

Kant and Sexuality

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Introduction

Why do gay people want to marry? Indeed, why does anybody want to marry; why do we not just love each other instead? Given the bad history of marriage, especially for women, should we not simply want to avoid this institution altogether? And if we do marry, must marriage and sexual love be only between two persons, and do marriage contracts have to be so all-encompassing? We might also wonder why good, healthy sexualities are so hard to realize in societies ridden with various kinds of oppression, such as racism, sexism, and homophobia. Why is the impossibility of living out one's sexuality – whether it is one's sexual identity or one's sexual orientation – one of the very few things that can lead people to suicide? Why is it so difficult to reduce the levels of domestic violence in (even affluent sections of) society, and why is the experience of being subjected to sexual violence often so extraordinarily damaging? Should the sale of sexual services and sexual images be legally permitted, and should it be permitted also, or even especially, when the ones providing the services and images are predominantly poor or otherwise seriously struggling women? Why is being truly loved, including sexually, often experienced as grounding, in the sense of

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contributing greatly to feeling genuinely at home in the world, and why is losing a loved one something that can undo one in destabilizing ways? Why is sexual love so unruly; why can it make us want to do the most wonderful of things, but also make us do terrible things, to ourselves and to one another?

These are some of the many questions facing anyone working on the philosophy of sexuality. And most of these folks have not thought, and still do not think, that Kant – a lifelong bachelor infamous for his many condemning statements about (especially lustful, non-procreative) sexuality (outside of marriage) – is the place to go for help to think through these issues. Simply, most people with genuine interests in philosophical questions regarding sexuality, including sexual love, are not drawn to thinkers who hold offensive, negative, and intolerant views about it. Unfortunately, Kant is one of those in the history of philosophy who expresses such views, and often in angry ways. In addition, Kant's philosophy as a whole comprises a complicated system of interlocking parts, and it takes years of hard work to master even one or two of them, such as the argument of the Transcendental Deduction, his account of private property, or his idea of universalizing maxims. If any or all of this were not challenging enough, understanding Kant's approach to the complicated issue of sexuality requires also figuring out how this complex and complementary system is reflected in what Kant actually says about sexuality. Only a view of the whole picture puts us in a position to figure out what is worth preserving in Kant's approach to sexuality as well as to criticize and overcome his philosophical mistakes, especially the ones expressed in his vehement condemnation of non-straight sexualities. Most non-Kantians, therefore, consider it overdetermined that Kant provides nothing helpful for thinking about sexuality. Even Kantians have thought it such a tall order to find anything useful that few have been keen to even look.

Not for no reason, then, was one of the first brilliant papers written on Kant and sexuality, by Barbara Herman, titled "Could It Be Worth Thinking about Kant on Sex and Marriage?"¹ It was also not coincidental that a major claim advanced by Herman is that, in spite of the many deeply troublesome things Kant says about sexuality, some of his central concerns are shared by contemporary feminist philosophers, namely problems concerning sexual objectification and the oppression of women. In this chapter, I join Herman (and others) in arguing that, despite its many serious failures and

¹ Barbara Herman, "Could It Be Worth Thinking about Kant on Sex and Marriage?" in *A Mind of One's Own: Feminist Essays on Reason and Objectivity*, ed. Louise M. Antony and Charlotte E. Witt (Boulder, Col.: Westview, 1993): 53–72.

mistakes, Kant's philosophy of sexuality has something to offer. I add to the existing work by proposing that a particular strength of his approach is the way in which Kant's analyses of ethics, right, and human nature are integrated: each element does its own independent, yet complementary, philosophical work. Kant's mistakes issue from his account of human nature, but these can be overcome without abandoning any of his insights or the philosophical structure of his approach.²

Setting the stage

Commonly, students are introduced to Kant's practical philosophy by reading his *Groundwork of the Metaphysics of Morals*. The focus tends to be on how, according to Kant, being virtuous is to act on universalizable maxims from the motive of duty. Most of the teaching is likely aimed at explaining what this means, including Kant's distinction between what he calls "perfect" and "imperfect" moral duties. Looking only at the *Groundwork*, we end up with a few famous puzzles and seemingly unsolvable problems. For example, if Kant thinks that at all times we must treat each other as equally valuable, what do we do in emergencies when our loved ones are in danger? Do we first seek the universalizable rule (save all persons) and then try to justify an exception to this general rule in order to save a loved one? If so, asks Bernard Williams, do we not have one thought too many in our philosophical analysis of these situations? Is it not the case that morally, including emotionally, healthy persons save their loved ones *just because* they love them (one thought) and not also because it is morally permissible to do so (two thoughts)?

More generally, how does Kant understand our embodied, emotional selves? Some worries here stem from the fact that Kant appears to put so much emphasis on our rational, self-reflective capacities. For Kant, being moral appears to be identified with thinking about our actions (identifying the maxim/rule one acts on and considering whether it can hold as a

² I have been developing this approach in the following recent pieces: "The Terrorist Attacks in Norway, July 22nd 2011 – Some Kantian Reflections," *Norsk Filosofisk Tidsskrift/Norwegian Journal of Philosophy* 49, nos. 3–4 (2014): 236–59; "Kant and Women," *Pacific Philosophical Quarterly*, electronic publication, Oct. 24, 2015; "Kant and Moral Responsibility for Animals," in *Kant on Animals*, ed. Lucy Allais and John Callanan (Oxford: Oxford University Press, forthcoming); "Kant on Sex. Reconsidered" (under review); and *A Kantian Theory of Sexuality* (Oxford University Press, forthcoming). This chapter, for obvious reasons, draws especially heavily on "Kant and Women," "Kant on Sex. Reconsidered," and *A Kantian Theory of Sexuality*.

universal law, and then acting as motivated by this reflection). From this point of view, central phenomena of sexuality, such as sexual identity and sexual orientation, having good sex, falling in love, and grieving and forgiving loved ones seem not to be within reach in meaningful ways. After all, on the one hand, we do not simply choose, after thinking about it, to fall in love, to grieve, to be gay or straight, or to sexually identify in particular ways. On the other hand, although more sexually experienced people can relatively easily stop to think about what they are doing while having sex, and although many times one ought to stop to think about what one is doing, having good sex does involve giving oneself over to it in some way. Reflection turns one off rather than on; having sex out of duty is certainly not the ideal. A theory of sexuality must engage these facts in the right ways, and surely, advocating self-reflection at all times cannot be the way to go. On the third hand – being an alien now – if it is true that thinking (reflection) and choice are not the whole story regarding good sexuality, then when is choice the crucial, morally determining factor, and why do we do things like choose to marry? Why do we not just love each other? On the fourth hand, why does Kant say, as he does in other writings, that marriage is limited to two persons and that it can only properly exist between a man and a woman (as many still believe today)? And on the last, fifth hand, what is the big deal about trade involving sexual services, especially in cases where both parties choose it and could choose otherwise (are not somehow forced into it)?

