**SEXUAL CONSENT AND LYING ABOUT ONE’S SELF**

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ABSTRACT: Despite the acknowledgement of the moral significance of consent there is still much work to be done in determining which specific sexual encounters count as unproblematically consensual. This paper focuses on the impact of deception. It takes up the specific case of deception about one’s self. It may seem obvious that one ought not to lie to a sexual partner about who one is, but determining which features of oneself are most relevant to the consent of one’s partner, as well as the lies which it follows would be impermissible to tell, is complicated. It is argued here that deception about one’s morally valenced character traits, those we think of as virtues and vices, are particularly problematic. This is true regardless of whether knowing the truth about those traits would have made a difference to one’s partner’s consent. Attention is then drawn to a range of types of lies that one ought not to tell.

Recent changes in cultural attitudes about what behaviors constitute sexual misconduct are an important example of moral progress. For instance, in the not so distant past, to be considered sexual assault sexual access to another person must have been obtained by the use of force.[[1]](#footnote-1) But it is now generally recognized that force itself cannot be what makes the difference between an encounter that counts as assault, and one that doesn’t. Note that force alone is not sufficient for a sexual encounter to count as assault since some forms of aggressive sexual play such as sadomasochism can involve force, but the willing participants are not obviously thereby victims of assault.[[2]](#footnote-2) Moreover, the use of force is not a necessary condition for an act to count as assault either; rape can be perpetrated against unconscious or physically incapacitated victims without the use of force. What makes the latter, but not the former, a case of assault is that it involves a sexual act performed on a victim who did not give their consent.

Despite the acknowledgement of the moral significance of consent, there is still much work to be done in determining which specific sexual encounters count as unproblematically consensual.[[3]](#footnote-3) One reason is that the concept of consent itself is more complicated than it is often recognized to be. At the most basic level, to consent means to be willing for, to agree to, or to permit, whatever the activity or encounter for which it is given. But not all expressions of willingness are morally on par. For instance, although people who are underage, lacking in certain cognitive capacities, or heavily intoxicated may express willingness to have a sexual encounter, these expressions of willingness are not considered cases of valid consent.[[4]](#footnote-4) Likewise, the validity of consent given under coercive circumstances or elicited by untoward pressure, is powerfully contested.[[5]](#footnote-5)

This paper focuses on the impact of *deception* on sexual consent. A person who deceives another intentionally causes that person to have a belief that he or she knows to be false, by bringing about the evidence on the basis of which that belief is formed.[[6]](#footnote-6) In romantic contexts, some deceptions seem perfectly permissible. People commonly wear make-up to conceal blemishes, or dye their hair to appear more youthful, and they may become more desirable to their partners on account of these manipulations.[[7]](#footnote-7)

But not all deceptions are morally innocuous. One class of deceptions that can have a negative impact on a person’s consent, I will argue, are certain types of lies. Although I focus on lies here, I expect that the conclusions will extend to many other acts of deception as well.[[8]](#footnote-8) I assume the uncontroversial view that to lie is to make a statement to another that one knows to be false with the intention that the person to whom it is told should believe it to be true.[[9]](#footnote-9) As with deceptions more generally, it seems unlikely that every lie told to a sexual partner will interfere with his or her consent. In fact, many so-called ‘white lies’, aimed at not unnecessarily hurting someone’s feelings, may be benign or even appropriate. But it is also clear that some lies do interfere with consent. One notable example is medical fraud involving cases of doctors passing off sexual acts as medical procedures.[[10]](#footnote-10) Although the patients in such cases consent to a procedure, they do not consent to the specific act that is performed. Progress in sexual ethics requires that we get a better understanding of when a lie can make a difference to sexual consent.

Some of the most recent contributions to the relatively small but growing body of philosophical work on deception’s impact on sexual consent have been put forward in a series of papers by Tom Dougherty.[[11]](#footnote-11) Dougherty argues that deception interferes with the consent of a sexual partner in the specific case where consent would not have been given had it not been for the lie. Put otherwise, deception interferes with consent where the consenting person is deceived about something such that, had they known the truth about it, it would have counted for them as a deal-breaker.

