

**Consent, Blame, and Sex**

by

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## Abstract

It's a commonplace principle that 'ethical (sexual) interactions must be consensual.' But what is involved in abiding by this principle? The first two chapters of my dissertation give partial answers to this question. While the first chapter focuses on consent-undermining *coercion*, the second chapter focuses on consent-undermining *ignorance*. In each chapter, I argue that consent can be undermined in far subtler ways than we often recognize, especially within close relationships. My specific focus is on illuminating how people can be blamed into nonconsensual sex, though my arguments generalize beyond blame and beyond sex.

Once we identify a sexual interaction as nonconsensual, how should we respond? The third chapter of my dissertation is about one dimension of this question. One might think that nonconsensual sex is the kind of wrong that is everyone's business; anyone can blame perpetrators of nonconsensual sex. By contrast, I argue that in some cases of nonconsensual sex, it is impermissibly meddlesome for a 'third party' – someone who is neither the victim nor the perpetrator – to express blame to the perpetrator. This result, I contend, will help us to stop neglecting certain kinds of nonconsensual sex.

By the end, I have illustrated three main themes. To begin, we cannot theorize well about consent and blame without attending to relationships. Conversely, we cannot theorize well about relationships without attending to consent. Finally, the language of consent comes along with a lot of associations, which behooves us to identify which associations to hold secure and which to let go. For instance, we should weaken the association between nonconsensuality and 'public'

sanctions, such as third-party blame or criminal punishment. In sum, my dissertation explores different aspects of the relationship between consent, blame, and sex.

## **Introduction**

It's a commonplace principle that 'ethical (sexual) interactions must be consensual.' But what is involved in abiding by this principle? The first two chapters of my dissertation give partial answers to this question. I argue that consent can be undermined in far subtler ways than we often recognize, especially within close relationships. My specific focus is on illuminating how people can be blamed into nonconsensual sex, though my arguments generalize beyond blame and beyond sex.

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My dissertation is, therefore, a series of essays about different aspects of the relationship between consent, blame, and sex. In what follows, I elaborate on the origin and arguments of each chapter, closing with a reflection on the overall upshots of the project.

## I. Chapter One

My first chapter began in Scott Hershovitz and Sarah Moss's 2018 graduate seminar on 'Consent and Coercion.' Our seminar was partly concerned with cases like the following: say that I agree to have sex with someone, only because they put a gun to my head. Does my agreement to sex really count as *consent* to it? In such cases of overtly threatened violence, the answer is clear. I have said 'yes' to having sex, but I haven't consented to sex. That is, I haven't made it the case that sex with them is something within my boundaries. Accordingly, if they proceed to sexually interact with me, even though they have secured my agreement through a threat of fatal violence, they have crossed my boundaries. This is because their threat of fatal violence is *coercive*, a pressure so substantial that my 'yes' is not a genuine yes.

But not every case of pressured agreement is so clearly coercive. Suppose, for instance, that I agree to have sex with someone, only because otherwise, they would whine endlessly, or guilt-trip me, or withhold affection, or deploy similarly subtle pressure tactics. Have such pressures coerced me, making the sex nonconsensual? Or do such pressures fail to rise to the level of coercion?

Philosophers have taken two approaches to this question, roughly speaking. Some have argued that pressures like these are not coercive, based on various justifications. One justification is that these pressures are ultimately permissible – and coercion requires a threat to *wrong* the target. Another justification is that these pressures are not potent enough to make it *reasonable* for the target to acquiesce to sex. Either way, someone who gets the target to give in by using such pressures does not cross their boundaries. Other philosophers have argued that pressures like these are coercive, because all pressures are coercive. That is, any case of pressured sex is a case of nonconsensual sex. Both approaches to this question about the coerciveness of subtle sexual pressures, importantly, share a commonality. They discuss such pressures in a general, abstract

way – not only by neglecting the nuances of different sexual pressures, but also by focusing on ‘cleaned up’ hypotheticals rather than real cases.

In my first chapter, I take a different approach. I focus our attention on a specific sexual pressure: sulking at a partner when they refuse sex, as a way of trying to induce sex. I show that in real cases within close relationships, such sulking often involves wrongful, potent blame. In this way, I show that blame-laden sulking can coercively undermine consent, contrary to philosophers who take the first approach above. At the same time, I avoid adopting the overly expansive account of consent-undermining coercion involved in the second approach. After establishing these claims with respect to sulking-induced sexual consent, I then generalize my conclusions to other forms of blame and to domains of non-sexual consent. The upshot is that we should attend more closely to subtle pressures within close relationships, and we should resist the consent literature’s methodological tendency towards abstraction.

## **II. Chapter Two**

Upon reflecting further on cases of sulking into sex, I noticed a gap in my first chapter’s arguments. My first chapter focuses on cases in which blame *pressures* someone to submit to sex. But what about cases in which blame *persuades* someone to submit to sex? What if, for instance, someone submits to sex because their partner’s blame leads them to a mistaken belief that they are obligated to have sex? We cannot theorize about this case in terms of coercion. For in cases of coercion, a victim sees submission to sex as the ‘lesser evil’, as compared to facing the pressure at hand. But in these cases, the victim sees submission to sex as *no evil at all*. The victim sees sex as their obligation.

It is cases like these that motivated me to write my second chapter. To figure out how to understand these cases, I looked to the literature about the relationship between consent and ignorance. In that literature, the key task is to determine: when does an ignorant agreement count as consent – and when does it not? For instance, say that someone agrees to a sexual activity only because their partner lies to them about having a transmissible STD. In such a case, their partner's successful deception prevents their agreement from counting as consent.

But I found that the literature about consent and ignorance neglected exactly the kinds of cases in which I was interested. This is because the literature focuses on cases in which someone agrees to some (sexual) activity due to ignorance about a *non-moral* feature of the activity, like the presence or absence of an STD. This focus thereby fails to attend to cases in which someone agrees to some (sexual) activity due to ignorance about a *moral* feature of the activity, like the presence or absence of an obligation to have sex.

Initially, I thought that whatever we say about the requirements for consent with respect to non-moral information, we should just say the same things about the requirements with respect to moral information. This is indeed the conclusion of my second chapter. I argue for a thesis I call *Symmetry*, which states that the informational requirements for consent do not distinguish between moral and non-moral information.

But as I thought about this symmetry, I saw two glaring reasons why it is difficult to defend it. First, the correct account of the informational requirements for consent is a matter of continuing debate. According to some accounts, it's obvious why *Symmetry* holds; according to others, it's not so obvious. Second, moral and non-moral information might differ in ways relevant to the requirements for consent.

The task of my second chapter is to argue for *Symmetry* while overcoming these difficulties. The gist of my argument is as follows. Any account of the informational requirements for consent tries, roughly, to distinguish the information that is so important that consenters need it from the information that is not this important. But non-moral and moral information can both be equally important to consent decisions. The ways in which these two types of information differ is not relevant to *consent*. Hence, the important/unimportant distinction is orthogonal to the non-moral/moral distinction. Accordingly, we have strong reason to believe *Symmetry* – no matter which account of the informational requirements we prefer; no matter what non-consent-related differences between moral and non-moral information there might be; and no matter whether we are talking about sexual or non-sexual consent.

### **III. Chapter Three**

One implication of my first two chapters is that the category of ‘nonconsensual sex’ is more capacious than we might have thought. But this raises the question: what are the implications of deeming a given sexual interaction to be nonconsensual? And is it plausible that these implications hold for more sexual interactions than we might have thought? My third chapter explores one dimension of this issue – the connection between nonconsensuality and sanctions.

Suppose that a friend tells me that her partner had sex with her without her consent. Is it okay for me to confront her partner? We might be tempted to answer – of course! We’re talking about *nonconsensual sex*. If my friend doesn’t want me to get involved, then it is certainly *non-ideal* for me to confront her partner. It would likely injure my friendship with her, after all. But it still seems *permissible* for me to confront her partner. It seems like nonconsensual sex is the kind of wrong that is always everyone’s business. Indeed, this intuition seems to align with many people’s beliefs



that all nonconsensual sex should be criminalized. For a lot of forms of bad sex, we might want to leave it up to the victim about how to proceed. But when consent is at stake, it's time for everyone to get involved.

In my third chapter, I argue against this tempting answer. More specifically, I argue for two key claims. First, in some cases of nonconsensual sex in which a victim does not want a third party to express blame to a perpetrator, it would be *meddlesome* for the third party to do so. Nonconsensual sex is *not* always everyone's business. Second, the blame's meddlesomeness can be significant enough to render it *impermissible*. This is because the ordinary reasons that justify expressing blame can sometimes fail to apply when it comes to victim-defying, third-party blame for nonconsensual sex. I end the paper with a suggestion that my arguments might extend even to criminal punishment. If that is right, then some nonconsensual sex should not be criminalized. In sum, nonconsensual sex is just like other, non-sexual wrongdoings, in that it is sometimes impermissible for third parties – including the state – to sanction the wrongdoing.

The primary upshot of the chapter is that it will help us stop neglecting certain kinds of nonconsensual sex. This is because we might be tempted to unduly restrict our conception of consent in order to abide by an incorrect principle: when third-party blame for a sexual interaction is impermissibly meddlesome, the sexual interaction must be consensual. And there might be myriad cases of nonconsensual sex – like those I discussed in my first two chapters – with respect to which third-party blame seems impermissibly meddlesome. By arguing against this principle, this chapter helps us see these cases of nonconsensual sex *as nonconsensual sex*.

#### **IV. Summing Up**

Let me end by bringing out three themes of my dissertation. First, it is useful to theorize about consent and blame as they are situated within close interpersonal relationships. By doing so, we can better recognize how consent can be undermined in subtle, quotidian ways. So too can we better recognize how potent blame can be. Indeed, because consent and blame are inextricably relational phenomena, the standards for consent and for appropriate blame are importantly sensitive to the relational context of a given interaction. Put another way, we cannot theorize well about consent and blame without attending to relationships.

The second theme is closely related. People sometimes think that when theorizing about ethical issues within relationships, we should abandon talking in terms of consent. We should instead shift to other concepts, say, equality. But to abandon talk of consent – rather than recognizing it as one useful concept among others – is to neglect that the concept of consent can do important work in identifying unethical sexual and non-sexual interactions within relationships. Theorizing about consent helps us identify how one person can usurp another’s authority by violating their boundaries. For this reason, we cannot theorize well about relationships without attending to consent.

Third, and finally, the language of consent comes along with a lot of associations – like its connections to blame and legal sanctions. Because of this, it is important to identify which of these associations we should hold secure and which we should let go. I’ve argued, for instance, that we should weaken the association between nonconsensuality and ‘public’ sanctions, such as third-party blame or criminal punishment. Consent’s primary role is a moral one, shaping our boundaries and relationships with respect to each other; its role in the law is secondary.

There is so much more to explore about these themes than I have had time and space to say here. So too is there so much more to explore about ethical sex, ethical blame, and ethical relationships, outside of a focus on consent. I look forward to a career of saying more.

## Chapter 1

### Sulking into Sex: Blame, Coercion, and Consent

Content Warning: nonconsensual sex

#### I. Introduction

People frequently submit to sex to avoid a partner's sulking, where this sulking blames them for refusing sex.<sup>1</sup> Consider, for instance, the following narrative:

Cuddle: "I wanted a cuddle and I told [my husband] that's all I wanted. He got frisky, and started pushing it. This is not uncommon, since becoming parents I've often just let him go ahead because he sulks and I'm too tired, it's easier just to let him have his three minutes and then I get some peace and he's happy... This weekend I might have even felt like it if only he'd started with a bit of nice chatting and cuddling. But he went straight for the finishing line, as per usual. Then he got in a sulky, 'victim' mood, rolled over and refused to cuddle. And accused me of seeing somebody else!... underneath it I think he just feels like I ought to do it whether I want to or not. And that is making me angry. Very angry. And very, very tired..." ("Being Made to Feel Bad").

The sulking that this woman faces is clearly morally problematic. So is the sex induced by that sulking. Indeed, both the sulking and the resulting sex seem to wrong her; she is owed rectification for not being treated as she should have been. But what explains this intuition? It cannot be that all sexual pressures are wrongful, or wrongful in the exact same way. After all, sexual pressures besides sulking are diverse, including violence, the prospect of a break-up, badgering, occasional disappointment, economic incentives, and so on. Accordingly, let me rephrase the earlier question: how can we explain the intuition about cases like Cuddle while avoiding overgeneralizing?

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<sup>1</sup> For data on the prevalence of nonphysical sexual pressures, see Smith et al. (2-3, 15-16). I have not found data specific to sulking, but the vast number of online stories of sulking into sex suggests that it is common.

The first aim of this paper is to answer this question. My answer has two parts. First, I argue that even attempting to blamingly sulk someone into sex – blamingly sulking *for* sex – often imposes *wrongful blame*. Second, I argue that succeeding at blamingly sulking someone *into* sex often undermines their consent via coercion. They thereby experience a further wrong of *nonconsensual sex*.<sup>2</sup> Importantly, this second conclusion focuses only on the moral sphere. It does not entail – nor do I believe – that sulking into sex should always be illegal.

Both arguments cut against the current literature. In making the first argument, I rebut Sarah Conly and Alan Wertheimer’s claims that pressures like sulking do not wrong a victim (Conly 114-115; Wertheimer, *Consent* 183). In making the second argument, I disagree not only with Conly and Wertheimer, but also with Kimberly Kessler Ferzan, because all of them claim that pressures like sulking are not consent-undermining (Conly 114-115, 119; Wertheimer, *Consent* 183; Ferzan 954-956, 971-980, 994-995, 1002-1007). I also disagree with Robin Morgan, who seems to claim that all sexual pressures undermine consent (165).

Additionally, my arguments have further payoffs. To take one example, my arguments usefully extend to other sexual pressures that involve blame, demonstrating the continuity between subtle pressures like sulking and more aggressive pressures like threats of violence. To take a second example, my arguments even extend to sulking within non-sexual interactions. I thereby offer a novel, striking explanation of the wrongfulness of blamingly sulking for and into sex, an explanation that generalizes without overgeneralizing.

The second aim of this paper is to bring out three broader lessons for the literature on consent and coercion. To start, if we do not attend to the nuances of different sexual pressures – especially subtle pressures like sulking – we risk neglecting key moral features of those pressures. We run

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<sup>2</sup> Some philosophers, like David Archard, define ‘rape’ as ‘non-consensual sex’. Others, like Ann J. Cahill, don’t (*Rethinking Rape* 11). I need not take a position here, so I will avoid the term.

the same risk, moreover, if we do not attend to how sexual pressures unfold within the unique dynamic of close relationships. This risk is heightened if we consider only hypothetical, ‘cleaned up’ cases, rather than first-person testimonies from those who have faced the relevant sexual pressures. In sum, the relative abstraction of contemporary discussions of consent and coercion has led scholars to neglect the wrongfulness of subtle sexual pressures. For this reason, this paper focuses on blame-laden sulking within close relationships, leaving robust discussion of other sexual pressures for other papers within my broader research program. For the same reason, this paper draws heavily from real stories.

In almost all the stories I draw from, a man sulks at a woman. This is no accident. Gender and patriarchy influence the prevalence of heterosexual relationships; the frequency at which different people desire and feel entitled to (sulk for) sex; the costs that different people incur upon refusing sex; and more. In this paper, however, I offer a general account of the wrongs of sulking for and into sex, wrongs that go beyond sexual unfreedom under patriarchy. This account thereby recognizes that cases of sulking that do not involve a man sulking at a woman can still be wrongful.<sup>3</sup> It also leaves open the exact extent to which gender and patriarchy shape the phenomenon of sulking into sex.

The paper proceeds as follows. In Section 2, I characterize sulking for and into sex. I then argue that oftentimes, such cases of sulking are habitual, prolonged, non-compartmentalized, situated within a close relationship, and laden with blame. Cases with these features – cases like Cuddle – will be my focus. In Section 3, I argue that blamingly sulking at someone for sex often wrongs them. This is because it involves imposing relational harms to pressure them to respond to the blame, even though oftentimes, they have done nothing morally bad in the first place. They

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<sup>3</sup> For examples of such cases, see “BF Sulks”; Price; and McDermott, “My Girlfriend”. For data on sexual victimization perpetrated by women, see Stemple et al. 303.

have simply said no to sex. In Section 4, I start by articulating some sufficient conditions for consent-undermining coercion. Next, I argue that blamingly sulking someone into sex often meets these sufficient conditions, thereby rendering that sex nonconsensual. Finally, I examine some further implications. I discuss the nature and gravity of nonconsensual sulking into sex, explain why it should not be illegal, and describe why the framework of consent is useful. I then extend my argument to other sexual and non-sexual pressures. Section 5 concludes.

## II. Sulking for and into Sex

Cycle: “[My boyfriend] came upstairs with me and started undressing me but I let him know I was tired. He got pouty and pouty [sic], and left. He gets pouty and sulks any time I say no...the last time we had sex was 7 days ago. It's not like months are passing...it makes me feel even less excited about having sex, because I'm nervous about whether I'll WANT to have sex. So it's a vicious cycle. I feel nervous, like I have to want sex...Feel like shit for not wanting to have sex” (“Boyfriend Gets Pouty”).

This narrative illustrates three key features of sulking.<sup>4</sup> First, sulking is a triadic relation between a sulker, a frustrated goal – here, the girlfriend’s having sex – and a sulkee. By sulking, the sulker communicates to the sulkee that they want them to provide one or more of the following forms of support: to resolve the frustrated goal; to distract them from it; or to comfort them about it. In Cycle, the boyfriend wants the girlfriend to resolve his frustrated goal by having sex with him. To communicate this desire, he sulks.

With this, we are led to the second key feature of sulking: the peculiar way it communicates a desire for support. Unlike ways of seeking support that orient towards the supportive person – like crying on their shoulder – sulking is a kind of withdrawal. But because sulkers seek support, they must remain within the scope of the sulkee’s attention. To achieve this peculiar ‘proximate

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<sup>4</sup> This section draws from Anita Barbee and Michael Cunningham’s similar account of sulking (393-395, 407).

withdrawal’, sulkers employ conspicuously limited verbalization, like curt responses or pointed silence. As in Cycle, sulkers often employ non-verbal forms of withdrawal as well: annoyed or angry sighing; defiant body language; pouting or frowning; flat affect; manifest focus away the sulkee; physical movement away from the sulkee; or reluctance to participate in social interactions. A sulker’s use of withdrawal, I suspect, is one source of resistance to viewing sulking as coercive. In our popular imagination, coercion involves ‘approach’ behaviors; this paper resists that framing.

The affective core of sulking – its third key feature – is anger or annoyance, rather than anxiety or sadness.<sup>5</sup> Because of this, sulking frequently involves (un)conscious blame. It is no coincidence that the girlfriend in Cycle feels ‘like she has to want sex’, feels ‘like shit for not wanting to’. She feels guilty for saying no because of her boyfriend’s sulky blame. Such blame is often difficult to challenge. Since sulking involves limited verbalization, sulkees frequently lack an explicit rebuke to challenge (Miceli 96). Even when a sulkee challenges a sulker’s implicit or explicit rebuke, the sulker will often prevent challenges, e.g., by silence. By preventing challenges, the sulker can save face by not admitting their distress. Indeed, entertaining challenges would draw the sulker into precisely the engagement they seek to avoid: a conversation.

As a final observation, note that even though sulkers are often self-aware, they can certainly sulk unknowingly. Now, I can more precisely formulate sufficient conditions for ‘sulking for and into sex.’ These conditions are valuable independently of the rest of this paper, as they provide a foundation for further examining sulking’s morality. Indeed, this is one reason why I focus specifically on sulking – it is a phenomenon I have not seen theorized in the philosophical literature.

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<sup>5</sup> I leave open whether annoyance is mild anger or distinct from anger.



Someone (A) sulks someone else (B) into sex if:

1. A, knowingly or not, sulks at B *for* sex. That is:
  - a. A proximately withdraws from B, verbally, and perhaps also emotionally, mentally, physically, and/or socially;
  - b. primarily because A is angry or annoyed about a frustrated goal;<sup>6</sup>
  - c. at least in part to communicate to B that A wants support from B for that goal;
  - d. where the support A wants includes sex with B.<sup>7</sup>
2. B agrees to sex with A, at least in part because of (1), and A and B have sex.

In the rest of this paper, I'll focus on a large subset of cases of sulking into sex, cases possessing four features. First, the sulker and sulkee are *in a close relationship*. People tend not to want support from strangers or acquaintances. Even when people do want such support, they often don't pursue it, because strangers will likely refuse or fail to support them. Finally, even when people do pursue such support, they tend to be more verbal, to avoid being misinterpreted. For these reasons, sulking in general, including sulking for and into sex, is far rarer between strangers or acquaintances.

Second, the sulker *blamingly* sulks at the sulkee for *frustrating their goal to have sex*. This feature is not always present. In some cases, for instance, someone might sulk for sex out of a non-blaming frustration. But sulking for and into sex often involves blame for sexual refusal, because sexual partners often feel entitled to sex.

Third, the sulkee *recognizes* that the sulker is blaming them for something – even if they do not recognize what for. In some cases, this is because a sulker communicates the blame or the views motivating it. As one sulkee describes, “[My husband] thinks its [sic] his right to have sex at least once a day but would like it twice a day” (“Different Sex Drives”). In other cases, a sulkee

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<sup>6</sup> Almost always, it is A's goal that is frustrated. Accordingly, I do not discuss the rare cases of someone 'indignantly sulking' on another's behalf.

<sup>7</sup> Sometimes, the sulker does not want the sulkee to say yes to sex in the moment; they want the sulkee to say yes the next time they make a sexual advance. I don't focus on such cases, but my arguments easily extend to them.

recognizes the blame without communication: “I knew he was mad...in his mind he’s the victim and always has been. He’s never wrong and I’m the bad guy” (“Boyfriend is Playing”). Such recognition is not surprising. As Victoria McGeer observes, we social creatures are disposed to pick up on others’ attitudes towards us (181-182). Hence, recognition of blame is common across blame-laden forms of sulking, including but not limited to blame-laden sulking for and into sex.

Fourth, the sulking is *prolonged*, *pervasive*, and *habitual*. Proximate withdrawal aims to make interpersonal engagement with the sulker contingent on the sulkee’s support. If this withdrawal were very brief, the sulkee would not be incentivized to submit to sex. Accordingly, in cases in which a sulkee does submit, the sulking tends to be prolonged.<sup>8</sup> The difficulty of challenging a sulker’s blame, as observed earlier, adds another reason that blame-laden sulking into sex tends to be prolonged. Sulking into sex also tends not to stay compartmentalized. Instead, it pervades across different parts of life. This is because ‘getting in a mood’ – cooking in a sulk, going on a walk in a sulk, etc. – can give a sulkee powerful incentive to comply. Finally, like other strategies of seeking support from partners, sulking is often habitual. As one sulkee recounts, “Things will be okay for a while, but then he reverts to the same behaviour” (McDermott, “My Partner”). Sulking into sex therefore involves, frequently, a kind of pervasive, prolonged, habitual detachment from interpersonal engagement that is anathema to us social creatures. Sulkees are thereby powerfully incentivized to give the sulker what they want.

Accordingly, I focus here on the many cases of sulking into sex in which a sulker blamingly sulks at someone close to them for not having sex; the sulkee knows that the sulker is blaming them; and the sulking is pervasive, prolonged, and habitual. It’s true that sulking can be wrongful even when a sulkee knows that they are *not* being blamed. As I argue elsewhere, when sulking

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<sup>8</sup> For some stories of particularly lengthy sulking, see “Emotional Abuse” and Sugar and Mitchell.

significantly intrudes on a sulkee's mental space, it constitutes 'stalking via withdrawal' ("Stalking by Withdrawing"). But here, I focus on cases with the above four features.

### **III. Blamingly Sulking for Sex**

Guilty: "I have been married for 12 years...we met when I was 19 and carefree. We had sex multiple times a day. Since then life got crazy and my sex drive went down. At a minimum we make love once a week. Our max at the moment is probably 4 times. I literally reject him 10 times a day/night. Not because I'm nasty but because I'm bloody tired! I work full time in child protection for DHS. It's a stressful role plus 3 kids, a house etc. He will sulk and complain for hours after I say no. I'm just so over it. I'm ready to walk away because I'm sick of the guilt!" ("Seriously Considering Leaving").

In Section 2, I observed that many cases of sulking into sex involve the sulker blaming a close partner for not having sex, and the partner recognizing at least that they're being blamed for something. Guilty, in which the wife is "sick of the guilt!", is one such example ("Seriously Considering Leaving"). What is unclear, however, is whether her husband's sulking ever gets her to submit. That is, her husband certainly blamingly sulks *for* sex, but it is unclear if he ever blamingly sulks her *into* sex. In this section, I'll argue that even attempting to blamingly sulk someone into sex – blamingly sulking for sex – often wrongs them. That argument is as follows:

**P1:** In many cases of blamingly sulking for sex:

- (a) the sulker and sulkee are in a close relationship;
- (b) the sulker blamingly sulks at the sulkee for not having sex with them;
- (c) the sulkee recognizes that they are being blamed; and
- (d) the sulkee's not having sex with the sulker is neither wrong nor suberogatory.