In recent years, as previously mentioned, some Kantians have started to engage these questions. For example, some have joined Herman in writing about marriage (including same-sex marriage) and the sexual objectification and oppression of women.³ In addition, much has been written on Kant on

³ See Christine M. Korsgaard, “Creating the Kingdom of Ends: Reciprocity and Responsibility in Personal Relations,” in *Philosophical Perspectives*, vol. 6: *Ethics*, ed. James E. Tomberlin (Atascadero, Cal.: Ridgeview, 1992), 305–32; Pauline Kleingeld, “The Problematic Status of Gender-Neutral Language in the History of Philosophy: The Case of Kant,” *Philosophical Forum* 25, no. 2 (Winter 1993): 134–50; Onora O’Neill, “Women’s Rights: Whose Obligations?” in *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), 97–113; Lara Denis, “From Friendship to Marriage: Revising Kant,” *Philosophy and Phenomenological Research* 63, no. 1 (July 2001): 1–28; Allen W. Wood, “Sex,” in *Kantian Ethics* (New York: Cambridge University Press, 2008), 224–39; Rae Langton, *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (Oxford: Oxford University Press, 2009); Linda Papadaki, “Kantian Marriage and Beyond: Why It Is Worth Thinking about Kant and Marriage,” *Hypatia* 25, no. 2 (Spring 2010): 276–94; Matthew C. Altman, “Same-Sex Marriage as a Means to Mutual Respect,” in *Kant and Applied Ethics: The Uses and Limits of Kant’s Practical Philosophy* (Malden, Mass.: Wiley-Blackwell, 2011), 139–64; Mari Mikkola, “Kant on Moral Agency and Women’s Nature,” *Kantian Review* 16, no. 1 (March 2011): 89–111; and Carol Hay, *Kantianism, Liberalism, and Feminism: Resisting Oppression* (New York: Palgrave Macmillan, 2013).

(unreflective) emotions, on affectionate love, and on forgiveness.⁴ In the writings on marriage, several add to Herman by arguing that, given Kant’s basic philosophical commitments regarding justice, he *should* have also defended same-sex marriage. In work on the emotions, Kantians commonly utilize other thinkers, such as Nietzsche or P. F. Strawson, to rethink Kant on these issues. In recent work on questions concerning our social, embodied selves more generally, and sexuality more specifically, I have proposed that we rethink Kant’s philosophy differently by interpreting his accounts of freedom (of ethics, or virtue, and of justice, or right) as complemented by his account of human nature, where each of these three accounts does its own independent, philosophical work in an overall, integrated, and coherent approach. This tack leads to two advances: First, I can show how the various existing, relevant papers on Kant can fit coherently into one somewhat more complex account. Second, I can answer a main philosophical and interpretive challenge for Kantians by showing that a plausible, reconsidered account of sexuality is consistent with Kant’s own philosophical framework. I will begin with Kant’s view of human nature.

Kant’s account of human nature

Kant proposes that human nature consists of three conscious, integrated structures – what he calls the (threefold) “predisposition to good in human nature” – namely our predisposition to animality, to humanity, and to personality.⁵ The predisposition to animality comprises three conscious orientations in us: self-preservation, the sex drive, and the social drive. Although these orientations are conscious, realizing them as such does not require self-reflective consciousness or abstract reasoning abilities. Consequently, preserving ourselves, having sex, and being social

I have also written on a number of these issues in the aforementioned “Kant and Women,” as well as in both “A Kantian Conception of Rightful Sexual Relations: Sex, (Gay) Marriage, and Prostitution,” *Social Philosophy Today* 22 (2007): 199–218; and “A Kantian Critique of the Care Tradition: Family Law and Systemic Justice,” *Kantian Review* 17, no. 2 (July 2012): 327–56.

⁴ For example, see David Sussman, “Kantian Forgiveness,” *Kant-Studien* 96, no. 1 (March 2005): 85–107; Lucy Allais, “Wiping the Slate Clean: The Heart of Forgiveness,” *Philosophy and Public Affairs* 36, no. 1 (Winter 2008): 33–68; Lucy Allais, “Forgiveness and Mercy,” *South African Journal of Philosophy* 27, no. 1 (2008): 1–9; Lucy Allais, “Elective Forgiveness,” *International Journal of Philosophical Studies* 21, no. 5 (2013): 1–17; and Ingrid Albrecht, “How We Hurt the Ones We Love,” *Pacific Philosophical Quarterly*, electronic publication, Oct. 24, 2015.

⁵ For Kant’s account of “the original predisposition to good in human nature,” see Rel 6:26–28. Here, I merely summarize core, relevant features of his account. For more details, see my “Kant and Women” and “Kant and Moral Responsibility for Animals.”

are possible also for other conscious, yet unreflective and non-reasoning animals. That is to say, human animals have a self-consciousness that is reflective in nature, whereas nonhuman animals do not. Instead, nonhuman animals have only simple reflexive self-consciousness.⁶ Correspondingly, human beings are capable of abstract conceptual thought (reason), whereas nonhuman animals are not; nonhuman animal thinking is merely associative in nature.