I am largely sympathetic with Dougherty’s idea that deception about deal-breakers will interfere with the deceived’s consent to sex, but I propose that lies about deal-breakers are only sufficient to interfere with the consent of the deceived. I will argue that it is not necessary that a lie pertain to a deal breaker for it to interfere with consent; other deceptions can interfere as well.[[12]](#footnote-12) Dougherty argues for the stronger view that it is necessary that an act of deception pertain to a deal-breaker. For example, in “Sex, Lies and Deception” he writes,

…I will argue that even with run of the mill deception, culpably *deceiving another person into sex* is seriously wrong. In making this claim, I stipulate this italicized phrase to be understood as follows. First, the deception must be about the encounter. Since each person is an essential part of the sexual encounter, one is deceived about the sexual encounter by deception about the other person. For example, this would include deception about whether this person is using birth control, about his or her profession, or about his or her mental attitudes. Second, the deception must concern a deal-breaker- a feature of the sexual encounter to which the other person’s will is opposed. This requires more than concealing an undesirable feature. It must be the case that the other person is all things considered unwilling to engage in the sexual encounter, given that it has this feature.[[13]](#footnote-13)

A little later in the same paper, he clarifies his position, explicitly adding that deceptions that do not pertain to deal-breakers do not undermine consent, “If someone would still choose to have sex with another person were the veil of ignorance lifted, then her sexual consent is unaffected by the deception.”[[14]](#footnote-14) My aim here is to identify an additional category of lies that can interfere with consent and to draw out some of the practical implications for the kinds of lies that one ought not to tell to a sexual partner.

The specific type of lies that I am concerned with are those that lead a partner to have false beliefs about the identity of the person to whom they express consent. But which beliefs are beliefs about identity, in the relevant sense? Empirical findings show that one feature stands out above others as highly relevant to how most persons commonly understand the identity of their partners. This feature is one’s partner’s moral character.[[15]](#footnote-15)

2.

In a recent series of papers, Tom Dougherty has argued that a lie will interfere with consent when it concerns a deal-breaker. Looking more closely at Dougherty’s view will enable us to hone in on a few under-explored issues that have implications for other kinds of lies that interfere with consent.

Individuals are taken to be authoritative over certain domains of their personal lives; to protect these domains we invoke the concept of rights. Rights impose obligations on others not to infringe on us in specific ways. Dougherty writes,

They, [rights] mark out personal realms over which we have exclusive control, and our decisions determine exactly what may permissibly happen within these realms. Having these personal realms is crucial to our leading our lives in the ways that we should like. Fundamentally, this generates duties in other people to respect our wills: they must respect the choices that we make about what shall happen within these realms.[[16]](#footnote-16)

A useful way to think of bodily rights is as boundaries to other peoples’ use of our person, including our bodies. When we consent we lift a boundary against the prohibition of specific things that we intend to give consent for. Dougherty claims,

If our choices are to morally determine the permissibility of others’ actions then the rights we waive must be the rights we intend to waive. Only this arrangement leaves us fully sovereign over these realms.[[17]](#footnote-17)

The key to understanding how deal-breakers interfere with consent, according to Dougherty, is in understanding the kind of psychological state consent expresses. When we consent, we express an attitude of willingness directed to whatever it is that we intend to engage in or allow. Dougherty follows Heidi Hurd in conceiving of the relation between our intention and what we intend as de dicto (specified by a mental description) rather than de re (a mere acquaintance relation).[[18]](#footnote-18) So when we consent, the description of what we intend restricts the range of things that we are willing for and thus intend to allow.

As noted, consent is a moral concept with power to alter the structure of rights and responsibilities. Although in the good cases it lifts a boundary to sexual access for the recipient, it should not be taken to be morally transformative for the person to whom it is expressed each time it is expressed. In ordinary cases, a person to whom it is expressed is prima facie entitled to take it to grant them permission. But Dougherty argues that it is no longer morally transformative in the case where the person has lied about some fact that is relevant in such a way that had they not lied, the deceived person would not have expressed consent. For example, if Mara consents to have sex with Matteo on the condition that they are in a monogamous relationship, but Mara would not consent if it were known that Matteo had other sexual partners, then Mara does not really intend the sexual encounter with Matteo in the case where Matteo lies to Mara about being monogamous.

