Kant and the Problems of Sex

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KANT AND THE PROBLEMS OF SEX

By

DANIEL MACEO MENDEZ

Under the Direction of Sebastian Rand, PhD

ABSTRACT

Kant argues that sex is only permissible under the condition of marriage. In this paper, I argue that Kant’s argument for the impermissibility of non-marital sex commits him to the impermissibility of all sex. I then show how he might alter his account of sexuality in such a way that it would both allow him to avoid the conclusion that all sex is impermissible and be more consistent with his broader ethical and anthropological thought.

INDEX WORDS: Kant, Sexual Ethics, Marriage
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DANIEL MACEO MENDEZ

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For Sam and Lina
ACKNOWLEDGEMENTS

My spirit bows to Sebastian Rand, Eric Wilson, and Andrew Altman
TABLE OF CONTENTS

ACKNOWLEDGEMENTS .................................................................................................................. v

1 INTRODUCTION ............................................................................................................................. 8
   1.1 Overview ................................................................................................................................ 8
   1.2 Background ............................................................................................................................. 9

2 The Problems of Risk and Use .................................................................................................. 12

3 KANT’S ACCOUNT OF MARRIAGE AND THE PROBLEM OF SURRENDER ......................................................... 13

4 IS MARITAL SEX PERMISSIBLE? ............................................................................................... 16
   4.1 Kant’s Justification ................................................................................................................ 16
   4.2 Alternative Justifications ...................................................................................................... 18
   4.3 Moral Transformation through Legal Institutions ............................................................. 19

5 EXTANT ACCOUNTS OF THE PROBLEM OF SEX .................................................................................. 21
   5.1 A Teleological Problem? ...................................................................................................... 21
   5.2 A Social-Historical Problem? .............................................................................................. 22
   5.3 A Problem of Reciprocity? .................................................................................................. 26

6 THE SEXUAL INCLINATION, TRUE HUMAN AFFECTION, AND SEXUAL AFFECTION .............................. 28

7 HOW ARE WE TO UNDERSTAND SEXUAL AFFECTION? ........................................................................ 31

8 A MORE KANTIAN ACCOUNT OF SEXUAL MOTIVATION ................................................................ 35
HOW COULD KANT HAVE MISUNDERSTOOD HIMSELF SO BADLY?.. 37

WORKS CITED.............................................................................................................. 42
1 INTRODUCTION

1.1 Overview

Kant claims that sex is only permissible under the condition of marriage (MS 6:278). In this essay I argue that the reasons Kant provides for the impermissibility of nonmarital sex commit him to the impermissibility of all sex, and I show how he might avoid this unappealing conclusion. After a discussion of the recent rise of interest in Kant’s account of sex and marriage, I begin my argument by outlining three problems that Kant identifies in sex and determining which of these problems grounds his claim that nonmarital sex is impermissible. In (§1), I consider Kant’s account of the risks of sex (the first problem) and his claim that sex involves using another as a thing (the second problem). In (§2), I argue on the basis of Kant’s account of marriage that he takes a third problem, concerning the surrender of oneself, to be the only problem of sex that needs to be resolved in order to render sex permissible. I argue in (§3) that this third problem (that of surrender), arises from the second problem (that of use). Thus, in attempting to solve the third problem, Kant commits himself to the existence of the second problem. I argue that Kant’s account of marriage, which he produces in order to solve the third problem, is unsuited to solve the second problem, and that, contrary to Kant’s understanding of the issue, in the absence of some further solution, he is committed to the impermissibility of all sexual activity. In (§4) I consider and reject several other extant interpretations of Kant’s account of sexual ethics which do not show Kant to be so committed. These accounts fail either correctly to identify Kant’s moral criticism of sex or to recognize the inadequacy of his account of marriage to address this moral criticism. In (§5) I show that both the second problem (of use) and the third problem (of surrender) rest on Kant’s empirical account of sexual motivation. I then argue that Kant provides us with a plausible alternative model of sexual motivation in the Lectures on Ethics that would allow for the possibility of morally permissible sex. In (§6) I defend this latter claim from objections found in the secondary literature.
In (§7) I argue that this alternative account of sexual motivation accords better with Kant’s anthropology and with his broader ethical thought than does the account that he endorses. Finally, in (§8), I attempt to explain how Kant could have misunderstood himself so badly on this topic.

1.2 Background

Kant’s account of sex and marriage has received a great deal of attention in recent years. Readers familiar with Kant’s thought on these topics may find this attention surprising. Kant’s account of sex and marriage, according to which nonmarital sexual relations degrade those who are involved in them, and according to which marital relationships are distinguished from others by spouses’ lifelong possession of each other, repulses many modern readers. The distance between Kant’s view and contemporary common sense is reflected in a habit common to contemporary Kantians of opening discussions of Kant’s sexual ethics with an admission that much of what Kant has to say on sex and marriage is unacceptable.¹

The increase in interest in Kant’s account of sex and marriage is not, however, entirely mysterious. Christine Korsgaard’s Kantian work in ethics has generated a great deal of interest in Kant’s practical philosophy among philosophers. Thanks in part to the efforts of Allen Wood and others, much of this attention has been focused on those often-ignored texts in Kant’s body of work that explore the embodied aspect of human existence. Sexuality plays an important role in Kant’s account of the origin of rationality in his “Conjectural Beginning of Human History,” for example, and so it is unsurprising that contemporary Kantians find themselves closely considering Kant’s views on the matter, if somewhat reluctantly.

¹ Barbara Herman’s opening remarks in her essay, “Could it be Worth Thinking about Kant on Sex and Marriage” (2002) are representative in their caution: “Kant’s views on sex, women, and marriage would best be forgotten by anyone who wanted to take Kant seriously. Or so I always thought. In the discussion that follows, I hardly want to withdraw that thought in its entirety, but I have been struck by certain possibilities in Kant’s later work that bear thinking about. Or so I now believe” (Herman 53). Allen Wood begins his discussion of sex in Kantian Ethics (2008) by claiming that “sexual morality is probably the very last topic on which a sensible person would want to defend Kant’s views” (Wood 224).
Today’s public and scholarly debates about the nature of marriage, and in particular whether or not marriage’s purpose can be realized within same-sex or other “non-traditional” marriages, have provided another impetus for interest in Kant’s account of sex and marriage. It is sometimes thought to be a liability on the part of those who have argued in favor of marriage rights for same-sex couples that they have typically avoided presenting a conception of the purpose of marriage compatible with same-sex relationships, and have instead settled for arguing, on the basis of liberalist proscriptions against legislating on the basis of moral views, that there is simply no good reason to exclude same-sex couples from the legal, financial, and social goods of marriage (whatever marriage may be for). Kant’s model of marriage has seemed to some contemporary philosophers to identify just such a purpose for the institution of marriage. For this reason Matthew C. Altman and others have argued that Kant has something of value to contribute to contemporary discussions of marriage, although such arguments usually reject Kant’s own considered position on the matter in favor of a reformed, “Kantian” view. Kant’s account has also of been of interest to some contemporary feminists, and such prominent scholars as Barbara Herman and Allen Wood have argued that, contrary to appearances, Kant’s picture of sexual ethics has much in common with the work on sexuality of feminists like Catherine MacKinnon and Andrea Dworkin.

There are good reasons, then, behind the increase of interest in Kant’s account of sex and marriage. However, those philosophers who have attempted to recreate this account, whether to defend part of it or to reject it entirely, have generally failed either to recognize that the fundamental

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2 John Finnis (2008) offers such a criticism of proponents of same-sex marriage rights. He claims that these proponents “find a willing aid in the ideologists of equality of entitlement to esteem. The ideology [...] draws support from all whose scepticism about all human value prevents them from assessing reasonably whether the ways of life esteemed are all equally or even sufficiently compatible with common good” (Finnis 397). Matthew Altman (2010) also suggests, but on behalf of same-sex marriage proponents, that to the detriment of the public debate they have tended to rely on liberal arguments against the legislation of morals, rather than developing a positive account of the moral goods of marriage (Altman 309-310).

