

Appropriately Using People Merely as a Means

Alexander A. Guerrero

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Abstract There has been a great deal of philosophical discussion about using people, using people intentionally, using people as a means to some end, and using people merely (or just, or only) as a means to some end. In this paper, I defend the following claim about using people: NOT ALWAYS WRONG: using people—even merely as a means—is not always (*prima facie* or *pro tanto* or all-things-considered) morally objectionable. Having defended that claim, I suggest that the following claim is also correct: NO ONE FEATURE: when it is morally objectionable to use people (either as a means or merely as a means), this is for many different kinds of reasons—there is no one wrong-making feature that every morally objectionable using has in common. After discussing these claims, I use them to present and motivate what I call the “precaution” theory of norms against using people. I conclude by considering a few cases from the criminal law context—cases that are naturally described as using people—to assess the moral appropriateness of this kind of use in these cases, and to demonstrate how the theory applies to the real world.

Keywords Using people · Deontology · Arrest quotas · Kantian ethics · Derek Parfit · Consequentialism

1 Introduction

There are many things in the world. We can use some of these things to achieve various ends of ours. Along with many other things that we can use, we can use each other.

We can use each other’s bodies. I can use your mass to lift me skyward on the see-saw. I can use your body as a shield as I run away from the opposing team. I can use your body, held in stocks or in prison, to deter those contemplating crime. In a bad spot, I can use your body for food.

A. A. Guerrero (✉)
University of Pennsylvania, Philadelphia, PA, USA
e-mail: aguerr@upenn.edu

We can use parts of a person's body, sometimes in a way naturally described—under the right circumstances—as using the person. I can use your shoulder to cry on. I can use a hand (probably two) in moving this piece of furniture. I can use one of your kidneys, if we take it out of your body and put it in mine. We can use each other's reproductive organs and reproductive material to reproduce. In some circumstances, I can use your skin, and more particularly, its color, to integrate a classroom.

We can use people's minds and what those minds contain: ideas, emotions, memories, attitudes of love, trust, respect. I can use your idea as an inspiration for my own, or I can plagiarize you—using your idea as my own. I can, like Emperor Palpatine, use your hate to destroy you. Or I can, like Barack Obama, use your hope to carry me to victory. We can use your memory of the combination to open the safe (At the moment, we have to use your report of that number, but in a not-too-distant neuroscientific future, we may be able to use the memory itself more directly). I can use your love to support me through difficult times. I can use your love to get you to lend me money.

And we can use people's efforts and abilities. I can use your hard work to keep the company afloat. I can use your culinary skill to impress a potential suitor.

There has been a great deal of philosophical discussion about using people, using people intentionally, using people as a means to some end, and using people merely (or just, or only) as a means to some end. In this paper, I will defend the following claim about using people:

NOT ALWAYS WRONG: using people—even merely as a means—is not always (*prima facie* or *pro tanto* or all-things-considered) morally objectionable.

Having defended that claim, I tentatively suggest that the following claim is also correct:

NO ONE FEATURE: when it is morally objectionable to use people (either as a means or merely as a means), this is for many different kinds of reasons—there is no one wrong-making feature that every morally objectionable using has in common.

After discussing these claims, I will use them to present and motivate what I call the “precaution” theory of norms against using people. I will conclude by considering a few cases from the criminal law context—cases that are naturally described as using people—to assess the moral appropriateness of this kind of use in these cases, and to demonstrate how the theory applies to the real world.

It is worth stressing at the outset that I am interested in investigating the morality of using people, which requires getting clear on what it is to use people. This investigation will run into issues that some approach from another direction, namely, those issues concerning whether there are constraints on the causal means by which good consequences can be brought about. The natural tie between these is this: many have suggested that there is a constraint on bringing about good consequences via the causal route of using people. More precisely, some think that there is a constraint on using a person X in a way that harms X, but which brings about good consequences that are thought to “outweigh” the bad consequences to X (Fewer people think that there is a constraint on using a person X to bring about a good consequence if there is no harm to X). I am interested in this question, and will discuss it later in the paper, but I begin with the broader question of the morality and definition of using a person, since not all instances of using people have a structure similar to that of the familiar example of pushing a Large Man in front of a trolley, and, as the above instances suggest, there are a wide variety of ways in which we use each other. The morality of using people is of independent interest.

2 Using People

In ordinary life, we think of “using people” as bad: “he used me” and “I feel used” both register complaints about how one has been treated. Our colloquial use generally picks out a subcategory of using people that is morally objectionable. But, as has been pointed out, if we understand “using people” in a neutral, descriptive sense—equated with something like¹:

(UM1) a subject, S, performs an action, A

(UM2) A involves another person, X (or group, G)

(UM3) in particular, A involves X’s (or G’s) physical body, body parts, abilities, efforts, ideas, or attitudes, and

(UM4) the presence or existence of the elements of X’s identified in (UM3) is required in order for S to accomplish S’s end, E, by performing A

many instances of using people seem morally unobjectionable. Derek Parfit writes:

Using people, it is often claimed, is wrong. But this claim needs to be qualified. If we are climbing together, I might use you as a ladder, by standing on your shoulders. And I might use you as a dictionary, by asking you what some word means, or use you as a witness to my signing of my will. Such ways of using people are not wrong.²

Many of the examples of using people identified above also serve as instances in which using someone is not wrong.³ So, using people is not always wrong.

But that’s not all that NOT ALWAYS WRONG asserts. It asserts something stronger: that using people *merely* as a means is not always wrong. And many people think that using a person *merely* as a means is always wrong. Kant thought something like this: it is wrong to treat any rational being merely as a means. When do we use someone merely as a means? Parfit offers this definition:

we treat someone *merely* as a means if we both treat this person as a means, and regard this person as a mere instrument or tool: someone whose well-being and moral claims we ignore, and whom we would treat in whatever ways would best achieve our aims.⁴

¹ There is a distinction between knowingly using a person and unknowingly using a person, and a similar distinction between intentionally using a person and unintentionally using a person. The account of using a person I’ve offered doesn’t build in that the use is knowing or intentional. We could offer explicit supplementary conditions:

(UK) and S knows that (UM2)-(UM4) obtain

(UI) and S performs A intentionally and with the knowledge that (UM2)-(UM4) obtain

and so on. My focus is not on the distinctive issues that unknowing or unintentional using of persons can raise, and so I will assume that (UK) and (UI) obtain, unless I explicitly state otherwise.

