Samuel J. Kerstein, *How to Treat Persons*
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Samuel Kerstein's *How to Treat Persons* is an ambitious attempt to develop a new, broadly Kantian account of what it is to treat others as mere means and what it means to act in accordance with others' dignity. His project is explicitly non-foundationalist: his interpretation stands or falls on its ability to accommodate our pre-theoretic intuitions, and he does an admirable job of handling carefully a range of well fleshed out and sometimes subtle examples. In what follows, I shall give a quick summary of the chapters and then say two good things about the book and one critical thing.

In chapter 1, Kerstein sets out his project, explains his methodology and discusses some basic concepts that will be used in the book. He moves from there to an attack on Wood's respect-expression approach to Kant's formula of humanity (in chapter 2). After concluding that the respect-expression approach is unsustainable, in chapter 3 Kerstein tries to develop a plausible sufficient condition for treating persons merely as means. Chapter 4 deepens our understanding of the account set out in chapter 3 with an attempt to develop a plausible sufficient condition for treating persons as means in general, and Kerstein then builds on this account in chapter 5 to articulate a Kant-inspired account of dignity. In the second part of the book, Kerstein applies the account he developed in the first five chapters to problems associated with the allocation of scarce, life-saving resources (chapter 6), organ markets (chapter 7) and some controversial topics in research ethics (chapter 8).

One of the things that any reader should take away from this book is an appreciation of Kerstein's account of non-ideal background conditions. This is a topic that is easy to overlook, but it is also one that is well worth broaching. Based on the stories I hear my students tell, I infer that they often use someone else's previous bad behaviour as an excuse for their own bad behaviour in turn. That is, when they have to act in a context in which they know someone has done them a wrong turn, 'anything goes'. Bad behaviour is taken to be the ethical analogue of a contradiction in the sense of the principle of explosion, *ex contradictione sequitur quodlibet*. Perhaps this is the expression of a deep-seated intuition in favour of retribution, but there are limits, often expressed in equally aphoristic ideas ('two wrongs do not make a right').

The point is that Kerstein does a nice job of developing a systematic way of thinking about what to do in non-ideal background conditions,

which include, of course, what to do when others are being, to put it nicely, uncooperative, as well as what to do when others are being, to put it bluntly, nasty. Here is Kerstein's formulation:

> The status of persons is such that if an agent treats another in some way, she ought to treat him as having an unconditional, transcendent value that does not change as a result of what the other does or of the agent's relation to him, apart from the following exceptions. Without violating … [this condition] an agent may treat person B as having a lower value than someone else, A, when A bears certain special relations to the agent, such as being identical to her or being a member of the agent's family, *and* the agent reasonably believes that her treating B in this way is necessary to maintain A's personhood … Without violating [this condition] … an agent [also] may treat B as having lower value than A if B has used or is using some person merely as a means or B has treated or is treating some person merely as an obstacle. But the agent may treat B as having a lower value than A only to the extent that doing so is, according to the agent's reasonable belief, necessary to prevent or curtail B's treating A merely as a means or merely as an obstacle. (128)

Explaining these exception clauses in detail is a task that Kerstein undertakes in his book. These clauses are meant to handle cases like using an assailant as a human shield when fleeing a hostage situation. For example, suppose multiple terrorists have taken hostage a group of people. Suppose, further, that one member of the group runs at the terrorists to distract them and thereby enable the others to escape. That person would be justified (according to Kerstein's principles) in using the first terrorist she or he reaches as a human shield against gunfire from the other terrorists. So the intuition that 'anything goes' is to some extent vindicated on Kerstein's account. However, these exception clauses do not allow just anything: the realm of reasonable response and retaliation is restricted to some degree. An agent may treat another as having lower value only so far as 'is necessary' (necessary for what? Kerstein explains the circumscription in detail in the book). So the intuition that 'not anything goes' is also vindicated on Kerstein's account. Given the nature of his project (i.e. as non-foundationalist) this is exactly the sort of confirmation for which Kerstein is looking.

However, in addition to advancing his positive view, Kerstein also spends a lot of time trying to take down relevant alternatives. The problem with this part of his project is that his attacks often do not connect.

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For example, in chapter 2, Kerstein argues that Wood's respect-expression approach to the formula of humanity generates counterintuitive results. To support this thesis, Kerstein examines three cases involving the withdrawal of medical treatment, killing in self-defence and heroic self-sacrifice, respectively. Kerstein argues that each case describes conditions in which it is intuitively permissible to take a human life but that this is countermanded by the respect-expression approach.

There are a few problems with this argument. First, the claim that taking a life is permissible in the cases in question is not adequately defended. The defence rests on saying that this is what 'many of us' believe (pp. 39, 48 and 49). But Kerstein cites no polls or surveys despite the fact that (1) end-of-life issues and self-defence are quite controversial,[1] and (2) recently some neo-Kantians have argued that heroic self-sacrifice might not be so heroic, after all.[2] Second, the claim that taking a life in the cases in question expresses disrespect for humanity (and therefore ought not to be allowed on Wood's respect-expression approach) is contentious at best.[3] Wood certainly never claims that taking the life of a rational being always expresses disrespect for humanity. Indeed, Wood points out that suicide might be permissible in some cases because expressive of respect for humanity.[4] It follows immediately that he thinks that taking the life of a rational being might not always express disrespect for humanity.