3 Altman (2010), etc.

4 Herman (2002), Wood (2008), and Brake (2012) differ on just how much common ground there is among Kant, MacKinnon, and Dworkin.
problem that Kant identifies in sex is specifically moral, or to identify correctly the ground of the moral problem of sex. In the first camp are scholars like Vincent Cooke and Lina Papadaki, who understand Kant’s fundamental criticism of sex in legal terms—Cooke in the teleological terms familiar from contemporary natural law arguments against same-sex marriages, and Papadaki in terms of the legal right to use another person’s body. Such legal interpretations of Kant’s account are attractive because they make Kant’s attempt at a legal solution to the problem of sex (through his account of marriage as a legal institution) intelligible. However, as I will argue below, the real problem of sex is a specifically moral problem, and that this moral problem underlies the various legal issues that marriage as a legal institution may be suited to solve.

The second camp includes such prominent interpreters of Kant as Barbara Herman, Allen Wood, and Christine Korsgaard, each of whom correctly understands the fundamental problem of sex to be moral, but misplaces the ground of the moral problem. Herman and Wood focus on the context in which sexual activity takes place—Herman on the morally unacceptable state of affairs brought about when one acts on his or her sexual desire, and Wood on the status of women within society. However, as I will argue below, Kant’s moral criticism of sex rests on a criticism of the nature of sexual activity itself, and these other problems must be understood as grounded in the morally problematic nature of the sex act. Korsgaard grounds the problem of sex in the (generally) imperfect reciprocity of sexual relationships. In his discussion of marriage as a solution to the problem of sex, Kant is certainly concerned with the reciprocity of sexual relationships. As I will argue, however, Korsgaard’s interpretation puts the cart before the horse. Kant insists that marital relationships must be perfectly reciprocal because such reciprocity is necessary if marriage is to solve a more fundamental problem that is grounded in the nature of the sex act itself.

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Kant identifies three problems with sex, and it is not immediately clear which of them (individually or in combination) he takes to imply the immorality of nonmarital sex. To begin with, Kant claims that sex puts people at moral and physical risk. Call this first problem “the problem of risk.” The moral risk of sex is that people who desire sex are often unconcerned for their partners’ well-being, and are willing to “plunge them into the greatest unhappiness” (MC 27:384) in order to enjoy their bodies. Once a lover has gotten what he wanted, he is likely to discard his partner “as one throws away a lemon after sucking the juice from it” (MC 27:385). Such callous disregard for one’s partner’s well-being violates our duty to make others’ happiness our end (MS 6:387-8). The physical risk of sex is that it may consume one’s body. For example, a woman’s body may be consumed by pregnancy, and a man’s by the repeated demands made upon his sexual capacity (MS 6:359-60).

Whatever we may think of these risks, Kant is unlikely to take them to imply the immorality of all nonmarital sex. His overriding concern in the moral analysis of action is the determining ground of the will (the reason for which one acts) (KpV 5:71). It would therefore be surprising if Kant’s argument for the immorality of nonmarital sex were to rest on what lovers are likely to do and suffer as a consequence of their sexual activity. We ought to expect Kant to point instead to a problem in the way sex is willed.

Indeed, Kant claims that such a problem lies in the inclination that leads us to have sex. Kant distances himself from those moral philosophers who censure the sexual inclination “only for its pernicious effects.” He finds an “inner abhorrenncy” in it that “runs counter to morality” (MC 8).

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8 I will make extensive use of the Moralphilosophie Collins (MC). Although MC is not authoritative (it is a collection student notes from Kant’s lectures in 1784-5), I do not believe there is danger in attributing the discussion of sex found there to Kant. Much of what Kant says in the Metaphysics of Morals (MS) reflects the view expounded in MC. See especially his discussion of masturbation (MS 6:424-5). The discussion of sex in MC also accords with that in another set of lecture notes, the Moralphilosophie Vigilantius (MV; see 27:601-2, 637-641), which reflect Kant’s position later in his career (1793-4).

9 Like many other men of his time, Kant seems to believe that women are more sexually driven than men.
27:386). The trouble with the sexual inclination is that it is directed exclusively towards the body of another as a thing, and precludes the proper regard for the humanity in its object. “As soon as anyone becomes an object” of another’s sexual inclination, “all motives of moral relationship fall away […] that person is in fact a thing, whereby the other’s appetite is sated” (*MC* 27:385). To act on this inclination (to have sex) is therefore to use another as a means to our end without maintaining the requisite regard for her humanity—as clear a violation of the moral law as one could hope to find. In fact, the problem is even worse, for lovers allow themselves to be used in the same way (*MS* 6:278). This two-fold violation gives rise to the second problem, “the problem of use.”

The problem of use is a plausibly Kantian reason for the immorality of (at least) nonmarital sex. It concerns the reason for which we have sex, not just what people are likely to do and suffer in connection with sex. However, Kant’s account of marriage indicates that he does not take the problem of use to be the fundamental problem of nonmarital sex. Since Kant takes marriage to be the sole condition under which sex is permissible, he must take marriage to resolve whatever problem it is that makes nonmarital sex impermissible. Kant does not intend his account of marriage to solve the problem of use, but to solve another problem altogether. This third problem concerns the possibility of freely surrendering oneself to another for his or her use.

### 3 Kant’s Account of Marriage and the Problem of Surrender

Kant defines marriage as the “union of two persons of different sexes for the lifelong possession of each other’s sexual attributes” (*MS* 6:277). Hence for Kant, each spouse’s legal possession of the other’s sexual attributes is the essence of the marital relationship. The other aspects of marriage—in particular, each spouse’s possession of the other’s entire person—are

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10 Recall the Formula of Humanity: “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means” (*GMS* 4:429). Since a person is an absolute unity (*MS* 6:278; see below), if I use someone’s body as a means without regarding her humanity as an end, then I use her humanity in the same way.
required for this possession of each other’s sexual attributes successfully to be acquired. The necessity of possessing each other’s entire person derives from Kant’s claim that persons are “absolute unities.” Since, on his view, persons are absolute unities, it is impossible to acquire part of another person without acquiring all of her person (MS 6:278). To acquire all of a person is not simply to acquire every part of her and her possessions, but to acquire all of this for the duration of their life. The only way to acquire an entire person for life without violating right is to exchange our own person for it (more about this below). Hence, Kantian marriage is an exchange of two persons, and not merely an exchange of sexual attributes—as Kant takes nonmarital sex to be (MC 27:387).

The problem that Kant takes marriage to solve is that lovers surrender themselves to one another. Since a person is an absolute unity, it is impossible to deal with a person’s body without also dealing with the person. To surrender one’s body to another’s use is therefore to forsake one’s person to another’s use, and this violates a right that we all have. “The natural use that one sex makes of the other’s sexual organs is enjoyment, for which one gives itself up to the other. In this act a human being makes himself into a thing, which conflicts with the right of humanity in his own person” (MS 6:278). The right of humanity is a natural, legal right to a form of freedom (independence from constraint by another’s choice); it inheres in us by virtue of our humanity (MS 6:237), our ability to set ourselves ends (MS 6:392). When I give my body to a lover, I forsake this freedom. I submit myself to constraint by the choice of the person who possesses me, and thereby violate the right of my humanity. The fact that sex involves this violation constitutes the third problem of sex, “the problem of surrender.” Kant’s reason for taking marriage to solve the problem of surrender is that each spouse, in acquiring the other, acquires the other’s possessions, including their own just-surrendered person. Thus, although each person is surrendered into the possession of

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11 The value of persons, “dignity,” is incommensurable with the value of commodities (GMS 4:434-5).
the other, each “reclaims itself and restores its personality” \((MS\ 6:278)\). The right of neither spouse’s humanity is violated, for each reacquires his person and remains free in the relevant sense.\(^{12}\)

It is appropriate, within Kant’s political philosophy, to look for a legal solution to the problem of surrender. Kant distinguishes between duties of “right” and duties of “virtue,” and divides the *Metaphysics of Morals* along this line. Right is constituted by those laws for which “external lawgiving” is possible \((MS\ 6:229)\). External lawgiving concerns the restriction of a person’s behavior to accord with the external freedom of others (or their freedom to do as they will), and its laws are appropriately enforced with coercion. External lawgiving “does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself” \((MS\ 6:219)\)—e.g., one’s desire not to be punished. In other words, external lawgiving concerns what people do, and not the reasons for which they do it. From the point of view of external law, so long as a person’s behavior does not impinge on another’s external freedom, the reasons for which he behaves as he does are irrelevant.