² Derek Parfit, *On What Matters* Vol. 1 (2011), p. 212.

³ There is a question of what makes *using* a person different from *working with* or even *working for* a person. On one suggestion, to say that S is working with X is just to say that S is using X and X is using S—there is mutual use—perhaps along with conditional intentions and mutual knowledge of various kinds. It may also have to do with whether X has explicitly consented—or even explicitly signed up or volunteered—to being used by S. Finally, it may have to do with the extent to which the end, E, toward which S’s action is aiming is an end that is shared (perhaps explicitly) by X. The suggestion here is that working with and working for a person will be special cases in which one person is using another—cases in which these various other conditions hold as well.

⁴ Parfit, p. 213.

Frances Kamm rejects this definition on the ground that it is too narrow—it suggests that a slave owner does not use his slaves merely as a means if, for example, he lets them rest in the hottest part of the day (out of some extremely limited compassion, rather than just for instrumental reasons).⁵ Parfit, I think rightly, argues that this is not a flaw in the definition of using someone merely as a means; it just shows that the correct moral principle is not just: “it is wrong to treat anyone merely as a means,” but also the more expansive: “it is wrong to treat anyone merely as a means, or to come close to doing that.”⁶ So, the slave owner is not using his slaves merely as a means, but what he does comes awfully close.

Like Kamm, I think that this definition is problematic, and too narrow, but in a different way. I see no reason for thinking that *using a person merely as a means* requires the complex combination of attitudes, counterfactual attitudes, and dispositions that Parfit’s definition suggests it does. Parfit suggests that using someone (“treating” someone) merely as a means requires (a) using the person as a means; (b) having a belief or attitude that the person is a mere instrument, where this includes ignoring that person’s well-being and moral claims in the particular moment of use; (c) having a stable disposition to ignore that person’s well-being and moral claims in the future; and (d) having the disposition to use the person in whatever way would be best for achieving one’s aims. I agree that if (a)–(d) are satisfied, this seems *sufficient* to establish that one is using a person merely as a means.⁷ But I don’t see why (b)–(d) are *necessary* conditions for using a person merely as a means.⁸

Consider a case in which it is a hot day and I position myself (unbeknownst to you) in your shadow while waiting for the bus. Or I am sad and I go to a performance to listen to you tell some jokes or sing some songs. These seem like instances of using another person merely as a means, but one needn’t have any of the disregarding beliefs or attitudes (implicitly or otherwise), nor any of the relevant counterfactual dispositions. All that needs to be true is that one is not *at the moment* attending to the other person’s interests or personhood, not that one believes that the person has no interests or is not a person, or that one has a standing disposition or policy to treat the people in those examples as if they have no interests or moral standing. As we might say: “absence of belief is not belief of absence.” Here is a candidate account of using a person merely as a means:

(UM1) a subject, S, performs an action, A

(UM2) A involves another person, X (or group, G)

(UM3) in particular, A involves X’s (or G’s) physical body, body parts, abilities, efforts, ideas, or attitudes and

(UM4) the presence or existence of the elements of X’s identified in (UM3) is required in order for S to accomplish S’s end, E, by performing A, and

(UM5) in the decision to perform and while performing A, S does not consider X’s views with respect to S’s performance of A, nor does S weigh or consider the effects of doing A on X

⁵ Parfit, p. 213, noting that Kamm gave him this objection “in discussion.”

⁶ Parfit, p. 214.

⁷ And it may be plausible that, on this account, it is always at least *prima facie* or *pro tanto* morally objectionable to use someone as a mere means—if for no other reason than the attitudes that one possesses.

⁸ In fairness to Parfit, he offers the above account as a “rough” definition, and it is possible he meant to be highlighting a clear set of sufficient conditions for treating merely as a means, perhaps leaving open whether those conditions are necessary.

Parfit and others want to build in a kind of counterfactual robustness to the idea of using a person merely as a means, so that it comes out true not just that *in this instance* S is using X merely as a means, but that S *would* use X in a whole range of cases in which there might be strong moral reasons not to use X in this way, or that S has a *general policy* of giving no thought to X's interests or moral standing when making decisions about using X. Parfit writes:

Whether we are treating someone as a means depends only on what we are intentionally doing. Whether we are treating someone *merely* as a means depends also, I believe, on our underlying attitudes or policies. And that is in part a matter of what we would have done, if the facts had been different.⁹

But it is unclear what motivates this extended counterfactual test. One thought might be that there is an intuitive distinction between *using a person* and *using a person merely as a means*, and that we are unable to mark this distinction or know which kind of case we are dealing with unless we run this extended counterfactual test: would S have taken X's interests or moral standing into account in any similar case, at any point, if the facts had been different so as to require this? But I think this test matches poorly onto our natural use of the idea of using someone merely as a means (as the above shadow and performer examples suggest). All we need to know was what S was attending to or thinking about in this particular instance. So, I generally agree with this claim of Parfit's:

(B) we do *not* treat someone merely as a means, nor are we even close to doing that, if either (1) our treatment of this person is governed or guided in sufficiently important ways by some relevant moral belief or concern, or (2) we do or would relevantly choose to bear some great burden for this person's sake.¹⁰

This allows us to say (perhaps, depending on how the content of (1) is filled in) that some instances of putting a person's body in front of a trolley constitute using someone merely as a means, and others do not.

But there are a range of cases in which a person does use another merely as a means, but it is not true that they have the robust set of attitudes and dispositions that Parfit suggests are necessary. Sometimes we use a person merely as a means because we are not, in that moment, thinking about her status as a person with us in the Kingdom of Ends—not because we are disposed or committed (or close to being committed) to her exclusion from that Kingdom. I will suggest that, in those cases, it is not always wrong to use a person merely as a means.