**P2:** If someone blames another person for something that is neither wrong nor suberogatory, they 'misdirectedly blame' them.

**P3:** Misdirectedly blaming someone who is close to the blamer and who recognizes that they are being blamed often wrongs them.

**C1:** In many cases of blamingly sulking for sex, the sulker wrongs the sulkee.

I've already defended the first three parts of **P1** and will defend the fourth shortly. Following this, I will make **P2** true by definition. Finally, I will defend **P3** at more length.

Some philosophers have discussed or endorsed views that contradict the fourth part of **P1**. For example, Scott Anderson argues that people can create sexual obligations by *promising*, say, to have sex after the kids sleep ("On Sexual Obligation" 123-132).<sup>9</sup> Richard Hull, moreover, explores whether sex that minimally harms one person but greatly benefits another is required by *beneficence* – though he doesn't take a clear stand (10-11). Finally, Alan Soble suggests that people can have *distributive* obligations, say, to reciprocate sexual pleasure ("Orgasmic Justice" 53-58).<sup>10</sup> These views could also be recast as identifying suberogatory rather than wrongful conduct.

In many sexual interactions, these views clearly fail to apply. Take Guilty. The wife has not promised to have sex at her husband's desired frequency. Nor does her refusal fall afoul of beneficence or distributive justice, given that she is exhausted and stressed. Hence, I can affirm the fourth part of **P1** without disputing the views above. Even if these views are true, it is still true that in many cases of blamingly sulking for sex, refusing sex is neither wrong nor suberogatory.

**P2** simply defines 'misdirected blame.' 'Well-directed blame', in contrast, is blame that is directed towards something that is wrong or suberogatory.<sup>11</sup>

**P3** states that blame that is both misdirected and recognized – though it need not be recognized *as* misdirected – often wrongs a blamee close to the blamer. Misdirected but unrecognized blame might also wrong a blamee. But because sulkees usually recognize blame, **P3** focuses on recognized blame. Even misdirected blame directed at a stranger might wrong them. But because sulking usually occurs within close relationships, **P3** does not address such cases. Finally, **P3** is

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<sup>9</sup> Contrast Liberto, "The Problem" 394-403.

<sup>10</sup> See also Wertheimer, *Consent* 258-276. Contrast Srinivasan.

<sup>11</sup> If blaming people for suberogatory acts is impermissible, **P2** can be simplified without affecting my argument.

neutral between different views about what blame involves: a judgment, emotion, desire, intention, functional role, etc. (Tognazzini and Coates). Having clarified **P3**, I can proceed to defending it.

### Wrongful Misdirected Blame

Misdirected blame in close relationships harms blamees in seven characteristic, interconnected ways. All blame usually involves the blamer *negatively morally assessing* and *directing negative emotions towards* the blamee. Analogously, recognized blame often causes the blamee to *morally criticize themselves* and *feel negative emotions* like guilt (Carlsson 91; Fricker 173). We care about how close partners view and feel about us, and how we view and feel about ourselves, so recognized blame often harms us (McGeer 166-167, 181-182). Moreover, in relationships, blame – like wrongdoing – regularly imposes *relational harms*. The blamer and blamee cease to be in a relationship in which they both have and recognize that they have good will for each other (Hieronymi 124, fn. 30, fn. 34). Such a relationship gives them faith that each other will follow shared norms. Damaging the relationship, then, hinders goods of reliable norm compliance like safe vulnerability and mutual respect (McGeer 163, 174). To stop these harms, the blamee must usually deny the act, excuse it, justify it, or atone for it. This *reparative labor* often takes time, energy, will, and social sensitivity (Hieronymi 124-125). Finally, if the misdirected blame persuades the blamee, they *gain a false moral belief* that their action is wrong, which can restrain them from living as they desire (Fricker 181). Misdirected, recognized blame in a relationship does not always cause all seven harms. But almost always, it causes at least one of them.<sup>12</sup>

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<sup>12</sup> For this reason, I am not bothered by Judith Jarvis Thomson's argument that people do not have a claim against being caused guilt (250-256). Even if so, the harms besides guilt justify a claim against misdirected blame. For what it's worth, I also reject Thomson's argument. She assumes that it is not morally worse to misdirectly blame someone who will feel guilty than to misdirectly blame someone who will not feel guilty; this assumption is implausible.

When blame is well-directed, it avoids some of these harms, like the acquisition of false moral beliefs. That said, well-directed blame does not avoid all the harms above. For instance, it still involves negative moral assessments. But well-directed blame causes these harms in the presence of justifying moral considerations: the moral improvement of the blamee; the reparation of past harms and damaged relationships; and the prevention of future harm.<sup>13</sup>

When blame is misdirected, it frequently lacks these justifying moral considerations. Perhaps misdirected blame can be an impetus for general moral improvement, but only rarely. Perhaps it is sometimes too difficult to avoid misdirected blame, say, on complicated moral issues that require taking a stand. But oftentimes, the costs of avoiding misdirected blame are not burdensome enough to justify its imposition. Hence, levying misdirected, recognized blame on a close partner often harms them in the absence of justifying moral considerations.

Harming someone in the absence of justifying moral considerations wrongs them. This claim specifies only a sufficient condition, leaving open the possibility of harmless wrongdoing. This claim also leaves open which moral considerations are enough to justify a given harmful act. For these reasons, I take this weak claim to be widely shared, and do not robustly defend it.<sup>14</sup> From this claim follows **P3**: misdirected, recognized blame directed at a close partner often wrongs them.

Sarah Conly objects to **P3**. She claims that threats of “emotional pain”, such as sulking, impose “pressure of a sort an honorable person wouldn’t”, but they do not “[go] beyond [one’s] rights” (114-115).<sup>15</sup> This is because “It is the nature of family relations that you may use your relationship

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<sup>13</sup> Relatedly, Daniela Dover discusses the benefits of ‘interactive’ moral criticism that aims to spark conversation rather than issue judgment (42-54).

<sup>14</sup> For one possible objection, see Hobbes’s discussion of a servant commanded to give money to a stranger (Ch. XV).

<sup>15</sup> Conly’s arguments concern threats of “emotional pain” writ large, which she also describes as ways of “using the strength of family ties to [one’s] own ends” (114-115). She also considers a laundry list of pressure tactics that fit under this category: guilt-tripping, sneering, contemptuously castigating, coaxing, cajoling, wheedling, importuning, haranguing, berating, and browbeating (114-115). For this reason, I take her comments to apply to sulking, even though she does not specifically mention this pressure tactic by name.

to (try to) impose on other family members, at least up to a point...we are vulnerable to our families, but that vulnerability is the price you pay for having an emotional relationship..." (115).

What is the point beyond which it is wrongful to leverage relational ties to impose on one's partner? Conly does not give a comprehensive answer, instead focusing on various examples. For instance, she thinks that it is permissible to threaten to break up with a partner unless they change, as long as the change bears on the relationship's health and isn't itself immoral (110).<sup>16</sup> In contrast, threatening violence to induce change is clearly impermissible (118). Threats of emotional pain, Conly suggests, are analogous to legitimate threats of a break-up, and disanalogous to threats of violence.

Conly's reasoning neglects that emotional pains are heterogeneous. Certainly, some emotional pains – like the legitimate threat of a break-up – can be permissible to impose. But I have just argued that other emotional pains – specifically, instances of misdirected blame – often wrong the victim. The observation that some forms of emotional pain are the permissible 'price you pay' for a relationship does not entail that every form of emotional pain is similarly permissible. Accordingly, we should reject Conly's objection that behaviors like sulking cannot wrong a victim.

Alan Wertheimer levies a different objection. He says, "even when expressions of anger are not justified, it does not follow that one's behavior is rights-violating [or obligation-violating]. Some boorish behavior is part of the rough and tumble of life" (*Consent* 183).<sup>17</sup> One interpretation of this objection is as follows. First, misdirected blame imposes minor harms. Second, minor harms are merely 'boorish'; they do not wrong. If they did, everyone would walk on eggshells to

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<sup>16</sup> For further discussion of the complex ethics of break-up threats, see Liberto, "Threats", as well as Ferzan 977-978.

<sup>17</sup> Note that because sulking involves anger – as I discussed in section 2 – Wertheimer's comments about unjustified anger apply to cases of sulking that involve misdirected blame. Additionally, I add 'obligation-violating' to the quote because Wertheimer switches between 'rights talk' and 'obligation talk' throughout his piece; and because his view of coercion requires that A proposes that if B refuses to agree, A will *either* violate B's rights *or* violate A's obligations to B (*Consent* 169-171).

diligently avoid minor harms. Moreover, when someone did impose a minor harm, we would not just let it go. Instead, wrongdoers would make amends that would likely be more costly than the harm the victim suffered. Third parties would support the victim, expending time and energy that would likely be more significant than the harm the victim suffered. In other words, we have an interest in avoiding excessive duties of diligence, rectification, and victim support, and this interest is a justifying moral consideration that always stops a minor harm from counting as a wrong.

I do not find this two-premise objection convincing. I'll start with the second premise. Even when breaching a promise imposes a minor harm, it can still wrong the promisee. This is because keeping a promise does not always require excessive diligence; and breaching a promise need not lead to excessive rectification and victim support. Similar reasoning applies to misdirected blame. Oftentimes, avoiding misdirected blame requires only thinking before you blame, not walking on eggshells. Similarly, rectification can involve brief apology; support can involve brief reassurance that the victim is not to blame. Hence, our interest in avoiding excessive duties of diligence, rectification, and victim support should not stop minor harms from counting as wrongs.

In any case, misdirected blame often imposes major harms, at least when it is pervasive, prolonged, habitual, and directed at a close partner. As I noted in Section 2, these are precisely the cases on which my paper focuses. Accordingly, even if one is skeptical that minor harms can wrong, one may adopt a duly restricted version of **P3** without undermining my conclusion. Wertheimer's objection thereby fails to refute my argument.

### Wrongful Sulking

**P3** leads to my conclusion. Contra Conly and Wertheimer, a sulker for sex does not just evince bad character or impose non-wrongful harm. They often wrong the sulkee via misdirected blame.



When they do, they don't just incur non-directed duties to become more virtuous. They also incur directed duties of atonement to that sulkee, like a duty to apologize.<sup>18</sup>

Some sexual pressures do not involve misdirectedly blaming a close partner. Thus, my argument does not imply that all sexual pressures are wrongful, or wrongful in the exact same way. But some sexual pressures can involve misdirected blame, for instance, aggressive shouting, verbal jabbing, endless criticizing, and so on. Hence, my arguments usefully extend beyond sulking.

Blame-laden sulking might be wrongful in other ways. It might 'subvert' morality by blaming the wrong object.<sup>19</sup> It might problematically transform sexual 'invitations' into 'demands'.<sup>20</sup> And as I discuss elsewhere, a sulker who peremptorily prevents challenges to their blame might commit an additional wrong ("Peremptory Blame"). That said, this section suffices to establish that it is wrongful to blamingly sulk at someone *for* sex – even if one fails to blamingly sulk them *into* sex.

#### **IV. Blamingly Sulking into Sex**

Tried: "When I tell [my husband] no he fucking pouts about it. His mood is off for hours or even the rest of the day. I've tried explaining to him why I'm not interested and I've told him how his sulking is annoying and makes me feel bad. I wonder how he would feel if he knew how many times I've consented to sex just because I don't want to have to deal with his pouting... I've tried explaining to him how I feel touched out. He doesn't get it. I've tried explaining to him that when I have a million things to do sex is the last thing on my mind. He just doesn't get it. It makes me so angry. I feel like I have to choose between his grumpy mood or having sex even when I don't want to" ("The No Sex Sulk").

In Section 3, I argued that even attempting to blamingly sulk someone into sex often wrongs them. Now I'll argue that succeeding at doing so – like the husband in Tried – often wrongs the sulkee further, by coercively undermining their consent. To argue this, I first identify sufficient

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<sup>18</sup> For discussion of duties of atonement, see Radzik.

<sup>19</sup> For a similar point about hypocritical moral address, see Wallace 335.

<sup>20</sup> For related discussion, see Kukla, "That's What She Said" 80-84.

conditions for consent-undermining coercion. Next, I show that these conditions are met in many cases of being blamingly sulked into sex. I end by discussing some further implications.

### Consent-Undermining Coercion

Consent to an activity is the normative power to release another person from a duty not to infringe on the relevant domain of your authority. Importantly, I might ‘agree’ to an activity without my agreement counting as ‘consent’. For example, if I say yes to a sexual activity, but only due to being coerced into it, I have *agreed*, but I have not given morally transformative *consent*.<sup>21</sup> (Other examples include agreement induced by incapacitation, deception, etc.) A sexual activity is consensual if and only if all participants consent to it. Otherwise, it’s ‘nonconsensual’, or in other words, the consent of one or more participants has been ‘undermined.’

To articulate five jointly sufficient conditions for consent-undermining coercion, I’ll consider a paradigmatic case. A credibly threatens B, ‘I’ll hit you if you don’t let me touch you.’ B, preferring not to be hit, agrees. Clearly, B’s agreement does not count as consent; A’s touch is nonconsensual.<sup>22</sup>

In this case, B is confident that the option of ‘not agreeing and yet not being hit’ is *unavailable*, because A’s threat is credible. Of course, B is *entitled* to this option, since being hit would wrong them. Furthermore, B’s confidence that they lack this option is not accidental. It arises from A’s acting at least *recklessly, if not knowingly or intentionally*. Because of B’s confidence, and because B *prefers to avoid* being hit, B lets A touch them. This decision, importantly, seems eminently

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<sup>21</sup> Some theorists prefer not to use consent as a success term. They instead adopt a tripartite framework. ‘Valid consent’ releases you from a duty. ‘Invalid consent’ does not release you from a duty, but in some sense, still counts as consent. But ‘no consent at all’ neither releases you from a duty nor counts as consent. This usage would not change my arguments.

<sup>22</sup> Cases of ‘third-party coercion’ involve B agreeing to A’s doing something because a third party, C, threatens to sanction them if they do not agree. These cases will not be relevant to my paper, so I do not discuss them.

*reasonable*. (Later on, I'll elaborate on what 'reasonable' means.) Hence, B lacks meaningful discretion between the options to which they are entitled. Their agreement thereby fails to genuinely exercise authority over their sexual life; A still had a duty not to touch B.<sup>23</sup> Having illustrated these conditions, I can formalize them along with this section's argument.

**P4:** If someone (B) agrees to another person (A) doing something (X), and the following conditions are met, B's consent is undermined via coercion:

- a. **Unavailable Option:** B has sufficiently high confidence that A will do Y unless B agrees to X;
- b. **Moral Baseline:** Y would morally wrong B;
- c. **Causal Role:** A, through words or conduct, intentionally, knowingly, or recklessly caused B to have the confidence referred to in **Unavailable Option**;<sup>24</sup>
- d. **Preferable Compliance:** B agrees to X because B prefers that to facing Y;
- e. **Reasonable Compliance:** It is reasonable for B to agree to X because they prefer to do that rather than to face Y.

**P5:** Many cases of being blamingly sulked into sex meet these conditions.

**C2:** In many cases of being blamingly sulked into sex, the sulkee's consent to sex is undermined via coercion.

I lack the space to robustly defend **P4**, but my earlier analysis of a paradigmatic case of coercion supports it. Moreover, **P4** is modest. It states that its conditions are *jointly sufficient* for consent-undermining coercion, not that they are *necessary*. Indeed, I doubt that they are, and so do many others.<sup>25</sup> **P4** also does not purport to expose the *best explanation* of why cases meeting its conditions involve coerced consent. One might reformulate **P4** to better 'carve at the joints.'

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<sup>23</sup> The reasoning guiding this illustration resembles that offered by Wertheimer (*Coercion* 202-221, 267-286).

<sup>24</sup> I follow standard legal conceptions of recklessness, e.g., see Edwards. To 'recklessly' cause such confidence is to recognize the risk that one will cause it, but unjustifiably disregard that risk. Minorly changing this definition would not affect my arguments.

<sup>25</sup> To list just a few examples: Claudia Card loosens **Unavailable Option** and **Preferable Compliance**, seeming to suggest that even a threatening atmosphere can undermine consent (18-19). David Zimmerman modifies **Moral Baseline**, arguing that Y need not wrong B for A to undermine B's consent (131-138). Tom Dougherty removes **Causal Role**, arguing that A need not cause B's confidence to undermine their consent ("Coerced Consent" 3-11). Dougherty also removes a condition like **Reasonable Compliance**, arguing that B's consent can be undermined even if noncompliance is reasonable ("Sexual Misconduct" 333).

This modesty is precisely why **P4** is well-accepted (Anderson, “Coercion”).<sup>26</sup> Crucially, **P4** is accepted even by Sarah Conly (104-110); Kimberly Kessler Ferzan (963-965, 968-980, 994-997, 1005-1007); and Alan Wertheimer (*Consent* 165-171, 177-186) – scholars who doubt that behaviors like sulking can undermine consent.<sup>27</sup> Thus, I am content to appeal to **P4**. I now turn to defending **P5**, the claim that **P4**’s conditions are often met in cases of being blamingly sulked into sex.

### Consent-Undermining Sulking

Recall my focus – cases in which a sulker blamingly sulks at a sulkee close to them for not having sex; the sulkee knows that the sulker is blaming them; and the sulking is pervasive,

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<sup>26</sup> As Anderson notes, accounts of coercion can be differentiated along two dimensions. The first dimension is the extent to which they focus on the coercee’s situation or on the coercer’s conduct (“Coercion”; “Of Theories” 396-403). The second dimension is the extent to which they require prior normative judgments – i.e., they are ‘moralized’ – or do not require such judgments – i.e., they are ‘non-moralized’ (“Coercion”; “Of Theories” 403-404). **P4** is closest to a coercee-focused, moralized account. (However, because **P4** does not offer necessary conditions for coercion, it is somewhat inaccurate to describe it as a full ‘account’ of coercion.)

I appeal to **P4** because it is most squarely in line with my opponents’ views, and because it aligns with the ‘standard view’ in the contemporary literature on coercion (“Coercion”; “Of Theories” 396, 411; “How Did There” 24-29). That said, I do believe that my arguments can extend to accounts of coercion that are coercer-focused and/or non-moralized. Take Anderson’s own coercer-focused, non-moralized account of coercion (“Of Theories” 414-421; “The Enforcement Approach” 6-18; “Conceptualizing” 72-85). His account is extensionally similar (though not identical) to coercee-focused, moralized accounts, despite being explanatorily different from them (“The Enforcement Approach” 10). Moreover, Anderson has explicitly extended his account to cover cases beyond paradigmatic cases of coercion (“Coercion as Enforcement” 529-539). For reasons like these, I believe that my arguments could be reframed to apply to coercee-focused and/or non-moralized accounts. But given that a thorough defense of this claim would require too much space here, I leave this for other work. Thanks to an anonymous reviewer for pressing me to clarify how **P4** relates to other accounts of coercion in the literature.

<sup>27</sup> Technically, Conly argues that **P4** should require intent (104-105). However, her arguments not only fail to entail that recklessness is insufficient, but also entail that negligence would be sufficient. Note also that Wertheimer suggests that **P4** should acknowledge that in some cases, if B prefers their agreement to be deemed consensual, then B’s agreement should be deemed consensual (*Coercion* 277). Without elaborating on the reasoning behind different variations of this objection, suffice it to say that no variation alters my conclusion. Frequently, sulkees won’t prefer their agreement to be deemed consensual. Finally, note that while Conly and Wertheimer endorse coercee-focused, moralized accounts of consent-undermining coercion (see fn. 26 for an explanation of these labels), Ferzan instead sees coercion as coming in two varieties. ‘Wrongful coercion’ focuses on the coercer’s wrongful conduct – a coercer-focused, moralized account (963-965). ‘Choice-undermining coercion’ focuses on the coercee’s constrained choice, say, to consent – a coercee-focused, non-moralized account (965, 968-970). Because Ferzan takes this latter variety to be non-moralized, she would not deem all of **P4**’s conditions (e.g., **Moral Baseline**) to be necessary for consent-undermining coercion, but she would deem **P4**’s conditions to be sufficient.

prolonged, and habitual. Many such cases meet **Unavailable Option**. For if a sulkee believed that they *could* say no without their partner continuing to sulk or escalating to worse behaviors, the sulkee likely *would* say no. Moreover, sulkees often believe that their partner will *not* escalate. Hence, in many cases of being blamingly sulked into sex, the sulkee says yes because they are confident that their partner will continue sulking if they say no.

Many cases meeting **Unavailable Option** also meet **Moral Baseline**. Some philosophers – like Conly and Wertheimer – doubt that sulking can wrong a sulkee, and thereby deny that sulking can undermine consent (Conly 114-115; Wertheimer, *Consent* 183). But in Section 3, I undercut this doubt. There, I argued that blamingly sulking *for* sex often involves wrongful misdirected blame. This argument applies equally to blamingly sulking *into* sex.

Cases that meet **Unavailable Option** and **Moral Baseline** often meet **Causal Role**.<sup>28</sup> To pressure a sulkee to submit to sex, many sulkers *intentionally* cause them to believe that the sulking will continue unless they submit. Even when sulkers don't intend to cause this belief, they often realize that their conduct is *likely* or *certain* to cause this belief. After all, sulkers often notice that they are sulking because they want sex, and a sulkee's reactions often provide further evidence of this, e.g., by asking 'will you stop sulking if I say yes?' Hence, in many cases of blamingly sulking into sex, the sulker intentionally, knowingly, or recklessly causes the sulkee to believe that if they don't have sex, the sulker will continue blamingly sulking at them.

Cases that meet these first three conditions frequently meet **Preferable Compliance**. As one woman, Teresa, recounts, "sometimes I'd just submit, otherwise he'd sulk for three days and be nasty. So it was the lesser of two evils...it was easier to grit your teeth and think of mother England

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<sup>28</sup> According to Mitchell Berman and Kimberly Kessler Ferzan, cases that meet these three conditions can be wrongful even if the next two conditions are not met. After all, such cases impose wrongful pressure on the coercee (Berman 53), and thereby can also involve the coercer wrongfully profiting from their own wrongdoing (Ferzan 980-988).

and be done with it” (Murphy). Of course, a sulkee’s agreement is not *always* spurred by a preference to avoid sulking. For example, when a sulkee is guilt-tripped into mistakenly believing that sex is obligatory, their agreement might be spurred by a preference not to wrong the sulker.<sup>29</sup> But as Teresa recounts, sulkees often see sex not as obligatory, but as the ‘lesser evil’. Hence, in many cases of being blamingly sulked into sex, the sulkee agrees because they prefer to avoid sulking.

Many cases meeting these four conditions also meet **Reasonable Compliance**. For it to be reasonable for B to agree to X because they prefer to do that rather than to face Y, two conditions are necessary and sufficient. First, agreeing to X must be ‘objectively preferable’ to facing Y and to pursuing other alternatives.<sup>30</sup> After all, if B agrees because they miscalculate the costs of X, Y, and other alternatives, we shouldn’t paternalistically relieve them of responsibility for that miscalculation (Ferzan 975; Conly 106).<sup>31</sup> Second, B must not have an ‘easily accessible remedy’ for Y (Ferzan 996-997, 1006; Conly 106-107; Wertheimer, *Consent* 184; and Wertheimer, *Coercion* 267, 275-276). If B does have such a remedy, the autonomy-constraining threat of Y would be counterbalanced.<sup>32</sup>

Conly, Ferzan, and Wertheimer doubt that cases of being blamingly sulked into sex can meet these two conditions. They believe, roughly, that in every case of being blamingly sulked into sex, either facing the sulking is objectively preferable to giving in; or there are alternatives that are

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<sup>29</sup> In other work, I argue that this kind of moral deception can undermine consent (“Do I Have To?”).

<sup>30</sup> Those who do not think ‘objective preferability’ exists would thereby reject or reformulate this condition.

<sup>31</sup> Ferzan and Conly do not use the term ‘objective preferability’, but I believe Ferzan’s terminology of “bad choices” and “mistakes” and Conly’s terminology of “harms great enough to affect [one’s] decision procedure” renders my interpretation reasonable (Ferzan 975; Conly 106).

<sup>32</sup> Wertheimer has articulated two other necessary conditions for **Reasonable Compliance**. First, the harm of X must be grave enough to justify relevant third parties incurring duties to intervene (*Consent* 184; *Coercion* 277-278). Second, it must be reasonable to expect A to believe that B agrees to X to avoid Y (*Consent* 185). This section’s argument, however, can easily extend to cover these conditions. Given limited space, then, I do not discuss these conditions further.

objectively preferable; or the harms of sulking are easily remedied (Conly 114-115; Ferzan 954-956, 971-980, 994-995, 1002-1007; Wertheimer, *Consent* 183).<sup>33</sup> These beliefs, I'll now argue, are mistaken.

In many cases of being blamingly sulked into sex, giving in is objectively preferable to facing continued sulking. As discussed earlier, misdirected blame involves seven characteristic harms, while sulking itself involves unpleasant interpersonal withdrawal. These harms compound as a relationship gets closer; as the number of affected third parties (e.g., one's children) increases; and as sulking gets longer, more pervasive, and more habitual. For instance, in Tried, the sulkee recounted, "When I tell him no he fucking pouts about it. His mood is off for hours or even the rest of the day...I wonder how he would feel if he knew how many times I've consented to sex just because I don't want to have to deal with his pouting" ("The No Sex Sulk"). In Guilty, the sulkee was ready to end a 12-year-long marriage because she was "sick of the guilt!" ("Seriously Considering Leaving"). Yet a third sulkee shares, "saying "no", and holding that "no" in the face of someone deeply resistant, is exhausting" (Price).