To illustrate this, notice that, because these animalistic ways of being consciously oriented do not require reason (thinking through abstract concepts), they are also available to us as newborns, even if in a rudimentary form, that is, before we have developed our capacities to think reflectively. For example, as newborns not yet capable of self-reflective being and thought, we still seek to survive, and we find it profoundly soothing to be cared for in affectionate, loving, sensuous ways. Correspondingly, experiences such as grief and affectionate love are strong emotions whose phenomenological structure at least in part operates on this unreflective and existentially fundamental level. This is why we do not choose to grieve just as we do not choose to love affectionately. Rather, we find ourselves grieving, and we find ourselves affectionately drawn to someone. This is also why it is deeply good for us (existentially comforting) to be held close by someone we love and who loves us. And, of course, although other animals do not share in this much more complex conscious being, they do have this fundamental predisposition to animality, which is why we can share this aspect of ourselves with them in important ways. For example, humans and social nonhuman animals can comfort each other; when we pick up kittens or puppies, they and we are both comforted. Holding and being held are ways that we affectionately affirm one another as loved, the world, and our place in it together as safe and good – at least our shared bit of it, right now. Our shared capacity for basic sociality enables this. A human and a nonhuman animal can form affectionate, loving units – an “us”; they can relate to one another as “mine” and share homes as “ours.”⁷

According to Kant, the second level of human being is enabled by the predisposition to humanity, which enables us to have a sense of self and

⁶ By “self-reflexive” consciousness I mean an awareness internal to any thinking or doing something, whereas by “self-reflective” consciousness I mean a *thinking about* what one is thinking or doing. Self-reflective consciousness can be seen as a second-order awareness of what I am already self-reflexively conscious of. I return to these concepts in more detail shortly.

⁷ I explore the differences between human and nonhuman animals in much more detail in my “Kant and Moral Responsibility for Animals.”

involves both comparative uses of reason and rational end-setting. Realizing this predisposition fully is possible only for rational beings, beings who both have reflective self-consciousness and can reason.⁸ That is to say, at the level of animality we are social beings in that it is existentially good for us to be comforted by another. At the level of the predisposition to humanity, in contrast, we are oriented by a need to be affirmed by and to affirm others as valuable (having equal worth). Moreover, having *reflective* self-consciousness opens up a range of emotions for us that involves what Kant calls “comparative uses of reason,” namely feelings that reveal the importance for us of seeing and being seen by others, such as taking joy in each other’s success and feeling shame, jealousy, and envy. Moreover, this predisposition orients us as rational beings in that we can set ends of our own. Human beings as such have no single set of ends to set: because we have reason and self-reflective consciousness, what ends we want to set is a fundamentally open question for us as individuals to answer, in general and in particular cases.

Using language from the *Groundwork*, we can say that as a human being I can be reflectively conscious of what I am doing (I can think about what I am doing, or be aware of what Kant calls the “maxims,” or subjective rules, governing my actions), and I can become aware that *I* am the one doing it (I can think about this too, that *I* am doing it). Therefore, as I set out to do something – including actions at the animalistic (self-preserving, sexual, and social) level, such as reaching out to offer my friend a comforting hug – I orient myself and my causal powers with respect to others by my maxim. My maxim (the subjective rule of action) orients how I go about things in the world – what I do and do not do – in ways compatible with obtaining a particular end (offering my friend a comforting hug). In addition, Kant argues, when I do this well, I do it in such a way that my action is compatible with and furthering of rational being (mine and the others’), including by affirming those with whom I interact as equally valuable.⁹ In turn, this argument connects up with another in the *Groundwork* (and elsewhere), namely that acting morally involves acting on universalizable maxims that can be both *thought* as universal laws for rational

⁸ Whether or not higher cognitively functioning nonhuman animals, such as chimps and elephants, who are able, for example, to pass the mirror test (have a sense of self), can do some of this is a question I cannot explore here.

⁹ For example, in the *Groundwork*, Kant writes: “A *maxim* is the subjective principle of acting, and must be distinguished from the *objective* principle, namely the practical law. The former contains the practical rule determined by reason conformably with the conditions of the subject (often his ignorance or also his inclinations), and is therefore the principle in accordance with which the subject *acts*; but the law is the objective principle valid for every rational being, and the principle in accordance with which he *ought to act*, i.e., an imperative” (G 4:421n).

beings (consistent with our self- and other-regarding perfect duties to respect one another as ends in oneself) and *willed* as universal laws for rational beings (consistent with our self- and other-regarding imperfect duties to develop our capacities and talents and to assist others in their pursuit of happiness) (G 4:424). It also connects up with one of the formulations of the categorical imperative in the *Groundwork*: “*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*” (G 4:429). That is, living well for a human being involves developing an ability to figure out which ends one wants to set given the kind of person one is – something each of us also has to figure out – and making sure that the ends one wants to set are compatible with, and insofar as possible supportive of others pursuing their own ends in a similarly open-ended and reciprocally respectful, supportive way.

The third and final aspect of the predisposition to good in human nature is called “personality.” Having personality means that human beings have “moral feeling,” which is a susceptibility in our nature without which we could not be morally responsible for our actions. That is to say, I cannot only think through what I am doing – think about whether or not I am doing something compatible with respecting and furthering of the rational being of myself and others – but I can also feel obliged to act in accordance with these reflections. I can decide that there is something I *must do* or that there is something I *must not do* simply because doing or not doing it is morally required (right) or morally impermissible (wrong). In Kantianese, I can act as motivated by my practical reason or “from duty.” When I do this, I incorporate this motivation into my maxim and thereby add a distinctive, *moral* “worth” or value to my actions (G 4:401). Because only human animals, as far as we know, are capable of acting from duty (as motivated by their reason), only human beings can be morally responsible for their actions. Moreover, when we do something *just because* doing so is the right thing to do (as determined by our reason), we act virtuously.