3 Not Always Wrong

Let us use this as our account of using a person merely as a means:

(UM1) a subject, S, performs an action, A

(UM2) A involves another person, X (or group, G)

(UM3) in particular, A involves X's (or G's) physical body, body parts, abilities, efforts, ideas, or attitudes and

⁹ Parfit, p. 215.

¹⁰ Parfit, p. 214.

(UM4) the presence or existence of the elements of X's identified in (UM3) is required in order for S to accomplish S's end, E, by performing A, and (UM5) in the decision to perform and while performing A, S does not consider X's views with respect to S's performance of A, nor does S weigh or consider the effects of doing A on X

I take it that this account captures the basic idea of using a person merely as a means, with (UM5) encapsulating the idea that the subject, S, is using a person without taking into account the distinctive *personal* aspects of that person: that she might have a morally relevant perspective on what S is doing and that she has possibly morally relevant interests that might be affected by S's action.

In this section, I will consider whether this is always morally objectionable—at least in a *prima facie* or *pro tanto* way, even if not after taking all considerations into account. I will argue in support of this thesis:

NOT ALWAYS WRONG: using people—even merely as a means—is not always (*prima facie* or *pro tanto* or all-things-considered) morally objectionable.

In general, my focus will be on an idea of moral objectionability that is related to individual moral blameworthiness, so that if one does something morally objectionable, one could be (not that one should be) appropriately morally blamed or criticized for having done so. But the broader suggestion is the conjunction of all of the following: using people merely as a means is not always morally wrong (objectively or subjectively); it is not always morally impermissible (objectively or subjectively); it does not always reflect an undesirable character or character trait; it is not always morally blameworthy or a reflection of a morally blameworthy mental state; and it does not always reveal or reflect that a person was acting on morally inappropriate reasons, on the basis of false moral beliefs, or by way of a morally inappropriate process of reasoning.¹¹

Now, with Parfit's understanding and perhaps the prevalent understanding of treating a person merely as a means—on which the person doing the using has a stable belief that the person being used just is the kind of thing that needn't be taken into moral account, or on which the user acts as if this is the case¹²—it might seem obvious that this is morally objectionable. At the very least, even if her action is not morally wrong or impermissible, the user will have a morally objectionable set of beliefs and attitudes—objectionable because they are false, because they fail to track the moral facts.

But I don't think anything similar can be said with respect to the (UM1)–(UM5) account. It might be that S has only true moral beliefs and morally appropriate attitudes with respect to X. For example, consider the case of S standing in X's shadow. In that case, S might well have the general views that X is an end-in-herself, that she should be treated only in ways that she could rationally consent to be treated, that her interests matter morally, and so on. But S might still satisfy (UM5), since S might not—in that instance—have given any thought to X's views about what S was doing, and S might not have considered the effects on X of standing in X's shadow. So, I take it that there are at least some intuitively plausible cases in which a person satisfies (UM1)–(UM5) but does nothing morally objectionable, and possesses no morally objectionable beliefs, attitudes, or dispositions. Furthermore, the opposite suggestion seems to demand a kind of exhausting,

¹¹ Thanks to Heidi M. Hurd for encouraging me to be explicit regarding the full scope of the view.

¹² Thomas Hill, in interpreting Kant on a related point, writes “‘Never treat them merely as a means’ is narrower, amounting to ‘when treating persons as means, also treat them as ends in themselves.’” “Scanlon on Moral Dimensions,” *Philosophy and Phenomenological Research* Vol. 83 (2011), p. 484.

morally overwrought way of being—one that is untrue to most of our ordinary, routine interactions amongst strangers in the modern world.

On the other hand, an objector might make the point that if you satisfy (UM1)–(UM5), and particularly (UM5), then, for all that you have considered, you *might* be doing something morally objectionable. It might seem that using a person merely as a means is always *morally risky* or even *morally reckless*, even if one need not be committed to any morally objectionable beliefs or attitudes. Perhaps this can ground the idea that using a person merely as a means is always morally objectionable in at least this way.

I do think that the above thought helps to make sense of why satisfying (UM5) is often objectionable. But I do not think it can ground the claim that doing so is always objectionable, at least if we are going to see something's being morally objectionable as connected to notions of moral blameworthiness.

Almost every action has some moral risk involved, at least if we think that the consequences of our actions matter morally (even if they are not all that matter). There is a hard question of how much we must consider and rule out before acting. In earlier work, I introduced the idea of a “blocker”: a blocker with respect to an action, A, is any state of affairs which, if it obtained, would make it morally wrong to perform A.¹³ One suggestion is that, for our action not to be objectionably morally risky, we must rule out all blockers for an action—we must be certain that they do not obtain—before we can take that action. But this is an unreasonably demanding standard, given that many blockers will not be obvious. It was not morally objectionable for me to turn off my alarm clock this morning, even though, unbeknownst to me, it had been taken apart and rewired in the middle of the night so that the “off” switch, when pressed, would kill 50 people in London. I am not morally blameworthy for doing this, even if it was the objectively morally wrong thing to do. So, it seems more plausible that at most we always have an obligation to investigate whether certain obvious or relatively obvious blockers to our contemplated actions obtain, prior to performing those actions.

What I want to suggest is that, for some instances of using a person merely as a means, our using that person by performing some action A is not tied in any obvious way to any blockers for A. Consider the case of S standing in X's shadow. Of course, it is possible that, by standing in X's shadow, X will suffer some horrible fate, through some obscure causal mechanism triggered by S's standing in X's shadow. One thought is that even if S had considered X's interests—so that S didn't satisfy (UM5)—S still would not have discovered this fact, and so it doesn't make sense to find S's conduct objectionable for being morally reckless. Another thought is that, given what S was contemplating doing (standing in X's shadow), there was no moral obligation for S to investigate whether doing so would in some way harm X, and this might be true *even if* S would have learned about this obscure causal mechanism if S had investigated. Both routes suggest that S is not morally blameworthy for doing something morally risky, and that S's conduct was not morally objectionable, although it satisfied (UM5). To say otherwise would be equivalent to holding an agent morally blameworthy for putting what is in fact arsenic in his friend's coffee, even though there was absolutely no reason for him to suspect that what was in the sugar bowl was anything but sugar (or even if his investigative efforts would have been sabotaged/manipulated so that the arsenic would seem, upon investigation, to be sugar).