Both the right that is violated in the problem of surrender (the right of our humanity, or our right to independence from constraint by another’s choice) and the way in which it is violated (our giving something—in this case, our bodies—into the possession of another) are matters of right. The problem at hand is not a matter of the reasons for which people behave, but the fact that their behavior is incompatible with one another’s external freedom. Thus, the giving of external law is an appropriate way of addressing the problem of surrender. In this case, external lawgiving addresses the problem of surrender with a marital contract that brings it about that each spouse remains in possession of his or her own person and free in the relevant sense.

It would in general be appropriate, within Kant’s political philosophy, to look for legal solutions to specifically moral problems. Moral problems concern the way in which the will is determined, or the reasons for which people act. Kant claims that although we can be coerced into

\(^{12}\) For a good discussion of the marital exchange of persons, see Herman (2002), 66.
doing something, we cannot be coerced into adopting any given end, for the adoption of an end is necessarily an unconstrained act: “to have an end that I have not myself made an end is self-contradictory, an act of freedom which is not free” (MS 6:381). The problem of use discussed above is a specifically ethical problem, for it concerns the impermissibility of the attitude towards each other that lovers necessarily adopt in virtue of the end for which they have sex—the satisfaction of their sexual inclination. A solution to the problem of use would require lovers to have sex for the sake of some other end than the satisfaction of their sexual inclination; thus, for Kant, a legal arrangement like marriage would be fundamentally incapable of providing such a solution.

4 IS MARITAL SEX PERMISSIBLE?

4.1 Kant’s Justification

Although we may find Kant’s account of the marital exchange baffling, let us grant that it solves the problem of surrender. Kantian marriage seems suited to address the problems of risk as well. Since each spouse possesses everything that the other possesses, “neither will be subject to happiness or misfortune […] without the other taking a share in it” (MC 27:388). Spouses therefore have prudential reasons to take care of one another. Since the problems of risk are in fact risks, or mere possibilities, the spouses’ acquisition of these prudential reasons seems prima facie adequate to address them.

All that remains is to determine whether marriage solves the problem of use. Kant indicates that marital sex is motivated by the same inclination as nonmarital sex. Since this inclination precludes the requisite regard for its object’s humanity and thus produces the problem of use, Kant’s

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13 Marriage is “the sole condition […] under which there is freedom to make use of one’s sexual impulse” (MC 27:388). A man can only “desire a woman in order to enjoy her as a thing […] under the condition of marriage” (MS 6:359, emphasis mine). It would be inconsistent for Kant to hold that marriage brings about a change in the inclination that we satisfy in having sex, for this would be the sort of internal act for which external lawgiving (to which marital rights and obligations belong) is insufficient.
account of marriage must provide a solution to the problem of use if he is to endorse the permissibility of marital, as opposed to nonmarital, sex. Yet reflection reveals that nothing we have seen in Kantian marriage provides such a solution. For Kant, the key transformation brought about by marriage is that it allows spouses to give themselves to one another for sexual enjoyment without losing their persons. However, whether or not someone possesses her person, it is immoral to use her as a mere means to an end. Given the nature of the sexual inclination, and Kant’s commitment to the view that all sex is motivated by this inclination, it seems that we cannot have sex without immorally using a person as a mere means to an end.

In focusing on solving the problem of surrender, rather than on solving the problem of use, Kant effectively treats a symptom rather than the disease. It is Kant’s picture of sex as the use of another as a thing that leads him to believe that sex requires surrendering oneself. Kant does not explain why sex requires surrender except by appealing to the way lovers use one another, in what are just elliptical statements of the problem of use (e.g., MS 6:278, 6:359-60).\(^\text{14}\) If Kant saw (at least some) sex differently—as a joint enterprise undertaken by two human beings who recognize each other as such, rather than as two people suffering solipsistic fits and trying to use each other as toys—he would not have to address the problem of surrender. However, even if Kant were to allow for the possibility of having sex out of something other than the sexual inclination, this grounding of the problem of surrender in the problem of use would be sufficient to render marriage ineffectual as a way of rendering sex morally permissible. If, on the one hand, it is possible to have sex out of something other than the sexual inclination (and thereby to avoid the problem of use), this possibility cannot be realized by marriage. If, on the other hand, one is motivated to have sex solely

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\(^{14}\) “The natural use that one sex makes of the other’s sexual organs is enjoyment, for which one gives itself up to the other” (MS 6:278); “A man cannot desire a woman in order to enjoy her as a thing, that is, in order to take immediate satisfaction in merely animal intercourse with her… that is, this can be done only under the condition of marriage” (MS 6:359).
by the sexual inclination, then marriage’s possible resolution of the problem of surrender will be insufficient to render one’s sexual activity morally permissible.

4.2 Alternative Justifications

So far we have seen that the feature of Kant’s account of marriage that he takes to solve the problem of surrender—each spouse’s acquisition of the other’s person—leaves the problem of use unsolved. Perhaps, however, another aspect of Kant’s account can solve the problem of use. Two possibilities present themselves. First, it could be that spouses are simply within their legal rights to use one another, and do no wrong in exercising this right. This is the justification for marriage’s moral transformation of sex that Lina Papadaki (2010) seems to endorse. Papadaki puts the point in the following way: “If a man (M) has a right over the whole person of a woman (W), it follows that M has a right over the body of W, and so M is allowed to use W sexually” (Papadaki 278). Some aspects of Kant’s account of sex—in particular, his grounds for rejecting concubinage and prostitution as candidate solutions to the problem of sex—do lend themselves to this suggestion.\(^\text{15}\) However, since the problem of use rests on the immorality of using another person as a mere means to an end, and not on the mere illegal use of another’s property, the acquisition of a legal right to use one’s spouse’s person is not suited to solve the problem.

A more promising possibility is that the marital contract makes it possible for spouses to regard one another as persons during sex—that is, that marital sex is motivated by something other than the sexual inclination as Kant characterizes it. Unlike Kant’s solution to the problem of surrender, or the possible legal solution suggested by Papadaki, this suggestion has the virtue of addressing the attitude towards one another that spouses take during sex. On the view suggested here, marriage

\(^{15}\) Kant argues that concubinage, which “occurs when a person surrenders to the other merely to satisfy inclination, but retains freedom in regard to other circumstances affecting their person,” fails to render sex permissible because in using a person’s body we use their whole person, and therefore use more than we have a right to (MC 27:387-8). Since spouses have a right over each other’s entire person, marriage does not face the same problem.
would suffice to bring about a change in this attitude, by providing spouses with some form of the sexual inclination that avoids the problem of use. We have seen, however, that on Kant’s own view legal rights and obligations are not related to internal acts of the mind (such as the attitude that spouses take towards one another) in the way that they would have to be for this suggestion to work (MS 6:239). If Kant is to allow the possibility of having sex out of something other than the sexual inclination, as he must if he is not to commit himself to the immorality of all sex, he cannot consistently hold that marriage, understood as external lawgiving, realizes this possibility or is required for its realization.