Notice what follows from Kant’s theory with regard to human versus nonhuman realization of one’s nature. Our complex form of consciousness (reflective self-consciousness) and capacity for reason (capacity to think through abstract concepts) lengthens the relative amount of time it takes to master most things such that we can set out to do them intentionally (act rationally, as enabled by our predisposition to humanity). We need even more time (and practice) to be able to assume moral responsibility for our actions (act as motivated by our practical reason, or as enabled by our predisposition to personality). Hence, developmentally, we begin by feeling our physical needs for the first time outside the womb: we seek food and we

immediately respond positively to soothing, calming, sensuous displays of affectionate love. Being comforted reveals how our predisposition to animality enables us affectionately to orient ourselves to others. We also exhibit rudimentary exercises of causality (choice) in spontaneous and uncontrolled movements of our limbs. As already mentioned, these kinds of orientations and activities as such require only reflexive forms of self-consciousness (and associative thinking); nonhuman animals can participate in them too. However, human beings also seek to do them rationally, intentionally, and responsibly – to love, to eat, to master one’s body, say – which nonhuman animals do not do. For although other animals orient themselves via reflexive self-consciousness and can think and choose associatively (or exercise what Kant calls “animal choice”), human beings also seek to orient themselves reflectively, which is why human choice can be free (autonomous) (MM 6:213–14; see also 226). Human beings aim to master orienting themselves by means of abstract concepts (maxims, rules, principles); we strive to become able to think about what we are doing (reason) by reflectively evaluating the “form” of these rules (whether or not they can hold as universal laws for all rational beings), and to be able to act as motivated by these reflections whenever necessary. Due to having more complex capacities, the task at hand – realizing one’s nature – is much more complicated for us as human animals than it is for nonhuman animals. It is a complex process involving learning to set our *own* ends in an open-ended, self-conscious way and to assume responsibility for our choices by ensuring that we act on principles that could hold as universalizable laws for rational beings. Thus it takes time.

Consider as a further illustration the way we naturally develop and master simple bodily actions. Notice that nonhuman animals manage the task of moving about in the world, including walking, relatively quickly. For example, foals typically manage to walk within the first hour or so after birth, whereas kittens commonly take up to three weeks. In contrast, it takes a human infant roughly one month just to raise its own head and six months to have basic control over the movements of the head. Becoming proficient at just the basics of walking usually takes a human being somewhere between twelve and fifteen months. Moreover, we can see how humans strive to employ concepts in learning to walk (that is, to act intentionally or rationally). At first, we stagger along either held or guided by an adult. We may then be able to do it while being held under the armpits, then by the hands, and finally just with the aid of someone’s finger. As a natural part of this process, adults say something like, “Does Emma want to walk to Mommy?” with the result of suggesting or encouraging her to use this rule to govern

what she is doing (to set the end and act on the maxim of walking). Then there is that moment when she can do all of this on her own – staggering along to mommy – and the adults say, “Oh, look! Emma is walking!” and then she becomes conscious of what she is doing and that she is doing it, and then she falls down. In Kantianese, we would say that in moving from just walking to thinking about our walking, we switch from acting on a maxim (acting in rationally directed or intentional ways) to thinking *about* both the maxim we are acting on and that we are acting on it (becoming reflectively conscious of ourselves and our maxim). With more practice, however, we can both walk (again, act on the maxim) and think about what we are doing as we are doing it (be reflectively aware of what we are doing and that we are doing it) without falling down. Indeed, we can even come to set for ourselves the task of intentionally perfecting our walking performance (perfecting our ability to act on the maxim of walking), including by figuring out how to walk in very many different and new ways. These are, then, core reasons why the task of walking for humans is much more complex than it is for nonhumans. Because we have more capacities contributing to a greater complexity of our activities, we take more time than nonhuman animals to master even the simplest activities.

Correspondingly, although all social animals quickly pick up on fundamental social emotions, such as being calmed by loving, affectionate care from others, nonhuman animals typically master all the social emotions available to them relatively speedily, whereas it takes humans years to learn how to minimally manage social interaction. Again, the reason is that nonhuman animals have less complex cognitive capacities and so a more limited range of social emotions and interactions. For example, cats and dogs express affection by doing things such as cuddling up and offering and seeking affectionate company when they are frightened. They engage in play by using certain social cues; this is how they learn to be social and affectionate with (to orient to) others. Contrarily, humans not only learn how to do these things and learn that they are doing them, but they also seek ways of doing them that are rational, including responsible. We engage in social interaction by acting on maxims in an open-ended way and in ways that are sensitive to the particular persons involved. For example, we playfully invent infinitely many ways of giving and receiving affection, ways of revealing our attention to one another’s individuality. So, hurting a loved one can result simply from interacting in a way that suggests one’s lack of sensitivity to another’s personality and idiosyncrasies.

It is hard (a cognitively complex endeavor), in other words, for humans to learn to set and pursue ends of our own. It is hard not only because it requires

us to be conscious in a specifically self-reflective way (by exercising an ability to think about what we are doing right now), but because it also comes with learning how to do something so well that we can be creative without losing control. Being truly creative involves playing with the imagination in new ways – ways that we do not already understand rationally. Because we are trying to do things we have neither done nor seen anyone else do, we have to figure it out. Sometimes we sit down to consider exactly what it is we would like to do so that we can then imagine ways of doing it. Other times, especially when we are acting within a framework of action that we have mastered – such as playing soccer – we find ourselves just doing it, going with our gut. We seek to set new ends and, ultimately, to be able to do all of it in a way that is consistent with and affirmative of ourselves and others as free beings, including by paying truthful attention to how we are in the world, who we are as individuals. All of these things are hard to learn, let alone do well. Hence most legal-political systems today assume that it takes about eighteen years to develop full moral responsibility. And although by this age we can be morally responsible for ourselves (generally), it is a lifetime project to become better at it.

The inescapable problem of evil

Kant proposes that the threefold predisposition to good in human nature is both “original” and “good,” meaning that to have human consciousness is to have the capacities required for these structures (why they are original) and that these structures enable lives that feel and are deeply pleasurable for us (why they are good) (Rel 6:28). Realizing the predispositions to animality and humanity is to realize a way of being that points toward what will be affirmed upon moral reflection, that is, from the reflective point of view of personality. Given this, why do we ever not do the right thing? Because, says Kant, we can choose – that is, we can choose not only to act well, but also badly. Trailing the predisposition to good in human nature is the “propensity to evil.” All humans will choose badly at times – choose what appears to maximize the sensation of pleasure in the moment – rather than what is truly good for us. Indeed, not only do we have trouble doing the right thing, but we also experience a real temptation to set the right kind of end though with a bad motivation, such as to help someone across the street (a good end) but only so that others will think well of us (a bad motivation).