The view that deceiving a sexual partner about deal-breakers is impermissible presupposes that consent has moral value.[[19]](#footnote-19) This much seems obvious. But to understand the specific wrong of deception vis-à-vis consent, it will help to get a clearer idea of how the moral value of consent is grounded. I assume that consent derives its moral significance from multiple sources. One significant source of value comes from the role of consent in enabling agents to live in ways that are consistent with their intentions, desires, and aims, that reflects their own conception of the good, and that enables them to achieve their own version of happiness. If we agree that people have a right to these aims, and that they generally know how to best achieve them, it follows that we should respect the choices that people make aimed at their achievement. It follows that partners must heed each others’ choices about consent in whatever sexual encounters they share.[[20]](#footnote-20)

Effectively using consent in pursuing these aims presupposes two important abilities: the first is the ability to be autonomous, and the second is the ability to have an accurate understanding of the world one engages with. By autonomy I mean the ability to make choices that are in an important sense under one’s own control or truly one’s own.[[21]](#footnote-21) Thus, we might add that the quality of a person’s consent depends in part on how autonomous is the intention it expresses.[[22]](#footnote-22) Much of the work in sexual ethics has focused on determining what factors interfere with the autonomy of a person’s sexual choices. Some examples that have been discussed include insufficient age for autonomous choice, cognitive capacity, relations of power, and other types of coercion.[[23]](#footnote-23)

In addition to autonomy, if people are to be successful in living in accord with their intentions and in their pursuit of their own conception of the good, what they choose, and ultimately what they do, must accurately reflect their intentions. And the ability to act on intentions that align with how things really are in the world requires one to have access to reality. Although we may not mind a bit of deception in our romantic life, having reliable access to a largely accurate conception of the situations we participate in is important to us not least because it facilitates our ability to have the kind of life we want and deception can interfere with that access.[[24]](#footnote-24)

These considerations impose obligations on our sexual partners. Since sexual experiences are a highly significant aspect of our lives, the stakes in this realm are especially high. It seems uncontroversial that interfering with one’s partner’s use of consent to control his or her sexual life is bad. And lying can interfere with this function of consent by leading one to agree to participate in situations that do not match what they intend to agree to. It is for these reasons that I am sympathetic to Dougherty’s view that deception about deal-breakers interferes with consent. A deal-breaker is, by its nature, a fact that one could not have intended, given one’s will. But although I am in agreement with Dougherty that lies about deal-breakers are sufficient to interfere with the consent of sexual partners, I do not think that his account can be the whole story.

3.

To bring this out, consider the following case,

Jane and Ed are in a monogamous marriage but Jane is secretly attracted to Ed’s identical twin Bill and would have sex with him. Unaware of her attraction, Bill pretends to be Ed and seduces Jane. Jane has sex with Bill under the assumption that she is having sex with Ed.[[25]](#footnote-25)

I suspect that most people would describe the sexual encounter between Jane and Bill as non-consensual. Intuitively, Jane’s expression of consent does not extend to Bill; it is not morally transformative for Bill despite the fact that she would have agreed to have sex with him had she known who he really was. So this looks like a case where a lie interferes with sexual consent despite the fact that no deal-breakers are involved. If we take these intuitions about Jane and Bill as revealing something deep about consent, then we should conclude that deceptions about factors other than deal-breakers can interfere with consent’s morally transformative power. More specifically, this case shows that one ought not to lie to their sexual partner about who they are. And this is not merely intuitively appealing, but it rises to the level of a considered moral belief as evidenced by the fact that deceiving a sexual partner about who one is, is already counted as rape in the rape-by-fraud laws of multiple nations and jurisdictions.[[26]](#footnote-26)

There are also strong theoretical reasons in support of this view. The nature of consent is to express agreement or permission for certain kinds of interactions; in so doing it alters the structure of rights and obligations between persons, making acts that were forbidden now morally permissible. But it only alters the structure of rights and obligations for a certain set of individuals. Agreements are for specific things and they take place between persons. So consent cannot perform its morally transformative function without specifying not only what is permitted but also for whom. To bring this out more sharply now contrast consent with a different kind of case in which one intends a boundary to be waived in general and where there is no intended recipient. We call this waiving a right. Waiving a right to one’s control of a boundary is different from lifting a boundary that one controls. The latter is what we do when we consent; in consenting we maintain and exercise control of the sexual boundary by giving permission for access to some individuals to the exclusion of others, for a time. Although the intended recipient is often just one person, the breadth of the set of individuals to whom it extends may vary. It would be an unusual case to intend to give permission to a set that is maximally inclusive (but possible).