Undoubtedly, the harms of submitting to sex can also be serious. But sometimes, people can reduce its harms, e.g., by zoning out or faking orgasm. Moreover, to claim that submitting can be objectively preferable to facing sulking does not imply that the harms of the former are trivial. It implies only that the harms of the latter can outweigh them.

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<sup>33</sup> As I discuss in fn. 15 and fn. 17, Conly and Wertheimer's discussions apply to sulking even though they do not explicitly mention it. Ferzan explicitly expresses skepticism about the coerciveness of sulking (994) and guilt-tripping (1002-1003). She also expresses skepticism about the coerciveness of a host of similar, verbal pressure tactics: "needl[ing] and harangu[ing]" (955); "incessant cajolery" (956); "callous, boorish behavior" (972); "pestering" (972); behavior that makes someone "annoyed, exhausted, disappointed, and disgusted" (974); "verbal and peer pressure" (975); "incessant badgering" (995); and "whining" (1006). Importantly, when Ferzan argues that acquiescence to such pressure tactics would not be reasonable (975), her argument does not depend on the pressure tactics being verbal, so I take her comments about these tactics to apply to cases of sulking as well.

Facing sulking might be objectively preferable when the sulking is compartmentalized, brief, one-off, and/or occurring between mere acquaintances. In these rare cases, a sulkee who submits to sex might be irrationally catering to their partner's desires. That said, we should be hesitant to draw this conclusion, lest we too hastily impute a kind of false consciousness. More importantly, in my central cases – blame-laden sulking that is recognized, pervasive, prolonged, habitual, and directed at a close partner – sulkees are often choosing rationally. To say otherwise seems baselessly patronizing. Hence, submitting is often objectively preferable to facing continued sulking.

Oftentimes, submitting is also objectively preferable to pursuing other alternatives. Trying to *distract* a sulker is routinely ineffective. As I observed in Section 2, sulkers have a strong incentive to prolong their sulking. Similarly, it is difficult for sulkees to *extricate* themselves from sulking. Even within non-abusive relationships, sulkees can face myriad obstacles to leaving a relationship or shared space: logistical (e.g., no transportation or access to funds); psychosocial (e.g., internalized gender norms and social sanctions for norm violations); religious (e.g., prohibitions against divorce); relational (e.g., the value of the relationship itself); etc. When a sulkee does leave, they often continue to suffer. After all, blame does not cease to be harmful when a blamee leaves the presence of the blamer. These difficulties with extrication compound when sulking is prolonged, pervasive, habitual, and in a close relationship. Accordingly, in many cases, the main alternatives to agreeing to sex – distraction and extrication – are not objectively preferable.

Finally, there is often no easily accessible remedy for sulking. Set aside legal remedies, like awards of damages. As I'll discuss later, I am skeptical that sulking into sex should be illegal. In the moral sphere, one possible remedy is improving *resilience* to sulking's harms. But to value interpersonal engagement with someone is to feel a loss at its being pervasively, enduringly,



habitually withdrawn. And a habit of being vulnerable to a partner's blame keeps us from moral complacency.<sup>34</sup> Hence, becoming inured to these harms is a costly remedy for sulking. Another possible remedy is a sulker's *atonement*. To get a sulker to atone, a sulkee might try to convince the sulker to do so. As I observed in Section 2, however, it is difficult for a sulkee to challenge a sulker's blame. A sulkee might try to get friends or other third parties to encourage a sulker to atone. But frequently, a sulkee would have little confidence that such third parties would intervene; that their intervention would succeed; or that their intervention would not itself have costs, like social blowback from bad-mouthing a partner. Without this confidence, the sulking's constraint on the sulkee's autonomy would fail to be counterbalanced. Thus, sulkees often lack easily accessible remedies for being blamingly sulked into sex.

I conclude that in many cases of being blamingly sulked into sex, submitting is objectively preferable to facing continued sulking or to pursuing other alternatives, and such sulking is not easily remedied. In other words, many cases of being blamingly sulked into sex that meet **P4**'s first four conditions also meet its fifth condition, **Reasonable Compliance**. Contra Conly, Ferzan, and Wertheimer, **P5** is true.<sup>35</sup>

From these premises follows **C2**: being blamingly sulked into sex often undermines one's consent via coercion. It might be tempting to conceive of sulking just as 'something that little kids do' – annoying but relatively inconsequential. But this conception neglects how sulking can be quite potent within adult relationships; it can be potent enough to induce nonconsensual sex.

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<sup>34</sup> As Krista Thomason argues, with respect to shame, "Shame prevents us from ignoring our unflattering features that undermine our own positive self-estimation." (2)

<sup>35</sup> I argued that 'many' cases of being blamingly sulked into sex meet **Unavailable Option**, 'many' cases that meet that first condition meet **Moral Baseline**, and so on. Might 'many' of 'many' (of 'many'...) cases end up being few? No, I believe, given how many stories of sulking appear to meet all five conditions. Of course, I am open to evidence suggesting otherwise. Relatedly, I recognize that this section's argument depends on various empirical conjectures and should thereby be revised if contrary evidence emerges.

### Further Implications

My argument calls us to reflect on how sulking, blame, and sex can intertwine to lead us to wrong. But before such reflection, it's worth clarifying what my argument does and does not imply. First, I will clarify the nature, import, and variable gravity of the wrong of nonconsensual sex. Next, I'll discuss legality and culpability. Finally, I'll explain how my argument usefully generalizes while avoiding overgeneralizing.

The wrong(s) of nonconsensual sex. All wrongs disrespect one as a person. But unlike non-sexual wrongs, sexual wrongs also disrespect one as an embodied, sexual agent. Hence, to be sulked into nonconsensual sex is to be disrespected as a person and as an embodied, sexual agent.

Being sulked into nonconsensual sex also involves another, more specific form of disrespect: a wrongful violation of a sulkee's *authority* over their sexual life. As Hallie Liberto describes, "Any consent-related violation just is...a breach of their authority within a domain that they are entitled to control" ("Coercion" 232). Violations of authority over one's sexual life have at least three interlocking dimensions. First, they inhibit *sexual autonomy*, the ability to construct and govern one's own sexual life. Second, they inhibit *sexual freedom*, both freedom from interference and freedom from domination. Third, they inhibit *trusting, intimate sexual relationships*, by hindering decisions about if, when, and how to engage in sex within various relationships.

Non-consent-based sexual wrongs are not so tied to authority. The wrong of 'exploitative' sex, for instance, is more related to undermining *sexual interactions on terms of fairness* (Zwolinski and Wertheimer). To take another example, the wrong of 'derivatizing' sex is more related to inhibiting one's *sexual individuality* (Cahill, *Overcoming Objectification* 32, 138-139).

The import of seeing sulking as consent-undermining. C2 states that sex to avoid blame-laden sulking is, in many cases, nonconsensual. What this implies is that in such cases, the sulker is not

just selfishly taking advantage of a sulkee, and not just self-centeredly disregarding a sulkee's distinct sexual desires. Rather, the sulker is denying the sulkee authority over their sexual life. Connecting to the three dimensions above, the sulker takes a primary place of sexual exploration – a close sexual relationship – and makes it a place where a sexual life is imposed upon the sulkee. What should be a relationship of freeing safety, the sulker renders both inequalitarian and insecure. The sulker turns intimate reliance into distant capitulation. The point here is that thinking in terms of consent helps us more fully understand the moral profile of sulking into sex. Sulking can certainly lead to non-consent-based sexual wrongs.<sup>36</sup> But it's important to recognize that sulking can also violate authority – a distinct sexual wrong worth our moral concern.

*The variable gravity of the wrongfulness of nonconsensual sex.* Although nonconsensual sex is always wrongful, its wrong is degreed. After all, consent-undermining mechanisms are themselves degreed. Victims can be more or less coerced, more or less incapacitated, and so on. It would be surprising if the wrongfulness of nonconsensual sex did not depend, at least partly, on the intensity of the consent-undermining mechanism at hand. Relatedly, the wrongfulness of nonconsensual sex is likely affected, at least in part, by a victim's experience of it – which can vary widely. Moreover, it's common sense that a heteronormative view of 'sex as penile-vaginal penetration' is arbitrarily narrow, but the consent literature neglects the immense diversity of sex. This diversity of sex implies a concomitant variability in the wrongfulness of nonconsensual sex. Finally, non-sexual consent violations, like theft, are degreed wrongs. There is no reason that sexual consent violations would differ in this regard. In sum, what unifies the category of 'nonconsensual sex' is not the *gravity* of its wrong but the *nature* of it.

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<sup>36</sup> For instance, Scott Anderson argues that in a patriarchal society, when a man sulks a woman into sex, the sex is exploitative ("Sex Under Pressure" 368).

C2 does not imply, then, that nonconsensual sex induced by sulking is always as wrongful as other forms of nonconsensual sex. Some instances of the former – perhaps those in which the sulking is very prolonged – might be of the utmost gravity.<sup>37</sup> But many other cases might not be.

One might now worry: isn't it important for victims to be able to use the concept of 'nonconsensual sex' to communicate that they experienced a wrong of the utmost gravity, and to call for severe sanctions? Thoroughly addressing this worry, as well as giving a full account of how the wrong of nonconsensual sex is degreed, would take lengthier discussion.<sup>38</sup> That said, one attraction of seeing the wrong of nonconsensual sex as degreed is that it helps victims of more subtle, everyday violations of sexual authority to understand their experiences. Indeed, it helps them understand that their experiences are continuous with the experiences of victims of more serious violations of sexual authority, despite the myriad differences between those experiences. Finally, note that the sanction-related aspect of this worry holds more weight in the legal sphere, where there are greater stakes to a crime having a more consistent gravity. Sanctions in the moral sphere, like criticism, can more easily be degreed. And I have focused so far on the moral sphere.

*Legality and culpability.* I turn now to the legal sphere. Criminal punishment for nonconsensual sex raises complicated questions relating to the import of interpersonal privacy; the costs of criminal legal bureaucracy; and the effectiveness of criminal punishment as a remedy for sexual wrongs, among other questions. For this reason, the fact that some sexual interaction is nonconsensual does not entail that it should be criminally punished. Accordingly, C2 does not imply, nor do I believe, that nonconsensual sex induced by sulking should always be criminally punished.

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<sup>37</sup> For stories from sulkees who describe their treatment as abuse, see "Emotional Abuse" and "Different Sex Drives".

<sup>38</sup> For one account of the degreed wrong of nonconsensual sex, see Dougherty, "Sexual Misconduct" 337-343. For another, see Boonin 145-169.

More would need to be said to explain and support my position – which might at first seem controversial. In other work, I do say more (“Meddlesome Blame”). Here, given limited space, let me offer just one schematic example. Take a case of sulking into sex within a longstanding intimate relationship. Suppose that both partners, having recognized the wrong, are now engaged in a process of reconstructing a healthier sexual life. In cases like these, criminal punishment is sometimes helpful, but sometimes not. Sometimes it can be a galvanizing tool, spurring a wrongdoer to take the process of repair seriously. But other times, it can interfere with the victim standing up for themselves, and with the victim and wrongdoer working things out together. What the latter scenario highlights is this: criminal accountability is not the only form of accountability for nonconsensual sex, nor is it always appropriate.

Just as **C2** avoids implying that sulking into sex should always be criminally punished, so too does it avoid implying that sulkers are always culpable. Some sulkers are clearly culpable, e.g., those who knowingly levy misdirected blame. Other sulkers might not be culpable, e.g., those who justifiably fail to know that their blame is misdirected, perhaps due to pernicious socialization. Nevertheless, non-culpable sulkers still ought to rectify the wrong done.

Avoiding overgeneralization. Having explained the moral and legal implications of my argument, I will now explain why my argument does not overgeneralize. My argument does not entail that all sexual pressures are consent-undermining, because some pressures don’t meet **P4**. For example, some pressures – like economic incentives in the context of ethical sex work – are not wrongful, thereby not satisfying **Moral Baseline**. That said, my argument does not entail that sexual pressures like these are *not* consent-undermining. This is because **P4** articulates jointly sufficient conditions for consent-undermining coercion, rather than necessary conditions.

In this way, I avoid endorsing Robin Morgan's expansive view that consent is undermined whenever not initiated out of one's own affection and desire (165). So too do I avoid ruling out this view – although I am skeptical of its implication that all pressured sex is similarly nonconsensual. In other words, I take pressured sex to be morally heterogeneous, and my argument leaves room for this.

Extensions: other forms of sulking; beyond sulking; beyond sex. Although my argument does not overgeneralize, it does extend usefully. So far, I've focused on blame targeted at *sexual refusal*. But **P4** can be met even when the blame is targeted at something like *sexual non-initiation*. As one sulkee recounts, "...my husband sits and sulks until I make the first move...why is it always up to me? Why do I get the guilt trip?" (Sugar and Mitchell). I've also focused on *occurrent* sulking. But when sulking is habitual, **P4** can be met even when the sulking *has not started yet*. Take the following story: "...at 71, I have no desire to have sex. However, my husband, 80, is still keen and if I turn him down he sulks...For ages now I have gone along with it..." (Parker and Parker). Here, the wife suggests that she doesn't turn her husband down so that he doesn't even start to sulk.

Behaviors of misdirected blame *other than sulking*, e.g., incessant arguing, can also meet **P4**. One person recounts their complicated experience, "...I said yes...Because I didn't want him to be mad at me. Or yell at me. And I wasn't sure I didn't want it. I was already there, so I just let it happen" (Bennett and Jones). Indeed, paradigmatic cases of coercion, like sex to avoid physical assault, often involve a threat of violence underwritten by a threat of misdirected blame. My argument thereby shows that the coerciveness of such conduct is often overdetermined. Furthermore, when a partner's pressure tactics habitually involve blame, such tactics can meet **P4** even when they *do not involve blame*. For these tactics might still recklessly induce a mistaken belief that the partner will impose wrongful blame in the event of sexual refusal. Even pressure

tactics that never involve blame can meet **P4**, if they *threaten a different kind of sanction that wrongs the coercee*.<sup>39</sup> In this way, my argument will extend to a whole host of subtle sexual pressure tactics.

**P4** can be met even in *non-sexual interactions*. If I want to paint my partner's office room in my favorite color, and my partner complies just to end my days-long sulk, they clearly don't consent to my painting their office. This is obviously less wrong than nonconsensual sex, given that authority over home decoration is less important than authority over one's sexual life. Nevertheless, it is still nonconsensual. Sulking, that is, can be a general tactic of coercive control.<sup>40</sup>

I conclude that blamingly sulking one's partner into sex often undermines their consent. The resulting nonconsensual sex not only disrespects the sulkee as a person and as an embodied, sexual agent, but also violates the sulkee's sexual authority. Still, this conduct has variable gravity; it should not be illegal; and it is not always culpable. Importantly, not all sexual pressures are consent-undermining, but both sexual and non-sexual consent can be undermined by forms of sulking and blaming beyond those focused on in this paper.

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<sup>39</sup> Thanks to an anonymous referee for spurring me to explicitly mention this point.

<sup>40</sup> Contrast Ferzan's verdict about a different non-sexual case: a teen incessantly sulking (or using similar pressure tactics) to get their parent to buy them ice-cream (993-996). Intuitions about Ferzan's case are muddled by its focus on a child-parent relationship. As Ferzan notes, "good parents don't give in to their children's whims" (994). That is, the reason that the teen's sulking does not undermine the parent's consent is that it is objectively preferable for the parent to withstand the sulking rather than submit to it; this is part of what is required for good parenting. But between partners, withstanding sulking does not have this kind of parental import. For this reason and others, conclusions about sulking within child-parent relationships are not straightforwardly parallel to conclusions about sulking within partner-partner relationships.

Furthermore, I am not sure that good parents never give in to their children's whims. Suppose that a teen is competent enough to be a full moral agent who can (threaten to) wrong their parent via sulking. Suppose further that their parent has tried the various alternatives of talking it out, distracting them, repeatedly saying no, and so on. If the teen continues to sulk so incessantly that the parent prefers to simply give them money for ice-cream, it seems plausible to me that this preference is reasonable. That is, it seems plausible that the parent's consent has been undermined. For why resist this conclusion? Deeming this interaction nonconsensual does not entail that we deem it seriously wrongful; it is a mundane matter of a few bucks. Moreover, recognizing that teens can sometimes undermine the consent of their parents seems to be part of seeing them more as equals than as children needing to be protected from their own whims. Finally, we can call the interaction nonconsensual while still saying that the parent is responsible for taking steps to prevent such pressure tactics in the future. The fact that the parent's agreement did not count as consent does not imply that they are not responsible for any of its reverberations into the future. Thanks to an anonymous referee for asking me to clarify the special complications of child-parent cases of sulking.

## V. Conclusion

Recognition: "...as the #MeToo movement began to take form... I started to question my actions in that moment and in others. I started to see that while I believed I had always been respectful and obtained consent, my sex life involved many incidences of pressuring women into sexual acts until they relented" (Bennett and Jones).

This paper started with a question: what could explain the wrongfulness of blame-laden sulking for and into sex, without overgeneralizing? I have now given an answer that cuts against the existing literature. Frequently, such sulking involves blame for sexual refusal, and is pervasive, prolonged, habitual, and directed at a close partner. Because of this, blamingly sulking for sex often levies *wrongful blame* on the sulkee. Furthermore, being blamingly sulked into sex often *coercively undermines the sulkee's consent* – a violation of authority that should be morally but not legally sanctioned. My arguments avoid implying that all sexual pressures involve wrongful blame and nonconsensual sex. At the same time, my arguments usefully extend to subtle sexual pressures besides sulking; overtly aggressive sexual pressures; and even non-sexual pressures.

I hope that I have demonstrated to philosophers the usefulness of closely attending to real-life stories of how a particular sexual pressure unfolds within a close relationship. It is this kind of close attention that helps us to recognize the key moral features of the relevant pressure, especially when that pressure is subtle. I also hope that I have not only enabled some sulkees to better understand their experiences, but also enabled some sulkers to follow the path of the commenter in Recognition – that is, to see themselves in the behaviors described and to begin to change. Ultimately, what I hope to have illuminated is this. Sulking is a complicated, seemingly paradoxical behavior of proximate withdrawal. In intimate relationships, sulking and blame form a fraught, potent pair. For this reason, sexual coercion need not always involve blatant threats of



violence. Instead, it often operates via simmering absence, a withdrawal that pulls you in its wake.<sup>41</sup>

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<sup>41</sup> For feedback on the ideas and drafts that developed into this paper, thanks to Sarah Buss, April Conway, Emmalon Davis, Tom Dougherty, Guus Duindam, Paul Garofalo, Gillian Gray, Scott Hershovitz, Josh Hunt, Renée Jorgensen, Gabrielle Kerbel, Dan Lowe, Ishani Maitra, Cameron McCulloch, Gabriel Mendlow, Sarah Moss, Marcela Prieto Rudolphy, Mark Schroeder, Eric Swanson, Brian Talbot, Jamie Tappenden, Adam Waggoner, Brian Weatherson, Katie Wong, the whole University of Michigan Philosophy Department, and the participants of the Minorities and Philosophy Flash Talk Series Part 1 (May 20, 2020).

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## Chapter Two

### ‘Do I Have To?’: Moral Ignorance and Consent

Content Warning: nonconsensual sex

#### I. Introduction

When people make decisions to consent – to a sexual interaction, a medical procedure, a business transaction, and so on – they often desire some information about that activity. For instance, before a one-night stand, two strangers might tell each other to disclose if they have a transmissible STD. When all goes well, this information is disclosed before the two of them agree to having sex. But if one of them agrees only because the other one lies about not having a transmissible STD, this agreement is not morally transformative; this agreement to sex does not count as *consent* to it.

Not only in the academic literature on consent, but also in popular understandings of consent, this case is a paradigm example of an important principle: morally transformative consent must be informed. Or rather, *two* important principles. For consent is usually taken to have two informational requirements. The first requirement, which I call Facilitation, requires a ‘consent-receiver’ to fulfill certain responsibilities to informationally facilitate the decision of the ‘consenter’, e.g., to disclose relevant information, not deceive them, and so on. The second requirement, which I call Grasp, requires a consenter to have a sufficient grasp of what they are consenting to, independently of what the consent-receiver (or anyone) can help them learn.

What are our ‘facilitative informational responsibilities’? What does ‘sufficient grasp’ amount to? Consent theorists have answered these questions in myriad different ways. But despite their differences, all these answers share a similar feature. They all neglect a whole dimension of the relationship between consent and ignorance. The goal of this paper is to attend to this neglected dimension.

To see this dimension, consider the example of a wife, unhappy in her marriage, who has stopped wanting to have sex with her husband. Her husband, frustrated with the situation, has tried different tactics to get his wife to agree to sex. Eventually, he learns that one particularly effective tactic is to deceptively guilt-trip her into believing that sex is her marital duty. After all, it is very important to her to be a ‘good wife.’ He knows that she has no such marital duty, but he continues to deceive her; she continues to say yes; they continue to have sex.

The deceived wife and the deceived stranger are both uninformed. But they are uninformed in importantly different ways. The stranger is ignorant about a *non-moral* feature of an activity: the presence of an STD. The wife is ignorant about a *moral* feature of an activity: the non-obligatoriness of marital sex.

Academic discussions of consent and ignorance focus almost exclusively on cases of non-moral ignorance. Thus, such discussions roughly share the following structure: Facilitation and Grasp require information about *this* kind of non-moral feature, but not *that* kind of non-moral feature. But this focus fails to attend to the moral dimension of the relationship between consent and ignorance. Does consent require moral information? If so, what does that imply about the consent of people like the deceived wife? Put more generally, what is the relationship between moral ignorance and consent?



It is no coincidence that the literature overlooks the significance of moral information in consent decisions. After all, the literature often concentrates on cases of consent between relative strangers, like the earlier case of the one-night stand. But in such cases, many kinds of moral information – like a ‘marital duty’ – are less relevant to a consenter’s decision. Moreover, many kinds of moral deception – like a guilt trip – would not be as effective. This is because consenters are far more likely to rely on the moral judgments of people close to them than those of relative strangers. Finally, insofar as consent theorists have discussed phenomena like guilt trips, they have often done so within the context of analyzing coerced consent, not within the context of analyzing informed consent.<sup>42</sup>

The aim of this paper is to correct this neglect, by taking a position on the relationship between moral ignorance and consent. Specifically, I will argue for the following thesis:

***Symmetry***: The informational requirements for consent (i.e., Grasp and Facilitation) do not distinguish between moral and non-moral information.

Everyone accepts that certain kinds of non-moral information are required for consent. To divide the kinds that are required from the kinds that aren’t, we must create accounts of Grasp and Facilitation. The idea behind ***Symmetry*** is that these accounts should be general. That is, whatever categories of information are required for consent, those categories will have moral and non-moral elements. To put the point in a slogan – moral and non-moral ignorance undermine consent in exactly the same ways.

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<sup>42</sup> For instance, see Conly, Anderson, and Patwardhan (“Sulking”).

My argument proceeds as follows. In Section 2, I give some preliminaries. I first elaborate on my background picture of consent; then I formulate Grasp and Facilitation with more precision; and finally, I make some clarifications about *Symmetry*.

With these preliminaries, I then give a prima facie case for *Symmetry* in Section 3. I sketch a taxonomy of different accounts of Grasp, showing that each type of account within this taxonomy is very likely to be symmetric between moral and non-moral information. I do the same for accounts of Facilitation. Along the way, I draw out the underlying reasons for this result. Roughly, any account of Grasp and Facilitation is ultimately an attempt to identify, on the one hand, the information that is so important that consenters need it, and on the other hand, the information that is not this important. But because non-moral and moral information can both be important to consent decisions, the important/unimportant distinction will be orthogonal to the non-moral/moral distinction. This argumentative strategy provides strong support for *Symmetry* – without needing to endorse any substantive accounts of Grasp and Facilitation.

In Sections 4 and 5, I turn to objections. My discussion of these objections aims not only to strengthen the case for *Symmetry*, but also to raise independently interesting questions about Grasp and Facilitation. In Section 4, I consider the objection that a very minimal account of Grasp – one focused on grasping the ‘central features’ of an activity – might threaten *Symmetry*. But I argue that on any plausible construal of ‘central features’, such features can be moral in nature.

In Section 5, I consider two objections that target the Facilitation half of *Symmetry*. First, one might believe that it is inappropriate to learn moral facts on the basis of another’s say-so, unlike non-moral facts. Second, one might believe that moral information, unlike non-moral information, is accessible to everyone. But if these disanalogies are right, we might imagine a consent-receiver asking a consenter, ‘Why should I be responsible to impart moral information to you, if you can’t

even rely on my testimony, and if you could acquire the same information yourself?’ In other words, consent-receivers have facilitative informational responsibilities with respect to non-moral information, but not with respect to moral information. I argue that even if these moral/non-moral disanalogies are true, they do not in fact undermine *Symmetry*.