In addition, because of our embodied, social natures in combination with our capacity for choice, we have a deep temptation to do bad things that make us feel intensely alive, that give us an enlivened sense of self, by being seen by others as valuable, desirable, important, and powerful. For example, it is deeply tempting to take advantage of other people's sexual attraction to us, to yield to feelings of jealousy, to punish loved ones for presumed lack of attention, or to ignore people who love us to get more attention (by their working harder to get our attention). Despite how tempting these actions may be, our predisposition to good as a whole enables us to avoid or stop this sort of behavior: our capacity for animality enables us to feel that such behaviors are incompatible with basic sociality; our capacity for humanity enables us to identify the maxim of our action and then feel the pain and irrationality of acting in such ways that treat others as not equally valuable, rational beings; and our capacity for personality enables us to avoid bad behavior *just because* it is wrong to do it and to engage in moral behavior *just because* it is the right thing to do. That is, our capacity for humanity enables us to stop and figure out what we are doing, and our capacity for personality enables us to do something rather than something else just because doing so is the right thing to do. Hence, because the threefold predisposition to good in human nature is original and good, despite what we *de facto* feel like or want to do in the moment, we are equipped with unreflective and reflective emotional and reasoning resources that we can rely on as we seek to do better. It makes sense, then, that Kant argues that our predisposition to personality can never be corrupted since it is only good – it simply is an ability to do what is right because it is right – and, although the emotional structures as enabled by the predispositions to animality and humanity can be profoundly off-kilter or messed with (through accidents and the choices of others and ourselves), they cannot be destroyed since they are original. Consequently, although we are necessarily emotionally imperfect, we can revisit old wounds to examine the patterns of our pathologies in order to heal, with or without the guiding help of others.

This account of human nature is both a happy and an unhappy story. On the unhappy side, we find that as we grow up and mature, we are subjected to other people's behavior and pathologies. By the time we are capable of moral responsibility (have realized personality), we inevitably have at least some unhealthy, acquired emotional difficulties. Assuming responsibility for our emotional shortcomings and our related wrongdoing is also not something easily or readily done, even if we know we ought to do it, and even if deep down we want to do it. In addition, we experience serious temptations to do bad things – to be little monsters in

various ways – and we succumb to these temptations. Given the complexities of our emotions, including the fact that we can feel them as strong forces, acting as we ought to and as would be truly good for us can be very hard. On the happy side, insofar as we have developed our cognitive capacities sufficiently to be rational and morally responsible, we can assume responsibility for our emotional shortcomings and the resulting behavior. We can heal, which will feel profoundly good, since what is healed are those structures enabled by the original predispositions to good, which are in turn the sources of our deepest pleasures.

Heterosexist assumptions in Kant's account of human nature

Before turning to the question of how to overcome the heterosexism in Kant's writings, one more aspect of his account of human nature requires mentioning, namely the twofold role of the imagination in developing the human sex drive. First, Kant proposes that our sex drive is fundamentally teleological in that it is oriented by a pursuit of embodied complementarity with regard to the project of procreation. One person seeks to be complemented by another as we participate in the continuation of the species. Second, the sex drive is oriented by our employment of the aesthetic principles of the "beautiful" and the "sublime," where the female is intimately linked to the beautiful and the male to the sublime. For Kant, these two normative facts entail that all morally justifiable, and emotionally healthy, sexuality is procreative, heterosexual, and tracking certain biological features we are born with. All other forms of sexuality are corruptions of our nature resulting from our propensity to evil. Thus, marriage should only be legally recognized between a man and a woman.

The heterosexist nature and sheer implausibility of these arguments in combination with some of Kant's rather awful statements about non-straight sexuality are why most scholars today find his account at best to be deeply unconvincing. Consequently, they seek elsewhere for inspiration to solve the philosophical puzzles surrounding sexuality. Yet, I argue below, given Kant's *own* philosophical system, he should have been much more careful in his statements about sexuality, because granting teleological and aesthetic orientations to the sex drive does not automatically lead to heterosexist conclusions. Moreover, if we let emotionally healthy, well-lived lives inform our philosophical investigations, as we should, we find that the more

plausible Kantian accounts will not reproduce Kant's heterosexist (and at times angry, homophobic) claims about non-straight sexuality.

Morality and sexuality

How, then, do we overcome the apparent heterosexism of Kant's account, and how do we accommodate a suitably revised account of human nature within Kant's moral framework of freedom (of ethics and of justice)? That is to say, how do we integrate the accounts of human nature and freedom into a Kantian theory of sexuality? In this last section, I sketch an answer to these questions.

Let us begin with Kant's heterosexism. It is useful, I think, to return to the predisposition to animality, for that is where we find Kant's account of our sex drive. Remember that reason is not necessarily involved in developing the predisposition to animality. Three important consequences follow. First, the kinds of emotions that are intimately connected with the animalistic predisposition – self-preservation, sex drive, and basic sociality – are importantly unreflective in nature; they do not concern things about which we simply choose. For example, we do not choose to whom we are sexually attracted or with whom we fall in love, and we do not choose to grieve, to forgive, or to heal our broken hearts. In an important, irreducible sense, we plainly find ourselves having these orientations and emotions. Moreover, how we deal with them is also not simply a matter of choice. Engaging this part of ourselves is importantly about tending to our own animality – to what we need and what is deeply good for us as who we are. We should, in other words, not moralize these normative orientations and emotions by making them inherently reflective.

Second, because these orientations (and the emotions they enable) are unreflective as well as first-personal (subjective) in nature, we cannot obtain or justifiably assert unconditional or necessary truths about them; any knowledge we have of them is contingent. Kant does think that we can acquire objective knowledge about the world external to us (for we can give a philosophical critique of pure reason), and he thinks that we can obtain objective knowledge about our practical world and how we are morally obliged to act (for we can give a philosophical critique of practical reason, or freedom). He does not, however, think the same about claims concerning human nature. A philosophical account of human nature – including how we employ the imagination in teleological and aesthetic ways when we realize

our sexuality – cannot reach, and so should not seek, the status of necessary, objective truths.