4.3 Moral Transformation through Legal Institutions

Perhaps a more sophisticated understanding of the moral significance of legal relationships can lend support to Kant’s legalistic solution to the problem of sex. Consider for instance Matthew C. Altman’s attempt to defend Kant’s solution from a similar criticism mounted by Elizabeth Brake (Altman 2010, Brake 2012). Brake argues that the problem that Kant intends marriage to solve is a matter of virtue (because it concerns the ends we have in acting), and that marriage, as an institution of right concerned solely with the regulation of behavior, is not suited to solve it. Altman claims that Brake has missed the moral significance of those legal relationships, like marriage, into which one enters voluntarily, and makes a case for the moral necessity of marriage in sexual relationships. Altman contrasts Kant with those political philosophers, like Locke, who see the law as primarily protecting arrangements and relationships that could exist in its absence. On Kant’s view, the law is in some sense morally transformative, though not in the sense of bringing about some change in a person’s disposition or inclination (the law renders no one virtuous). Legal arrangements may open

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16 For a good discussion of the distinction between the doctrines of right and virtue as it pertains to Kant’s account of marriage, see Elizabeth Brake (2012), 66-71.

17 Brake’s (2012) criticism differs from mine in that she is less concerned with the moral threat posed by sexual desire and activity themselves than with the tendency of lovers to treat one another poorly (put another way, Brake focuses on the problems of risk rather than the problem of use).
the possibility of forming certain morally significant arrangements and relationships. For Kant, it is only in “agreeing to limit my freedom so that my actions can be consistent with the freedom of others, and by consenting to coercion that would constrain my actions accordingly,” that “I fully recognize other people as beings who are worthy of respect” (Altman 316). We have a duty to adopt the ends of others as our own; in order for us properly to do this, we must attempt to prevent ourselves from obstructing the outer freedom of others; and we do this by agreeing to coercively enforceable legal restrictions on our own behavior. Altman argues that the significance of the legal institution of marriage is to be understood in this way. In order for me to maintain the morally required respect for my sexual partner in the face of the degrading nature of our desire for one another, I must voluntarily enter into an arrangement under which my behavior may be coercively constrained to accord with his or her freedom. The central point is not that law enforcement now has a role to play in our relationship, and that we are therefore safe from moral violations, but that our voluntary adoption of legal constraints on our behavior towards one another manifests and, in some sense, secures the regard for others that is morally required of us (Altman 318-319).

If Altman’s argument is taken as a Kantian defense of the sufficiency of marriage for morally permissible sex, then the argument begs the question. For if sexual activity does in fact violate the moral law, as I have argued that Kant’s claims about sexual desire commit him to holding, then sex with one’s partner would be the sort of activity that we must agree to be coercively prohibited from doing in order to manifest the proper respect for the ends of other persons—not an act that is made permissible in virtue of our submitting ourselves to such coercive constraint. So the Kantian conception of such submission as morally transformative does nothing to support the claim that marriage is necessary for morally permissible sex—let alone to explain how the acquisition of marital rights and obligations could be sufficient to make sexual activity morally permissible. Without some new conception of the nature of sexual desire, all that Altman’s argument regarding the
morally transformative role of legal institutions can show is that we may be morally obligated voluntarily to submit ourselves to the coercive prevention of all sexual activity.

5 EXTANT ACCOUNTS OF THE PROBLEM OF SEX

5.1 A Teleological Problem?

Although many of those who have written in recent years on Kant’s account of sex and marriage agree that, for Kant, the fundamental problem of sex involves the use of another as a thing, there is little agreement in the literature on the proper way to understand this violation. Some scholars disagree even with this most basic interpretation of Kant’s view. Vincent Cooke, for example, interprets the basic Kantian problem of sex in teleological terms. On his view, the reason why some forms of sexual activity (including both bestiality and nonmarital sex more generally) are immoral is that they contradict the natural end that humanity has in sexual activity: to preserve the species without debasing the person (Cooke 7). The immorality of nonmarital sex lies not in the ways in which lovers use one another but in a contradiction between the sort of action that the lovers perform and the principle that specifies their reason for doing so (Cooke 8). Sexual acts have a natural end (procreation), and in the case of nonmarital sex this natural end is contradicted by the principle that specifies the reason the given lovers actually have in performing these acts. Their reason is not the respectful procreation of the species, but either the use of one another’s bodies for the sake of pleasure or the procreation of the species in a way that does not respect human dignity.

Kant does occasionally use teleological language in discussing the immorality of nonmarital sex, but it is only in rejecting sex acts other than those involving one man and one woman that he explicitly relies on claims about the natural end of our sexual inclination (e.g., MS 6:277). As we have

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18 See, e.g., Kant’s discussion of the “crimina carnis contra naturam” in the Lectures on Ethics (MC 27:391-2).
seen, when Kant discusses the moral status of sexual activity between men and women, the fundamental problem that he identifies is not a conflict between the natural end of human sexuality and the reasons for which people have sex, but a conflict between the moral requirement not to use persons as though they were things and the way in which we necessarily regard those whom we desire sexually. Furthermore, there are good Kantian reasons to reject those arguments of Kant’s against same-sex sexual relations that do rely on teleological claims about the natural end of the sexual inclination. Altman has made a persuasive case that, contra Cooke, these teleological arguments are inconsistent with Kant’s broader ethical thought, for “being obligated by natural laws […] would contradict the rational autonomy that forms the basis of our obligation to the categorical imperative” (Altman 323). Furthermore, as Allen Wood has shown, it is inconsistent of Kant to insist that a fixed, “natural” end of our sexual capacities sets the standard for their morally acceptable use. According to the account Kant gives of the natural development of human rationality, what is distinctive about human sexuality is that through the mediation of the imagination our sexual desire becomes detached from the objects and ends given by our animal nature (Wood 230-234). Given the sophistication of Kant’s account of human sexuality, the teleological account of Kant’s sexual ethics offered by Cooke is an implausible defense of Kant’s position, even regarding those cases where Kant himself relies on teleological arguments—let alone on those in which he does not, as in the case of nonmarital sex between persons of different sexes.

5.2 A Social-Historical Problem?

In the work of those scholars who agree that the fundamental problem of sex lies in the way that sexual desire affects our regard for those persons towards whom we are sexually attracted, there are

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19 Wood (2008) develops the claims about sexuality that Kant makes in the “Conjectural Beginning of Human History” into a Freudian account of sexuality opposed to the account given by Kant in the Lectures on Ethics and the Metaphysics of Morals. Wood’s account can be seen either as an alternative to the account I give in the sections below or as lending this account support.
several extant interpretations of this problem. Scholars such as Barbara Herman and Allen Wood place the problem of sex in the social context within which sexual activity takes place, rather than in sexual activity itself. Barbara Herman, in “Could it be Worth Thinking about Kant on Sex and Marriage?” (2002), correctly points out that for Kant sex is morally problematic because of the sexual inclination’s orientation towards the body of another. “Since the body is an inseparable part of the person […] the sexual appetite, in taking the body of the object as its interest, compels regard of the person as an object (or blocks regard for the body as the body of a person)” (Herman 60). However, in reconstructing Kant’s view, Herman focuses not on this orientation of the sexual inclination, but on the state of affairs that is brought about when people act on the sexual inclination so construed. In this state of affairs, because a person\(^{20}\) is regarded as an object, his or her interests are not considered as grounds for moral regard. Hence, the objectification that is built into the sexual inclination “makes the path from sexual use to abuse open” (Herman 62). Sexual activity makes it the case that one’s moral personhood is, in some sense, not in force; even if one’s lover happens to treat one as a person (to take consider his interests as grounds for moral regard), this treatment is contingent in a way that is morally unacceptable.