The view I am outlining here has some resemblance to David Archard’s core-features model of valid consent. On Archard’s view, it is impermissible to lie about essential or ‘core’ features of the sexual act, and the identity of the recipient is taken to be a core-feature.[[27]](#footnote-27) Dougherty is critical of approaches like Archard’s core features view that take there to be specific features that are universally relevant to consent such that deception about them will in all cases interfere with consent. He sees the core-features model as paternalistic and as exhibiting an out-dated sexual moralism. On his view, a proper understanding of valid consent will assume that people determine for themselves which features of a sexual encounter are relevant to what they intend. He writes,

One of the key achievements of waves of sexual liberation has been the promotion of a sexual pluralism that allows each individual to pursue his or her own conception of the sexual good….as such it is up to each individual to determine which features of a sexual encounter are particularly important to her.[[28]](#footnote-28)

He illustrates what he takes as the inappropriate moralism of the core-features view by applying it to the following case of mistaken identity.

Suppose that Jiang willingly engages in group sex with his boyfriend Isaiah and another man, Antonio. In doing so, Jiang consents to various kinds of sex acts involving both men. At one point, Jiang mistakenly thinks that he is engaged in one of these kinds of acts with Isaiah, when in fact he is engaged in it with Antonio. Since Jiang is willing to have sex with Antonio at this point, the sex is consensual, even though Jiang is mistaken about a purportedly “core” feature of the encounter- whether it is sex with his boyfriend. The reason why it is consensual is that Jiang has decided that this feature is irrelevant in these specific circumstances. The moral significance of this feature, and indeed any feature, depends on Jiang.[[29]](#footnote-29)

I agree with Dougherty here that the right interpretation of the sexual encounter between Jiang and Antonio under conditions of mistaken identity is that it is not non-consensual. Though I don’t think we need to assume that Jiang has waived his right to control who has sexual access. And I do not follow Dougherty in assuming that who Jiang actually has sex with is irrelevant to him. It is plausible that rather than it being irrelevant to Jiang who his sexual partner is, it just does not matter to Jiang whether his partner is Issaiah or Antonio. I assume that Jiang has consented to a sexual encounter with a disjunctive recipient set, Antonio and/or Isaiah, and so his consent covers all and only sexual acts that he engages in with either. Alternatively Jiang may have formed an intention to have sex with “anyone who expresses an interest in joining us”. But though this is consistent with my view, it is still not clear that this interpretation is motivated by the example. If a new person arrived would the consent automatically extend to them? If it did, the explanation of that extension need not be that the identity of the new person was not a deal-breaker for Jiang. It could also be because Jiang’s intention specifically allows for such an extension, e.g., “I intend to have sex with Issaiah or Antonio or anyone else who joins this group…”

To summarize, that some recipient or group of recipients be intended is necessary for consent insofar as it is meant to be morally transformative in the way that it is. Only when this condition is met can consent fulfill its specific moral function of changing the structure of rights and obligations between persons, while allowing that individuals still exercise control over the sexual boundary. And yet, I am in agreement with Dougherty that who the recipient of consent is should be left entirely up to the individual involved. We ought not decide on another’s behalf to whom they can or should consent. So we still escape the unhealthy sexual moralism that Dougherty warned against in his critique of the core-features model.

But it is one thing to say that deceptions about who one is matter. Once we accept this conclusion about consent, additional issues arise. Specifically, which features of oneself are relevant to how one’s sexual partners understand who one is, such that it would be morally impermissible to lie about those features?

4.

I noted that the intended recipient of consent could be a maximally inclusive set (one could grant permission intended to be valid for ‘everyone’). But this is not how consent typically looks. Most often, a person intends a boundary to be removed for a more restricted range of persons. How do we know which specific person or persons the boundary is removed for? On a first pass, it may seem obvious that consent is intended to be morally transformative for just those specific persons to whom it is expressed. This holds true for most cases of consent because in most cases the person to whom consent is expressed is presumably the person specified by the consenting party’s intention. This explains why, in ordinary cases, the person to whom consent is expressed is prima facie entitled to take consent to be morally transformative.[[30]](#footnote-30)

But things are different when deception leads an individual to have a mistaken belief about their intended partner, as the case of Jane and Bill is meant to illustrate. To see how requires that we focus again on the psychological state expressed in consent. I already noted that the intention expressed is a de dicto intention as opposed to a de re intention. Insofar as some specification of who the person for whom the boundary to be lifted is, is a part of this intention, the intended recipient is also represented by a description.[[31]](#footnote-31) And where the intention includes a description of the intended target, the description plays a central role in fixing the appropriate target. This understanding is shared by Dougherty.[[32]](#footnote-32) In defending his own view he asks us to consider the following two claims presumably involving someone taken to be a famous movie actor,