Having considered these objections, I move to Section 6, where I offer two final observations about *Symmetry*. First, although most of my paper focuses on examples relating to sexual consent, I show that my arguments for *Symmetry* also hold for consent in other domains: property, medicine, etc. Second, I clarify that *Symmetry* says that there is no *in-principle* difference between moral and non-moral information with respect to consent. It does not say that there is no such distinction *in practice*. As a result, it is possible that consent will be *less often* undermined by moral ignorance than by non-moral ignorance, even if the informational requirements are symmetric.

Finally, in Section 7, I conclude that we should endorse *Symmetry*, and elaborate on its upshots. Much ink has been spilled on the relationship between non-moral ignorance and consent, as well as the relationship between moral ignorance and exculpation from responsibility. But this paper offers the first thorough exploration of the relationship between moral ignorance and consent. In articulating and defending *Symmetry*, one of my aims is to encourage us to notice a neglected dimension of the relationship between consent and information. This discussion not only has theoretical stakes, but also has practical stakes, in helping us to theorize about cases like that of the deceived wife. Another aim is methodological. In our theorizing about consent, we should attend more closely to close relationships, since they generate relatively unique questions of consent. A final aim is generative. As I’ll discuss throughout the paper, once we start thinking about moral ignorance and consent, we will come upon other interesting questions about consent.

## II. Preliminaries

### Preliminaries about Consent

Before arguing for *Symmetry*, let me set up that argument with some preliminaries about consent. Consent to an activity releases another person from a duty not to infringe on the domain of authority relevant to that activity. Someone might ‘agree’ to an activity without their agreement counting as ‘consent’. For instance, if they say yes to undergoing an organ donation, but only due to severe coercion, they have *agreed*, but they have not given morally transformative *consent*.<sup>43</sup> An activity is ‘consensual’ only if all agents who have a consent-sensitive right against that activity consent to it. Otherwise, it’s ‘nonconsensual’, or in other words, consent to the activity has been ‘undermined’. For example, a sexual activity is consensual if and only if all participants consent to it.

Nonconsensual activities always wrong their victims, given that they always violate their authority over the relevant domain. However, such wrongs can be all-things-considered justified. If someone threatens to kill you unless you beat up their enemy, for instance, it might be justified for you to carry out the beating even if it is nonconsensual.

If nonconsensual activities always wrong their victims, should they always be legally sanctioned? I think not. To take one example, suppose that we used civil or criminal law to sanction relatively trivial forms of nonconsensual activity – like a single, mild, nonconsensual pinch. If we did, the costs of mobilizing the legal bureaucracy might outweigh the benefits of the legal sanction in the first place, especially when the evidentiary burdens are difficult to meet.

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<sup>43</sup> Some theorists prefer not to use consent as a success term. They instead adopt a tripartite framework. ‘Valid consent’ releases you from a duty. ‘Invalid consent’ does not release you from a duty, but in some sense, still counts as consent, whereas ‘no consent at all’ neither releases you from a duty nor counts as consent. This usage would not change my arguments.

More would need to be said to explain and support this position. For instance, if not all nonconsensual activities should be legally sanctioned, which ones should be, and why? In other work, I discuss questions like these.<sup>44</sup> But in this paper, I will remain neutral about whether all nonconsensual activities should be legally sanctioned. More specifically, I will remain neutral about whether consent undermined by moral ignorance should be legally sanctioned. I will instead focus on the moral dimension of nonconsensual sex.

I have said that nonconsensual activities always wrong their victims. This does not imply that consensual activities never wrong their victims. In my view, duties to respect each other's consent are best understood as duties to respect each other's authority. One might lack an authority-based duty not to engage in a certain activity while still having a duty not to engage in it. After all, one can have duties grounded in something besides authority, like fairness, fidelity, authenticity, and so on.<sup>45</sup> For example, one might have a fidelity-based duty not to have adulterous sex even if that sex is consensual. Although more could be said about this point about consent – and all the points above – I turn now to some preliminaries about consent's informational requirements.

#### Preliminaries about the Informational Requirements

As mentioned earlier, consent is commonly taken to have two informational requirements. Here they are again, along with some further explanation of each requirement.

Facilitation: Suppose you agree to someone engaging in some activity within your domain of authority. That agreement counts as consent only if it is not caused by their failing to carry out

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<sup>44</sup> Patwardhan, "Meddlesome Blame".

<sup>45</sup> For more discussion, see the literature in sexual ethics that focuses on moral concepts besides consent, e.g., Kukla.

their *facilitative informational responsibilities* – their responsibilities to informationally facilitate your decision.<sup>46</sup>

An example will help illustrate Facilitation. Suppose that I agree to exchange some money for a bicycle, but I agree only because the seller has deceived me: I will actually receive a scooter. If so, my agreement does not count as consent; they have a duty not to take my money in exchange for the scooter. This is because they had a responsibility not to deceive me about the product I would receive; they nevertheless deceived me; and this deception got me to say yes.

Of course, ensuring my consent is not the only reason that a consent-receiver should not deceive me. Other reasons include avoiding disrespect, maintaining trust, promoting my wellbeing, and more.<sup>47</sup> But here, we will be concerned only with consent-related reasons. That is, we will be concerned only with those informational responsibilities that are required to ensure consent.

Many philosophers believe that our only facilitative informational responsibilities are *to disclose or inform about certain facts*, and, by extension, *not to deceive about those same facts*. If so, then in line with Danielle Bromwich and Joseph Millum, it would be most perspicuous to rename this requirement as a ‘disclosure’ requirement (“Disclosure” 198, 203-204). But I believe that people can have other facilitative informational responsibilities. As I argue in other work, people can have a responsibility to spur a consenter to double-check information that they have hastily acquired; or to start a conversation about a relevant fact (“Fairness”).

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<sup>46</sup> For the language of facilitative responsibilities, see Dougherty, “Informed Consent”. Additionally, note that this Facilitation requirement is neutral between what view to take on causation, as is the Grasp requirement. One interpretation of these requirements is *counterfactual*. On this interpretation, if it is the case that you would not have agreed to someone engaging in the relevant activity, had they succeeded in carrying out their facilitative informational responsibilities, then your agreement to that activity does not count as consent. For discussion of different views of causation, see Gallow; Menzies and Beebee; Woodward; Hitchcock; Andreas and Guenther; and Frisch.

<sup>47</sup> For a useful discussion of care-based responsibilities of disclosure, as contrasted with consent-based responsibilities of disclosure, see Millum and Bromwich, “Informed Consent” 55-56.

In this paper, I will stay neutral between these different accounts of our facilitative informational responsibilities. For this reason, I label this requirement as one of ‘informational facilitation’ generally, which can be interpreted as one prefers. For similar reasons, my arguments will not depend on my more demanding conception of Facilitation.

As a final observation, note that Facilitation is dyadic. It focuses on what *someone else* must do for *you* insofar as your agreement to some activity is to count as consent to it. Such a requirement acknowledges that a consenter has an interest in the quality of the (informational) interaction between them and a consent-receiver. Insufficient informational facilitation compromises this interest. The dyadic nature of Facilitation distinguishes it from the other informational requirement:

Grasp: Suppose you agree to someone engaging in some activity within your domain of authority. That agreement counts as consent only if it is not caused by your *insufficient grasp* of what you are doing.

This requirement, unlike Facilitation, is monadic. It focuses on what a *consenter* must grasp in order to consent, independently of what a consent-receiver (or anyone) should or should not help them learn. This requirement acknowledges that even when a consenter’s interest in the quality of the (informational) interaction is protected, a consenter retains an interest in the quality of the decision they make within that interaction. Profound ignorance compromises this latter interest.

To illustrate this requirement, consider the following example. Suppose that you agree to a procedure due to being thoroughly misguided about what it is. You think it’s a noninvasive examination, but it’s instead a traditional invasive surgery. Your ignorance is not due to any failure

of the doctor – they explained the procedure in detail and have no reason to believe that you did not understand it. Rather, your ignorance stems from a combination of unfamiliarity with medical terminology and medical settings, as well as less-than-full familiarity with the English language. It might seem that even though you agree, you haven't genuinely consented, because you don't have any grasp of what you are agreeing to. Grasp captures exactly this intuition, by stating that agreement on the basis of thoroughgoing ignorance is not consent.<sup>48</sup>

Many philosophers, like Ruth Faden and Tom Beauchamp, describe this requirement as one of 'understanding' rather than 'grasp' (298-336). But discussions of this requirement often use examples and arguments that refer only to a consentor's lack of false beliefs about what they are agreeing to. Moreover, in popular and academic discussions, 'understanding' is often taken to involve more than just lack of false belief.<sup>49</sup> For this reason, I prefer to talk in terms of 'grasp', where this involves at least lack of false belief but stays neutral beyond that point. A minimally demanding conception of Grasp would require only lack of false belief, while a more demanding conception might require knowledge or understanding. None of my arguments will depend on endorsing a more demanding conception.

### Preliminaries about *Symmetry*

Having elaborated on consent and its informational requirements, we are now positioned to give some final preliminaries about the thesis, *Symmetry*. Here's the thesis again:

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<sup>48</sup> If one believes that this case of agreement does count as consent, imagine a case in which deep ignorance does seem to pull apart agreement from consent. If one cannot imagine any such case, then one might simply disagree that Grasp is a requirement for consent in the first place. I discuss this possibility at the end of this section.

<sup>49</sup> For discussion of many philosophical views of understanding, see Grimm.



***Symmetry***: The informational requirements for consent (i.e., Grasp and Facilitation) do not distinguish between moral and non-moral information.

The first thing to notice is that the importance of this thesis depends on the existence of informational requirements for consent. If there are no such requirements – as well as nothing akin to them – then ***Symmetry*** is trivially true. In this paper, I don't mount an argument for the existence of Grasp and Justification, though I do mention various possible arguments throughout. Instead, I take for granted the common sense that ignorance can undermine consent, focusing on the moral/non-moral symmetry within this common sense.

What is the best way to understand this moral/non-moral symmetry? Roughly, as the claim that moral and non-moral ignorance undermine consent in exactly the same ways. More carefully, as the following two-part claim. First, the types of information involved in a consent-receiver's facilitative informational responsibilities have both moral and non-moral tokens. Second, the types of information that are required for a consenter to sufficiently grasp what they are doing have both moral and non-moral tokens. In this way, ***Symmetry*** does not imply that consenting to an activity requires full moral information about that activity, just like consenting does not require full non-moral information about that activity. It claims only that whichever categories of information are required for consent, those categories have moral and non-moral elements.

For instance, say that a consenter must grasp all and only *material* facts about a consent activity, and that these same facts are involved in a consent-receiver's facilitative informational responsibilities. ***Symmetry*** would imply that this category of information has non-moral instances and moral instances; there are non-moral facts that make a decisive difference to a consenter's decision, as well as moral facts that do the same.

What if moral facts ultimately reduce to non-moral facts? If so, *Symmetry* can be reinterpreted as a symmetry between ‘non-moral information that constitutes moral information’ and ‘non-moral information that does not constitute moral information’. This terminological change would not significantly change the thesis. But would the thesis be undermined if there were no moral facts whatsoever? It depends. If one would want us to give up our talk about morally transformative consent and our talk about moral facts more generally, then *Symmetry* – and any such ethical investigations of consent – would be undermined. But if one would instead want to ‘save the appearances’ of moral talk and inquiry, then one could reinterpret *Symmetry* along these lines and still preserve its import. With these preliminaries, I can now proceed to advancing a prima facie case for *Symmetry*.

### III. A Prima Facie Case for Symmetry

In this section, I give a prima facie case for *Symmetry*, the thesis that Grasp and Facilitation do not distinguish between non-moral and moral information. I first discuss the Grasp half of *Symmetry*, and later turn to the Facilitation half.

#### The Grasp Half of Symmetry

According to Grasp, if you agree to something because you insufficiently grasp what you are doing, that agreement does not count as consent. But what is required for you to have a sufficient grasp of what you are doing? Philosophers have used two, mutually compatible strategies to answer this question: metaphysical and functional. Both strategies, I will argue, are likely to generate answers that entail that Grasp is symmetric. I will also argue that new strategies will be

likely to imply the same result. Hence, we have strong reason to believe that any plausible account of Grasp is symmetric.

The metaphysical strategy identifies a metaphysical feature of consent, and then uses this feature to derive the set of information that a consentor must grasp. For instance, suppose that Joseph Millum and Danielle Bromwich are right that consent must be *intentional*, such that in order to consent to some activity, you must intend to consent to it (“Understanding” 48-49). Intending to consent requires that you grasp that what you are doing is consenting – that is, engaging in the process of waiving a right – rather than doing something else (48-49).<sup>50</sup> If you take yourself to be doodling on scrap paper, rather than signing a surgical consent form, then you do not intend to consent to surgery, and so you do not consent. Accordingly, appealing to a metaphysical feature of consent can tell us about the information a consentor must grasp.

This example version of the metaphysical strategy is clearly symmetric. To start, this view certainly requires grasping *non-moral* features of a consent interaction. Say that someone asks me, “Can I hug you?”, but I mishear them as asking, “Do you like ice-cream?” My failure to grasp the words that they said is a failure to grasp a non-moral feature of the interaction. Because of this non-moral ignorance, what I take myself to be doing when I say ‘absolutely!’ is expressing my intense enthusiasm about ice-cream. I do not take myself to be consenting to a hug. But grasping that you are consenting also requires grasping *moral* features of a consent interaction. For in order to grasp that I am consenting to some act, I must grasp that I have a consent-sensitive right against this act. The following case illustrates this point:

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<sup>50</sup> Note that Millum and Bromwich argue that grasping that you are consenting is necessary, but not sufficient for you to meet the Grasp requirement (“Understanding”).

Vows: Zara mistakenly believes that she has no right against Henrik making sexual contact with her, such that he can touch her without asking and without falling afoul of her consent. Zara believes that she lost this right upon marriage; Henrik shares these mistaken beliefs.<sup>51</sup> Still, Henrik always asks if Zara wants to have sex rather than just starting to touch her. He believes that it's better to be polite about initiating sex, in the same way that it can be polite to ask someone for 'permission' to ask them a question even when this is already permissible. One day, Henrik asks Zara to have sex. Zara says yes because she believes she has no right to say no and prefers to participate in a ritual of politeness. They proceed to have sex.<sup>52</sup>

In Vows, Zara robustly grasps the *non-moral* features of the consent interaction. She knows that Henrik is proposing to have sex with her, and she knows what sex is. Zara does not grasp, however, a crucial *moral* feature of the consent interaction. She does not recognize that the sexual contact is something that she has a consent-sensitive right against, a right that she can waive through consent. Given this ignorance, Zara believes that her saying 'yes' is simply her being polite, not her engaging in the process of waiving a right. Hence, Zara does not grasp that she is consenting, showing that 'grasping that you are consenting' requires grasping both non-moral and moral information. In other words, this example version of the metaphysical strategy is symmetric.

This example also reveals a more general lesson. The basic point of the Grasp requirement is that consenters don't need to grasp everything, but they need to grasp some things. Any version of

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<sup>51</sup> There are two ways to interpret this mistaken belief. On the one hand, Zara and Henrik might believe that she irrevocably waived the right. On the other hand, they might believe that she actually lost the right. The differences between these interpretations will not matter for my argument.

<sup>52</sup> Karamvir Chadha and Tom Dougherty have independently conceived a case like Vows (Chadha 637; Dougherty, *The Scope* 91-92). Both use such cases to argue that intending to consent is not necessary to consent (Chadha 637-640; Dougherty, *The Scope* 92-93). Accordingly, if their arguments are right, the example account on the table is wrong. But as mentioned earlier, my argument for *Symmetry* does not depend on any particular account of Grasp, so I do not evaluate Chadha and Dougherty's arguments.

the metaphysical strategy to flesh out Grasp, hence, must draw a line between facts that must be grasped and facts that need not be grasped. The example view draws this line at *intention-relevant facts*, because it appeals to the claim that ‘consent must be intentional’.<sup>53</sup> Other versions of the metaphysical strategy appeal to the claim that ‘consent must be voluntary’, and then draw the line at *voluntariness-relevant* facts.<sup>54</sup> Still other versions of the metaphysical strategy might draw the line in other places, via appeal to other metaphysical features of consent.

Despite their differences, all these versions of the metaphysical strategy share a similarity. The metaphysical features to which they appeal are those that are relevant to the consenter’s *agency*. They are ultimately aiming to divide the facts that are too important to a consenter’s agency not to grasp from the facts that are not this important.

But there is no reason to believe that moral facts are systematically less important to a consenter’s agency than non-moral facts. Just as my decision to agree to sex might turn on STD status or my partner’s identity, so too might it turn on the obligatoriness of the sexual activity at hand. Our consent decisions, like our other decisions, are informed by our deliberations about non-moral and moral facts. Hence, any use of the metaphysical strategy is very likely to generate a symmetric account of Grasp.

This does not imply that every use of the metaphysical strategy *guarantees* a symmetric account of Grasp. Such a guarantee would be near-impossible, as it’s possible that hitherto undiscovered metaphysical features of consent could entail that Grasp is asymmetric. But my arguments show that we have strong reason to doubt this possibility. If Grasp is to be fleshed out by appealing to consent’s metaphysical features, then Grasp is likely to be symmetric.

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<sup>53</sup> Just as Millum and Bromwich appeal to the claim that ‘consent must be intentional’ (“Understanding”), so too do many other theorists: Dougherty (“Sex”; “Informed Consent”); Faden and Beauchamp; Hurd; and Alexander.

<sup>54</sup> Theorists who appeal to the claim that ‘consent must be voluntary’ include McGregor (181); Archard (50); Manson; Feinberg; Westen (189); and Herring.

To put this argument in a nutshell, however we draw the line between facts that are too agency-relevant not to grasp and facts that are not, we have strong reason to believe that this line will be orthogonal to the moral/non-moral distinction. For this reason, this argument for the Grasp half of *Symmetry* is what I call an ‘orthogonality argument’. We’ll continue to see more orthogonality arguments throughout this section.

As I mentioned earlier, the metaphysical strategy is not the only way to derive the information that consenters must grasp. There is also a *functional* strategy, one that derives this information via appeal to a function of consent.

Suppose, in line with Victor Tadros, that one function of sexual consent is to give a consentor control over the meaning of a sexual activity as part of their broader sex life (246). Suppose further that we take the necessary conditions for consent to be tied to consent’s functions. If so, then a consentor must not be ignorant about features of the sexual activity that undermine the meaning that they assign to it. In other words, a consentor must not be ignorant about features of the sexual activity that undermine the central reasons they are motivated to agree to it (253-254).

Accordingly, my mistaken belief that I washed my bedsheets yesterday will not undermine my consent to a sexual activity on my bed – assuming, that is, that week-old sheets will not undermine the central reason I am motivated to agree to sex in that moment: intimacy with my partner. On the other hand, my mistaken belief about the identity of my sexual partner – thinking it is my spouse, when it is a total stranger – could very well undermine my consent. This error, as contrasted with the bedsheet error, could undermine the central reason I am motivated to have sex. In this way, appealing to the functions of consent can tell us about the information a consentor must grasp.

But here, another orthogonality argument emerges. Tadros’s account of Grasp distinguishes facts that are too meaning-relevant not to grasp from facts that are not; this is orthogonal to the

distinction between moral and non-moral facts; and so his account will be symmetric. To illustrate, consider the following case:

Kiss: On a first date, Rosa and Rob kiss passionately. Rosa then comes to think that if he asks her to have sex, it would be unkind not to have sex. After they kissed so passionately, and after Rob paid for their whole dinner, sex is the only way not to be ‘prudish,’ not to be ungrateful – or so Rosa believes. Because she believes this, when Rob does ask her to have sex, she says yes. But her belief was mistaken. Saying no neither makes her ungrateful, nor prudish, nor unkind.

The central reason that Rosa is motivated to have sex is that she believes that in this case, sex is the way to avoid being unkind, prudish, or ungrateful. But the moral facts undermine this reason. This example thereby shows that moral facts, just like non-moral facts, can be ‘meaning-relevant’.

The same result will hold for other versions of the functional strategy.<sup>55</sup> For example, an instance of the functional strategy which appeals to consent’s function to ‘protect autonomy’ will also be symmetric. This is because the line between autonomy-relevant and autonomy-irrelevant facts is orthogonal to the line between moral and non-moral facts. More generally, any version of the functional strategy, just like any version of the metaphysical strategy, is aiming to identify functional features of consent that are relevant to a consenter’s *agency*. But moral facts are agency-relevant. We thereby have strong reason to believe that functional strategies to flesh out Grasp will entail that it does not distinguish between moral and non-moral information.

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<sup>55</sup> To my knowledge, only Tadros has appealed to ‘control over the meaning of an activity’, but other theorists have different functional strategies. Dougherty, for instance, appeals to a balance between consent’s function to protect us from others and consent’s function to enable valuable interactions with others – or in other words, a balance between the negative and positive faces of autonomy (“Informed Consent” 138).

Thus far, we have shown that if we use the metaphysical or functional strategies to specify the information that a consentor must grasp, we are likely to end up with a symmetric account of Grasp. But of course, we could develop extremely novel versions of these strategies, or even novel strategies altogether. Could such novel approaches support an asymmetric account of Grasp? We are now in a position to see why this is implausible.

Consider an analogy. Suppose that someone claimed that consentors must grasp the risks that a medical procedure poses to their nose, but they need not grasp the risks it poses to their mouth. Ignorance about the former risks would undermine consent; ignorance about the latter would not. This position would be absurd! How could an oral difference make a moral difference? The importance of a risk to a consentor's agency is what determines whether it must be grasped, not its bodily location.

This point holds with respect to accounts of Grasp more generally. The importance of a fact to a consentor's agency is what determines whether it must be grasped. Strategies to flesh out an account of Grasp differ with respect to how they identify such agency-relevant facts. Some strategies appeal to metaphysical features of consent; some appeal to functional features; and novel strategies might appeal to other kinds of features.

But just as there is no reason to believe that facts about oral risks are systematically less important to a consentor's agency than facts about nasal risks, there is no reason to believe that moral facts are systematically less important to a consentor's agency than non-moral facts. In other words, the agency-relevant/agency-irrelevant distinction is orthogonal to the moral/non-moral distinction. I conclude that we have strong reason to believe that Grasp does not distinguish between moral and non-moral information.



### The Facilitation Half of *Symmetry*

I now turn to advancing a parallel set of orthogonality arguments for the Facilitation half of *Symmetry*. The Facilitation requirement claims that if you agree to someone doing something because they fail to carry out their responsibilities to informationally facilitate your decision, that agreement does not count as consent. Currently, there are two mutually compatible strategies to elaborating on the content of these responsibilities: grasp-focused and mistreatment-focused. Both strategies likely imply that the responsibilities are symmetric between moral and non-moral information – or so I will argue. After extending this argument to new strategies that we might develop, I will conclude that we have strong reason to believe that any plausible account of Facilitation is symmetric.

One strategy to generate a fleshed-out account of Facilitation is to derive it from a fleshed-out account of Grasp. In other words, people have facilitative informational responsibilities to ensure that consenters have the information required for them to have a sufficient grasp of what they are doing. For instance, one might endorse the following view, argued for by Tom Dougherty: people have responsibilities not to deceive about any material facts about a consent interaction, precisely because a consenter must grasp all such facts in order to have a sufficient grasp of what they are doing (“Sex”).<sup>56</sup>

If I’m right that any plausible account of Grasp is likely to be symmetric – as I argued above – then any account of Facilitation derived from Grasp is also likely to be symmetric. In other words, we should expect the grasp-focused strategy to generate facilitative informational responsibilities that do not distinguish between moral and non-moral information.

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<sup>56</sup> But note that Dougherty has recently argued against this view (*The Scope*). Note also that other theorists have advanced similar, grasp-focused accounts of Facilitation: Manson; Macey; Brown; and Wendler and Grady.

The mistreatment-focused strategy takes a different approach to fleshing out Facilitation. To employ this strategy, we start by observing that one function of consent is to protect a consentor from making agreements that are induced by a consent-receiver's mistreatment. Such mistreatment can be non-informational, like coercion. But it can also be informational. Hence, the next step of this strategy is to claim that the content of our facilitative informational responsibilities is determined by the kind of 'informational mistreatment' from which consenters should be protected. In this way, fleshing out an account of informational mistreatment allows us to flesh out an account of Facilitation.

An example, drawing from Hugh Lazenby and Iason Gabriel's work, will help illustrate this mistreatment-focused strategy (273-280).<sup>57</sup> Suppose, then, that I 'informationally mistreat' you in a consent interaction just in case I set back your interest in autonomy without advancing an outweighing interest. In other words, I mistreat you in virtue of *inappropriately balancing relevant interests*. Suppose further that I do that just in case I conceal, through non-disclosure or deception, any fact about the activity that meets three conditions. First, I know this fact, you don't, and I know that you don't. Second, I also know that this fact makes a decisive difference to your consent decision. Third, neither I nor anybody else has an outweighing interest, such as an outweighing interest in privacy, in my concealing this fact.