Interpreting Kant’s account in this way has two principle advantages: first, by focusing on the circumstances that arise as a result of sexual activity, Herman makes her reconstruction more palatable to contemporary readers; for we are accustomed to thinking of sexual ethics in social-historical terms, and to treating the nature of sexual desire itself as morally innocuous (perhaps even to denying that sexual desire has any concrete nature, let alone nature could be morally dangerous). Second, it is Herman’s primary concern to defend the now-unpopular Kantian claim that, in some areas of life, public institutions can perform morally transformative roles. We have seen above that

\(^{20}\) I am speaking of only one person because, for Kant, masturbation faces the same basic moral problem as sex between two or more persons.
Kant belongs to a tradition in political philosophy that regards the state, not just as recognizing and preserving arrangements that could exist in the absence of a state, but as making possible certain morally important relationships. By placing the central moral problem of sex in the state of affairs brought about by sexual activity (rather than in the nature of sexual activity itself), Herman makes it more plausible that acquiring legal rights and obligations through voluntary entry into a state-sanctioned institution might solve the problem of sex, and make it possible to enter into a sexual relationship in a morally permissible way.

Kant and Herman give us good reason to believe that sexual activity does bring about the morally unacceptable state of affairs that Herman claims it does; and if this is the case, then perhaps marriage as Kant conceives of it is an appropriate way of addressing this problem. However, for reasons we have seen above, Kant’s account of the morally problematic nature of sexual activity itself commits him to the impermissibility of marital as well as nonmarital sexual activity, whether or not marriage would be necessary to morally transform the state of affairs brought about by sexual activity. Herman correctly (if somewhat vaguely) identifies Kant’s moral criticism of sexual activity itself (Herman 59-60), and cannot therefore consistently argue that a legal institution like marriage suffices to render sexual activity morally permissible.

Furthermore, there is little reason to take the legal institution of marriage even as a necessary condition of the moral permissibility of sex. Any solution sufficient to render sex morally permissible will involve the possibility of acting for the sake of some end other than the satisfaction of our sexual inclination (as construed by Kant); and since the moral problem with the state of affairs brought about through a person’s acting upon her sexual inclination depends in some way upon the problematic orientation of this inclination, it would seem that acting upon another, morally

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21 Herman (2002) correctly identifies this account (Herman 59-60) before turning to the state of affairs brought about by sexual activity.
neutral inclination would suffice to preclude this unacceptable state of affairs from coming about. Thus, Herman’s interpretation of marriage’s morally-transformative role promises us no solution to the problems of sex.

To my knowledge, the closest Kant comes to arguing that the real moral problem of sex lies in the morally unacceptable state of affairs brought about by sexual activity (as Herman suggests) is in a passage in the lectures on ethics. There, Kant claims that, because the person driven by his or her sexual inclination sets humanity aside as a ground of value, “any man or woman will endeavor to lend attraction, not to their humanity, but to their sex, and to direct all actions and desires towards it” (MC 27:385). The sexual inclination leads us to misjudge our own and others’ value, in terms not of our ability to set ourselves ends (our humanity) but in terms of our “sex appeal” (to use an anachronistic phrase). The ultimate result of this misjudgment is that “humanity becomes an instrument for satisfying desires and inclinations,” and it is therefore “in peril of being equated with animality.” Here Kant seems to be focusing on a broad social problem resulting from the nature of the sexual inclination. The problem, however, is simply the problem of use writ large. The social problem is not more fundamental than the problem of use, but is in fact an extrapolation of it.

Allen Wood devotes a chapter of Kantian Ethics (2008) to Kant’s account of sexuality, and in it offers an interpretation similar to Herman’s. Like Herman, Wood is concerned to show that at least some aspects of Kant’s account of sexuality are worth considering, and it is perhaps for this reason that he focuses, as did Herman, on the social and historical aspects of Kant’s account, rather than on the nature of sexual desire itself. On Wood’s interpretation, the chief determinant of the fact (as Kant sees it) that sexual desire threatens human rights and dignity is that “men systematically stand

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22 We must note that Kantian Ethics is not intended as a straightforward exposition of Kant’s own views (Wood distinguished between “Kantian ethics” and “Kant’s ethics”); however, Wood does attribute this interpretation of the problems of sex to Kant, and it is not therefore inappropriate to consider this as an attempt to “get Kant right.”
in a decisively superior relation of power – physical, social, economic – over women” (228). Wood provides no textual support for this claim. Indeed, although in the Anthropology Kant does make some surprisingly enlightened comments about the position of women in society and how it relates to the alleged fact that women are valued primarily as objects of erotic interest, there is no textual support to be found anywhere in Kant’s discussions of sex for the claim that the social status of women is the chief determinant of the various moral problems of sex.

When Kant discusses the moral problems of sex, he clearly understands these problems to be perfectly reciprocal—and sometimes in ways that reveal his misogyny, as when Kant treats as equivalent the consumption of a woman’s body by pregnancy (and the possibly fatal delivery following from it) and the consumption of the man’s sexual capacity by the frequent demands that the woman makes upon him. Furthermore, the fact that Kant identifies in male masturbation the same problem that he identifies in sexual activity between men and women gives us a strong reason to deny that, for him, the central problem of sex is determined by the social status of women.

Thus, Wood’s interpretation of Kant’s position, no matter how plausible as an independent account of sexual ethics, cannot stand as a representation of Kant’s view.

5.3 A Problem of Reciprocity?

Finally, in Creating the Kingdom of Ends (1996), Christine Korsgaard briefly considers Kant’s account of sex and marriage. She correctly points out that, for Kant, the fundamental problem of sex lies in the orientation of the sexual inclination towards the body of another (Korsgaard 194). However, Korsgaard pivots away from this interpretation and ends up arguing that “extramarital sex is forbidden only because the woman, as Kant supposes, does not then have the same rights over the

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23 See, e.g., Anth 7:309-10. These remarks are “surprisingly enlightened” given the many sexist claims Kant makes in the Anthropology and elsewhere—e.g., his claim that, although the general project of anthropology concerns what man can make of himself, in order to understand women one must understand their natural end (Anth 7:305-6).
24 See “On Defiling Oneself by Lust” in the Metaphysics of Morals (MS 6:424-5)
man that he has over her” (195). On Korsgaard’s view, the fundamental problem of sex lies in the imperfect reciprocality of the rights that sexual partners have over one another, and this imperfection is grounded in the relative inferiority of the social status of women in Kant’s (and our own) society. Korsgaard appears to be drawing from claims that Kant makes in the *Metaphysics of Morals* regarding the unsuitability of prostitution, concubinage, and in particular “morganatic” (or unequal) marriages as candidate solutions to the problem of sex (*MS* 6:278-9). Kant claims that a morganatic marriage, in which one spouse (usually the wife) is denied rights over the other’s property or titles, “is no true marriage” (*MS* 6:279). Kant claims, furthermore, that the inequality of a morganatic marriage renders it no different from concubinage, and seems to imply that inequality is what rules out both concubinage and prostitution as solutions to the problem of sex as well. This focus on the equality of any morally acceptable sexual relationship may lead the reader to believe that reciprocality is the fundamental issue in sex. However, this would be to put the cart before the horse. Kant insists on the perfect equality of marriages because this equality is a necessary condition of the marital exchange discussed above, in which two persons grant each other a right over their entire person, and regain themselves in taking possession of the other. This exchange of persons is itself necessary to solve the problem of surrender. For Kant, even a nonmarital sexual relationship between two persons of equal social standing, with no possibility of immoral consequences, would give rise to the problem of surrender, because it would involve the problem of use. Thus, Korsgaard’s interpretation of Kant’s account, which makes the imperfect reciprocality of sexual relations the fundamental issue, puts the cart before the horse.
6 THE SEXUAL INCLINATION, TRUE HUMAN AFFECTION, AND SEXUAL AFFECTION

As we have seen, the heart of Kant’s criticism of sex is his analysis of the sexual inclination. Given that the sexual inclination is as Kant believes it to be, to act upon this inclination is to violate the moral law, and this violation produces the legal problem of surrender. The nature of the sexual inclination would also seem to explain why sex poses a moral risk. In the remainder of this paper, I examine Kant’s account of the sexual inclination, and argue that Kant ought to adopt another model of sexual motivation that allows for the possibility of morally permissible sex.