Of course, sometimes using a person merely as a means will involve an objectionable kind of moral recklessness—consider a case of someone using another person's body for

¹³ Alexander A. Guerrero, “Don't Know, Don't Kill: Moral Ignorance, Culpability, and Caution,” *Philosophical Studies* Vol. 136, pp. 59–97 (2007), p. 73.

sexual stimulation without knowing whether that person consents to being used in this way. But other cases of using a person merely as a means are not like this. We don't think about whether the person we are using does or could rationally consent to our use, nor do we consider the effects of our use on that person. This is fine, I suggest, because in those cases it is appropriate to act as if little or nothing morally significant is at stake—not because the person we are using isn't morally significant—but because what we are using them for is not morally significant, or is extremely unlikely to be morally significant.

4 No One Feature

I think it's worth making the point that using people merely as a means is not always morally objectionable. One reason for this is that it has been suggested that there is some one factor that makes such using always morally objectionable, and this factor is the same across a range of cases. And although that might be the case for some stipulated understanding of the term (perhaps it is just defined so that this is the case: using + objectionable moral feature), there are many instances in which something that looks like using a person, and that looks morally objectionable, will be either not diagnosed as problematic, or misdiagnosed as problematic for reasons other than the ones that make them problematic.

In this part of the paper, I tentatively suggest that this claim is true:

NO ONE FEATURE: when it is morally objectionable to use people (either as a means or merely as a means), this is for many different kinds of reasons—there is no one wrong-making feature that every morally objectionable using has in common.

This claim suggests that using people is not itself a distinctive moral wrong or distinctive moral concern—it's just that people are morally significant and sensitive entities (think: like using unstable chemical compounds, not like using poison)—and so one can run into lots of different kinds of moral trouble when one attempts to use them to accomplish various ends.

There are several candidate univocal explanations for what makes using people wrong, when it is wrong. One common view is expressed by Helen Frowe, who writes: “Generally speaking, the main objection to using a person as a means is that it treats them in a particular way that is indicative of a certain attitude towards the object of that treatment.”¹⁴ Onora O’Neill writes that “to treat something as a mere means is to treat it in ways that are appropriate to things.”¹⁵ Christine Korsgaard invokes the notion of hypothetical consent, suggesting that we treat a person merely as a means when we treat her in a way to which she could not possibly consent (if the maxim of our action precludes the possibility of her consent), something which she takes to ground the wrongness of using people in this way.¹⁶ Thomas Scanlon suggests that “being a means in this sense—being causally necessary—has no moral significance in itself ... [w]hat matters is the cost to the person of being involved, where ‘cost’ is understood broadly to include reasons for not wanting to be involved because of the meaning of that involvement.”¹⁷

¹⁴ “Equating Innocent Threats and Bystanders,” *Journal of Applied Philosophy* (2008), p. 281.

¹⁵ Onora O’Neill, *Constructions of Reason* (1989), p. 138.

¹⁶ “The Right to Lie: Kant on Dealing with Evil,” in *Creating the Kingdom of Ends* (Cambridge University Press, 1996), p. 138.

¹⁷ T. M. Scanlon, *Moral Dimensions* (Harvard University Press, 2008), p. 118.

Some of these accounts purport to be definitional (and possibly stipulatively so) regarding using merely as a means: this is *what it is* to treat a person as a means or merely as a means. Often, along with the definitional claim is a claim that it is always (at least *pro tanto*) wrong to use a person merely as a means—sometimes this follows relatively straightforwardly from the definition.

In this section, I will assume that using a person as a means is defined by the first four conditions—(UM1)–(UM4)—and that using a person *merely* as a means is defined by those four conditions plus (UM5). Above, I argued that, on these accounts of using people, neither using a person nor using a person merely as a means is always wrong. Here, I will focus just on those instances of using people that *are* wrong, and to consider whether there is some one feature that makes those instances morally objectionable.

There are three broad families of views as to what makes using people objectionable, when using people is objectionable. The first concerns the objectionability of possessing or expressing certain *attitudes* toward the person(s) used. The second concerns the violation of norms of actual or hypothetical *consent* of the person(s) used. The third concerns the *harm* or *cost* imposed on the person(s) used. These categories can overlap—e.g., one might identify the cost to the person as being on the receiving end of an expression of disrespect—but it's worth considering them as roughly distinct for my purposes here.

So, considering our above account of using people:

(UM1) a subject, S, performs an action, A

(UM2) A involves another person, X (or group, G)

(UM3) in particular, A involves X's (or G's) physical body, body parts, abilities, efforts, ideas, or attitudes and

(UM4) the presence or existence of the elements of X's identified in (UM3) is required in order for S to accomplish S's end, E, by performing A, and

(UM5) in the decision to perform and while performing A, S does not consider X's views with respect to S's performance of A, nor does S weigh or consider the effects of doing A on X

we might suggest the following additional conditions for *morally objectionable* using:

(Harm) A harms X

(Significant Harm) A significantly harms X

(Probable Harm) A is likely to harm X

(No Rational Consent) X could not rationally consent to S's performing A

(No Actual Consent) X does not consent to S's performing A

(No Shared Ends) X could not rationally consent to S's performing A to achieve E

(Bad Attitude—Possessed) that S performs A to achieve E reveals/demonstrates that S disrespects or has a morally objectionable attitude toward X

(Bad Attitude—Expressed) by performing A to achieve E, S expresses disrespect or a morally objectionable attitude toward X

One could, of course, combine these in various ways, so that, for example, morally objectionable using is when both (Harm) and (No Actual Consent) are satisfied. In this next section, I will offer a few instances in which I think morally objectionable using takes place, but in which different of these conditions are satisfied, and others are not satisfied. The suggestion is that there is no condition that is both necessary and sufficient for an instance of using a person to be morally objectionable. What I hope to suggest is that each

of these can be ways in which using people can be problematic—there are a number of different ways in which things can go badly—although establishing this fully is outside the scope of this paper.