But the problems with Kerstein's attack on the respect-expression approach do not end here. For one thing, there are methodological issues: even if Kerstein had shown that many do take these things to be permissible and that they express disrespect for humanity (he did not show either of these things, but even if he did) this will not go very far if (1) one thinks that, in matters of ethics, it is the opinions of experts that should be trusted and many experts think these things are impermissible or (2) one thinks that the respect-expression approach can be grounded on considerations that are logically prior to, or perhaps simply of more weight in some sense than, the results of that principle when applied to any given case or small subset of cases (as Wood, in fact, does). Even by the standards of Kerstein's own method, considering a small handful of cases and showing that a principle gives results that many disagree with would not constitute good (let alone sufficient) evidence to discard a principle, especially if that principle succeeds in many other cases (which, if Aretha Franklin is anything to go by, the *r-e-s-p-e-c-t*-expression account does).[5]

So the respect-expression account seems to withstand Kerstein's attack, and this looks to be the case with many of the other accounts Kerstein attacks, too. For example, in chapter 3 Kerstein attacks the possible consent interpretation, according to which agents ought not to act on maxims that would preclude consent from their interlocutors. However, Kerstein tells us

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that he is going to jettison the problematic notion of a maxim. He is open about this – it is 'for the sake of simplicity' (72 n. 36) – but the problem is that it means his attack goes wide of the mark. One cannot attack an account that makes ineliminable appeal to maxims unless one is willing to take maxims on board.[6]

But even if I am right about all of this, there is still enough of value in Kerstein's book to make it well worth reading, and I would like to focus on one such thing in my closing remarks. In the final chapters of his book, Kerstein develops an impressive theoretical framework to handle cases in which an agent is not treated in accordance with his or her dignity despite voluntary, informed consent to a mutually beneficial arrangement. The sort of thing Kerstein has in mind is organ donation, which in some cases is financially remunerative and, thus, beneficial for both the donor and the recipient. But even if the donation is voluntary and consensual and even if the donor is well informed, if the background conditions that make these circumstances possible are themselves corrupt, they can exert a corrupting influence on the donation itself. The idea seems to be that we need to pay as close attention or perhaps even closer attention to background conditions as/than we pay to the action occurring in the foreground. Voluntary, informed consent to a mutually beneficial arrangement seems ironclad and bullet proof, at least from a moral perspective – but Kerstein patiently and convincingly exposes its Achilles heel and, it is hoped, in so doing stakes out a new territory for fruitful and interesting discussion.

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Notes

1 That Kerstein cites no polls is somewhat surprising given the frequency with which he rests his claims on what 'many of us' believe. See e.g. pp. 66, 78, 99, etc.

2 E.g. Baron 1999: ch. 1.

3 If the reader is like me, she will have wavering intuitions about the withdrawal of medical treatment case, and introspection will reveal that she is convinced that withdrawing the medical treatment is permissible when but only when it seems to be consistent with expressing respect for the patient's humanity. The self-defence case is not much better: the claim that killing someone in self-defence in this case would express disrespect for humanity rests on the claim that if someone's intentionally killing an innocent person expresses disrespect for the value of that person's humanity, then one's intentionally killing a person who is attacking one in self-defence expresses disrespect for that person's humanity (p. 44). But this claim is implausible: actions, like words, express different things in different contexts, and self-defence is obviously morally relevant. The self-sacrifice case rests on a narrative in which the self-sacrificer is said to act in disregard for his life and on the claim that this narrative implies that the

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self-sacrificer failed to express respect for his rational capacities (p. 49). But there is an obvious tension here: it is only insofar as the self-sacrificer valued his life that extinguishing it was a sacrifice – and considered reflection might reveal that it is only insofar as it was a sacrifice that it is regarded as praiseworthy.

4 Wood (1999: 152–3) and especially Wood (1999: 372 n. 37), where he seems to endorse one of Kant's examples of a permissible suicide. See also Wood (2008: 87): 'at times people are in terrible situations where living up to the dignity of their rational nature even requires them to sacrifice their continued existence. There may also be situations in which moral rules grounded on the worth of rational nature as end in itself require that human beings be killed, or even entail that the continuation of a human life should no longer be set as an end at all.'

5 Kerstein's attack against the respect-expression account does not end in ch. 2. But the later attacks seem to face even more serious challenges than the challenges articulated above. For example, Kerstein argues that the respect-expression account would prescribe flipping a coin to determine whether to give a scarce, life-saving medicine to a young patient or to an old one (pp. 155–8). But he arrives at this result by doing exactly what Wood tells us not to do: Kerstein tries to reduce the respect-expression account to other things like sharing an end. Yet Wood tells us to rely on intermediate, hermeneutical premises about what an action in a given context would express. The final attack is confusing: Kerstein comes to the conclusion that the respect-expression account proscribes an action that Kerstein says is permissible because it is expressive of respect for humanity. He calls this result 'ironic' (p. 186) but it seems more indicative of a deep misunderstanding of the account he is trying to criticize.

6 Not entirely true: one could attack the notion of a maxim itself as incoherent. But, puzzlingly, Kerstein does not do that, either.

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Jennifer Mensch, *Kant's Organicism: Epigenesis and the Development of Critical Philosophy*

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In this concise and tightly argued monograph, Jennifer Mensch has demonstrated, first, Kant's continual and critical attentiveness to the work of the emergent life sciences across the eighteenth century. She shows a clear grasp of what that scientific work took up and what its philosophical implications were – both for the scientists and for Kant. Others have