1. of Brian, Alice intends to have sex with him
2. Alice intends that she have sex with (the Sundance kid of movie fame)

A expresses a de re intention and B expresses a de dicto intention (where the description is captured in brackets). A is true if Alice is acquainted with Brian. But in the case where both A and B are true (and assuming that Alice intends to have sex with just one person), Alice cannot be giving valid consent to Brian because Brian is not the Sundance kid. Alice intends to have sex with an individual who she understands as being the famous actor. Brian does not match that description and so he is not the intended recipient. So we now have at least a partial explanation for why Jane’s consent to the sexual encounter is undermined by Bill in the case above; Jane intends to have a sexual encounter with someone she understands to be Ed and her expression of consent expresses that specific intention. Bill and Ed may share many of their qualities, but Bill is not Ed.[[33]](#footnote-33)

Moreover, when we look closely at the example involving Alice and Brian we see that it raises another issue. That case suggests that the way one represents their partner can, and I would add often does, go beyond their spatial and temporal properties. In that example, Alice understands Brian to be a movie star. Presumably in many typical cases a person believes a good deal of things to be true of their sexual partner. At least some of what is believed true will be captured in their description of the intended recipient such that it will be crucial in determining the person for whom consent is intended to be morally transformative. Deception about such features would interfere with consent if the person involved in the sexual encounter does not match the description of the intended recipient in crucial ways. So what conclusions, if any, can we draw from this about which specific lies about oneself it would be morally impermissible to tell to one’s sexual partners?

One tempting conclusion at this juncture would be that one ought not lie to a sexual partner about any facts pertaining to oneself. But this turns out to be too strong. Suppose that Alice and Brian have just met and Alice presents Brian with a chocolate cake. Brian does not like cake but he doesn’t want to hurt Alice’s feelings so the tells her that he loves cake. Since Brian has deceived Alice about one of his preferences, which is an aspect of his personal psychology and a feature of himself, the proposal would predict that Brian’s lie was impermissible. But we have at least some reason to be skeptical of this verdict. Brian’s lie not only appears to be of little consequence, but many take morality to demand such white lies aimed at saving the feelings of others.

Some like Buss go further to argue that little lies are a necessary part of seduction. According to Buss, early romantic love is too fragile or fickle to withstand complete straightforwardness.[[34]](#footnote-34) Even if morality does not *require* deception, we may still worry about a view that treats all person-level deceptions as morally on par. For one thing, it is unlikely that all of what one believes true of one’s sexual partner will be equally significant in fixing the target of consent. More likely, some of what one takes to be true of the person will be essential to their intention, and other things will be peripheral. A feature is essential to how a person is picked out if their being the target depends on their having that feature. Features we take to be peripheral, on the other hand, are immaterial to whether the person is the target of the intention. For instance, Alice may understand her sexual partner to be both a famous actor and also someone who enjoys cake. But only one of these features may be relevant to whether her actual sexual partner is the person she intended to consent to. That Brian does not actually like cake may be irrelevant to his being the proper target of her intention. But his not being the famous actor could make a crucial difference, and this is true even if Brian’s not being an actor would not have been a deal-breaker for Alice.

It seems clear then that lies about features of oneself that play a recipient-fixing role for the consent of one’s sexual partner should not be told to people one has sex with. But can anything more specific be said about the kinds of lies that play this role? Here it might seem that the answer is no. On the one hand, to try to generate an a priori list of features that are or should be relevant to the way that people conceive of their sexual partners gets things wrong. What matters to people about who their partners are cannot be determined apart from what particular consenters themselves deem to be important. To decide on a person’s behalf which features matter, or should matter, would be an exercise in paternalism and would be incompatible with the respect for our partner’s autonomy in virtue of which consent receives some of its moral import. And, on the other hand, there is a worry that looking to peoples’ actual intentions to determine what specific kinds of features matter to them will yield too diverse a set of properties to yield any general recommendations. This is complicated by the fact that which features of a partner matter to one may change relative to the context. What matters to Alice when she consents to Brian during a one-time encounter may differ from what matters to her consent if they are in a long-term romantic relationship. And so it appears as though not much can be said about the specific lies about ourselves that we should not be telling.