Consider cases of what looks to be morally objectionable exploitation. Frick runs a factory that operates with something like sweatshop conditions—incredibly long hours at terrible wages—which she is able to do because she only employs vulnerable people, people whose legal immigration status is in question, for example. So, she performs an action A (running the sweatshop) which requires using the labor effort of a group of people, G (the employees), and the efforts of the members of G are required to achieve her end, E (higher profits). Assume that (UM5) is satisfied: Frick does not consider the morally relevant effects on the members of G, or their moral perspective on what she is doing. Let's also assume that the members of G are not harmed by this employment (they benefit from it—they are not all-things-considered harmed, nor are they harmed in a non-all-things-considered way), and that it is rational for them to consent to working in these conditions (given their other options), and that they do actually consent. Still, it seems many cases like this involve morally objectionable conduct. One natural thing to say in explanation is that Frick's actions demonstrate that she has a morally objectionable attitude toward the members of G. A second thing to say is that, in treating them this way, she expresses that attitude. Both of those things might be morally objectionable. I do not purport here to answer the question of whether exploitation of this sort should be legally disallowed because it is morally objectionable; all I claim is that there is something morally objectionable about what Frick does in using the members of G in this way, and that this can't be explained either by the satisfaction of either the *harm* or *no consent* conditions.¹⁸

Can we identify an instance of morally objectionable using (but not necessarily using merely as a means) in which no bad attitude is expressed or possessed? Things are somewhat tricky here because people will disagree about whether what is done is morally objectionable, or whether a morally objectionable attitude is possessed or expressed. Much more would need to be said to fill in the details of what constitutes a “bad attitude.”

But consider a case like the following. Jones is a young scholar with a modest reputation in his field. He works in an engineering field that is the same field as the former field of one Professor Lilly. Professor Lilly is a notoriously private person. Indeed, she resigned her academic post, and cannot be located—she's been “off the grid” for two decades. There used to be rumors that she was living in some remote part of Russia, but even those rumors have quieted in recent years. She has published very little of her work, and what she did publish was highly controversial. She and her work have become only more controversial

¹⁸ Perhaps one of the objectionable things about exploitation of the vulnerable is that vulnerability affects the quality of the consent that can be obtained. It can be hard to spell out the notion of consent at work in this thought but, even if there is a worry in this vicinity, we can turn to cases in which it seems completely clear that consent is both actual and rational, and that it is “robustly offered” in some sense. Consider, for example, a very slightly modified version of Parfit's Green and Gold case (Parfit, p. 217):

Green marries Gold, a 90-year old billionaire. Green gives Gold various services and in other ways treats Gold well. Green's sole aim throughout this, as Gold knows, is to inherit Gold's wealth. Though Gold would prefer genuine affection from Green, she accepts a mutually advantageous arrangement on Green's egoistic terms. Suppose next that Green regards Gold as a mere tool, whom he would treat in whatever way would best achieve his aims. Green's first plan was to forge Gold's will and then murder her, and he changed his plan to marrying Gold, and treating her well, only because that seemed a safer way to get some of Gold's wealth.

Here, there is no harm to Gold (let us suppose), and Gold's consent does not seem at all questionable. What is morally objectionable is the same: the attitude toward Gold that Green possesses and perhaps expresses.

since, due to a discovery of her association with Neo-Nazis while she was still a professor. By chance, Jones finds notebooks and notebooks full of unpublished material of Professor Lilly's. Jones knows that it will only see the light of day if he claims it as his own, since Professor Lilly's reputation will keep anyone from looking at it or taking it seriously on its merits, or at least it will take decades for people to turn to it. But her work also is, to Jones's mind, very important to improving the efficiency of solar panels, which is itself (to Jones's mind) important, and Jones thinks it should have a much wider audience. Jones does not satisfy (UM5): when thinking about passing the work off as his own, he considers Professor Lilly's possible views on the subject, and the possible effects it might have on her. After reflection of this sort, he decides to claim the work as his own, and publishes it under his name, with the end of improving solar panels.

What should we think about this case? My reaction is that there is something morally objectionable about what Jones does in using Professor Lilly's work and ideas in this way, although I do not think that Jones satisfies either of the *bad attitude* conditions. Instead, it seems that Jones violates at least one of the *no consent* conditions (no actual consent), and possibly the *harm* condition—at least insofar as one can be harmed by having one's preferences/desires thwarted, and if her preferences/desires would incline against what Jones has done. This is not to say that, all-things-considered, Jones ought not to have done what he did—non-consent can be trumped by other considerations, and perhaps it is appropriate to weigh the harm done to Professor Lilly by the benefit to others of having her ideas in public circulation. But it is to say that there is something *pro tanto* morally objectionable about what Jones does, and this is not most naturally explained by his attitudes toward Professor Lilly. Indeed, he might very much want to have obtained her consent, and might have done everything in his power to obtain it. Still, in the neutral sense of using people that I've identified, Jones is clearly using Professor Lilly to help him achieve his ends, by way of her ideas. And it seems that the "using" at least partly explains why what Jones does is morally objectionable. But it seems that what is objectionable about this is not his attitude toward her, but her lack of consent, and possibly the harm to her interests.