Third, it follows that, although we make space for human nature in our (moral) accounts of freedom, we cannot let human nature set the framework for freedom: the contingent cannot limit the non-contingent. Consider an example having to do with gender. Kant thought that he had never seen female scholarly genius. Neither was he sure that women could be great public leaders. Both accomplishments he considered generally rare and requiring extraordinary abilities for abstract, principled thought (OBS 2:232). He did argue that if scholarly genius and public leadership express something true about what both men and women can do, then our children's education should take this into account (OBS 2:231). However, Kant never presented his views about the traditional genders (men and women) as certain, as if they could be philosophically and unconditionally justified. From the beginning he was unsure about his own judgments (OBS 2:207). Moreover, he writes in his theory of right that women are passive citizens while men are active citizens, but he continues by emphasizing that *all* citizens must be legally permitted to work themselves into active citizens (MM 6:314–15). And in his essay on the enlightenment encourages *everyone* to use and trust their own reason, including women (WE 8:35–36). Finally, in the introduction to the *Metaphysics of Morals*, Kant makes clear that, although what he calls “moral anthropology” is central to understanding human life, it must never take the place of our accounts of freedom (including when we construct ideals for legal-political institutions to enable and protect freedom) (MM 6:217). The problem is that, if it does, we risk mistaking what we believe we have or have not seen for what is *possible* for free beings like us. And, of course, if we interact on the basis of such mistaken beliefs, we interact with others in ways that are inconsistent with respecting their freedom.¹⁰

What Kant did not seem fully to realize is that the same thing follows when it comes to assertions about sexual identity and orientation. In this case too, our knowledge is inherently contingent. Moreover, in writing about sexuality, it is central that what we say expresses an awareness that we are dealing with our unreflective, embodied being at the most fundamental, existential level; we are writing about ourselves with regard to what we need in order to be happy, emotionally healthy, and safe as who we are. It is crucial to draw conclusions in careful ways, fully respectful of all that we are as

¹⁰ This way of interpreting Kant is controversial. For more, including further relevant textual references, see my “Kant and Women.”

human beings. To put this point differently, although Kant was fairly careful when writing about women, he was exactly the opposite when it came to writing about non-straight sexuality. Kant says many awful things, not just in insisting on a heterosexist language, but also in adopting a very aggressive and condemning rhetoric, such as saying that non-straight sexual interactions are not only “unnatural,” but involve “crimes against nature,” “unmentionable vices,” and doing “wrong to the humanity in our own person,” so they should be “repudiated completely” (MM 6: 277). And, as if this is not bad enough, engaging in “unnatural” sexual behavior is supposed to “defile” and “debase” one “beneath the beasts,” and is an act worse than suicide, since committing suicide at least requires courage (MM 6:425).

Privilege is a wickedly nasty thing; it is bad for those who have it and much worse for those who do not.¹¹ Part of the difficulty of privilege is that often it brings with it a cognitive and emotional blindness to the ease with which those who are privileged are able to proceed in some aspect(s) of their lives. That is, privilege seems to bring with it a real danger of a profound unawareness of the limitations of one’s own first-personal experience when it comes to understanding the experience of others. Thus, the privileged often (unknowingly) proceed quite brutally in relation to those who need to live differently in order to live well and who do not have the power to resist. Likewise, when one writes philosophy, or theorizes in general about something in relation to which one’s own way is privileged, a common risk one runs is that one simply does not have sufficient first-personal access to the aspects of life one is writing about, and yet one thinks one does.

Another significant danger is the likelihood that one becomes combative in defending a theory rather than letting actual lived lives provide an invaluable source of correction to what one writes. In this case, if people are profoundly happy only when living non-straight lives, which a theory cannot capture, the problem is likely with the theory, not with the lived lives. When one is aware of one’s own privilege, one realizes that claims about different kinds of lives (those deviating from one’s own and which suffer much social condemnation) are not equally plausible. In contrast, if one denies one’s own privilege, one feels not only justified but also invulnerable in speculating about the consequences of living a different kind of life, such as whether or

¹¹ Much has been written on privilege in recent years in relation to so-called “implicit bias.” See especially the pioneering philosophical work by Jennifer Saul, “Skepticism and Implicit Bias,” *Disputatio*, 5, no. 37 (Nov. 2013): 243–63; and “Implicit Bias, Stereotype Threat, and Women in Philosophy,” in *Women in Philosophy: What Needs to Change?* ed. Katrina Hutchison and Fiona Jenkins (Oxford: Oxford University Press, 2013), 39–60.

not “the others” are perverted. For example, I cannot count how many times the first question in a talk I have given on non-straight sexualities (always from someone whose sexuality is privileged) is this: “What about animals and children? Is sex with them also morally permissible, according to your perspective?” Mostly, it is not meant as disparaging, and when it is not it displays an ignorance that is difficult to explain philosophically without introducing the kind of cognitive and emotional blindness that privilege brings. Other times it is put forward quite aggressively, which, I believe, is only possible to explain on this account as coming from someone’s discomfort with her or his own sexuality.

In one of his amazing essays written in prison, “Some Cruelties of Prison Life,” Oscar Wilde talks about the danger of (privileged) physicians not being correctible by their patients. Instead of seeing that a particular prisoner is losing his mind, the doctor responsible for treating the prisoner holds fast to his theory, according to which the prisoner is faking it. Wilde has been watching the tragedy unfold for a while and urges the public authorities to interfere. He reports, “At present it is a horrible duel between [the male prisoner] and the doctor. The doctor is fighting for a theory. The man is fighting for his life. I am anxious that the man should win.”¹² These same problems are real for those with non-straight sexualities. According to a recent survey, the attempted suicide rate among transpersons is 41%, among gay and lesbians 10–20%, and among people who identify as straight only 4.6%.¹³ Such numbers yield a call to proceed carefully when we are seeking to better understand sexuality. If one’s theory is not able to accommodate the link between people’s sexuality, including sexual oppression, and suicide rates, then what needs correction is the theory, not the people. And though such statistics were not available to Kant, he did know that he talked about actual people and actual lived lives, which made it his duty to be much more careful than he was.