5.

I have argued that a person is the intended recipient of consent if they match the description of the intended recipient in important respects. This would make it impermissible to lie concerning facts about oneself that figure importantly in the content of one’s partners’ intentions. But given the enormous range of intentions, the project of identifying specific types of lies about oneself that would interfere with consent seems complicated at least, and perhaps even impossible. One recommended guideline would be that if a person knows how their sexual partner is likely to represent them, then that person should not lie to their partner about those facts. I now want to propose that we have reason to think one’s moral character traits- the kinds of traits that we think of as moral virtues and vices- are likely to be features that figure in how one’s sexual partner’s intention represents them. Since we have reason to think that facts about one’s moral character traits will be relevant, in the absence of clear evidence that such facts are irrelevant, one ought not to misrepresent one’s moral self to sexual partners.

Two factors, I propose, most often drive the selection of features by which intended sexual partners are described. The first is how one understands the identity of one’s partner- or more loosely put ‘who one is’, so to speak, in one’s partner’s eyes. As evidence that intentions pick people out by features associated with who one understands them to be, consider again the case of Jane, Ed and Bill. This assumption seems to be what licenses our intuition that Jane’s consent is not valid for Bill. We assume that Jane intends a sexual encounter with a person who is the unique person she takes Ed to be. Bill cannot be the intended recipient of Jane’s consent because whatever the description of the person who Ed is involves for Jane, it does not apply to Bill. And it is also significant that we do not worry that Alice’s consent to Brian has been compromised when he lies to her about liking cake. I think that one reason this lie does not bother us here is because we do not feel that a food preference – or even honesty about one’s food preferences under such circumstances -- will be highly relevant to how a person understands the identity of their partner.

When it comes to how people understand the identities of others, among their various features, moral character traits turn out to be disproportionately important. Although our concepts of ourselves and others encompass many facts, and some are undoubtably related to biological and historical properties, these concepts are also enriched by the specific qualitative information about a person’s specific psychological features. This includes information about their preferences, intentional states, emotional profiles, skills and abilities, memories, and character traits. This qualitative dimension of a person’s psychology is referred to in psychological literature as the self or self-concept.[[35]](#footnote-35) Moreover, Nina Strohminger and colleagues have recently presented a wealth of empirical support that, “even among traits that are considered important in understanding a person’s self, people pick out a subset of those traits- their moral traits- as belonging to what researchers refer to as the ‘true-self’. These factors are judged as making people who they really are deep-down.”[[36]](#footnote-36)

For example, in one type of study, Strohminger and Sean Nichols had participants report their intuitions about the extent to which a person described in a story remained the same person over various types of psychological transformations. In one scenario subjects are asked about the identity of a person who undergoes a partial brain transplant and loses different aspects of his mind, (memory, desires, moral conscience). Subjects claimed that low-level cognitive deficits like agnosia didn’t correlate with judgments about identity, but loss of the transplantees’ moral faculty did.[[37]](#footnote-37) In a similar study, subjects were asked how much a person changes after taking a pill that selectively removes one of the following traits: perception, desires, preferences, memories, morality. Subjects judged that a person was most dramatically changed if the pill altered moral traits, with all other traits leading to less dramatic changes. And even the traits that scored higher within categories like memory, desire, and perception, seemed to have moral connections.[[38]](#footnote-38) Finally, they presented subjects a list of changes that an old friend has undergone and asked the degree to which each change would impact the friend’s identity. The results were consistent with the previous two studies; moral traits were considered most important, then non-morally valenced personality traits, basic cognition, memories, preferences, and last, perception.

A second group of studies they conducted looked at folk notions of identity as reflected in notions like the soul, which are taken as strongly associated with the essence of a person. They predicted that in scenarios where the soul leaves the body, people would judge it to conduct moral traits more reliably than other mental traits, regardless of whether the subject believed in God, an immaterial soul, or spiritual possession. In one study, subjects were asked to imagine that a guy named Jim’s soul now inhabited a new body with none of his original traits. Subjects were asked to rate on a 1-7 scale how likely it was that a variety of traits ranging from identifying physical traits to perception, preferences and desires, memory, and moral traits, would be transferred to the new body. Consistent with the other studies, people were more likely to judge that the soul conducted moral traits than any other type of trait, even more so than traits that confer distinctiveness such as fingerprints or memories. In a final study, participants were told that a lot of religious traditions believe that a person could be reincarnated after death and that during this process their “true self”, or “who they really are deep down” is preserved even if some more superficial traits will have changed. Participants were asked which traits were likely to have been preserved during reincarnation and were significantly more likely to choose moral items than any of the other personality items.[[39]](#footnote-39)