Kant’s account of the sexual inclination is supposed to be empirical. For Kant, an inclination is a “habitual sensible desire” (APH 7:251). “Desire” here refers to an activity of the faculty of desire, “the faculty for producing objects by one’s representations” (MM 29:893-4), through which humans act. A “sensible” desire is an activity of the faculty of desire that has pleasure as its incentive (MS 6:212). An inclination, then, is a habit of wanting to act (or possibly a disposition to act) in a certain way for the sake of pleasure. Inclinations arise from our natural existence, not from reason or from the structure of experience (GMS 4:444), so any account of an inclination must be subject to revision in the light of experience.

The sexual inclination is a habit of wanting to use (or perhaps a disposition to use) another’s body for the sake of pleasure. Kant claims that it is one of the strongest impulses of nature (APH 7:276), and that the pleasure we get from acting upon it is the strongest possible sensible pleasure in an object (MS 6:426). The sexual inclination is so common that someone without it would be considered imperfect (MC 27:385). Yet despite being such a powerful and general feature of human psychology, the sexual inclination as Kant characterizes it is unique in his account of psychology, for, unlike any other inclination, it is directed exclusively towards the bodies of others as things (MC 27:384). For this reason, the sexual inclination is “cannibalistic in principle (even if not always in its
effect)” (MS 6:359); and since Kant denies that there is any inclination towards cannibalism per se (MC 27:384), the sexual inclination is the only cannibalistic inclination that we have. Inclinations towards the mental states or acts of will of others are much more common—for example, “true human affection,” an inclination to promote the happiness of others for the sake of the pleasure that this gives us (MC 27:384). Since Kant conceives of the sexual inclination as directed, unlike true human affection or any other inclination, exclusively towards another’s body, he is led to believe that the sexual inclination is incompatible with the proper regard for the humanity in others. “Since the sexual impulse is not an inclination that one human has for another, qua human, but an inclination for their sex, it is therefore a principium of the debasement of humanity” (MC 27:385). At the root, then, of the problems of use, surrender, and the problem of moral risk lies Kant’s empirical claim that the inclination to have sex is uniquely and exclusively directed towards the bodies of other people.

Although readers may find Kant’s empirical account a plausible description of some forms of sex, they are unlikely to find it adequate as an account of sexual motivation per se. We tend to think that some of the pleasure of sex can and ought to derive from the mutuality of our enjoyment. Kant warns that lovers allow each other to enjoy their bodies, but he does not draw from this the conclusion that is commonsensical to us: that, in having sex, we take our partners to enjoy our bodies as we enjoy theirs, and that their enjoyment contributes to our own.

Kant does, however, make a suggestion along these lines in his lectures on ethics. He claims that “the sexual inclination can […] be combined with [true] human affection, and then it also carries with it the aims of the latter” (MC 27:384).25 Recall that true human affection is an inclination to promote the happiness of others for the sake of the pleasure that this gives us. Although promoting others’ happiness for the sake of our own pleasure is not morally valuable (KpV 5:71), it

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25 To my knowledge, this suggestion appears only in the Moralphilosophie Collins. We ought, therefore, to be careful attributing it to Kant. However, even if he does not endorse this possibility, he ought to, for reasons given below (§7).
is not immoral, either, and the possibility that the inclination to do this can be incorporated into the sexual inclination provides a plausible solution to the problem of use. Call the inclination that results from the combination of the inclination to promote the happiness of others and the sexual inclination “sexual affection.”

Someone with sexual affection would regard the object of this inclination as a human being, and sexual affection would therefore not give rise to the problem of use. To promote another’s happiness is to make her morally permissible ends my own (MS 6:388). In the case of sex, one of my partner’s ends is sexual enjoyment, an end given by nature. Yet I would not really be promoting her happiness if I were to focus on promoting this one natural end to the detriment of the ends she has set herself—that is, her distinctly human ends. Acting out of sexual affection therefore requires regarding others as capable of setting themselves ends, which is to regard them as human beings (MS 6:392). Thus, although sex motivated by sexual affection would be self-interested (we would still be pursuing our own pleasure), it would not give rise to the problem of use.

Lest it be objected that to act out of sexual affection is still to use another as a means to our pleasure, and that it therefore violates Kant’s moral law, let us note that on Kant’s view it is not always immoral to put others to use. What is morally required of us is that we take the right attitude towards others when pursuing our pleasure—that we treat the other in question as a human being who is in a position to help us in the promotion of our happiness (as a means to happiness that is at the same time an end in itself), rather than as a tool to be used for the satisfaction of our inclinations (as a mere means). When acting out of sexual affection, we would take the former, morally neutral

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26 It has been suggested to me that it might be possible to have sexual affection for non-human animals, in which case to have sexual affection for a being would not necessarily be to regard that being as a human. Perhaps it would be more accurate for me to say that, given that the object of one’s sexual affection is a human being, one would have to regard him or her as a human being. If something more needs to be said to address this possibility, perhaps it will suffice to say that that true human affection is, by Kant’s stipulation, affection for other human beings.
attitude towards our partners, and the sex that we have in this way would therefore be as morally innocuous as a friendly game.

7 HOW ARE WE TO UNDERSTAND SEXUAL AFFECTION?

If sexual affection is to provide a Kantian solution to the problem of use it must do so within the framework of Kant’s psychology. The fact that Kant did not take sexual affection to provide such a solution, and instead turned to an account of marriage in order to solve the problem, may indicate that sexual affection, properly understood, is not a viable solution. We must therefore see whether or not it is consistent with Kant’s psychology to hold that the sexual appetite might be combined with true human affection in such a way as to obviate the problem of use.

Many of those who have written on Kant’s account of sex in recent years have attempted to show what Kant did not bother to: that the problematic orientation of sexual desire towards the body is not changed in a morally significant way by the combination of this desire with true human affection. These authors differ in their reasons for denying that sex motivated by sexual affection might be morally permissible. Wood (2008), for example, places the insufficiency of sexual affection in the fact that the combination of the two inclinations “is always contingent and unstable” (Wood 226). Sexual affection would be, like sexual desire and true human affection, an inclination, and inclinations are contingent and unstable. However, it is not clear that its instability would rule sexual affection out as a solution. My having sexual affection towards another at one time does not, of course, guarantee that I will always have it towards him or her, but the contingency of sexual affection alone would not make it immoral for me to act upon it. Given that sexual affection has as its object the happiness of the person towards whom it is directed, then if I act upon sexual affection in having sex with another, I do not treat him or her as a mere means to my pleasure, and
the problem of use does not arise. If it were a necessary condition of the moral permissibility of a
certain sort of action that it be impossible ever to perform that action for a morally impermissible
reason, then it would be hard to imagine a morally permissible action. Consider that it is possible to
help someone in need for a bad reason—e.g., to humiliate them. The mere possibility of so acting
does not mean that I would be doing something wrong were I to help someone in need for the right
reason (that I take it to be my duty to do so), no matter how contingent my having this morally
appropriate attitude towards the other may be. So it would seem that Wood’s reason for denying the
moral permissibility of sexual activity motivated by sexual affection does not work.