So how can we understand sexuality better? The starting point should probably be that sexuality is a part of human experience regarding which we do not have first-personal access to one another’s perspectives. For example, if one is gay, in a fundamental sense, one does not understand, orient to, or feel what it is like to be straight. Therefore, learning about others’

¹² Oscar Wilde, *Children in Prison and Other Cruelties of Prison Life* (London: Murdoch, 1898), 15.

¹³ Ann P. Haas, Philip L. Rogers, and Jody L. Herman, *Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey* (New York and Los Angeles: American Foundation for Suicide Prevention and the Williams Institute, Jan. 2014), williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf.

sexualities requires that we listen to what others experience. Second, understanding sexualities precludes that we use the scientific, strictly deterministic, third-personal point of view. If the theory I propose is right, we will never find a “gay gene,” which is also what current scientific studies confirm.¹⁴ Sexualities concern individual embodied ways in which we are in the world with ourselves and together with others. It is not primarily about how we think about the world from a shareable, moral perspective or about ourselves as objects that can be studied through a shareable, strictly causal, scientific (spatiotemporal) perspective.¹⁵ Central to sexuality, Kant seems exactly right to say, is a way of being oriented that is aesthetic (by utilizing principles of the beautiful and the sublime) as well as teleological in that it is about how we view others as able to complement us in embodied ways, ways that we find emotionally good, sexually arousing, and deeply fulfilling. None of these considerations entail heterosexism, however.¹⁶

Virtue and sexuality

On Kant’s own account of human nature, sexuality involves both our animality and our humanity in combination with a teleological and aesthetic employment of the imagination. It all comes together at the level of personality, which enables us to assume moral responsibility for who we are and what we do. What I am proposing to revise is the assumption of heterosexism at the animalistic level, for it fails to capture the complexity of human sexuality and so also of human nature. It assumes a limited range of sexuality that appears impossible to explain except by appealing to the damaging work of privilege. In addition, such expansion of the theory to include other sexualities easily accommodates Kant’s account of virtue, or of perfect and imperfect duties. We have perfect duties not to act on maxims that involve damaging,

¹⁴ For one relatively recent newspaper article on this – with links to related scientific research – see Peter Tatchell, “The Latest ‘Gay Gene’ Study Gives No Comfort to Homophobes,” *Telegraph* (Oct. 9, 2015), www.telegraph.co.uk/news/science/11922975/The-latest-gay-gene-study-gives-no-comfort-to-homophobes.html.

¹⁵ Of course, I am not denying that we might find common, associated clusters of features. The claim is simply that we will not find the kind of strict necessity needed to meet what Kant thought science delivers, namely necessary and universal laws.

¹⁶ What is entailed is that exploring sexual aspects of ourselves is an individual enterprise, even though the theory I have proposed is one suggestion for how to proceed exploring one’s sexuality. I explore these and other issues much more thoroughly in “Kant on Sex. Reconsidered” and *A Kantian Theory of Sexuality*.

aggressive, or destructive behavior toward oneself or others, and we have imperfect duties to develop our own sexuality and to assist others in their pursuit of happiness in this regard, too. What sort of sex one should and should not engage in depends, from a first-personal point of view, importantly on what one wants/desires. Because sexuality concerns both our animality and humanity, having kinds of sex we do not want is to act in profoundly unhealthy and damaging ways. Moreover, virtue demands that each of us learn to attend to our own embodied sexuality and develop our wants and desires in ways that feel deeply good, in the sense of pleasurable and safe, emotionally satisfying, and sexually playful and exciting. Those who are able to attend to themselves and others in ways that are good, affirming, and developing of who we all are can be a part of this project. But ultimately it is an endeavor that remains fundamentally one’s own in the sense that it is something for which each of us must assume moral responsibility as part of realizing our predisposition to personality.

Barbara Herman, Christine Korsgaard, and Rae Langton, in some of the best secondary literature on the topic, argue that one of Kant’s core insights is that sexuality involves a danger of objectification (treating ourselves or others as mere objects and not also as subjects with equal worth). I fully concur that objectification is a real danger when it comes to sexuality. Given our embodied, social natures and the challenges involved in assuming responsibility for ourselves as free beings in relation to other free beings, we are highly susceptible to bad forms of objectifying ourselves and others. It can be the result of force and/or deception, including self-deception, and it is more likely to occur under conditions of oppression, as they also centrally involve dehumanization (of vulnerable social groups). In other words, on this point, Kant’s account is philosophically in line with core arguments put forward by Simone de Beauvoir in her groundbreaking work, *The Second Sex* (1949).¹⁷

Right and sexuality

For reasons of space, I will simply sketch how the theory of sexuality as given here is compatible with much of what has been written recently regarding Kant’s theory of right. To start, it is important to note that,

¹⁷ For a more in-depth analysis, see my “Kant and Women,” “Kant on Sex. Reconsidered” and *A Kantian Theory of Sexuality*.

for Kant, the law is concerned solely with what can be rightfully enforced in people's interactions. Considerations of virtue (how one ought to act) are beside the point here, since virtue cannot be enforced. Indeed, trying to do so would not only necessarily fail, but would be inconsistent with respecting each person's right to freedom. Rightful interaction, instead, is always respectful of everyone's innate right to freedom, understood as their right to "independence from being constrained by another's choice [*Willkür*] . . . insofar as [the individual's use of freedom] can coexist with the freedom of every other in accordance with a universal law" (MM 6:237). The basic argument is simple: Kant follows much of the social contract tradition in arguing that the state is a distinctly *public* authority. The state is not another private person, but a representative legal-political means through which we solve (ideal and non-ideal) problems that we cannot solve on our own in the state of nature. Consequently, central to Kant's argument is the idea that the public authority is not a private person with private interests. Rather, it is an artificial person that must represent the will of each, and yet no one in particular, by exercising public authority through a legal-political framework based on universal laws of freedom. Three kinds of rights are protected by such laws of freedom: innate rights (the right to our bodies, to thought and speech, and to honor); private rights that are acquired and hold between private persons (rights to private property, contract, and what Kant calls "status" right); and public rights, which are systemic rights, meaning claims that citizens have on their public institutions (rather than against one another as private persons). Let us see how this account of rights plays out with regard to sexuality, beginning with our innate right to our own bodies.