There are other, perhaps more controversial cases with the following general form: S uses X; X could rationally consent to A but does not actually consent to A; S neither expresses nor possesses any objectionable attitudes toward X by performing A; but A significantly harms X—and this last feature makes A morally objectionable (These cases are perhaps more controversial because some may see the fact that S performs A in such a situation, without X's consent, as *constituting* the expression of an objectionable attitude toward X). Consider a version of a trolley case in which S pushes X in front of a trolley to prevent the trolley from hitting and killing 25 people. In such a case, some will argue that, no matter what, S expresses (if not possesses) an objectionable attitude toward X. But I think we can raise questions about this. It certainly seems that S's treatment of X might be governed or guided in sufficiently important ways by relevant moral beliefs and concerns, and that S might choose to bear some great burden for X's sake. Perhaps S would have given his own life if that could have prevented X from losing his life; perhaps S would not have pushed X except to save 20 or more lives. It is at least not obvious that every instance of this kind of action must involve an agent that satisfies (UM5). What seems to be going on in this case—to the extent that we find S's action objectionable—is that there is some moral principle that bars (or at least tells against) actively causing significant harm to one person as a way of preventing significant harm to others—even if the harm prevented is in some sense greater than the harm caused—if the person one causes harm to does not consent to being harmed in this way. So, we are using the person as a means, and our use is

objectionable, but not because we are using that person *merely* as a means (we are not) or because we harbor morally objectionable attitudes toward the person (we do not). Of course, a Kantian might disagree, maintaining that S's willingness to use X in this way, even if S thinks about X in moral terms, demonstrates that S possesses an objectionable attitude toward X, failing to appreciate him in the morally appropriate way.¹⁹ So that makes this kind of case controversial.

The above discussion suggests, I think, that NO ONE FEATURE is true, that when it is morally objectionable to use people (either as a means or merely as a means), this may be for many different kinds of reasons. One way of understanding what I am saying is that there is no one feature, no one condition (or simple cluster of conditions) that is necessary and sufficient for a using of a person to be morally objectionable. I have not established this conclusively, in part because people will not all agree (a) on which actions have morally objectionable aspects and (b) on the correct explanation for what makes the morally objectionable actions morally objectionable. (There is also the related problem that NO ONE FEATURE can be rejected by a successful argument that every morally objectionable *action* has the same wrong-making feature, so that it follows trivially that every morally objectionable *using* has the same one wrong-making feature. So, for example, a utilitarian will reject NO ONE FEATURE.)

I do not think that I have established this; I've merely suggested it. But if my suggestion and the argument so far is convincing, then we are left with a predicament. Using people—whether as a means or merely as a means—is not always morally objectionable. When it is morally objectionable, there is no one feature that makes it so. As a result, we are left with a more complex, more uncertain story about when using people is morally objectionable. At the end of the paper, I will discuss what this uncertain story means for us.

There is a remaining hope for those who wish to introduce some bright line rules regarding use. One might be able to offer conditions that are always *sufficient* to make using someone morally objectionable, even if they are not necessary. One such condition, say the Kantians, is to treat someone in a way to which she could not rationally consent. This might be correct, but more needs to be said to fill in what constitutes the basis on which we assess the rationality of consenting. I won't try to resolve these disputes here, since I think they can only be resolved by offering and defending a full moral theory. In particular, one needs some account of the relationship and tradeoffs between a number of seemingly relevant moral considerations: harm, consent, and our attitudes toward and dispositions regarding each other. In the next section, I will consider one other particularly prominent candidate sufficient condition for using a person to be wrong, one based on harm: the “means principle.”

5 The Means Principle

Alec Walen writes that “The ‘means principle’ (MP) holds that it is impermissible to cause significant harm to others, or to allow significant harm to befall others, when the harm

¹⁹ There is an additional complication here in that some theorists, such as Parfit, want to focus on whether the action A is morally objectionable, as opposed to whether there is something morally objectionable about the case more inclusively—perhaps including just the mental states of the person performing the action. So Parfit suggests that, in some cases, a person might possess a morally objectionable attitude toward another, but this does not manifest itself in the action, and the action is not morally wrong or even morally objectionable. Again, resolving this dispute or the relevance of this dispute requires, among other things, taking a view about what is the proper object of moral assessment—something I will avoid doing here.

would result from using them *merely* as a means.”²⁰ So, reinterpreting the MP in our terms, the suggestion is that it is always morally objectionable to satisfy these conditions:

- (UM1) a subject, S, performs an action, A
- (UM2) A involves another person, X (or group, G)
- (UM3) in particular, A involves X’s (or G’s) physical body, body parts, abilities, efforts, ideas, or attitudes and
- (UM4) the presence or existence of the elements of X’s identified in (UM3) is required in order for S to accomplish S’s end, E, by performing A
- (UM5) in the decision to perform and while performing A, S does not consider X’s views with respect to S’s performance of A, nor does S weigh or consider the effects of doing A on X.
- (Significant Harm) A significantly harms X (A causes or allows harm to X)

Is this correct? Here is a template for a kind of case that I think serves as a counterexample to at least this construal of the MP: cases in which (a) S satisfies the (UM1)–(UM5) conditions, (b) S causes significant harm to X by performing A, but (c) that X would be significantly harmed by A was unforeseeable by S, through no fault of S’s. So, one stands in a person’s shadow while waiting for a bus on a hot day, but—through some obscure and exceptional causal mechanism—this causes the person to lose a limb. It seems that, in these cases, one intentionally and knowingly uses another person merely as a means, and causes her significant harm for having done so, but that what she did was not morally impermissible and she is not morally blameworthy for acting as she did.

In response, one might worry that I have shifted the discussion from whether some action, A, is morally impermissible, to whether some agent, S, is morally blameworthy. It’s certainly true that I defend the view that S is not morally blameworthy for acting as she does in the unfortunate harmful shadow standing case. But I think it’s actually rather unclear that, in that case, standing in the shadow is “morally impermissible,” as opposed to being (as it turns out) the objectively wrong thing to do.

This raises the issue of whether “morally impermissible” in the MP is supposed to be about subjective moral impermissibility or objective moral impermissibility. Ordinarily, in Large Man trolley cases, the issue doesn’t arise, since in those cases we imagine an agent, S, who is intentionally and knowingly using a Large Man, X, by pushing X into the way of a trolley so as to achieve E (the prevention of the deaths of five people who are trapped on the tracks). But consider a case that is more analogous to the shadow case:

The Unfortunate Hug

S is feeling sad and lonely. He thinks to himself, “I really need a hug.” He sees a Large Man, who appears to him to be making a gesture as if to hug someone, which encourages S to come over and get a hug. S can’t believe his luck! He heads over to the Large Man to get a hug. But S is—through no fault of his own—suffering from a complex kind of hallucination and visual illusion. Rather than any of what S reasonably believes given what he sees, in fact the Large Man is standing with his back to S, somewhat precariously by the side of a road, a road which overlooks a train track. Also unbeknownst to S, a trolley is hurtling toward five people who are trapped on the tracks. S goes over to the Large Man to get a hug from him, but instead knocks him off of the road onto the tracks below, killing him but also just in time to block the trolley from hitting the five people trapped on the tracks.