A stronger basis for denying that sexual affection might render sex morally permissible is the
denial that the sexual appetite is itself altered at all when it is combined with true human affection.
Perhaps the account given of sexual affection above plays up the combination of these inclinations:
it may be more accurate to understand the two inclinations as mixed together, rather than
synthesized into one new inclination. Recall how Kant introduces the combination of these two
inclinations: “the sexual inclination can […] be combined with [true] human affection, and then it
also carries with it the aims of the latter” (MC 27:384). Herman (2002) points out that this is not the
language of transformation (Herman 64). On her reading, even in combination with true human
affection, the sexual appetite would retain its morally problematic orientation. Allan Beever (2013)
understands the problem with sexual affection in the same way: “While A can possess both genuine
affection27 and sexual desire for B, A’s natural affection does not make her sexual desire anything
other than the desire for B as a thing” (Beever 344). If sexual affection is best understood not as a
third inclination synthesized out of the first two, but as a mixture of two inclinations that retain their
distinctive orientations (namely, towards the body of another and towards his or her happiness),

27 (Beever is referring to true human affection)
then it seems likely that to act upon sexual affection is no more permissible than to act upon the
sexual inclination alone.

My central claim is that if it is to be possible to have sex in a morally permissible way, then it
must be possible for us to act out of something like sexual affection as I characterized it in the
section above. Perhaps it is an error to read Kant’s claim about the combination of the sexual
inclination and true human affection as I have; and the fact that Kant himself did not take this
combination to point toward the possibility of morally permissible sex ought to give us pause. But
even if the interpretation given above is mistaken, sexual affection so construed is the sort of
solution that is required, since the institutional solution that Kant and those who defend his account
claim to find in marriage cannot solve the problem of use. It would be convenient if an appropriate
solution could be found within Kant’s work, but it is not essential to my claim that such a solution
could be found there. It strikes me as plausible—even commonsensical—that we can have a sort of
sexual inclination the object of which is not merely the body of another but his or her happiness as
well, whether or not what Kant discusses in the Lectures ought to be understood this way. Surely
what we desire in the normal case of sexual desire is not just the opportunity to do as we will with
the body of the other, but to please the other, to satisfy a desire of his or hers.

Not only is this suggestion commensensical, it has much to recommend it as an
interpretation of Kant’s discussion of sexual affection. When Kant introduces the possibility that the
sexual inclination can be combined with true human affection, he writes that, in such a case, the
former carries with it the aims of the latter. It is hard to know what “carries with it the aims of the
latter” means, if not “aims at that towards which the latter aims.” If this is what Kant means, then,
since the aim of true human affection is the happiness of others, when the sexual inclination is
combined with true human affection, one of the aims of the sexual inclination will be the happiness
of others (including the object of this inclination qua sexual inclination). Since what was morally
problematic about the sexual inclination was that it was directed towards the body of another to the
exclusion of any consideration of their desires, once the aims of this inclination are expanded to
include not just the enjoyment of another’s body but the enjoyment of his or her happiness then the
problem of use will be obviated. If, on the other hand, Kant means something else when he claims
that the sexual inclination can carry with it the aims of true human affection, then it is puzzling why
he would use this language at all.

It remains a puzzle how we are to understand the combination of the sexual inclination and
ture human affection. Even if, as I have argued, the sexual inclination changes its orientation when
combined with true human affection, such that it is aimed not only at the body of the other but
towards his or her happiness as an embodied being, it is not clear how we are to conceive of the
relationship between the sexual inclination and true human affection after they are combined. There
seem to be at least two ways of plausibly conceiving of their combination. First, the two inclinations
may be synthesized into a distinct, third inclination. This is the conception with which I have been
working. Alternatively, the inclinations may act in concert while remaining distinct—that is, I may be
motivated to act by both simultaneously. Which of these two conceptions is closer to Kant’s will
depend on the proper interpretation of Kant’s philosophy of action—in particular, on whether or
not Kant takes it to be possible to act on the basis of more than one inclination at a time. For the
purposes of this essay, however, it is not important which conception of sexual affection is Kant’s,
so long as, on the latter conception, a person still adopts as an end the promotion of his or her
partner’s happiness in acting upon sexual affection—and this would seem to be the case.

28 Any lesser connection between the two inclinations—e.g., their both existing within one person, thought not
simultaneously effective—could not, I take it, be plausibly described by Kant’s words in the Lectures.
8 A MORE KANTIAN ACCOUNT OF SEXUAL MOTIVATION

Kant has two good reasons to allow for the possibility of the synthesis of the sexual desire and true human affection. The first is that, as it stands, Kant’s account of sexual motivation has implications that are inimical to his own ethical thought. It commits him to the immorality of sex, which means that his conception of virtue must involve abstention from the satisfaction of one of our strongest natural impulses (APH 7:276). This implication would trouble Kant. He holds that we have a duty to promote our own happiness, for “adversity, pain, and want are great temptations to violate” the moral law (MS 6:388). Kant singles out abstention from sexual pleasure as a source of temptation when he claims that the time between a man’s sexual maturation and his being able to marry is scarcely filled “with anything else but vices” (APH 7:325). Thus, Kant’s account of sexual motivation commits him to our being obligated to incur terrible temptation through sexual abstinence. This is not an absurdity (we may just be so unlucky), but Kant would want to avoid such a result. He disparages those “strict moralists, and those who wish to be taken for saints,” who seek to repress the sexual inclination (MC 27:385). These would-be-saints do a disservice to humanity by representing virtue as something grim and unappealing. Kant makes a similar point in the Anthropology, defending the length of his account of dinner parties: “the cynic’s purism and the anchorite’s mortification of the flesh, without social good living, are distorted forms of virtue which do not make virtue inviting; [...] they can make no claim to humanity” (APH 7:282). If Kant does not allow for the possibility that we can be motivated to have sex from something other than the sexual inclination (such as sexual affection), then he is in danger of becoming a moral anchorite.

The suggestion that it is possible to be motivated to have sex by sexual affection is also more consistent with Kant’s anthropology than the model that he endorses. As Kant characterizes it, the sexual inclination is immoral—it involves a disposition to violate the moral law. Kant, however,
denies that inclinations can be immoral. “Considered in themselves,” inclinations “are good […] and it is not only futile to want to extirpate them but to do so would also be harmful and blameworthy” (RGV 6:58). Kant identifies the sexual impulse as one component of the predisposition to good in human nature—though vices may be grafted onto it (RGV 6:26). In Kant’s psychology, it is not an inclination, but a “passion,” a sort of exacerbated inclination that “prevents reason from comparing it with the sum of all inclinations in respect to a certain choice” (APH 7:265), that poses a direct moral problem. It would be more consistent with Kant’s broader psychology for him to accept the possibility of sexual affection, for this inclination would, like all others, be morally neutral. The disposition that Kant identifies and criticizes under the name of the sexual inclination could then be regarded as a passion, into which sexual affection might degenerate.

In his Anthropology, Kant gives examples of innocuous activities and inclinations similarly degenerating into passions. It is not, for example, immoral to play competitive games, and our inclination to do so promotes the important natural end of preserving our vital force. Yet the pleasure that we get from competition may cause “a propensity to the most violent and long-lasting passion” (APH 7:275). Sex, like competition, serves important natural ends, not least of which is the propagation of the species (APH 7:276), and so long as it is motivated by sexual affection, it is morally permissible. Yet if we come to value our own pleasure in such a way that we cease to take into consideration our desire to promote others’ happiness (if, on my suggestion, we develop a passion for sexual enjoyment), then our sexual activity will become what Kant takes all sex to be, and will violate the moral law.