If I conceal facts that meet the first and second conditions, I set back your interest in making choices that align with your will. If those facts also meet the third condition, then I have not advanced any outweighing interests; I have thereby informationally mistreated you. Accordingly, this version of the mistreatment-focused strategy asserts that the facilitative informational responsibilities that people have are responsibilities to disclose facts that meet these three

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<sup>57</sup> Note that Lazenby and Gabriel's view is similar, but not identical, to the view articulated below.

conditions. To illustrate, if someone doesn't tell me that they have a transmissible STD despite knowing that this is material for me, without any reason beyond wanting to have sex with me, my agreement to sex does not constitute consent.

This account of Facilitation is symmetric. This is because the distinction between informational behavior that inappropriately balances relevant interests and informational behavior that does not is orthogonal to the distinction between moral and non-moral information. The following case demonstrates this point:

Guilt Trip: Dave knows that his wife, Pooja, doesn't owe him sex, but he's constantly lied to her about this. Through explicit and implicit communications, but without threats, he's kept repeating the lie: sex is Pooja's marital duty. One evening, Dave makes a sexual advance. Pooja doesn't feel at all like being intimate; she slept badly and is exhausted. Still, Pooja worries that she owes him sex, so she asks him, 'Do we have to do something tonight? I'm pretty tired.' But Dave wants to have sex, so he responds: 'I'm sorry; I thought you were my wife.' Hearing this response, Pooja is again deceived into believing that sex is her marital duty. So she says, 'You're right; let's do it; I'm not that tired anyways.' They proceed to have sex.

In Guilt Trip, Dave knows that the sex is not obligatory. Because Pooja worriedly asks him if she has to have sex, he also knows that she does not know this moral feature of the sexual activity. For the same reason, Dave knows that this fact is material for her. In the end, Pooja agreed only because she came to believe that sex was her marital duty. She came to believe this, of course, from Dave's lie. Dave did not lie to protect his privacy; he lied because he wanted sex and this was the way to get it. And so in Guilt Trip, Dave undermines Pooja's consent – at least according to

the above account of Facilitation. This result would extend to other cases, too, like cases involving thick evaluative facts like whether it would be ‘selfish’ to say no to sex. This version of the mistreatment-focused strategy, accordingly, generates a symmetric account of Facilitation.

The same pattern will likely hold for other ways of specifying the ‘informational mistreatment’ from which consenters should be protected.<sup>58</sup> After all, Guilt Trip makes clear that consenters can be mistreated not only with respect to *non-moral* information, but also with respect to *moral* information. No matter how we specify the ‘informational mistreatment’ from which consenters should be protected, the line between mistreatment and appropriate treatment will likely be orthogonal to the moral/non-moral line. Hence, any plausible version of the mistreatment-focused strategy is likely to generate a symmetric account of Facilitation.

But what if we flesh out Facilitation without using the grasp-focused or mistreatment-focused strategies? Could we then undermine *Symmetry*? This is unlikely. Any account of Facilitation aims to draw a line between enough informational help and too little. Put differently, any account of Facilitation aims to draw a line between the informational harm we should bear and the harm that we shouldn’t. From this similarity emerges symmetry. For I can help or hinder your consent decision by revealing or concealing some non-moral features of the relevant activity. But I can do the same with respect to its moral features. Our consent decisions, after all, are informed by non-moral and moral information. Thus, any plausible distinction between enough and not enough help, or between bearable and unbearable harm, is likely to be orthogonal to the moral/non-moral distinction. We have strong reason to believe that our facilitative informational responsibilities do not distinguish between moral and non-moral information.

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<sup>58</sup> Examples include Bromwich and Millum, who focus on ‘illegitimate informational control’ (“Disclosure”); Miller and Wertheimer, who focus on ‘unfair treatment’; McGregor, who focuses on ‘expectations of harms’; O’Neill and Pallikkathayil, who focus on ‘treating as a mere means’; and Perkins, who focuses on ‘fraud in the factum’.

## Wrapping Up

I have now argued that we have strong reason to believe *Symmetry*. My argument does not depend on any substantive account of Grasp or Facilitation. No matter how we flesh out these accounts, they are very unlikely to distinguish between moral and non-moral information. This is because however they divide the information required for consent from the information that is not, this divide will likely be orthogonal to the moral/non-moral divide.<sup>59</sup>

This argumentative strategy suggests an important direction for future research, as well as a possible objection. What are the correct substantive accounts of Grasp and Facilitation, and moreover, what verdicts would they issue about various real-world cases of agreement induced by moral ignorance? To be clear, I have not endorsed any of the accounts I discussed above, nor the

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<sup>59</sup> Those familiar with the consent literature might notice that I have not discussed how *Symmetry* relates to an alternative interpretation of the relationship between ignorance and consent. My interpretation talks in terms of the ‘informational requirements’ for consent. If I agree to some activity X, only because I lack information that Grasp and Facilitation require of me, my agreement fails to count as consent to X. We can call this the ‘malfunction’ interpretation of the relationship between ignorance and consent – ignorance can make an agreement ‘malfunction’ in its ability to count as consent.

But another way of thinking about the relationship between ignorance and consent omits – or at least minimizes – mention of any ‘informational requirements’ for consent. On this interpretation, ignorance does not make an agreement malfunction. Rather, ignorance makes it the case that what I agreed to is not what ends up happening. I have consented to something, but what I’ve consented to is not what happens. For instance, suppose that I agree to sex with a condom, but I am ignorant that the sex that is about to take place will not involve a condom. If so, then I have consented to ‘sex with a condom’, but what ends up happening is ‘sex without a condom’ – which I did not consent to. In other words, the reason that ignorance matters for consent is that ignorance can make an activity fall outside the ‘scope’ of what you agreed to in the first place. For this reason, we can call this the ‘scope’ interpretation of the relationship between ignorance and consent.

If we rephrase *Symmetry* to align with this alternative ‘scope’ interpretation, my arguments for *Symmetry* will still go through. For in order to flesh out the ‘scope’ interpretation, we need to explain how we should determine what lies inside and outside the scope of a consentor’s agreement. On one prominent account, advanced by Emily Tilton and Jonathan Ichikawa, this scope is determined by the content of a consentor’s *communication*, where this is understood broadly as including explicit and implicit statements. This account would clearly entail *Symmetry*. For instance, if a consentor communicates that they agree only to ‘sex as part of one’s marital duty’, but they are ignorant that sex is not their duty, then what they agree to is not in fact what happens; moral ignorance has led to a nonconsensual sexual activity. More generally, no matter how we delimit the scope of a consentor’s agreement, it is difficult to see why the moral features of an activity would never be relevant to that scope – for the same kinds of reasons mentioned in the main text.

Thus, my arguments throughout the paper straightforwardly extend to the ‘scope’ interpretation of the relationship between ignorance and consent. But for simplicity’s sake, I will continue focusing on the ‘malfunction’ interpretation.

verdicts that follow from these accounts. Nevertheless, identifying the correct accounts of Grasp and Facilitation, and using those to issue verdicts about real-world cases, is of crucial importance, both philosophically and practically speaking.

As I mentioned, my argumentative strategy also suggests a possible objection: could some accounts of Grasp and Facilitation be so *minimal* that they require only non-moral information? This is unlikely. To my knowledge, the account of Grasp that would require consenters to grasp the least amount of information is the account that a consenter needs to grasp *only* that they are consenting. But an account like this will be symmetric. This is the lesson we learned from our discussion of a similar account, as applied to Vows. Additionally, the most minimally demanding account of Facilitation that I have come across is an account that we considered above. Namely, our only facilitative informational responsibilities are to tell the truth about facts that we know are unknown to and material for the consenter, unless we have outweighing reason not to do so. But our discussion of Guilt Trip showed that an account like this will be symmetric. Thus, I don't find this objection to *Symmetry* to be very promising. I now turn to three objections that are more promising.

#### IV. Grasp and Symmetry: The Central Features Objection

Consider the following account of Grasp: the information that consenters must grasp is just *the central features of the activity to which they are consenting*. In this section, I argue that this account initially seems to threaten *Symmetry*, but ultimately, it does not.

One way to justify this account is to appeal to a purported metaphysical feature of consent. For instance, as discussed earlier, if consenting to an activity requires intending to consent to it, one might claim that intending to consent to an activity requires grasping its central features.

Alternatively, one could justify this account by appeal to a purported functional feature of consent. Suppose, for example, that one of consent's functions is to protect a consenter's autonomy. If so, then one might claim that agreeing to an activity without grasping its central features would not be autonomous. In these ways and others, the objector could justify the account of Grasp above.

At first glance, this account might seem to undermine *Symmetry* in the following way. For a consenter to grasp, say, the central features of a kiss, it might seem that they only need to have non-moral information. They need to grasp that kissing involves one person touching another person with their lips. But these features of kissing are not moral features. If this is generalizable, then grasping 'the central features of the activity to which you are consenting' requires only non-moral information. We thereby seem to have identified an important asymmetry within Grasp.

To determine whether this account of Grasp would in fact be asymmetric, we need to have an account of 'the central features of the activity to which you are consenting.' Take a given sexual interaction. Such an interaction has myriad features: the physical actions that make it up (e.g., sexual touching); the identities of the participants (e.g., your spouse); the relevant objects involved (e.g., a condom); the moral status of the activity (e.g., its non-obligatoriness); and so on. Which of these features are 'central' features that a consenter must grasp? Answering this question will be crucial to determine whether this account of Grasp is asymmetric.

There are three natural answers to this question. One answer is that the 'central' features of an activity are set by a consenter's *mental states*.<sup>60</sup> What they need to grasp is those features of the activity at hand that are relevant, say, to whether or not they intend to engage in that activity. If I intend to have sex while protected by a condom, I must grasp the presence of a condom (or lack thereof). If it makes no difference to my intentions whether the lights are on or off, I need not grasp

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<sup>60</sup> See Dougherty, "Sex", for an argument for this intentions-focused approach, especially pgs. 731-732 and 734-737.

whether they are on or off. But as we discussed in the previous section, an account of Grasp that rests on a notion like ‘features relevant to a consentor’s mental states’ is likely to be symmetric. After all, someone might intend to abstain from non-obligatory sex – and must thereby grasp moral information about the sexual activity at hand.

On another view, the ‘central’ features of an activity are set by the *communication* between a consentor and consent-receiver.<sup>61</sup> What a consentor needs to grasp is those features of the activity at hand that are at play in the communication between the consentor and the consent-receiver. Importantly, this notion of ‘communication’ can also include nonverbal forms of communication, as well as social conventions that fill in for things left unsaid. So if I talk to my partner about wanting to have sex only with a condom, then I must grasp the presence of a condom (or lack thereof). But if we don’t communicate at all about whether the lights are on or off, and if the lights are not relevant to any implicit social conventions about sex, I need not grasp whether the lights are on or off. With respect to this view, we can again observe that this account of Grasp is asymmetric. A consentor might communicate that they do not want to have non-obligatory sex, making it the case that they must grasp moral information about the sexual interaction.

On a final view, the ‘central’ features of an activity are set by the *central metaphysical features* of the activity. The central features of an activity are part of its ‘nature’ or ‘essence’; other features are not.<sup>62</sup> For instance, maybe it is part of the nature of a given sexual interaction that it does not pose a substantial risk of pregnancy, in which case a consentor must grasp the presence of a condom (or lack thereof). But the lighting of a sexual interaction is likely not part of its nature, and so a consentor need not grasp whether the lights are on or off.

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<sup>61</sup> See Millum and Bromwich, “Understanding” for an argument for this communication-focused approach, especially pgs. 49-56.

<sup>62</sup> See Sommers, especially pgs. 2289-2302, for experimental evidence that ‘folk morality’ takes this essence-focused approach – an approach that she later criticizes.



This view seems to have the best chance of undermining *Symmetry*. For it might be plausible that the moral features of an activity – a sexual interaction, a medical procedure, a business transaction, and so on – are not part of that activity’s nature.

But even this attempt is unlikely to be successful, for two main reasons. To begin, in order to determine which metaphysical features of an activity are central or not, we have to describe what the activity is. But there are myriad ways to describe any activity, and it is unclear how we would find a principled way to choose the ‘right’ description. For instance, if we describe a consentor as consenting only to ‘an obligatory sexual interaction’, then the presence or absence of a sexual obligation seems to be part of the nature of the activity. But if we describe it as ‘a sexual interaction’, this moral fact may no longer be part of the nature of the activity. Importantly, appealing to something like simplicity to adjudicate between act descriptions won’t help us, because it’s not clear why we should see simpler act descriptions as more accurate act descriptions. Thus, we cannot claim that the moral features of an activity are never ‘central’ unless we have already begged the question – by describing the activity in a non-moralized way.

But say that we can somehow give a principled reason for preferring coarse-grained descriptions of activities, such as the description, ‘sexual interaction’. Still, we then face the issue of deciding how to distinguish ‘central’ features of that activity under that description from ‘non-central’ features. One natural approach is to appeal to the motivations behind Grasp, i.e., to appeal to metaphysical or functional features of consent. For instance, maybe the ‘central’ features are those relevant to protecting a consentor’s autonomy. But as I discussed in the previous section, moral information is unlikely to be systematically irrelevant to the metaphysical and functional features of consent. The other natural approach is to define ‘central’ features without respect to consent, say, by interpreting it modally – the features that an activity *must necessarily have* (Ishii

and Atkins). But then this view becomes unmotivated. Why do consenters need to grasp all and only the necessary features of an activity? What is the import of these features *to our standards for consent*? For these reasons, the metaphysical version of this objection does not seem promising.

This section started with the suggestion that *Symmetry* might be wrong if we hold an account of Grasp focused on the ‘central features’ of an activity. We’ve now considered three natural versions of this account, none of which appear to pose strong threats to *Symmetry*. Still, it’s worth noting that this objection does raise an interesting question for future research. Namely, are there other versions of this ‘central features’ account of Grasp, versions that do threaten *Symmetry*?

Finally, note that this objection could be retargeted to challenge the Facilitation half of *Symmetry* rather than the Grasp half. In other words, someone might argue that people have responsibilities not to deceive consenters about the central features of the activity. This is in fact a traditional view of Facilitation within legal discussions of sexual consent. Only fraud in the *factum* – fraud about the nature of an activity – undermines consent.<sup>63</sup> However, my responses to the Grasp-targeted version of this objection could easily be reframed to counter the Facilitation-targeted version of this objection.<sup>64</sup> For this reason, I don’t consider this version at length. Instead, I’ll now turn to two objections that exclusively target the Facilitation half of *Symmetry*.

## V. Facilitation and Symmetry: The Deference and Access Objections

‘Learn the moral facts on your own.’ This is the demand that Facilitation makes of consenters, according to the two objections in this section. Less colloquially, both objections aim to establish

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<sup>63</sup> See Perkins.

<sup>64</sup> For example, see Fischer, Wertheimer (206-209), and Falk (157-162), for similar responses to a Facilitation-targeted version of this ‘central features’ objection.

that people have facilitative informational responsibilities with respect to non-moral facts, but not with respect to moral facts.

Each of the two objections can apply to facilitative informational responsibilities broadly. But the clearest and strongest version of each objection applies specifically to our responsibilities to *disclose or inform about* certain pieces of information, rather than, say, our responsibilities not to lie about certain pieces of information. For this reason, I focus on the objections as applied to disclosure.

### The Deference Objection

‘Pessimists’ about moral deference believe that there is nothing problematic about learning *non-moral* information on the basis of another person’s say-so, but not so for *moral* information.<sup>65</sup> Even if I can just take your word for the non-moral fact that ‘it is raining outside’, I can’t just take your word for the moral fact that ‘killing for fun is wrong.’ To a pessimist, moral information seems like the kind of thing that you must learn *yourself*. It is problematic to let *others* learn it for you.

Some pessimists believe that what is problematic about moral deference is epistemic. Moral testimony does not transmit epistemic warrant even though non-moral testimony can.<sup>66</sup> Other pessimists believe that what is problematic about moral deference is moral. Relying on another person’s say-so to acquire your beliefs about moral matters is in some way morally inappropriate.<sup>67</sup>

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<sup>65</sup> For a good overview of pessimist and optimist views about moral deference, see Hills.

<sup>66</sup> For an epistemic optimist view that considers (and rejects) numerous epistemic pessimist views, see McShane.

<sup>67</sup> For a moral pessimist view that considers and (rejects) numerous moral pessimist views before developing a novel form of moral pessimism, see Fileva.

Of course, some forms of pessimism – like the view that moral testimony cannot transmit moral understanding – are both epistemic and moral.<sup>68</sup>

If either form of pessimism is true, then consenters should not learn moral facts on the basis of someone's say-so. But if a concenter should not use a consent-receiver's testimony to learn some fact, it seems strange to hold the consent-receiver responsible for disclosing this fact. If these two premises are right, then people cannot have responsibilities to impart *moral* information to consenters, even if they can have responsibilities to impart *non-moral* information to consenters. Facilitation, then, *does* distinguish between moral and non-moral information; *Symmetry* is wrong.

The deference objection relies on an extremely controversial premise – pessimism about moral deference. Accordingly, if this is the price to pay to avoid *Symmetry*, it's a steep price. Nevertheless, suppose, for the sake of argument, that pessimism is true. The bigger issue with this objection is its invalidity. Even if pessimism is true, consent-receivers can still have facilitative informational responsibilities to convey moral information.

To see this invalidity, observe that there are two pathways by which a concenter can use a consent-receiver's testimony to learn moral information. First, a concenter can learn moral information *on the basis of the testifier's say-so*. In this case, the concenter's trust in the testifier is the underlying support for their moral learning. Second, a concenter can learn moral information *on the basis of their own deliberation about the content of the testimony*. In this case, the concenter's deliberation is the underlying support for their moral learning. The consent-receiver's testimony is only the occasion for this deliberation. As Iskra Fileva aptly describes such cases, "Testimony becomes like the ladder that one kicks away when it is no longer needed" (5n11).

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<sup>68</sup> See Hills for an overview of this view.

Consider an example. Suppose that I learn that marital sex is not obligatory, via my spouse's testimony. One way I could have learned this fact was by trusting my spouse, who told me so. Another way I could have learned this fact was by doing my own deliberation, spurred by my conversation with my spouse.

Pessimism about moral deference impugns the epistemic and moral appropriateness of the first pathway, but not the second. Accordingly, even if pessimism is true, there is a way for consenters to appropriately use testimony to learn moral facts. Pessimism, then, is compatible with holding consent-receivers responsible for disclosing moral facts. Just as people can have facilitative informational responsibilities to convey non-moral information, so too can they have facilitative informational responsibilities to convey moral information.

### The Access Objection

Now I turn to a second objection to the Facilitation half of *Symmetry*: the access objection. The objection starts with the claim that moral facts, unlike non-moral facts, are always *accessible to anyone*, at least in principle. Michael Smith, for instance, observes that “the way in which we conduct ourselves in living the moral life seems to presuppose that these [moral] facts are in principle available to all” (5).<sup>69</sup> That is, we treat moral facts as facts that we can always learn if, say, we deliberate for long enough. The same does not hold for non-moral facts. For example, there are some features of deep space that we are in no position to observe.

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<sup>69</sup> Thomas Nagel makes a similar claim when he says, “I do not believe that the truth about how we should live could extend radically beyond any capacity we might have to discover it (apart from its dependence on nonevaluative facts we might be unable to discover)” (139). Relatedly, but focused specifically on the accessibility of the wrongfulness of one's actions, Elizabeth Harman writes, “ordinary people who know the non-moral facts of what they are doing, when they do wrong things, often do have *sufficient evidence* that their actions are wrong” (461-462, emphasis hers).

In practice, of course, we may not always be able to get to the moral truth. We may not have the opportunity to develop skills in moral deliberation; we may not have the opportunity to deliberate for long enough; we may be misled by other people; we may be misled by oppressive social norms or incorrect social norms of other kinds; and so on. But theoretically, any consenters is always in a position to learn about the moral features of the activity at hand.

If a consenters can learn a given fact themselves, should Facilitation require a consent-receiver to tell them about that fact? One might think not. For it might seem that when a consenters can labor to correct their own ignorance, they should not push that burden onto the consent-receiver; they should bear the burden themselves. If a consent-receiver does not share an accessible, but significant, fact, perhaps they have done something morally non-ideal, but they have not undermined consent to the activity in question.

The above points constitute an objection to *Symmetry*. Suppose that moral facts are always accessible. Suppose that people don't have facilitative informational responsibilities with respect to accessible facts, whether these facts are moral or non-moral. From these two premises, it follows that people never have such responsibilities with respect to moral facts.

To illustrate, recall a case from earlier, Guilt Trip. Suppose that Pooja could learn on her own that she is not obligated to have sex with Dave. Suppose further that Dave does not have a facilitative informational responsibility to tell her the truth with respect to facts she could learn on her own. If so, then Dave does not have such a responsibility to tell Pooja that she isn't obligated to have sex.

Like the deference objection, this access objection also rests on a controversial premise – the view that all moral facts are accessible in principle to anyone.<sup>70</sup> Endorsing this view in order to

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<sup>70</sup> See Sorensen, for instance, for an argument that moral obligations can be unknowable.

undermine *Symmetry* is, therefore, a costly choice. Still, for the sake of argument, I'll grant the view. What I will reject is the second premise of the objection – the claim that people do not have facilitative informational responsibilities with respect to accessible facts.

The second premise is most clearly motivated when the consentor knows that the fact in question is very easy to learn. When you know that you can very easily learn a fact yourself, then it seems right that a consent-receiver should not have to learn it for you. You should learn it yourself.

But say that it would be quite difficult for you to learn a fact. If so, the dictate to 'learn it yourself' seems to lose its punch. Moreover, say that it would be somewhat easy for you to learn a fact, but it would be much, much easier for the consent-receiver to simply tell you. Even in this case, the dictate to 'learn it by yourself' seems less compelling. To offer yet another example, say that it would be easy for you to learn a fact, but that you mistakenly, reasonably believe that it would not be so easy. In this case, telling you to learn it yourself seems to expect too much of you. All these observations suggest that the second premise rests on shaky motivations.

To make this response more decisive, let me now turn to a pair of cases. The first is a case I mentioned in the introduction – a case of consent undermined by ignorance about an STD. The second is a variation on that case. The two cases together will give us reason to reject the second premise.

Here's the first case again, made more detailed:

Private. Dean has multiple sexual partners. His spouse, Olive, is comfortable with this. That said, Olive has told Dean that they do not want to have sex with him if he acquires a transmissible STD. After one of his regular appointments, Dean learns that he has acquired a

transmissible STD. He does not want Olive to stop having sex with him, so he does not tell them. Because Olive does not know about the STD, Olive and Dean keep having sex.

As I noted in the introduction, Private is a case in which Dean's behavior straightforwardly undermines Olive's consent. Dean has a facilitative informational responsibility to disclose that he has an STD. He fails to carry out this responsibility, and this failure causes Olive's agreement. Hence, Olive's agreement does not count as consent.

Importantly, Olive could not have learned on their own that Dean had an STD; only he had the test results. But if this fact were accessible, should our judgment about the case be any different? Let's see. Here's a tweaked version of the case, with the key change italicized:

Shared. Dean has multiple sexual partners. His spouse, Olive, is comfortable with this. That said, Olive has told Dean that they do not want to have sex with him if he acquires a transmissible STD. After one of his regular appointments, Dean learns that he has acquired a transmissible STD. He does not want Olive to stop having sex with him, so he does not tell them. *Olive could find his test results on their own. (The two of them get tested on a regular basis; keep all their medical records in a shared file cabinet; and have each other's permission to look at them.) But Olive trusts Dean completely, so they do not look at his records; they expect that he would tell them if he tested positive.* Because Olive does not know about the STD, Olive and Dean keep having sex.



In Shared, just like in Private, Dean can disclose to Olive that he has a transmissible STD – a disclosure which would lead the two of them to stop having sex. But in Shared, Olive knows that they can also learn this information on their own.

Nevertheless, Olive’s access to a shared file cabinet does not seem to matter for our judgment about this case. After all, Dean already knows that an STD is a deal-breaker for Olive. Olive has no reason to distrust Dean – and in fact, has every reason to trust him, given the nature and closeness of their relationship – and so has no reason to open the file cabinet in the first place. Such ‘accessibility in principle’, that is, a file cabinet that Olive has no reason to open, cannot mark an important moral distinction between Shared and Private. Olive’s agreement does not count as consent in Shared, just as it does not in Private.

This pair of cases thereby illustrates that people can have facilitative informational responsibilities to disclose accessible facts. In other words, consent-receivers are sometimes required to teach consenters facts that they could learn themselves. To apply this point to Guilt Trip: the fact that Pooja could independently learn that she is not obligated to have sex does not imply that Dave has no facilitative informational responsibility to convey this information to her. In both Guilt Trip and Shared, the consenter’s trust in the consent-receiver renders it of little import that they can learn the relevant fact themselves.

At this point, one might try to appeal to a more fine-grained sense of ‘accessibility in principle’, such that consent is absent in cases like Shared but is present in cases like Guilt Trip. To offer a single example, one might argue that in Guilt Trip, the fact that Pooja is not obligated to have sex with Dave is accessible to Pooja *a priori*, just via her deliberating about the issue. In contrast, in Shared, Dean’s STD results are not accessible to Olive *a priori*. Olive would have to go open the

file cabinet to find the results. Could it be that facts that are accessible *a priori* need not be disclosed?