²⁰ Alec Walen, “Transcending the Means Principle,” *Law and Philosophy* (2013), pp. 1–2.

It is a bit artificial, but let us stipulate that the Large Man's apparent gesture only inclined S to see the Large Man as a source of hugs—S did not consider the Large Man's views about giving S a hug, nor did S consider the effects on the Large Man of hugging—so that S satisfies (UM5). I think that, in this case, S violates the strict terms of the MP, that S is not morally blameworthy for killing the Large Man, and that what S did was objectively morally wrong (quickly: wrong given all of the information). But it is less natural to say that what S did was morally impermissible. What S *thought* he was doing was morally permissible, or at least borderline (depending on the ethics of borderline consensual hugs). What S *actually* was doing would have been morally impermissible under the description of the facts as they actually were. But it seems strange to say, flatly, that what S did was morally impermissible. Perhaps others disagree. My reason for thinking this is connected to the idea that facts about permissibility and impermissibility are facts connected to morality as action-guiding, so that we are thinking in terms of what agents do and do not have permission to do. Of course, we can distinguish between an action being subjectively morally impermissible and objectively morally impermissible, and so perhaps little turns on this. If interpreted as a principle of subjective impermissibility, the MP is false. If interpreted as a principle of objective impermissibility, the MP may (for all I have said here) be true.

The point I want to stress is that using someone merely as a means—even if it means not thinking about what the effects of one's actions might be on that person—does not automatically make one morally blameworthy for the harms that follow from that use. The mere fact of *use* does not trigger something like *strict moral liability*. It still depends on what one is using the person for, what one is contemplating doing, whether there are relevant blockers of which one should be aware, and so on. One must be appropriately sensitive to the moral risks, given what one is doing. But sometimes one can act “thoughtlessly” in terms of what one is doing—even in using another person—and that can be acting in a way that is appropriately sensitive to the moral risks, because what one is doing is (anyone should believe) innocuous. One can get unlucky in those cases, but one does not accrue some level of moral objection to one's conduct simply because one's conduct can be described as using a person merely as a means. It is the conditions of use, and not the fact of use, that remains morally significant.

Additionally, the discussion above concerning the interpretation of the MP as a principle of objective impermissibility suggests that perhaps my initial formulation of the MP was incorrect, since the defenders and critics of the MP do not want to establish something like strict moral liability from using people merely as means, but instead something more like a straightforward doctrine of double effect. So that, rather than the MP as I've interpreted it, we might change the account to this:

- (UM1) a subject, S, performs an action, A
- (UM2) A involves another person, X (or group, G)
- (UM3) in particular, A involves X's (or G's) physical body, body parts, abilities, efforts, ideas, or attitudes and (Significant Harm) A significantly harms some element of X's (A causes or allows harm to X) identified in (UM3)
- (UM4*) the significant harm to X is required in order for S to accomplish S's end, E, by performing A

According to the doctrine of double effect, this is always morally impermissible. If we add these further conditions concerning knowledge and intention:

(KUM4*) S knows that the significant harm to X is required in order for S to accomplish S's end, E, by performing A

(IUM4*) S intends to cause or allow significant harm to X in order to accomplish E

then the (c) condition for the counterexample template sketched above could never be satisfied.

Some might feel, then, that the proper interpretation of the MP should be something closer to: it is morally impermissible to satisfy all of (UM1)–(UM3), (Significant Harm), (UM4*), (KUM4*), and (IUM4*). It's worth noting, however, that this may suggest that what is morally objectionable (if anything) is not causing harm by using a person or using a person merely as a means, but causing harm that one intended and knew one would cause.

6 The Precaution Theory

In this concluding section, I will put forward what I call the “precaution theory” of the morality of using people and apply it to several cases in the criminal law context to help illustrate its contours.

Here is the basic idea: people are morally sensitive entities—it is easy to act morally objectionably when we use them: through harming them, failing to appreciate them in the right way, or overriding their autonomy. So, we must be careful how we treat them, and we must be careful how we use them. As I have argued, using people—whether as means or mere means—is not moral poison, i.e., always impermissible. Instead, we should think of using people not as using poison, but as something like using nitroglycerin—an unstable compound, dangerous to use. Furthermore, if we accept the suggestion that NO ONE FEATURE is correct, then there is no simple set of instructions that can guide our use.

A number of things follow from this. First, as moral agents, we should be very careful to scrutinize our use of another person—whether as a means or a mere means. This is particularly true in cases in which we are or might be contemplating what would amount to using a person merely as a means, precisely because what makes a using a *using as a mere means* on my account is a lack of moral consideration at a crucial juncture. So the first part of the “precaution theory” (borrowing language from the constitutional domain) is this: *contemplated use of people merits heightened moral scrutiny*. This is not a particularly surprising or unusual part of the theory, but it is worth stressing.

A second part of the precaution theory is that, because when we are considering using someone we are interested in and motivated by the end toward which we are aiming, we must be wary of motivated reasoning—rationalizing our assessment of the moral situation in a way that permits our use. This concern about motivated reasoning is one thing that makes using people in need of particular scrutiny—perhaps more than just non-using action that has effects on people (and the effects of which may be harmful). It is true that we should also worry about the non-use related side-effects of our actions on other people, but using both raises distinctive worries about consent to our use, and we are assured (by the structure of the using relation) to have some end that we are pursuing through use of this other person. This is especially true if the end we seek is one that benefits us personally and specifically, rather than one that is more concerned with the common good or what is impartially best. So, the second part of the theory is this: *self-interested use of people merits especially strict moral scrutiny*. The suggestion is not that it is harder to justify the use of people when the end at which we are aiming is a self-interested one—this might be true, but it is not the point. The point is that—given what we know about the potential we

have for motivated reasoning and rationalization—we should expect to find that many of the moral mistakes that people make are of the form: S believed that it was morally acceptable to use X to pursue his self-interested end E, but S was wrong about that. So, to act better, morally-speaking, or to help others act better, we should be cognizant of this, and perhaps institute various firewalls or oversight mechanisms to help reduce the mistakes of this kind.

