Except for permanent 'civil' minors – see above, n. 21.
- 26 It is a difficult task, and beyond the scope of this paper, to reconcile Kant's statement about the necessary conditions for laws to be binding with his claims about the impermissibility of rebellion. See esp. *MM* 318-323. Kneller, "Kant on Sex," 469-470 suggests that this tension infects Kant's account of marriage.
- 27 Ansbro, "Kant's Limitations," 94-98, complains that Kant has provided no mechanism for protecting the rights of passive citizens. This criticism is misplaced in two ways: first, the domestic servant and the spouse have both voluntarily entrusted themselves to their representative. Furthermore, the domestic servant may withdraw from the contract at will. Second, Kant is not intending to provide a manual for practical politics but a 'doctrine of right.' To borrow some contemporary legal terminology, Ansbro presents an 'as applied' challenge where only a 'facial' challenge is appropriate.
- 28 Kant uses the Formula of Humanity almost exclusively in deriving applied conclusions in the Doctrine of Virtue. See Wood, *Kant's Ethical Thought*, 139-141.
- 29 See Gregor, *Laws of Freedom*, 129.
- 30 Kant also argues for this conclusion by an explicit appeal to the Formula of Humanity: since humanity necessarily gives rise to moral personality, renouncing my moral personality must involve destroying my humanity so that I actively oppose the ends the moral law commands me to pursue (*MM* 423; see also *G* 429).
- 31 That personality can be diminished implies that it comes in degrees. This would seem to conflict with Kant's insistence on the equal value of all persons, since it means that some are persons to a greater degree than others. This problem is discussed briefly by Wood *Kant's Ethical Thought*, 121. Even more problematically, at *MM* 387, Kant seems to speak of *humanity* coming in degrees. There is not space in this paper for a thorough treatment of these difficulties.
- 32 See Cooke, "Kant, Teleology, and Sexual Ethics," 3-13; Lara Denis, "Kant on the Wrongness of 'Unnatural' Sex," *History of Philosophy Quarterly* 16 (1999): 233-239.
- 33 This also shows that the reading given by Cooke, "Kant, Teleology, and Sexual Ethics," 7-8 must be mistaken: if it were correct, then the wrongness of unnatural sex would follow straightforwardly from the teleological considerations.
- 34 See, e.g., Soble, "Kant on Perversion," 64; Gregor, *Laws of Freedom*, 139-142 refers to this vice as 'self-abuse,' but admits in a footnote that Kant may be referring to "unnatural vice in general" (139n27).
- 35 Soble, "Kant on Perversion," 62-63 briefly discusses this passage in connection with masturbation.
- 36 Kant never discusses heterosexual sex acts other than vaginal intercourse, but this line of thought suggests that he is implicitly committed to classifying such acts as 'unnatural.'
- 37 See Denis, "Kant on 'Unnatural' Sex," 232n16.
- 38 Soble, "Kant on Perversion," 73-74, specifically identifies bonobos as a species which has been documented to engage in acts Kant classifies as unnatural sex; surely the bonobo is a good candidate for having this kind of faculty if any non-human species is.
- 39 Cp. Gregor, *Laws of Freedom*, 120: "Certain actions affecting one's own person are of such a nature that to perform them necessarily implies a subjection of one's attitude of will to the inclinations, and it is this that makes the action a violation of duty to oneself."
- 40 By saying in the Casuistical Questions that sexual desire "can enter into close union with [moral love] under the limiting conditions of practical reason" (*MM* 426), Kant suggests that when the other is properly respected the expression of love or some similar end may be achieved. However, Kant does not explicitly admit this as an end of sexuality. The introduction of this end may provide an opening for a Kantian theory to permit homosexual marriage.
- 41 The author thanks Bonnie Kent for helpful comments on a previous draft.