This line of thought is ad hoc. For in appealing to *a priori* accessibility, it loses sight of the original motivation behind the objection. The access objection was motivated by the thought that if a consentor can learn a fact themselves, they should be expected to do so. Why should it matter whether the method of learning is *a priori* or *a posteriori* – unless we are fishing for a reason to reject *Symmetry*?

There might be other accessibility-related differences between cases like Shared and cases like Guilt Trip, differences that could resuscitate a variation on the access objection. But any such variation would have to be dramatically different in order to be plausible. For the basic problem with the access objection, as revealed by Shared, is this: the access objection has too simplistic a view of how the accessibility of a fact relates to a consent-receiver's responsibility to disclose it.

It certainly seems right that the accessibility of a fact to a consentor will make *some* difference to a consent-receiver's facilitative informational responsibilities. Other considerations, however, also seem to make a difference. Even if a consentor can learn a fact themselves, we should still ask: but how hard would it be for them to learn it? Would it be a lot easier for the consent-receiver to disclose it than for them to learn it? Do they have good reason to trust that the consent-receiver will disclose it to them? Are they even aware that they can learn it? The takeaway here is that the maxim, 'if I can learn it, you need not disclose it', is simply too simple. The correct view of a consent-receiver's facilitative informational responsibilities will be one that appropriately accounts for the import of all accessibility-related considerations – not just the single consideration of a consentor's in-principle ability to learn a fact on their own.<sup>71</sup>

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<sup>71</sup> In other work, I try to develop a view that does precisely this ("Fairness").

For this reason, any resuscitation of the access objection will have to tell a much more complicated story about why consent-receivers cannot have responsibilities to convey moral information. But we'd have to see the details of such an objection in order to argue against it. In any case, the (controversial) premise that moral facts are accessible to all – on its own – does not entail the conclusion that we do not have facilitative informational responsibilities with respect to moral facts.

### Wrapping Up

I've now argued against the deference and access objections. Even if moral deference is uniquely inappropriate, and even if moral facts are uniquely accessible, we have no reason to doubt that Facilitation is symmetric.

Both objections, importantly, raise intriguing, independent questions for future research. Suppose that deference to testimony is appropriate in at least some cases, setting aside the question of whether all such cases involve non-moral information. Say, for instance, that in some cases, a patient talking to a doctor about the safety of a procedure can just 'take their word for it'. Does that imply that it is appropriate for the doctor to say to the patient, 'Just take my word for it'? Or does the doctor's disclosure need to go further than that, despite deference being permissible? Put more generally, do the bounds of appropriate deference shape the bounds of our facilitative informational responsibilities, and if so, how?

Turning now to the access objection, I've shared that I see a kernel of truth in it. In my view, the accessibility of a fact to a consentor – among other considerations – does matter for our facilitative informational responsibilities, with respect to non-moral and moral information. If this view is right, it cuts against some prominent accounts of our facilitative information

responsibilities. Accounts of Facilitation that neglect what consenters can learn themselves cannot be correct. Accordingly, we must investigate: how should our facilitative informational responsibilities be shaped by considerations of informational accessibility?

## VI. Two Final Observations

In the previous two sections, I considered objections that target the Grasp and Facilitation halves of *Symmetry*. Having found those objections wanting, I conclude that we should be confident that these informational requirements for consent do not distinguish between moral and non-moral information. With this confidence, I now turn to making two final observations about *Symmetry*.

### Domain-Generality

Throughout most of the paper, I have discussed cases in which moral ignorance induces agreement to *sexual* interactions. But of course, we also agree to activities other than sex. We agree to medical procedures; business transactions; journalist recordings; and so on. In all these domains, the question of whether an agreement counts as consent is an important one. Accordingly, a question arises: does *Symmetry* apply to Grasp and Facilitation only with respect to *sexual* consent?

No, *Symmetry* is domain-general. Grasp and Facilitation do not distinguish between moral and non-moral information, no matter the specific domain of consent at hand. After all, although I've discussed many sexual cases, my arguments for *Symmetry* and my arguments against possible objections did not appeal to any special features of a sexual context.

In a nutshell, I argued that Grasp and Facilitation are ultimately concerned with identifying the types of information or informational facilitation that are important enough to be necessary for consent. But we have no reason to think that moral information is systematically ‘not important enough’, in the sexual domain or other domains. Hence, it is unlikely that Grasp and Facilitation are asymmetric, in any domain.

Moreover, we can generate relevant cases outside the sexual domain, like the following:

Donation: Gloria knows that her patient, Carlos, is not obligated to donate an organ. Given the surgical risks involved; it wouldn’t be selfish to say no. But she really wants him to donate, because she wants to give the organ to another patient, Nadia. Gloria also knows, given her previous conversations with Carlos, that he is feeling uncertain about the decision. He has repeatedly asked her, “Do you think I have to donate?” Sensing his uncertainty, she decides to say, “You don’t *have* to donate, Carlos. But Nadia is depending on you, and I know that you wouldn’t want to be selfish, right?” As Gloria predicted, her guilt-trip succeeds; she convinces Carlos that donating is the non-selfish thing to do. Once he says yes, she removes and transfers his organ.

How should we analyze consent within Donation? We should first look to the correct account of people’s facilitative informational responsibilities. Suppose, for a moment, that we hold an example view mentioned in Section 2. Namely, people have responsibilities not to conceal facts that they know are unknown to and material for a consentor, unless they have good reason to do so. After we pick an account of Facilitation like this one, we should then apply the account to this case. What we find is that Gloria lies about the non-selfishness of the donation, despite knowing

that this moral fact is unknown to and material for Carlos. Moreover, it is unlikely that Gloria's desire to help Nadia would count as the kind of 'good reason' that would render the organ removal consensual.<sup>72</sup> According to this account of Facilitation, then, we should conclude that Carlos's agreement does not count as consent.

In the analysis above, the difference between moral and non-moral facts made no difference, even though Donation is situated within the medical domain. This is because our example account of Facilitation did not have any features that make it symmetric in the sexual context but asymmetric in the medical context. The same pattern will likely hold for any plausible account of Facilitation or Grasp. After all, *Symmetry* traces back to the informational requirements themselves, not to any specific account of those requirements.

All this said, it's worth noting that I have not addressed every possible objection to the domain-generality of *Symmetry*. Suffice it to say, then, that we have strong, but not conclusive reason to believe that *Symmetry* holds across domains.

### Asymmetries in Practice

I now turn to a second observation about *Symmetry*. Namely, all that it claims is that the informational requirements for consent do not distinguish between moral and non-moral information, *in principle*. It does not claim that there is no such distinction *in practice*.

To illustrate what I mean, let me return to the earlier example account of Facilitation. People have responsibilities to tell the truth about facts that they know are unknown to and material for the consenter, unless they have good reason not to. What *Symmetry* implies is that these criteria can be met in the same ways by moral and non-moral information; these criteria do not rule out

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<sup>72</sup> If your intuitions go the other way, simply imagine a case in which the deception is less honorably motivated. Perhaps, for instance, Gloria lies to Carlos simply for the sake of getting some practice at removing organs.

the possibility of consent-undermining moral ignorance. What *Symmetry* does not imply is that moral and non-moral information will meet these criteria in an equivalent number of real cases.

Consider, for instance, cases in which a wife agrees to sex with her husband due to mistakenly believing that this is obligatory. In many such cases in the real world, the criteria of the account above are not met. The husband might share his wife's mistaken belief, both of them duped by oppressive gender norms about marital sexual obligations. The husband might be uncertain or conflicted about the moral fact at hand, not having thought about it in detail. He might not realize that his wife has this mistaken belief, or not realize that it is material. And so on. By contrast, consider cases in which a wife agrees to sex because she mistakenly believes that her husband does not have an STD. Perhaps in many of these cases – though I am not sure – the above criteria are met. Hence, although this example account of Facilitation is symmetric in *principle*, it might nevertheless be somewhat asymmetrical in *practice* – in the sense that it might apply to cases of non-moral ignorance more often than cases of moral ignorance.

So far, I've observed that *Symmetry* permits asymmetries in practice. But to say that it permits such asymmetries is not yet to say that such asymmetries do in fact exist. To determine if they do, we'd first have to settle on the correct accounts of Grasp and Facilitation – a contentious matter. Next, we'd have to do empirical work to figure out how often the criteria of those accounts are met by moral and non-moral ignorance, respectively. I leave this as an intriguing future line of inquiry.

Importantly, this line of inquiry will be illuminated by continued investigation of *Symmetry* itself. For one way that *Symmetry* could turn out to be wrong is that the correct accounts of Grasp and Facilitation might be *completely inapplicable* to moral information. If so, then of course there is an asymmetry in practice, because there is a complete asymmetry in principle! There is a second

way that *Symmetry* could turn out to be wrong. The correct accounts of Grasp and Facilitation might apply to moral information in a *systematically different way* than they apply to non-moral information. If so, then the question of whether there is an asymmetry in practice becomes even more complex. For these reasons, any investigation of possible asymmetries in practice will depend on, and be enriched by, further investigation of possible asymmetries in principle.

However, as I've argued, Grasp and Facilitation are likely to be symmetric in principle even if they are asymmetric in practice. Such an asymmetry in practice, importantly, would not undermine the import of *Symmetry*. For certainly, there are at least some real cases of consent induced by moral ignorance – cases like Section 2's Guilt Trip – that closely resemble paradigmatic cases of consent induced by non-moral ignorance. If *Symmetry* is right, then given that the latter cases undermine consent, so do the former cases. We should thereby be attending more to these cases. These cases are not just of philosophical import, in that they illuminate the relationship between moral ignorance and consent, but they are also of deeply practical import, in that they are real instances of nonconsensual activities that go mostly unnoticed in our daily lives.

## VII. Conclusion

This paper started by pointing out that consent theorists have neglected the relationship between moral ignorance and consent. I have now argued for a view about that relationship – the first move in what I hope will be a fruitful philosophical conversation. Specifically, I have argued that the informational requirements for consent, Grasp and Facilitation, do not distinguish between moral and non-moral information. In Section 3, I gave a prima facie case for this view, *Symmetry*, and in Sections 4 and 5, I defused possible objections to this view. Accordingly, absent further objections, we have not just prima facie but decisive reason to endorse *Symmetry*.



Importantly, *Symmetry* does not require consenters to possess all the moral facts. All it requires is that whatever types of non-moral facts consenters must possess, they must also possess the same types of moral facts. Moreover, my argument for *Symmetry* does not depend on any substantive accounts of the informational requirements for consent. And so, we have opened an intriguing line for future research. What does the correct substantive account of the informational requirements imply about cases of agreement induced by moral ignorance? This question has not only theoretical stakes, but also practical stakes. I've already mentioned some real-world cases of agreement induced by moral ignorance, like sex induced by a deceptive guilt-trip. There are myriad other real-world cases that I haven't mentioned – for instance, cases in which someone agrees to a police search because they mistakenly believe that they are both legally and morally obligated to do so. We need to know how to theorize about such cases.

Along the way, we've also opened lines for future research that go beyond debates about *Symmetry*. How does accessibility figure into the informational requirements for consent? How about the (in)appropriateness of testimonial deference? And more broadly, what other questions about consent might we find by attending more closely to consent within the context of close relationships?

There are still other lines for future research that I have not yet mentioned. How might my arguments generalize beyond moral ignorance to other kinds of normative ignorance, like a trainer's misrepresenting their services as necessary for a patient's health? How might we morally criticize sex induced by moral ignorance, through non-consent-focused frameworks within sexual ethics? How might my arguments apply to the relationship between moral ignorance and other normative powers like promising?

What I hope to have emphasized, then, is this: we should attend more to the relationship between moral ignorance and consent. Not only is this independently interesting, but it will also inspire a multitude of other interesting lines of inquiry.<sup>73</sup>

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<sup>73</sup> For feedback on the ideas and drafts that developed into this paper, thanks to Rima Basu, Danielle Bromwich, Sarah Buss, Eugene Chislenko, Jeanine DeLay, Andrew Garland, Gillian Gray, Alex Guerrero, Scott Hershovitz, Jonathan Jenkins Ichikawa, Zoë Johnson King, Renée Jorgensen, Ishani Maitra, Emily McRae, Jonathan Sarnoff, Roseanna Sommers, Eric Swanson, Brian Weatherston, and audiences at the University of Michigan, the Great Lakes Philosophy Conference, the Michigan-MIT Social Philosophy Workshop, the Southeastern Graduate Philosophy Conference, the Georgia Philosophical Society Spring Conference, the Vienna Forum for Analytic Philosophy Graduate Conference on Knowledge, Ignorance, and Moral Responsibility, and Macalester College.

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## Chapter Three

### Meddlesome Blame for Nonconsensual Sex

Content Warning: nonconsensual sex

#### I. Introduction

Suppose that a friend of mine tells me that when she has sex with her partner, he doesn't attend to her sexual pleasure as much as she attends to his. She is hurt by his behavior; this is bad sex; she wants a change. Given this, is it okay for me to confront her partner, censuring him for his conduct? The answer seems to be that it depends. In particular, it depends on what my friend wants me to do. Her wishes play an important role in determining whether it is okay for me to blame her partner to his face.

Now suppose that the situation is slightly different. My friend tells me that her partner had sex with her without her consent. Let me ask again: is it okay for me to confront her partner?

We might be tempted to answer – of course! We're talking about *nonconsensual sex*. If my friend doesn't want me to get involved, then it is certainly *non-ideal* for me to confront her partner. It would likely injure my friendship with her, after all. But it still seems *okay* for me to confront her partner. It seems like nonconsensual sex is the kind of wrong that is always everyone's business. Indeed, this intuition seems to align with many people's beliefs that all nonconsensual

sex should be criminalized.<sup>74</sup> For a lot of forms of bad sex, we might want to leave it up to the victim about how to proceed. But when consent is at stake, it's time for everyone to get involved.

In this paper, I argue against this tempting answer. More specifically, I argue for two key claims. First, in some cases of nonconsensual sex in which a victim does not want a third party to express blame to a perpetrator, it would be *meddlesome* for the third party to do so. Nonconsensual sex is *not* always everyone's business. But of course, sometimes meddlesomely blaming someone is, overall, worth it. Scooby-Doo and the gang might be 'meddling kids', but that's what enables them to solve crimes. Because of this, I also argue for a second key claim. Namely, it can be *impermissibly* meddlesome for a third party to express blame to a perpetrator of nonconsensual sex. The ordinary reasons that justify expressing blame can sometimes fail to apply when it comes to victim-defying, third-party blame for nonconsensual sex.

My arguments might sound like a worrying endorsement of our society's historical reticence to hold perpetrators of nonconsensual sex accountable. The point is in fact the opposite. I'm not arguing that third-party blame for nonconsensual sex is always impermissibly meddlesome. Nor am I arguing that it's mostly impermissibly meddlesome. I'm just arguing that in some cases, it is. Once we appreciate this point, it will in fact help us stop neglecting certain kinds of nonconsensual sex; it will help us recognize that the category of 'nonconsensual sex' is more capacious than we might have realized. This is because we might be tempted to unduly restrict our conception of consent in order to abide by an incorrect principle: when third-party blame for a sexual interaction is impermissibly meddlesome, the sexual interaction must be consensual. The point of this paper is to fracture this inference – to undermine this temptation.

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<sup>74</sup> For one articulation of this position, see West.

In addition to this primary upshot, a secondary upshot of my paper concerns sexual consent in the law. On a certain view of the nature and functions of criminal punishment, my argument will imply not just that third-party blame for nonconsensual sex can be impermissibly meddlesome, but also that criminal punishment for nonconsensual sex can be impermissibly meddlesome. This implication raises questions about the liberal legal position that the absence of consent is the dividing line between criminal and noncriminal sexual interactions.

Finally, my paper calls us to recognize something that we already recognize in many other forms of interpersonal wrongdoing. Namely, a victim's wishes about how a wrongdoing should be addressed should not be unhesitatingly defied. The same holds for nonconsensual sexual interactions, or so I suggest.

The paper proceeds as follows. I start by discussing consent and meddlesome blame separately. I sketch a big-picture view of the point of consent, by imagining what life would be like without it (section 2). From this thought experiment, it emerges that it is useful to think about consent as a way of changing our boundaries with respect to others. To call an interaction 'nonconsensual' is to mark that one person is crossing another's boundaries.

Having given an overview of consent, I then turn to meddlesome blame (section 3). After explaining the nature and point of blame, I describe how blame can be meddlesome. I focus our attention on cases in which a third party's blame meddlesomely defies a victim's wishes about how to hold the wrongdoer accountable. Finally, I note that such victim-defying blame can still be permissible, identifying the sense of permissibility that I have in mind.

I then bring together these understandings of consent and meddlesome blame (section 4). Using a series of concrete examples of nonconsensual sex, I argue that a third party's blame for nonconsensual sex can meddlesomely defy a victim's wishes. I also argue that such meddlesome



blame can fail to achieve the functions of blame well enough to count as permissible. Along the way, I consider a number of objections to these arguments. These objections allege that there are various features of nonconsensual sex that make it a special form of wrongdoing – one that always warrants third-party blame.

Finally, I draw out the two key upshots of my arguments (section 5). The first upshot is that the appropriateness of third-party blame is not a good litmus test for the nonconsensuality of an interaction. By undermining this litmus test, we can be less skeptical of the nonconsensuality of certain kinds of sexual interactions. The second upshot is that my argument suggests that consent may not mark the line between criminal and noncriminal sexual interactions. I end by noting what my argument brings out about the import of a victim's wishes (section 6.)

## **II. The Point of Consent**

### On consent

What role does consent play within our normative landscape? Imagine a community in which we could neither give nor retract consent.<sup>75</sup> In such a community, what would become of our normative boundaries with respect to each other? They would become unchangeable. For suppose that we community members all had a boundary with respect to each other: don't take each other's stuff. If so, then even if I wanted my friend to borrow a treasured book of mine, they could not accept it. After all, to borrow the book would be to violate my boundaries. My inability to give consent would thereby leave me unable to loosen my boundaries.

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<sup>75</sup> This brief thought experiment is inspired by Joel Feinberg's 'Nowheresville', an imaginary world in which nobody has rights (243-249). See Bolinger for a similar thought experiment, focused on the concrete example of someone trying to request a surgery in a world without consent (186-188).

I would also be unable to tighten my boundaries. Say that I had somehow – impossibly – managed to allow my friend to borrow that book, as well as any other books of mine. I loved getting to hear their thoughts and feelings about the books that I loved, to see the old texts anew. But things change; people do, too; and now my friend never seems to get around to returning the books, or even talking about them with me. In these circumstances, I would be unable to retract my consent to this ‘open book policy’, unable to tighten boundaries that were now too loose.

When boundaries are unchangeable, we cannot individualize them to suit our desires. In a community without consent, then, we would find ourselves alienated from our own boundaries.<sup>76</sup>

So too would we be alienated from our own relationships. For boundaries are a crucial feature that differentiates the relationships between me and the countless others in my life. Savannah has unspoken permission to sneak into my house and hang decorations for a surprise party, while Celia does not. It is partly in virtue of differences like these that Savannah is a friend and Celia is a distant acquaintance. Moreover, before Savannah and I met, even she didn’t have such permissions. And so, boundaries also play a role in differentiating my relationship with the same person over time. If I could not change my boundaries with respect to others, I could not change important features of my relationships with them.

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<sup>76</sup> Three clarifications are useful here. First, this statement should not be taken to imply that in a world with consent, every boundary would be changeable. There might be some boundaries – like an ‘inalienable right to life’ – that we cannot change through consent. See, e.g., McConnell for a book-length defense of the existence of inalienable rights; but see, e.g., Steiner for an argument that rights cannot be inalienable. Second, even in a world without consent, some boundaries might be changeable through forfeiture. For instance, if someone is about to hit me, they might forfeit their right against my hitting them in self-defense. But as this example illustrates – and as McConnell discusses (6-7, 13-14) – forfeiture requires engagement in wrongdoing. Forfeiture, hence, does not let us individualize our boundaries as freely as consent does. This is why I am comfortable with the (admittedly imprecise) statement that consent is required for changeable boundaries. Third, and finally, this loose talk of ‘boundary change’ is not meant to be a full account of the exact normative change effected by an act of consent. Rather, it is meant to be a way to stay neutral between different accounts, given that defending a particular account is unnecessary for my arguments here. For a defense of an ‘authority-shifting’ account of consent that also discusses ‘rights-waiver’, ‘duty-release’, and ‘reason-elimination’ accounts, see Liberto, “The Question”.

Ill-fitted boundaries, ill-fitted relationships – what else would a community without consent involve? The loss of a whole host of valuable interactions. For what is a gift if not something of mine becoming something of yours? What is the value of a hug if I cannot choose it? In other words, some interactions, like gifts, are defined in terms of consent.<sup>77</sup> A community without consent is a community without such interactions. Other interactions, like initiating a hug, are not defined in terms of consent. But their value – or at least much of their value – depends on their being chosen. When we empty our normative landscape of consent, we empty these interactions of their value.

To sum up, what role does consent play within our normative landscape? It lets us change and individualize our boundaries. By doing so, it lets us change and individualize our relationships. Through these mechanisms, it also broadens our lives, giving us access to various valuable interactions. Hence, consent makes our boundaries and relationships *flexible* and *personalized*, and our lives *richer*.

### On nonconsensuality

Now we know how consent is important to our normative landscape in general. But what is the importance of consent within particular interactions? Put another way, what is the meaning and weight of an interaction being ‘nonconsensual’?

As I discussed above, giving and retracting consent is a way of changing boundaries to rule in or rule out certain interactions. That means that when an interaction is nonconsensual, it is an interaction that falls afoul of the boundaries of one or more of the individuals in the interaction. For example, if I say that I am not okay with interacting sexually, but my partner makes a sexual

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<sup>77</sup> For recent, insightful discussion of how this point bears on the difference between sex and rape, see Liberto, “The Question” 66-71.

advance, they violate my consent. Or to take another example, if I say that I'd like sexual interactions of this one type, but not of that other type, and yet my partner initiates sexual interactions of that other type, such interactions would be nonconsensual. A nonconsensual interaction, then, is a boundary-crossing interaction.

We can now see the nature of the wrong involved in nonconsensual interactions. Consent enables us to change and individualize our boundaries; those who violate our consent prevent us from exercising this ability. That is, when someone crosses your boundaries, they do not let you have a say with respect to your boundaries. Given the centrality of boundaries to our relationships, they also do not let you have a say with respect to your relationships. This is the sense in which someone might be 'too familiar' with you. The wrong of a nonconsensual interaction, therefore, is that the perpetrator takes control of your boundaries and your relationships. The wrong is usurpation.

The gravity of this wrong is the gravity of the relevant boundary-crossing. This depends on the import of the boundary crossed, as well as how, by whom, and to what extent it was crossed. For instance, if someone crosses important sexual boundaries of mine in an egregious way, the wrong is quite serious. Varying dimensions of the example – the type of boundary, the nature and degree of its violation, and the relationship between the violator and the victim – changes the gravity of the boundary-crossing. In other words, usurpation comes in different levels of severity. Nonconsensual interactions are, therefore, *variably wrongful usurpations*.<sup>78</sup>

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<sup>78</sup> For more detailed accounts of the variable wrongfulness of nonconsensual sexual interactions, see Dougherty, "Sexual Misconduct" 337-343 or Boonin 145-169. I will also talk more about this issue in Section 4.

### III. Meddlesome Blame

#### The nature of blame

With this overview of consent, I can now turn to examining meddlesome blame. But before I turn to this, it's worth asking: what is blame, in the first place? It turns out that the answer to this question is a matter of much debate (Tognazzini and Coates). This is because it is difficult to determine what features are present in *all and only* cases of blame.

One way to define blame is to define it as a *specific type of activity*. Here, accounts diverge based on what activity they take blame to be. According to such accounts, "blame is, roughly, either a matter of *doing, believing, feeling, or desiring*" – to borrow D. Justin Coates and Neal A. Tognazzini's elegant formulation ("The Nature" 198).

We might think that blame is an *action*, say, of reproaching someone.<sup>79</sup> Alternatively, recognizing that sometimes we blame people only in our heads, we might instead take blame to be a *belief*. We might say: to blame is to believe that the target of your blame has done something that reflects badly on them, morally speaking, and that they are blameworthy for it.<sup>80</sup> But beliefs might seem too cold, too inert, to capture the ire of blame. Accordingly, perhaps blaming someone involves *feeling* a particular way towards them – say, angry.<sup>81</sup> Are feelings, however, too 'hot'? Could blame be dispassionate? If so, we might desire a different account of blame. Maybe blame must involve a *desire* that the target of the blame had been more responsive to good moral reasons.<sup>82</sup>

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<sup>79</sup> For instance, see Altham for a discussion of the publicity of reproach – though note that he believes that blame can be fully private (268).

<sup>80</sup> Hieronymi, for example, argues for a cognitive account of blame.

<sup>81</sup> See Bell, who sketches an account of blame that requires being liable to hostile attitudes, including but not limited to anger.

<sup>82</sup> See Sher for an account of blame that involves desire.