Because we are embodied beings, one's person and one's body must be regarded as in an analytic relation, meaning that one's person and one's body are coextensive from the legal point of view (MM 6:249–50).¹⁸ Given this and the account of human nature above, we can understand why, on Kant's account, there can never be an enforceable right to sexually interact with another person, which is why there can never be such a thing as a right to have sex or an enforceable contract regarding sexual interaction. To have such a right would be to have an enforceable

¹⁸ For more on the nature of this relation in Kant, see my "A Feminist, Kantian Conception of the Right to Bodily Integrity: The Cases of Abortion and Homosexuality," in *Out from the Shadows: Analytical Feminist Contributions to Traditional Philosophy*, ed. Sharon L. Crasnow and Anita M. Superson (Oxford: Oxford University Press, 2012), 33–57.

right to another's person, which no one can have. Therefore, authorizing consent is always necessary for rightful sexual interaction with others.

Nevertheless, one can obtain sexual rights involving another person. Kant's account of marriage (as part of his account of private right) includes, among other things, an account of how we can acquire rights concerning another person's sexuality. This argument is simple too: if two people decide that they want to become a private "us" – that is, a legally recognized home shared by two persons as equals – then part of this legal contract (the marriage contract) will include the promise not to choose unilaterally to engage in sexual interactions with others. When one marries, one promises that henceforth, sexual interactions are a shared choice. Moreover, as many have argued in recent years,¹⁹ to have such a right to form a legal, private "us" or home cannot plausibly depend on one's sexual identity or orientation in a free society; rather, it is a basic private right we all have as citizens. To be denied the right to marry is to be forced to stay in a condition ("the state of nature") where sharing a home with someone one loves cannot be legally realized or legally protected.

Finally, as mentioned, Kant provides a separate account of systemic justice, or public right – an account that has received much attention in recent years.²⁰ Particularly interesting for our purposes is this concise argument: once the state assumes a monopoly on coercion, as it must, it must also reconcile this monopoly with each citizen's right to freedom, meaning each citizen's right not to have her or his freedom subjected to another's private choice but dependent only on public laws. Importantly, this means that the state must provide unconditional poverty relief for all citizens. It must secure each citizen's legal access to both a safe place to exist and to the means required for survival at all times (MM 6:325–26).²¹ Without such legal conditions of safety, the state fails to be a public

¹⁹ See the sources listed in note 3 for various recent ways of bringing out this point.

²⁰ For overviews of this secondary literature, see Kyla Ebels-Duggan, "Kant's Political Philosophy," *Philosophy Compass* 7, no. 12 (Dec. 2012): 896–909; as well as my "Immanuel Kant – Justice as Freedom," in *Contemporary Philosophy: A New Survey*, vol. 12: *Philosophy of Justice*, ed. Guttorm Fløistad (Dordrecht: Springer, 2015): 213–37.

²¹ How to interpret Kant on this issue is of course controversial in the secondary literature. For a criticism of the line of interpretation presented here, see Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012). For an exchange between Kleingeld and myself on these issues, see my "Patriotism, Poverty, and Global Justice: A Kantian Engagement with Pauline Kleingeld's *Kant and Cosmopolitanism*," and Pauline Kleingeld, "Patriotism, Peace and Poverty: Reply to Bernstein and Varden," *Kantian Review* 19, no. 2 (July 2014): 251–84.

authority. That is, it fails to represent the basic rights of *each* citizen, because without such conditions the possibility of some citizens being able to exist somewhere safely and to have legal access to means is subject to some other citizens' private choices. That is to say, the possibility of such basic safety and subsistence means (material resources) for any one citizen at any one time cannot be subjected to any other citizen's private choice, such as another citizen's choice to employ or provide charity for her or him (the poor). This is why the state must guarantee unconditional poverty relief for all its citizens.

In the context of the provision of sexual services and sexual images for consumption, a special problem arises. A main problem with these industries is that often those providing the sexual services do so only because they have no real choices available to them for obtaining an income. It seems that unless the state provides unconditional poverty relief, Kant's position can never authorize the criminalization of supplying such services; after all, in this scenario, the state is failing to secure basic rights to those providing these services. Whether or not it should make the buying of such services illegal is, I believe, a question to which there is no *a priori* answer. Similarly, there is no *a priori* answer to the question of how a state that does provide unconditional poverty relief (a safe place to stay and legal access to survival means) but nothing more than this (in terms of systemic economic justice) should go about dealing with the problem that many of its citizens find themselves subject to conditions in which there are no real income-generating options other than those involving selling sexual services.

In addition, as discussed in the section on "Morality and Sexuality" above, especially problematic in this case is that the person is engaging in activity that is truly dangerous in that it can be very emotionally damaging if one does not want to be doing it. With regard to this issue as well as whether or not the buying of sex can be outlawed, I think Kant's position maintains the following: as the state builds a system that protects people's systemic rights in better ways, it must strive to make sure that the measures undertaken do not make a safe, rightful existence even harder for those who are already vulnerable. The aim is to seek ways of protecting those who are providing these services as well as possible at any particular moment – whether this involves legalizing the buying of sex or not. Then, the task is to make sure, over time, to build

better systemic institutions that secure all citizens' choices, enabling and securing a condition wherein each citizen has real paths available, according to which his or her hard work, within a reasonable amount of time, will secure them the means required for a good life and active citizenship.²²

²² Thanks to Lucy Allais, Sarah Broadie, Rachel Bryant, Ann Cahill, Andrew Cutrofello, Chad Flanders, Jonathan Garthoff, Carol Hay, Barbara Herman, Sari Kisilevsky, Patricia Marino, Eric J. Miller, Sasha Newton, Jonathan Peterson, Massimo Renzo, Barbara Sattler, Laurie Shrage, David Sussman, Nicolaus Tideman, Shelley E. Weinberg, Allen W. Wood, Ekow N. Yankah, Lorenzo Zucca, and Rachel Zuckert for invaluable feedback on ideas along the way. And a special, big thanks to Krupa Patel and Shelley Weinberg for helping me rid this paper of many presentational infelicities. All the mistakes that have survived despite these people's efforts obviously remain mine.