This brings us to the third part of the precaution theory, concerning the institutionalized use of people in legal, commercial, or professional contexts. First, we should be wary of the rationalizations of those working in various institutional settings, and particularly the possibility of distortion in contexts in which the person doing the self-interested using also gets to determine (in a legal or contractual sense) whether the conditions of permissible use obtain. This is a reason to prefer bright line rules against self-interested using of people (for everyone, but particularly in institutional settings) rather than somewhat more flexible standards that put certain conditions on permissible use (These are morally good rules-of-thumb, rather than moral rules about permissible use—not all self-interested using of others is morally objectionable). It is a reason to prefer allowing self-interested using of people only in no-discretion or low-discretion contexts, and to implement oversight mechanisms so that someone other than the self-interested user of others get to determine whether the conditions for permissible use obtain. To summarize, the third part of the theory is this: *from an institutional standpoint, if self-interested use of others is allowed, it should be overseen by disinterested others—and there are strong reasons not to allow self-interested use in high discretion, low oversight contexts.*

The final part of the precaution theory is a suggestion regarding the strength of our intuitions concerning non-use of people. Whenever we act, we should be wary that we might harm others. But there does seem to be something distinctive about using people—at least in terms of the strength of our reactions to cases. Most people think it is permissible to turn the trolley from the track with five to the track with one person on it, but not to push the Large Man into the trolley's way.²¹ Of course, as Peter Unger and others have argued, there might be many psychologically significant but morally irrelevant factors that affect our judgments of these cases.²² And I think we can put pressure on the idea of whether what is different about those two cases has to do with *using* the person as opposed to something about *intending* that the harmful event occur. But, leaving that aside for the moment, another possibility is that our local moral rules have developed as something of rules-of-thumb, and that, because using people is so fraught with possible moral peril, we have developed bright line rules-of-thumb against it, or at least against doing it in cases where significant harm is threatened. So, this would be a precaution-based explanation for the strong intuition we have against using. One further reason for suspecting something like this might be correct is that, if we make the case exceptional enough, with enough at stake, many people's intuitions flip: it is morally permissible to push the Large Man into the trolley's way to save 10,000 people. But of course there are other explanations (including the permissibility of the Large Man's non-consent to being pushed) that might be offered to explain this differing response to the higher stakes cases.

²¹ For discussion of the empirical point, see Fiery Cushman, Liane Young & Marc Hauser, "The Role of Reasoning and Intuition in Moral Judgments: Testing Three Principles of Harm," *Psychological Science* 17 (2006): 1082–1089.

²² Peter Unger, *Living High and Letting Die* (Oxford University Press, 1996).

Let us now consider a few instances in which people are used in the criminal law context in order to illustrate and apply the precaution theory to a real case. I will argue that the precaution theory tells against allowing this using from an institutional standpoint, even if not every instance of using is morally objectionable.

Consider police officer quotas for “contacts” with members of the public—tickets, arrests, summonses, stop-and-frisks, field interviews, warnings. These can be formal or informal, they can set out explicit targets or general guidelines, they can serve as benchmarks for pay and promotion or as conditions of employment. There might be many objections to the use of quotas of this sort, but one I’d like to suggest is that they can amount to using people for self-interested ends. I think it is likely that many, or at least some, contacts that are performed under a quota regime will constitute instances of using people—and in particular using their arrest, ticketing, or physical harassment—to further one’s own end (an end connected not to reducing levels of crime, but to the personal ends of police officers as connected to their reasons for wanting to hit certain quota numbers). It is plausible that these four conditions are satisfied:

(UM1) a subject, S, performs an action, A

(UM2) A involves another person, X (or group, G)

(UM3) in particular, A involves X’s (or G’s) physical body, body parts, abilities, efforts, ideas, or attitudes and

(UM4) the presence or existence of the elements of X’s identified in (UM3) is required in order for S to accomplish S’s end, E, by performing A

Given that, we can ask what the precaution theory would say about this practice. In the background is the moral argument that we should be morally free from police entanglement—let alone arrest and ticketing—except in those circumstances in which the actual democratically-enacted or democratically-authorized “triggering conditions” of permissible State action are satisfied. Police officers and other State officials are morally permitted to do things to us, but only when certain conditions are satisfied. Whatever those conditions are—the thought goes—if police have the power to decide whether to act as if those conditions are satisfied, and if they have a lot of discretion in making those decisions, and if there is little scrutiny or oversight of those decisions, then it is morally a very bad idea to institute something like a quota system, where we are supplying them with a self-interested end that they can only accomplish through using people. We want police officers to be extremely careful and thoughtful in making their determinations as to whether the relevant triggering conditions for intervention obtain; by supplying them with an instrumental consideration through a quota system, we make this considerably less likely, and we make moral violations more likely. These moral violations will have two dimensions: state action against individuals when the relevant triggering conditions are not in fact satisfied; and morally objectionable using of individuals in those cases where “contact” is made but is unwarranted, leaving only the naked, unjustified using.

And other similar stories could be told. A very similar story could be told about the way in which prosecutors’ bonuses and promotions are tied to conviction rates, creating self-interested reasons to withhold or manipulate evidence, coerce testimony through overcharging, and employ other tactics that lead to morally impermissible using of people, in addition to unjustifiable and morally inappropriate State action against particular individuals. The precaution theory strongly tells against both creating these kinds of self-interested incentives to use people for one’s own ends, but also against doing so in

conditions in which discretion is high and oversight mechanisms are either difficult to implement or ineffective.

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