What if blame were all these things? In that case, we might try to identify blame with a type of activity that is itself quite diverse. For instance, if blame just is a form of *attention*, and if attention can manifest in myriad ways, we might be able to capture the diversity of blaming activities (Chislenko). Another way to capture the diversity of blaming activities is to define blame not as an activity, but as a set of activities all aimed at a given *function*. For example, perhaps blaming someone involves protesting what they have done, where such protest can be actualized in many ways (Smith). But now the same worry might arise anew. What if blame has multiple functions – as I discuss below – and how would we accommodate this kind of diversity?

It's clear that the debate about the nature of blame is a quagmire. Fortunately, I need not take a stand in this debate. For any account of the nature of blame should easily accommodate the cases of blame that I will be focusing on – cases of the following kind.

***Schema for cases of 'third-party blame'***: A third party not only believes that the wrongdoer is responsible for engaging in nonconsensual sex with the victim, but also *expresses this belief to the wrongdoer*. The third party is at least slightly angry about the wrongdoer's conduct, desiring that the wrongdoer had been more responsive to the moral reasons against such conduct. The third party even takes themselves to have reasons to modify their relationship with the wrongdoer – whatever that relationship was – in light of the wrongdoer's conduct. All these activities of the third party aim to fulfill various functions of blame. I'll elaborate on these soon, but to give some examples, the third party aims to educate the wrongdoer, assert the victim's value in protest of the wrongdoer's conduct, repair the community's damaged moral norms, and so on.

Each account of blame might have a different view of ‘where the blame is’ in cases like these. Nevertheless, every plausible account will find blame somewhere in such cases. For this reason, I can stay neutral about the nature of blame while still arguing for my thesis – that such cases can involve impermissibly meddlesome blame. While arguing for this thesis, I won’t continually specify that it is these cases that I have in mind. Instead, I will use the phrase ‘third-party blame’ as elliptical for talking about such cases.

### Flawed blame

Now we have a basic sense of what blame is. Before discussing how blame can be meddlesome, let me situate that discussion within a wider context. Namely, there are three rough ways in which blame can go wrong.

First, blame can fail to be *fitting*. Blame is fitting only if the target is blameworthy. That is, they have done something (or neglected to do something) in a way that reflects badly on them, they have capacities of deliberation and control sufficient to be morally responsible, their action does not stem from some form of non-culpable ignorance, and so on.<sup>83</sup> Additionally, blame is fitting only if it is proportionate to the significance of what the blamer has done. It should not be overly harsh or overly sustained. Even when blame is fitting, it is important for a blamer to have sufficient evidence of this fact, where the standard of sufficiency will be attuned to the stakes at hand. Otherwise, even fitting blame can be inappropriately risky.

An instance of fitting blame can still *malfunction*, in the literal sense of hindering or not achieving the functions of blame. What are the functions of blame? In my view, there are four. Blame is a form of moral education for the wrongdoer, the victim, and others, education about how

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<sup>83</sup> For useful overviews of the philosophical literature on moral responsibility and blameworthiness, see Tognazzini and Coates; Talbert; and Rudy-Hiller.

to live together well. When blame does not educate – and even when it does – its typical unpleasantness makes it a useful deterrent for future bad conduct by the wrongdoer or others. Through facilitating the cessation of current misconduct and the prevention of future misconduct, blame can also play a role in repairing relationships between the victim and wrongdoer, and between the wrongdoer and others. Similarly, blame can repair damage done to the community's shared moral norms. This is because it allows people to enforce the norms – signaling their commitment to follow these norms and to hold each other accountable for doing so. If nothing else, when a victim blames a wrongdoer, they express that they are worthy of being treated as morality demands. This expression may be aimed at the wrongdoer, in protest of their behavior. It may also be aimed at others, including themselves. A third party's blame cannot first-personally assert the victim's value, but it can still express it third-personally. Additionally, blame also allows one to express one's disapproval of the wrongdoing in question. In sum, what are the functions of blame? In a slogan: educate, deter, repair, and express.

Blame can achieve these functions to a greater or lesser extent. When all goes well, blame does it all. But all does not always go well. Blame can fail to educate. Indeed, it can make people even more resistant to moral learning. For the shameless, blame can be an impotent deterrent. Relationships can lie broken despite blame. So too can moral norms. And if an instance of blame is unconfident, or arrogant, its expression of the victim's value may be feeble; its expression of disapproval may be mistaken. In all these ways, blame can malfunction. Indeed, I'll later discuss how meddling blame can be thoroughly malfunctioning.

Finally, it is often said that blame can *lack standing*, in the way that a non-injured party lacks the standing to file a lawsuit.<sup>84</sup> Put in a less legal sense, a blamer can be *in the wrong position* to

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<sup>84</sup> For an overview of 'standing talk', see Tognazzini and Coates.



blame. How does one lose standing? The three most common answers to this question are: being hypocritical in your blame; being complicit in the activity for which you are blaming the other person; and blaming in a way that constitutes meddling in another's affairs. There might be still other ways to lose standing.

All this said, it is difficult to articulate what exactly it means to 'lose standing', such that 'blame with standing' is not equivalent to 'permissible blame'. Some philosophers are skeptical that there even is a coherent, useful notion of standing in the first place (Bell; King, "Skepticism"). I am one of these philosophers! I cannot argue for this position here, but according to me, any moral problems involved in hypocritical blame, complicit blame, meddlesome blame, and other alleged examples of standing-less blame are variegated, not assimilable under a single category of 'lacking standing.' For this reason, my argument will not rely on any notion of standing. I will instead rely on an articulation of a few, more specific problems involved in meddlesome blame.

To sum up, blame can go wrong by being unfitting; by malfunctioning; and by lacking standing – or manifesting whatever more specific moral problems count within the category of 'lacking standing'. But if I am myself the victim of a wrong, there is one way my blame can't go wrong. I can't be meddlesome. For how could it make sense to tell me that my grievance isn't my business? It's my grievance! If I am the wrongdoer, the same applies. If I am to improve myself, my own moral failings have got to be my business. Thus, only third parties can be meddlers.

### Meddlesome blame

I am now in a position to ask: what does it even mean to deem an instance of third-party blame to be meddlesome?<sup>85</sup> If meddlesomeness were a morally neutral term, we might say that someone's blame is meddlesome whenever they are a 'third party' to the wrong. That is, any blamer who is neither the wrongdoer nor the victim is a meddlesome blamer. Say, for instance, that a friend asks me for help in confronting their adulterous partner. When my friend and I express and explain our anger about what their partner did, my blame would be meddlesome – according to this definition of meddlesomeness.

But I wouldn't be meddling! It's true that I was not the one cheated on. It's also true that if my friend did not want my help, but I still butted in, then I would be doing just that – butting in. But by asking me for my help, my friend made *their* injury into *my* business. This reveals that meddlesomeness is not a morally neutral term; it is not the case that a third party's blame is always meddlesome. Rather, when we describe a specific third party's blame as meddlesome, we are *criticizing* that blame – and them. We are saying, 'this wrongdoing is not your business, and your attempt to make it your business is problematic.'

When is a wrongdoing none of a third party's business? I'm unsure that there is a single answer to this question. For there seem to be numerous considerations in favor of a wrongdoing not being your business. The victim might want to stand up for themselves.<sup>86</sup> They might have already forgiven the wrongdoer.<sup>87</sup> The wrongdoer might benefit from focusing their attention on the

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<sup>85</sup> Note that this question is not the same as asking what it means for a person to be meddlesome. This kind of question will lead us towards analyzing meddlesomeness as a character-level vice – an issue discussed insightfully by Linda Radzik – but away from analyzing the meddlesomeness involved in a specific instance of blame (“On the Virtue”).

<sup>86</sup> For good discussions of the complex ethics of standing up for oneself and standing up for others, see Radzik, “On Minding” 594-597; Wallace; and Dempsey, “Public Wrongs” 259-260.

<sup>87</sup> See Priest for exploration of third-party blame after a victim's forgiveness.

victim's blame, rather than yours.<sup>88</sup> The victim and the wrongdoer might want to work things out only with each other.<sup>89</sup> The wrong in question might be something so specific to the relationship between the victim and the wrongdoer that your blame would be inappropriate.<sup>90</sup> The wrong in question might be purely self-regarding.<sup>91</sup> There might be enough other third parties blaming the wrongdoer.<sup>92</sup> Perhaps the victim's close friends can appropriately get involved, but you are not a close enough friend.<sup>93</sup> There are, of course, still more considerations that we might imagine. Each consideration at least somewhat supports the conclusion that your blame is meddling, even if some considerations are not sufficient on their own to guarantee this conclusion.

The takeaway here is that meddling blame is quite diverse.<sup>94</sup> Because of this, I will focus here on just one broad variety of meddling blame: cases in which a third party's blame *meddles with the victim's decision about how they want the process of accountability to unfold*. In the rest of this section, I discuss different ways in which a third party's blame might defy the victim's wishes, and the different moral problems involved in these ways. Afterwards, I explain how blame that is meddling in these ways can nevertheless be permissible.

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<sup>88</sup> See Christie 9 for some discussion of the importance to the wrongdoer of a victim's blame – as well as a more general argument that victims and wrongdoers have “rights to their own conflicts” (1). Nagel also has some discussion of the costs of having to justify oneself to a wider public, rather than selected intimate others (19-20).

<sup>89</sup> For discussion of third-party blame and relational privacy, see Radzik, “On Minding” 593-594 and Christie 8-9.

<sup>90</sup> Seim goes as far as to say that a third party's blame is meddling if and only if the wrongdoing in question is solely a violation of a norm specific to the relationship between the victim and the wrongdoer (15-20). In contrast, I believe that third parties can non-meddlingly blame for violations of such relationship-specific norms, and that blame can be meddling even when the wrongdoing violates universal moral norms, but I won't argue against Seim's account here.

<sup>91</sup> For recent discussion of paternalistic blame for self-regarding wrongs, see Radzik, “On Minding” 593.

<sup>92</sup> On the relevance of other parties' blame for the justifiability of one's own blame, see Edlich 222-223 and Dempsey, “The Public Realms” 161, 165-166.

<sup>93</sup> For interesting discussion of the import of the closeness of the third-party blamer to the victim, see Edlich 216-218.

<sup>94</sup> Do these diverse varieties of meddling blame share some unifying feature? Yes, I suspect. In line with P. Quinn White's argument that relationships have constitutive norms of honesty and discretion, I believe that relationships also have constitutive norms of blaming. This is because different relationships require different norms about when and how to blame. Blame is meddling, accordingly, just in case it falls afoul of such norms. I won't argue for this big-picture view of meddling blame here, given this paper's narrower focus. But it's worth noting that my view of meddling blame is bound up with the role that blame plays within relationships.

### Meddlesomely defying a victim's wishes

When someone is wronged – when they *become a victim* – they face a decision about how to respond. They could decide that they want to stand up for themselves; they could plan to enlist the help of others; they could let it go; they could forgive; they could silently seethe; and so on and so forth. For instance, suppose that Anita cheats on Greg, and Greg decides that he wants to stand up for himself, by himself. If a mutual friend of theirs, Carla, blames Anita, then Carla wrongs Greg. After all, Greg wanted the chance to hold Anita accountable completely on his own – to prove himself capable of defending his own moral worth – but Carla denied him this chance.

Alternatively, suppose that Greg decides that he doesn't want any third parties involved, not because of the value of standing up for himself, but instead because of the value of working things out with Anita together. Both of them know that sharing life with another person inevitably involves hurting them. Both of them also know that they are capable of working through many kinds of hurt together. They don't need to be or want to be scrutinized by people who barely know them or barely care for them. Accordingly, through the long-term process of working through relationship problems together, Greg and Anita have developed an implicit agreement: 'if a problem comes up, and we *can* work it out with each other, we *will* work it out with each other.' In this version of the hypothetical, when Carla blames Anita, she makes it harder for them to work things out alone. Assuming that Greg values his relationship with Anita, Carla's interference with their relationship-sustaining agreement wrongs him.

Finally, suppose that Greg has a different kind of reason for not wanting Carla to get involved. It's not that he wants to stand up for himself, by himself. Nor is it that he wants him and Anita to work things out together, a practice that sustains their valuable relationship. Instead, what he wants is for Anita to focus on his blame, rather than Carla's blame. He wants Anita to change because

she recognizes *his* moral authority – *his* status as an agent who is owed better treatment. Now imagine that Carla does blame Anita, and that her blame disrupts Anita’s focus on Greg’s blame, such that Anita changes because of her respect for *Carla’s* moral authority. Anita’s initial wrong – cheating – already involved a failure to recognize Greg’s moral authority. Now she’s done it again. But Carla has also wronged Greg, in facilitating this failure despite Greg’s wishes otherwise.

These three versions of the hypothetical reveal a general lesson about meddlesome blame. The nature of the wrongs involved in meddlesome blame will depend on the nature of the case at hand. In the first version of the hypothetical, the wrong is one of denying Greg the chance to stand up for himself. In the second version, the wrong is one of risking damage to Greg’s relationship. In the third version, the wrong is one of disrupting Anita’s focus on Greg’s blame. There are likely still other versions that involve still other wrongs, given that the exact contours of the victim’s wishes will shape the meaning and impact of a third party’s blame. Similarly, cases of meddlesome blame that do not involve defying a victim’s wishes – cases I do not discuss here – will also involve numerous different kinds of wrongs.

Thus far, I have repeatedly appealed to the language of ‘wrongs.’ This is because I believe that our obligations not to meddlesomely blame are *directed* obligations. In the hypotheticals above, Carla *owed it to Greg* not to meddlesomely blame Anita. If Carla meddlesomely blames Anita, in violation of this obligation, she has not just ‘done something wrong.’ She has wronged Greg; she owes him an apology or other form of reparation. I find it illuminating here to think back to our talk of boundaries. When a third party meddlesomely defies a victim’s wishes, they *cross the victim’s boundaries*.

Not everyone shares this view of meddlesome blame. As I discussed above, some authors have argued that the moral problem with meddlesome blame is that it leads to a loss of *standing* (Radzik,

“On Minding”; Mendlow; Seim). Others see meddlesome blame as involving *non-directed* wrongdoing, for instance, a wrongful form of attending to what one should ignore (King, “Attending” 1428-1433).<sup>95</sup> Still others have described meddlesome blame as a manifestation of a *vice* (Radzik, “On the Virtue”). These views are also mutually compatible, given that meddlesome blame could involve all these moral problems.

My arguments, importantly, do not hinge on my ‘directed wrongs’ view of meddlesome blame. Rather, my arguments will rely only on a claim that aligns with each view of the moral problems of meddlesome blame. Namely, meddlesome blame is *presumptively unjustified*. This does not imply that meddlesome blame can never be justified. Indeed, I’ll soon discuss how meddlesome blame can often be justified.<sup>96</sup> But it does imply that when such a justification is lacking, to deem an instance of blame meddlesome is to deem it impermissible.

So far, we have discussed (the moral problems of) three varieties of victim-defying, meddlesome blame. At this point, we might wonder: is *every* case of third-party blame that conflicts with a victim’s wishes a case of meddlesome blame?

I doubt it. For imagine a victim who doesn’t want intervention because they are conflict-averse; or because they deprioritize their own interests in a self-abnegating way; or because they don’t even realize they have been wronged; or so on. Surely in some of these cases, the victim’s wishes do not have the moral weight necessary to render third-party blame meddlesome. In other words, sometimes victims are mistaken about what is and is not the business of third parties. For this

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<sup>95</sup> Technically, King does not specify that wrongful attention is a non-directed wrong, although he never describes it as a wrong to the target of the blame, and never describes a blamer as owing it to the target not to blame them. If King does see wrongful attention as a directed wrong, then his view is in line with mine. Suffice it to say, however, that it is possible to see meddlesome blame as a non-directed wrong.

<sup>96</sup> My claim that directed wrongdoing can nevertheless be justified is akin to Thomson’s distinction between infringing a right and violating it (122).

reason, I do not believe that every single case of victim-defying, third-party blame is meddlesome.<sup>97</sup> I'll focus only on the three varieties of victim-defying blame that I discussed above.

#### Not meddling and permissibly meddling

I've argued that a third party's blame, when it defies the wishes of the victim, can involve a litany of wrongs. But of course, there are cases of third-party blame that do not defy a victim's wishes. If Greg *wants Carla to help him* hold Anita accountable – and assuming that the case does not involve some other variety of meddlesomeness – then Carla's blame won't be meddlesome.

Moreover, in some cases of third-party blame, the 'third party' might be better understood as a victim themselves. For we might think that some interpersonal wrongdoings also wrong the community at large. A serial killer, for instance, principally wrongs the people that they murder, but they also seem to wrong the community at large. Later, I'll talk more about how we should understand this notion of 'wrongs to the community.' But for now, notice that if a 'third party' blames a wrongdoer for the wrong done to *them*, rather than for the wrong done to the principal victim, they are no 'third party' at all. Their blame will not count as meddlesome – although it may certainly exhibit other flaws, such as disproportionality, complicity, etc. As we discussed above, victims (in their role as victims) can't be meddlers.

Hence, third-party blame can be meddlesome or not, depending on the circumstances. Importantly, even when a third-party's blame is meddlesome – even when it is presumptively unjustified – it can still be permissible. That is, the wrongs involved in meddlesome blame can be *justified* wrongs.

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<sup>97</sup> For related discussion, see Mendlow, "The Moral Ambiguity" 1168.

How can meddlesome blame be permissible? To answer this question, let me take a step back. How do we assess the permissibility of any instance of blame? I take there to be two sets of relevant considerations.

The first set of considerations relates to whether the instance of blame is doing a good (enough) job at being blame. For an instance of blame to be good enough, qua blame, is for two conditions to be met. First, the blame must be fitting. For if the target is not blameworthy, or is disproportionately harsh, or so on, then the blame is not appropriately attuned to its target. We might say that the target does not *deserve* the blame. Second, the blame must sufficiently fulfill one or more of the functions of blame: educate, deter, repair, and express. Say that the blame is flawed in some way that makes it presumptively unjustified. It is meddlesome, or inappropriately hypocritical, or so on. In that case, the blame must be well-functioning enough to justify levying it anyway; the standard of ‘sufficiency’ will be sensitive to the extent to which the blame is flawed. On the other hand, say that the blame is not flawed in a way that makes it presumptively unjustified. In this case, the blame might be good enough simply by not being counterproductive. In other words, an instance of blame is doing a good enough job at being blame when it is fitting and it is sufficiently well-functioning. An instance of blame that meets this standard is, *ceteris paribus*, permissible.

But other things are not always equal. This is a clue to the second set of considerations relevant to assessing the permissibility of any instance of blame: the consequences of that instance of blame that are *unrelated* to its functions. For instance, suppose that I blame an innocent stranger. My blame, qua blame, is bad. After all, they are innocent, and I’m not fulfilling any functions of blame. But say that by blaming them, I distract them for long enough for them to avoid stepping into a giant pit. This beneficial consequence is completely unrelated to the functions of blame.



Nevertheless, this benefit is so important that it permits my levying the blame. In other words, my blame might be impermissible, *ceteris paribus*, but it is permissible, *all things considered*. In the same way, blame that is permissible, *ceteris paribus*, can be impermissible, *all things considered*.<sup>98</sup>

To assess the permissibility of meddling blame, we look to the same two sets of considerations. Suppose that if Carla blamed Anita, she would meddlingly defy Greg's wishes. Her blame might still be permissible, *ceteris paribus*. For her blame could be fitting and sufficiently well-functioning. Perhaps Carla's blame can *educate* Anita – get her to see how she's hurting Greg – or at least *deter* her. Perhaps Carla's blame will help *repair* the community's damaged moral norms against adultery, showing that this wrongdoing will be taken seriously. Perhaps her blame will help *express* Greg's value in the wake of wrongdoing. Furthermore, Carla's blame could also be permissible, *all things considered*. Even if her blame fails to achieve any functions of blame, it might have other consequences, unrelated to these functions, that justify it.

Now we know how meddling blame can nevertheless be permissible. In the rest of this paper, I will be concerned with arguing that third-party blame for nonconsensual sex can be impermissibly meddling. Importantly, I will focus only on arguing that it is impermissible, *ceteris paribus*. If I can establish this, it will easily follow that it can be all-things-considered impermissible. But the converse is not true. In other words, I will focus on arguing that third-party blame for nonconsensual sex can not only be meddling, but also do a bad job at being blame. For this reason, I will henceforth use '(im)permissibility' as elliptical for '(im)permissibility, *ceteris paribus*'.

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<sup>98</sup> Some might be skeptical that consequences unrelated to the functions of blame could render it permissible. Such skepticism does not undermine my arguments, for as I discuss later, I focus only on permissibility in the *ceteris paribus* sense.

#### IV. Impermissibly Meddling into Nonconsensual Sex

##### The core examples

Now that I've discussed consent and meddlesome blame, I can put these pieces together. In this section, I argue that third-party blame for nonconsensual sex can be impermissibly meddlesome. Let me start with a few examples that I'll discuss throughout.

***Begging:*** Nick and Richa, two undergraduates, have now been dating for two years. Things in their relationship are going well, except when it comes to sex. When Nick really wants to have sex, but Richa doesn't, Nick begs her to say yes until she gives in. He laments about his sexual frustration; he incessantly asks her for reasons she doesn't want to have sex and argues against them; he pleads and mentions how happy he would feel if she said yes; and on and on, for hours and even days, until Richa can't take any more. This behavior has become such a pattern that now Nick just makes statements like 'Do you want me to beg?' and Richa submits to sex to prevent the begging from starting. After some time, Richa confides in her friend, Jasleen, about this cycle of coerced sex. Jasleen, up in arms, wants to confront Nick. But Richa tells Jasleen, 'Please don't! I usually let other people step in when things like this happen. But I want to do this myself; I want to show myself that I can do it. But I promise I'll tell you how it goes immediately afterwards.'<sup>99</sup>

***Asleep:*** Raj and Wes have been lovers for decades. Recently, Raj has started to have fantasies about touching Wes while Wes is sleeping. This is not something they have done before or agreed to do before. Without prior consent, this would be a boundary crossing. But Raj thinks

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<sup>99</sup> In other work, I discuss cases of nonviolent coercion like these, with a focus on cases of sexual consent induced by blame ("Sulking").

to himself, ‘Is it really that big of a deal? We touch each other all the time while we are awake, and Wes probably wouldn’t even notice, heavy sleeper that he is.’ Having rationalized this, Raj does touch Wes one night. His touching gets vigorous enough that Wes does wake up. When Wes realizes what is happening, he is shocked. He leaves the room and goes to sleep at his friend Huda’s house, disturbed and unsure of what to do or how to think about things. When Wes and Huda debrief in the morning, Wes decides that he wants to go back home and confront Raj. Huda asks if he should come, but Wes says that if his relationship with Raj is going to survive, he and Raj will have to work things out on their own.

***Corinthians:*** Ben and Samantha are newlyweds. In the early days of their marriage, Ben tells Samantha that a passage from 1 Corinthians implies that a wife owes her husband sex whenever he wants it – despite knowing that this interpretation isn’t true. Samantha isn’t sure how to interpret this passage, but she trusts Ben’s judgment. Whenever Ben wants sex, Samantha says yes, even when she doesn’t want to. A year later, Samantha is talking to her sister, Sally, about Ben’s interpretation of this passage. Sally is aghast, and after a long conversation, Samantha comes to share Sally’s opinion: Samantha has been a victim of marital rape. Sally tells Samantha to end the marriage now, but Samantha cares deeply about Ben and wants to give him a chance before ending things. She says that she’ll talk to him alone. It’s important to her that Ben changes because *she* tells him to change, not because anyone else tells him.<sup>100</sup>

Richa, Wes, and Samantha are all victims of nonconsensual sex. Richa is coerced into submitting to sex; she submits only to avoid Nick’s endless begging. Wes is asleep when Raj

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<sup>100</sup> In other work, I discuss cases like these – cases of morally ignorant consent – at length (“Do I”).

touches him, and they hadn't communicated at all about this kind of sexual touching beforehand. Ben deceives Samantha into believing that she is obligated to agree to sex whenever he wants it. All three cases, therefore, involve sexual boundaries being crossed.

Of course, you may disagree with my verdicts about each of these cases. If so, feel free to substitute cases that seem more clearly nonconsensual, with the broader details held fixed – in particular, the victim's desire to hold the wrongdoer accountable on their own.

### The core argument: part 1

Let me now show that in these cases of nonconsensual sex, third-party blame is impermissibly meddlesome. Richa wants to stand up for herself, by herself. Wes wants to try working things out with Raj on his own. Samantha wants Ben to change because of her moral authority, not anyone else's. Because of this, they don't want third parties – Jasleen, Huda, and Sally – to get involved in the accountability process, even though they are happy to confide in and chat with them. In each case, if the third party were to blame the wrongdoer, they would defy the victim's wishes regarding the accountability process. They would cross the victim's (blame-related) boundaries after a wrongdoer had already crossed the victim's (sexual) boundaries.

Additionally, third-party blame in these cases – or rather, some variations of these cases – is *impermissibly* meddlesome. For it's easy to imagine that Jasleen, Huda, and Sally will not be good enough at fulfilling the functions of blame for their meddlesomeness to be justified. Let's focus on *Corinthians*. Sally has already educated Samantha about how she has been wronged, just by talking with her. Blaming Ben might not further this education. It might also fail to help Ben realize what he's done, if, say, he thinks Sally is overly moralistic. Finally, if Sally will not publicly broadcast this blame, it won't help educate other third parties about the wrongdoing in question.