This more complex model of sexual motivation is plausible, and it better accords with Kant’s account of passions and inclinations than does the model that he endorses. If Kant were to accept that sexual affection could be our incentive to have sex, then he would have to accept that nonmarital sex as such is not immoral; and, since his account of marriage is primarily intended as an
account of the conditions under which sex is permissible, Kant’s account of marriage would be rendered at least partly redundant (though it may be the case that marriage addresses the problems of risk and other issues that may arise in a long-term sexual relationship, such as the rearing of children). The possibility of having sex out of sexual affection does not, however, imply the permissibility of all sex. Having sex in a morally permissible way would require a great deal of attentiveness to our partners’ and our own attitudes. Even if I am confident that I could act on sexual affection, and thus not use my partner as a mere means, it would be immoral for me to have sex with a person driven solely by the sexual inclination, for in doing so I would make my own humanity into a mere means to the satisfaction of another’s inclination.

Kant writes of love and respect as the two great forces at work in moral life, and warns that, should either overpower the other, immorality, “with gaping throat, would drink up the whole kingdom of (moral) beings like a drop of water” (MS 6:459). Navigating human life in a virtuous way requires tempering the promotion of our own and others’ happiness with due respect for human dignity. This task is only made a little easier by the possibility of morally permissible sex.

9 HOW COULD KANT HAVE MISUNDERSTOOD HIMSELF SO BADLY?

I have pointed out an inconsistency in Kant’s thinking on sex and marriage. Kant seems to point out a distinctly moral problem (the problem of use) as the fundamental problem of sex; but he then attempts to show that a legal institution (marriage) is adequate to render sex permissible. By Kant’s own lights, a legal solution of this sort would necessarily fail to solve the former, specifically moral problem. Perhaps, however, contrary to the position developed in this paper, we ought simply to

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29 Because the primary problems that Kant identifies in sex do not appear to be gender- or sex-specific (on Kant’s view, both men and women use each other as things and surrender themselves to one another), some scholars, such as Matthew C. Altman, have attempted to recruit Kant’s account of sex and marriage in support of same-sex marriage (see Altman 2010). On my view, such an attempt is misguided, since Kantian marriage is unsuited to solve the problem Kant identifies in sex.
abandon Kant’s account of the problem of use, and take as fundamental the problem that marriage is suited to solve. In the absence of good evidence against it, the principle of charity would seem to demand this alternative interpretation. Kant’s discussion of sex in the Lectures on Ethics are incompatible with this alternative interpretation; but, as we’ve noted above, the Lectures are not as reliable a source as the Metaphysics of Morals, and Kant’s discussions of sex in the latter, more authoritative work are not as explicitly concerned with the sexual inclination (and therefore with the problem of use) as is the former. It is incumbent upon me, first to show that Kant’s account of sex and marriage is in fact dependent upon his account of the problem of use, so that discarding his account of the problem of use in the name of charity is not a viable solution; and second, to explain how Kant could have misunderstood himself on this topic so badly.

The problem of surrender, recall, begins with the claim that sexual activity requires those who participate in it to surrender themselves to one another (MS 6:277-8). Outside of marriage, this surrender violates the right of each partner’s humanity—the innate right to independence from being constrained by another person’s choice (MS 6:237). It is this violation that marriage is designed to preclude: since the surrender of each spouse to the other is total and perfectly reciprocal, each remains in possession of him or herself, and not, qua possession of the other, constrained by the other’s choice (MS 6:278).

This whole edifice rests on Kant’s claim that sexual activity requires surrender. We are accustomed to the use of such language in connection with sexual activity (it is standard to speak of sex in terms of “possession,” “giving,” and “taking”). We ought not to let the familiarity of such language satisfy us, however, for it is far from obvious that sexual activity should actually require surrender in any meaningful sense. Of course, to consent to sex is to consent to a particular sort of interaction with one another’s bodies—but why should this be understood as a surrender of each others’ bodies?
Unfortunately, Kant does not go into as much detail on this point as we would like. However, the highly schematic explanation that he does provide strongly suggests that the requirement of surrender is grounded in the problem of use. Kant begins his discussion of sex and marriage in the *Metaphysics of Morals* by defining sexual union as “the reciprocal use that one human being makes of the sexual organs and capacities of another” (*MS* 6:277). He goes on to introduce the requirement of surrender in the following way: “For the natural use that one sex makes of the other’s sexual organs is *enjoyment*, for which one gives itself up to the other” (*MS* 6:278). Thus, surrender seems to be required on account of the nature of sexual union, or the reciprocal use that human beings make of one another’s sexual organs and attributes, and in particular on the claim that they use one another in this way for the sake of enjoyment.

This account of the requirement of surrender does not straightforwardly imply that the problem of surrender is grounded in the problem of use as I have characterized it above. However, my account of the problem of use—in particular, the claim that the sexual inclination is incompatible with the morally requisite regard for the humanity in another—would seem to be the best explanation for this requirement. Since, on my account, when I act upon the sexual inclination, I regard the object of this inclination *solely* as a thing to be used for the sake of enjoyment (and not as a human being), in consenting to have sex with me, the person towards the use of whom I am so inclined gives himself over to me as a thing to be used for the sake of my enjoyment.

One of the difficulties faced by those who would defend Kant’s account of sex and marriage is the necessity of marking sexual activity off from other interpersonal activities that involve the use of the participants’ bodies. What makes sex so different from, for example, arm-wrestling? Some of the pleasure of arm-wrestling (presumably) consists in the enjoyment of the use of one’s partner’s

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30 *Sic*. Kant is picking up from the final sentence of the previous section: “Even if it is supposed that [the lovers’] end is the pleasure of using each other’s sexual attributes, the marriage contract is not up to their discretion but is a contract that is necessary by the law of humanity, that is, if a man and a woman want to enjoy each other’s sexual attributes they *must* necessarily marry, and this is necessary in accordance with pure reason’s laws of right” (*MS* 6:277-8).
body; and arm-wrestling would not seem to require any careful attention to one’s partner’s humanity (the existence of arm-wrestling machines may testify to the arm-wrestler’s disregard for her partner’s humanity). Thus, arm-wrestling would seem to be describable in the same (minimal) terms that Kant uses to describe sexual union above—yet nobody would hold that nonmarital arm-wrestling is morally impermissible. I take it that the problem of use, which rests on the exclusive orientation of the sexual inclination towards a person’s body, is necessary to fill our Kant’s account of surrender. If one were to accept Kant’s account of the problem of surrender while denying his claim that the sexual inclination, alone among all inclinations, is directed exclusively towards the body, then one would be committed to the impermissibility of an indefinite number of similar bodily activities (that is, to their impermissibility outside of marriage). Thus, interpretive charity requires that so long as we accept Kant’s commitment to the necessity of marriage for morally permissible sex, we accept his commitment to the problem of use.

Finally, then, we must ask how Kant could have misunderstood his own account of sexual ethics in the way that I have claimed he did: why would Kant take the legal institution of marriage to solve a problem that, by his own lights, it is incapable of solving? I believe the answer is that Kant was not interested in breaking new ground in sexual ethics, but solely in providing a stronger basis for the sexual-ethical views prevalent in his own time. From a distance, Kant’s account of sex and marriage seems quite traditional. Its central claims—that sexual interest is directed towards the body, and that sex is impermissible only under the condition of marriage—both precede and survive Kant by centuries. It is only in attempting to organize these central claims into his moral-philosophical framework, and thereby to sanction them, that Kant’s account becomes eccentric (in, e.g., Kant’s definition of marriage as a contract for the lifelong mutual possession of one another’s sexual attributes). Indeed, when Kant strays from the received opinions of his time, his views tend to undermine the traditional views of sex and marriage that he attempts to strengthen—as do, for
example, the forward-thinking claims about the mediation of distinctly human sexuality by the imagination that he makes in his “Conjectural Beginning” essay (8:112-3), and his remarks about the appropriateness and prudence of married women’s solicitous behavior in the Anthropology (7:310).

Kant inherited a set of beliefs about the nature and moral value of sex and marriage, and for whatever reasons (psychological or historical) he was unable fully to evaluate this inheritance in the light of his own philosophical research.
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