So too might Sally be ineffective at deterring future wrongdoing, by Ben or by others. Ben might be able to shut out her criticism, either in his own head or by taking steps to stop being in her presence. Other possible perpetrators of marital rape won't be around to be deterred.

Samantha has told Sally that the only way to repair the relationship between her and Ben is for Ben to change because *Sally* tells him to. So for Samantha to get involved is for Samantha to hinder any reparation that is possible. Samantha may also not be positioned well to repair the community's damaged moral norms. By being unable to educate Ben or others, she might not be able to restore community compliance with norms against marital rape; by being unable to deter them, she might not be able to signal that these norms will be robustly enforced.

It's true that in blaming Ben, Samantha can express Sally's value in the wake of her victimization. It's also true that Samantha can express disapproval of Ben's wrongdoing. But Samantha cannot express Sally's value from a first-personal perspective – in the way that Sally can. More importantly, Samantha's blame would express, to some extent, that Sally is *not* so valuable. After all, her blame would indicate that she is willing to meddlesomely defy Sally's wishes, that is, to wrong Sally. And so it is plausible that with respect to the expressive functions of blame, Samantha's blame is counterproductive.

I conclude that it's easy to imagine variations of *Corinthians* in which Samantha's blame does not fulfill the functions of blame to an extent sufficient to justify her meddlesomeness. (Of course, it's also easy to imagine variations in which it does do so.) The same point holds for the other cases, as well as the litany of similar cases that I do not discuss here. Third-party blame for nonconsensual sex can be impermissibly meddlesome.

At this point, it's useful for me to make two important clarifications about my argument. At the risk of belaboring an obvious point, I have not argued that third-party blame for nonconsensual

sex is *always* impermissibly meddlesome. My arguments should not be taken as endorsing this dangerous position, a position that risks leaving victims in the cold when they need support.

Second, even in cases where third-party blame is impermissibly meddlesome, other forms of third-party involvement might not be. Notice that in all three cases above, the third parties help in ways that do not involve blame. They listen to the victim's experiences, help them process the experience, and support their planning and decision-making. Forms of support like these aren't meddlesome in the cases at hand, and so are perfectly permissible. As a result, my argument does not imply that third parties should simply 'stay out of it' when it comes to nonconsensual sex.

#### The core argument: part 2

Thus far, I have given a high-level argument for the claim that third-party blame for nonconsensual can be impermissibly meddlesome. But at this point, the question might arise: isn't nonconsensual sex *special* in a way that makes it everyone's business? Let me now consider this question.

Why might nonconsensual sex be everyone's business? One answer is the claim that nonconsensual sex is always an irreparable wrong, or that it always renders the relationship between the victim and the perpetrator unsalvageable. If so, then it might seem that third-party blame cannot be meddlesome. For what import are the victim's wishes for the accountability process, if the accountability process will never culminate in reparation? If the victim's wishes have no import in such cases, then defying them may not seem like an instance of meddlesomeness at all.

The clearest problem with this line of thought is that the process of holding someone accountable can have value beyond the prospect of reparation. As I discussed above, there are

cases – like *Begging* – in which someone wants to stand up for themselves, by themselves. Even if Richa’s stand does not result in Nick making amends, Richa has still proved herself capable of defending her own moral worth. If Jasleen steps in and blames Nick, contrary to Richa’s wishes, she has meaningfully defied Richa in a way that counts as meddling. Additionally, it is false that nonconsensual sex is always an irreparable wrong, or that it renders relationships unsalvageable. People do make amends for nonconsensual sexual conduct; relationships can be repaired in the wake of it.<sup>101</sup>

Instead of focusing on the alleged irreparability of nonconsensual sex, another line of thought might focus on its gravity. That is, someone might claim that nonconsensual sex is always a serious wrong, and that serious wrongs are always everyone’s business. For this reason, a third party who blames a perpetrator of nonconsensual sex is not meddling.

This line of thought is unconvincing. Most obviously, it is not the case that serious wrongs are always everyone’s business.<sup>102</sup> Consider, for instance, our previous example of adultery within a monogamous relationship. This can be a substantial, relationship-ending deception. Yet, it seems obvious that adultery is not always everyone’s business. If Greg tells Carla not to blame Anita for cheating on him, it can be meddling for Carla to blame Anita.

Additionally, to make a perhaps less obvious point, nonconsensual sex is not always a serious wrong. Some authors, like David Archard, disagree. Archard’s basic idea is that a person’s sexual boundaries are central to their self or their personhood, making any crossing of such boundaries seriously wrongful (387-393). But there are two problems with this idea. The first problem is one that I discussed in section 2 – sexual boundaries, like all boundaries, can be crossed to different

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<sup>101</sup> As a piece of anecdotal evidence, Sheila Gregoire, an author and speaker focused on helping Christians (re)build healthy marriages, writes about marital rape: “Can this get better? I think it’s really difficult, but I have heard from many couples who have worked through these steps [of recovery] because he has owned what he has done.”

<sup>102</sup> For related discussion, see Mendlow, “The Moral Ambiguity” 1167-1168.

degrees. People can be more or less coerced into sex, more or less incapacitated, more or less deceived, and so on. If a sexual boundary is minimally crossed, then even if it is central to a person's self, it seems plausible that the boundary-crossing can still fail to be a serious wrong.

Indeed, this might be some people's preferred interpretation of *Begging*. Some people might see begging as a 'minimal' form of coercion, as compared to threats of serious violence or death, in which case Richa might be a victim of a less seriously wrong form of nonconsensual sex. Of course, that does not mean that the wrongdoing should not be addressed or attended to. It simply means that the wrong may not be 'serious' in the sense of being extremely damaging to her personhood or self.

The other problem with Archard's idea is that the notion of 'sexual boundaries' is overly homogenizing. It's common sense that a heteronormative view of 'sex as penile-vaginal penetration' is arbitrarily narrow. The consent literature, however, neglects the immense diversity of sex, and accordingly, the immense diversity of sexual boundaries. A sexual activity can involve any part of the bodies of the participants. A sexual activity can be virtual or telephonic. A sexual activity can imbue sexual meaning into actions and body parts that may not typically be considered 'sexual'. Indeed, because the participants of a sexual activity can *make things sexual*, the scope of sex cannot be well-defined. Importantly, while crossing some of these boundaries might be extremely serious, crossing others might be less serious.

Consider *Asleep*. Whether Raj sexually touches Wes's nipples or whether he sexually touches his penis, he crosses Wes's 'sexual boundaries'. But these two boundaries might be quite different to Wes. Crossing the latter might be shocking – a severe blow to the self – while crossing the former might be merely frustrating. The two boundaries might also have quite different social meanings. The relevant community or communities might attribute different levels of significance



to each boundary, deeming one boundary to be more central to the self and the other to be less so. Hence, the diversity of sexual boundaries, along with the diversity of ways in which they can be crossed, renders it implausible that sexual boundary-crossings are always serious wrongs.

At this point, someone might try to revise this line of thought to maintain that nonconsensual sex is everyone's business. They might claim that nonconsensual sex just is rape<sup>103</sup>, and that rape, surely, is everyone's business. I won't take a stand here on how to define rape. The matter of how to define rape is complex, and there may not be a stable best definition (Reitan). I will instead give the following, likely predictable response. If nonconsensual sex just is rape, then rape is not everyone's business, given my arguments above. But if rape is everyone's business, then rape cannot be equivalent to nonconsensual sex. My argument here, then, could be taken to issue a challenge for future scholarly work. Insofar as rape seems identical to nonconsensual sex and seems to be everyone's business, we must rethink rape.

There is a final way in which someone might argue that nonconsensual sex is a 'special' wrong for which third-party blame cannot be meddlesome. They might claim that in every case, nonconsensual sex is not just a wrong to the principal victim, but a wrong to the community at large. If this is right, then a third party who blames a perpetrator of nonconsensual sex *for wronging the community* is not a real 'third party' at all. They are a victim themselves.

To evaluate this line of thought, let me first note that there are myriad ways to understand the notion of a 'wrong to the community.' We might say that an interpersonal wrongdoing wrongs the community when it encourages others to commit similar wrongdoings; spurs wrongdoing out of revenge; spreads community-wide fear; makes the community volatile; lessens community-wide trust; attacks the community's defining values; damages the community's moral norms; or causes

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<sup>103</sup> See, e.g., Archard.

or constitutes still other kinds of social harms.<sup>104</sup> Importantly, each of these social harms must be of a serious enough gravity for it to be plausible to say that the community has been *wronged*. To return to a prior example, adultery might cause various social harms, but these harms do not seem serious enough to deem adultery to be a wrong to the community.

Suppose that the notion of a wrong to the community makes sense. Still, nonconsensual sex is not always a wrong to the community at large. Some cases of nonconsensual sex are undoubtedly wrongs to the community. They strongly encourage others to commit similar wrongdoings; they spread intense fear; they seriously attack the value of respecting each other's sexual boundaries; and so on. But as I noted above, some cases of nonconsensual sex are less seriously wrongful (although this does not imply that they should be ignored). Such cases can certainly cause or constitute various social harms. However, these harms do not seem serious enough for the cases to be deemed wrongs to the community. Otherwise, we risk deeming all kinds of interpersonal wrongdoings as wrongs to the community. This would implausibly eliminate the category of third-party meddlesomeness altogether.

All this said, suppose that nonconsensual sex always was a wrong to the community. It still does not follow that third-party blame for nonconsensual sex cannot be meddlesome. For in some cases, a third party blames the perpetrator not for wronging *them*, but for wronging *the principal victim*. Take the cases above. Jasleen, Huda, and Sally propose to blame the wrongdoers for wronging the principal victims. They do not propose to blame the wrongdoers as 'victims themselves.' Nor is it their goal to hold the wrongdoer accountable for the wrong done to the community. They are wholly focused on holding the wrongdoers accountable for what they did to

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<sup>104</sup> For a good overview of various conceptions of a 'wrong to the community', see Mendlow, "On the State's Exclusive Right" 246-253.

Richa, Wes, and Samantha.<sup>105</sup> In such cases, appealing to the notion of a wrong to the community will not prevent third-party blame from being meddlesome – because the blame is not levied for the wrong done to the community. I conclude that nonconsensual sex is not special in ways that make it ‘everyone’s business.’

### The core argument: part 3

Perhaps there is another sense in which nonconsensual sex is special. Namely, perhaps nonconsensual sex has some feature such that even when third-party blame is meddlesome, it is nevertheless permissible. One feature stands out as a possibility: we live in a patriarchal society that has historically failed to intervene appropriately with respect to sexual misconduct, including but not limited to nonconsensual sex.

For instance, one feature of our patriarchal society is that victims of nonconsensual sex often do not recognize how they have been wronged. When a victim does not see themselves as a victim, it might be meddlesome for a third party to blame the perpetrator in defiance of the victim’s wishes, but it seems much more likely to be permissible. After all, someone needs to hold the perpetrator accountable. If the victim won’t do it, and if the wrongdoer won’t hold themselves accountable, then third parties may have to step in.

But this line of thought won’t hold in all cases of nonconsensual sex. In *Begging* and *Asleep*, Richa and Wes realize that they are victims of nonconsensual sex, and nonetheless do not want third parties to intervene. In their cases, third-party blame is not filling a void left by an unwitting victim. Moreover, even when a victim does not initially realize that they are a victim, third-party blame is not the only way to proceed. We saw this in *Corinthians*. Sally got Samantha to see that

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<sup>105</sup> For further discussion of distinguishing the object of an instance of blame from its objectives, as related to wrongs to the community, see Mendlow, “On the State’s Exclusive Right” 247-248.

she had been maritally raped, not by blaming Ben, but by talking to her. Once Samantha understood the situation, she was then able to hold Ben accountable on her own. Thus, there are only some cases of nonconsensual sex in which a victim will be persistently unable to recognize how they have been wronged. It is only in these cases that the necessity of holding the perpetrator accountable can license meddlesome blame.

Similar points apply to a different feature of our patriarchal society. Namely, victims of nonconsensual sex, even when they are victims, are often unwilling or unable to hold their wrongdoers accountable on their own. They might, for instance, be in an abusive relationship that makes it unsafe for them to blame their abusers. But this won't apply to all cases of nonconsensual sex. Just like in *Begging*, *Asleep*, and *Corinthians*, there will be many cases of nonconsensual sex in which victims are able and willing to hold their wrongdoers accountable on their own. This feature of our patriarchal society, then, won't license meddlesome blame.

Finally, one might appeal to our historical failure to intervene in cases of sexual misconduct, or to the import of third-party intervention for feminist struggle against sexual misconduct. The thought here is that given our historical neglect of nonconsensual sex, we need to over-correct. We need to implore third parties to blame perpetrators for each and every case of nonconsensual sex. It is in this way that we will correct for our previous neglect, and advance feminist struggle.

But an overcorrection is exactly that – an overcorrection. It's true that it might be good to maintain a rule of thumb that encourages third parties to blame perpetrators of nonconsensual sex. But the rule of thumb will sometimes go wrong. In some cases – like the examples above – a third party will end up getting involved in an impermissibly meddlesome way. They will end up defying a victim's wishes without sufficiently fulfilling the functions of blame.

Hence, none of these features of our patriarchal society make it the case that meddlesome blame for nonconsensual sex is always permissible. I conclude that third-party blame for nonconsensual sex can be impermissibly meddlesome. There is nothing ‘special’ about nonconsensual sex that undermines this conclusion.

## V. Two Key Upshots

### A more capacious category of nonconsensual sex

I have now argued that third-party blame for nonconsensual sex can be impermissibly meddlesome. The primary upshot of this argument is to help us recognize that ‘nonconsensual sex’ is a more capacious category than we might have thought.

To unpack this upshot, let me first step back to offer a general observation: dividing consensual sexual interactions from nonconsensual sexual interactions is a difficult task. One way to make this task more tractable is to identify ‘edge’ cases – the cases closest to the dividing line – and then determine which side of the line they fall on. By doing that, we can gain more insight into the nature of the line itself, that is, the meaning of a sexual interaction being (non)consensual.

In order to determine what side of the line a given edge case falls on, we consent theorists often appeal to certain ‘litmus tests’ for (non)consensuality. To mention a few examples: If a given sexual interaction is not intentional, then it must not be consensual (Dougherty, “Yes Means Yes” 229; but see Bolinger 188-191 for criticism of ‘intentionality’ requirements). If a sexual interaction does not violate anyone’s autonomy, then it must be consensual – even if it is bad (Woodard 301, 309; but see Cahill 747, 754 for criticism of ‘autonomy’ talk). If someone has a reasonable alternative to agreeing to sex, and yet agrees, then the sex cannot be deemed nonconsensual on grounds of

coercion (Conly 106; but see Dougherty, “Sexual Misconduct” 333 for criticism of ‘reasonableness’ requirements).

Some litmus tests for (non)consensuality are bad. Indeed, I disagree with some of the litmus tests above. When we rely on bad litmus tests in order to construct our conception of (non)consensual sexual interactions, we end up with an incorrect conception.

This paper, importantly, identifies several bad litmus tests – tests that I suspect are operative in popular and academic understandings of sexual consent. When I talk to people about cases of nonconsensual sex like *Begging*, *Asleep*, and *Corinthians*, it seems that they doubt the nonconsensuality of such cases, because they have a vision of the kinds of sanctions that should be levied for nonconsensual sex. Namely, nonconsensual sex is the kind of wrong that should be condemned not just privately, but also publicly. It should be condemned by friends, by family, by acquaintances, perhaps even by strangers on the internet, perhaps even by the criminal justice system. In other words, people seem to employ the following litmus test: when third-party blame for a sexual interaction would be impermissibly meddlesome, that interaction must be consensual. I’ve argued against this litmus test.<sup>106</sup> So too have I argued against some closely related litmus tests – that nonconsensual sex must always be ‘seriously wrongful’; or must always be a ‘wrong to the community’; or must always cause ‘irreparable relational damage’.

By rejecting these litmus tests, we can recognize a more capacious category of ‘nonconsensual sex’. In particular, we will be better able to recognize a certain set of cases of nonconsensual sex: cases that occur *within committed relationships*; that are *less seriously wrongful*; and in which *third parties are no better positioned than the victim* to get the wrongdoer to change. In many committed relationships, victims will want to at least try to work things out with their partners without third-

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<sup>106</sup> Note that I have not argued against the converse, although I am also skeptical of it; third-party blame is sometimes permissible for sexual interactions that are bad but consensual.

party involvement before asking for others to confront their partners. This implies that third-party blame will likely defy a victim's wishes, at least initially. It will be difficult for such victim-defying blame to be justified if the case of nonconsensual sex is less seriously wrongful, and if the third party is no better positioned than the victim to get the wrongdoer to change. This is because the victim will often be well-positioned to fulfill the functions of blame – educate, deter, repair, and express – if anyone is. If the third party were able to add any value, it would often not be enough to justify meddlesomely wronging the victim.

Importantly, cases like these do not seem far-fetched. Many perpetrators of nonconsensual sex are in intimate partnerships with their victims (Basile 7-9). Many crossings of sexual boundaries are not at the level of the most egregious instances of nonconsensual sex (Basile 3-5).<sup>107</sup> And victims are frequently (though not always) in as good of a position as any 'relationship outsider' to spur a wrongdoer to change. They might, for instance, be more informed about the wrongdoing; more informed about how the wrongdoer might 'see the light'; more committed to the wrongdoer's change; more trusted by or credible to the wrongdoer; or more proximate to the wrongdoer.

If we as a society neglect to recognize such cases of nonconsensual sex, we will be doing these victims a dual injustice. First, we will misunderstand the nature of the wrong done to them. This will worsen our ability to support them, whether through blame or not. So too will it worsen our ability to educate wrongdoers and repair our damaged moral norms. Second, we will hinder (though not eliminate) the ability of victims to understand the nature of the wrong done to them.

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<sup>107</sup> Here, I am particularly pointing to the National Intimate Partner and Sexual Violence Survey statistics about sexual coercion, which they define as "unwanted sexual penetration that occurs after a person is pressured in a nonphysical way"; and unwanted sexual contact, which they describe as "unwanted sexual experiences involving touch but not sexual penetration" (Basile 1). Although some instances of these behaviors are less seriously wrongful, other instances are certainly of the utmost severity.

After all, we all draw on collective moral understandings to inform our own moral beliefs. This will worsen their abilities to support themselves and to hold their wrongdoers accountable.

Hence, we should reject the permissibility of third-party blame as a litmus test for nonconsensuality. The importance of this point is not meant to be merely theoretical, limited to improving academic conceptions of consent. Rather, it is meant to be eminently practical, to help us improve at recognizing and responding to the full spectrum of nonconsensual sexual interactions in our real world.

### Nonconsensual, noncriminal sex

The next upshot of my paper relates to the relationship between the moral wrong of nonconsensual sex and the criminal law. Suppose that the following view of criminal punishment is correct.<sup>108</sup> Criminal punishment for interpersonal wrongdoings involves the state *blaming* the perpetrator for what they have done *to the victim* (Duff and Marshall 71-72). This view contrasts with two other views. First, the view that criminal punishment only involves the state blaming the perpetrator for what they have done *to the community at large*. Second, the view that criminal punishment does not involve any form of blame. It does not aim to hold the wrongdoer accountable; it aims only to deter wrongdoing through the imposition of sanctions. But again, suppose that these other two views are incorrect. If so, then criminal punishment is a form of third-party blame. The state is the third party, blaming the perpetrator for what they did to the victim.<sup>109</sup>

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<sup>108</sup> My points here also apply to criminal prosecution, but to keep things simple, I focus on punishment.

<sup>109</sup> Note that weaker versions of the last two views could be compatible with the first view. Namely, one might hold the position that criminal punishment involves blaming the perpetrator for what they did to the victim, blaming them for what they did to the community, and imposing non-blaming sanctions. My argument in this section can extend to this kind of all-inclusive position, but for simplicity's sake, I focus on just the first view.



Now the upshot is probably obvious. If third-party blame for nonconsensual sex can be impermissibly meddlesome, then it might follow that criminal punishment for nonconsensual sex can be impermissibly meddlesome.

This conclusion does not immediately follow from my arguments. As noted, it depends on the view of criminal punishment above. It also depends on another premise: the functions of blame, on the one hand, are similar enough to the functions of criminal punishment, on the other hand, for my arguments to extend from the former to the latter.

Let me mention three reasons that one might be skeptical of this second premise. First, one might argue that criminal punishment in a just society must be equitable. But if we restrict punishment to cases in which the victim desires state intervention, our criminal justice system will be importantly inequitable.<sup>110</sup> Second, one might argue that the state is not just any third party. Rather, it is a third party that can lay claim to representing the community at large. This allows its blame to play a number of unique roles – expressing community-wide disapproval; signaling community-wide commitment to maintaining and enforcing shared moral norms; and reconstituting the ‘character’ of the community.<sup>111</sup> Third, one might argue that criminal punishment allows a community to hold a wrongdoer accountable without falling prey to the harms of revenge (Gardner).

All three of these purported functions of criminal punishment provide additional considerations in favor of criminal punishment for nonconsensual sex. And yet, none of these considerations appears to be decisive. It seems that there could be cases of nonconsensual sex in which criminal

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<sup>110</sup> As Gabriel Mendlow explains, “Suppose we actually entrusted prosecutorial control to crime victims. We would see the criminal process deployed far less often against offenders who prey on the poor, the unsophisticated, the overlenient, the easily intimidated, the readily bought off, the subjugated, the busy, and the distracted, than against offenders whose victims are well-resourced, savvy, unforgiving, implacable, or incorruptible—not to mention racist, oppressive, or sadistic. The certain prospect of these inequities constitutes an all-but-decisive case against the civil model of the criminal process” (“The Moral Ambiguity” 1171).

<sup>111</sup> On this last point, see Dempsey, “Public Wrongs” 269-270.

punishment would meddlesomely wrong the victim in a serious way, and in which none of these considerations would justify this wrong. Indeed, cases like *Begging*, *Asleep*, and *Corinthians* seem to fit this description. Any benefits to be gained by levying criminal punishment in these cases seem to be outweighed by the injury this would impose on the victims, who do not want others involved in the process of accountability at hand.

If all of this is right, then sex that is nonconsensual can still be noncriminal. This conflicts with a common position within liberal legal theory: the line between criminal and noncriminal sex is the absence of consent.<sup>112</sup> This position results from attempting to balance two competing goals. On the one hand, liberal legal reformers want to avoid *undercriminalizing* sexual interactions, by requiring, say, that a victim must resist to the utmost extent in order for a sexual interaction to be considered criminalizable. On the other hand, liberal legal reformers want to avoid *overcriminalizing* sexual interactions, by punishing forms of bad sex that are not properly the state's concern. The argument above implies that this second goal is not best achieved by holding that all nonconsensual sex should be criminally punished.

That said, the argument above is just a sketch. More would need to be said to defend its two key premises. But suffice it to say that my argument raises questions about the liberal legal approach to reforming rape law. At the least, my paper's main argument makes clear that the *point* of consent is not to mark the line between criminal and non-criminal (sexual) interactions. In other words, the role of consent within our normative landscape is *not* a necessarily legal one. Rather, the point of consent is to mark the line between boundary-crossing and boundary-respecting conduct. How this latter line relates to the former line is a further question.

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<sup>112</sup> As I mentioned in fn. 74, West offers one articulation of this position. Note, however, that West does not offer a positive argument for this position, instead responding to various objections to the position. Importantly, she also criticizes the way in which this position inappropriately 'legitimizes' consensual sex by depicting it as harmless and unobjectionable.

## VI. Conclusion

I started this inquiry by noting a tempting inference. If a sexual interaction is nonconsensual, it is okay for me to confront the perpetrator – even if I am a third party, and even if this goes against the victim’s wishes. I have now argued against this inference.

My arguments, importantly, have not extended to all, or even most, cases of third-party blame for nonconsensual sex. Rather, they are strictly limited to cases in which a third party defies a victim’s wishes, and in which their blame does not sufficiently advance the functions of blame to be permissible, *ceteris paribus*. In this way, I avoid endorsing our society’s troubling reticence to intervene in cases of nonconsensual sex. Frequently, victims *do* desire third parties to help them in the blaming process; frequently, third-party blame *can* advance the functions of blame enough to be permissible even when meddlesome.

At the same time, I hope to have shown the importance of recognizing that third-party blame for nonconsensual sex is sometimes impermissibly meddlesome. Not only can such a recognition help us expand our conception of what counts as nonconsensual sex, but it can also inform our views about the appropriate scope of criminal punishment for nonconsensual sex.

Let me end by emphasizing a different reason that my argument is important, one that is perhaps obvious but worth drawing out. A perpetrator of nonconsensual sex crosses the sexual boundaries of their victim. Deciding on a good response to this boundary-crossing is a matter of high stakes. Indeed, the stakes can be so high that a victim has a claim against others interfering with this decision. A victim, that is, can have a boundary against third-party interference. When a third party meddlesomely defies a victim’s wishes, they echo, in a different register, the same message that the perpetrator’s conduct communicates to the victim: *your boundaries do not matter*.

But they do, of course. And so we should be extremely careful about interfering with a victim's decision about how they want the process of accountability to unfold. I hope that my paper helps us to better exercise such care.<sup>113</sup>

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