The studies suggest that a person’s moral character traits are among those most strongly aligned with who we think a person is deep down. When intentions showcase those features by which we understand who a person is, then it is reasonable to assume, to the extent that they are known to one, that a person’s moral traits will not only be included but will also play a significant role in picking out the intended recipient.[[40]](#footnote-40) But although who one’s partner understands one to be may drive how one is picked out by intentions in many cases, the features relevant to how one thinks of a person’s core-identity are not necessarily going to be relevant in all cases. Sometimes it is just what one values about one’s partner in the moment of consent that determines how they understand the person to whom they give their consent. And which facts about a partner matter to one may differ depending on circumstances such as the nature of the relationship between the parties or the origin of their desire.

For instance, Alice may know very little about Brian’s moral character and she may not care much about whether he likes cake or who he even is as a person outside of the apparent fact that he is the famous movie actor known for playing the Sundance Kid. In this case Brian’s fame may be the cause of Alice’s desire and his status as The Sundance Kid of movie fame may be the only description by which she intends him as the recipient of her consent. Here, if Brian deceives Alice about being the famous actor then the deception will interfere with Alice’s consent to their sexual encounter and that is true even if that fact would not have been a deal-breaker for Alice. We can imagine even more idiosyncratic cases involving even more superficial desires. In some cases all that matters about a person to consent may be the physical or spatial/temporal qualities of their partner. In some such cases deception could have less of an impact.

But when it comes to sexual interactions that happen in the context of intimate personal relationships such as romantic partnerships or friendships, there is actually a good deal of consistency in at least some of what matters to individuals about the identities of their intended sexual partners. This is because intimate personal relationships or even those which aspire to intimacy, are those in which partners recognize and respond to those features of the other that they take to align most closely with who the other is. And as the studies by Strohminger et. al. demonstrate, those features that people tend to think of as most closely aligned with a person’s deepest nature have to do with their moral character traits. Deception about those traits ruins not only the authenticity and intimacy of intimate sexual encounters, but also prevents one from having an accurate view of the identity of one’s partner. To the extent that it prevents an accurate view of the identity of one’s partner, it also interferes with one’s consent to that partner.

Consider that in many personal relationships such as friendships, family relationships, and romantic partnerships, relationships that revolve around the formation of intimate bonds, people often take their partners’ moral traits to be particularly relevant to their sense of ongoing obligation to them. Significant changes in the moral traits of our partners are considered to be grounds for getting out of promises, commitments, and other morally binding agreements. A spouse upon learning that his partner has been dishonest or lacking in empathy may feel justified to end his marriage agreement on the grounds that the person no longer resembles in significant ways the person to whom the commitment was made. This suggests that moral traits are an important aspect of how partners to these agreements are intended. Assuming consent is similar in kind to these other moral agreements, it will operate similarly in this way.[[41]](#footnote-41)

We should also expect that the moral character of partners will be prioritized in sexual encounters that take place outside of otherwise intimate relationships. For many people even casual sex involves some level of intimacy. For instance, one might feel toward a casual partner some of the same feelings involved in other intimate relationships like care and closeness and this can be so even where one’s partner is otherwise unfamiliar. People often still value sexual partners for the person who they are even when they do not require complete transparency about the details of their partner’s identity. Since the information is important to the extent that one does know it, deceptions about moral features in these cases can still lead to misdescriptions of the person to whom one consents.

Furthermore, it is also rational to expect that one’s partner will value one for who one really is, or at least for who they take us to be. Note that sexual encounters often if not always involve that partners display vulnerability- both physical and psychological. LaFollette provides an apt description of the foundational role of trust in facilitating vulnerability,

Sexual interaction is most satisfying when the partners are to some significant degree not self-conscious…when we are not self-conscious we are less able to control our verbal and bodily behavior, we have less control over how others perceive us. We cannot tailor how we look or what we say. The intellectual barriers we usually construct to keep others at bay are dropped. Thus, sex involves not only physical nakedness but psychological nakedness as well. And most of us do not wish to be vulnerable with someone we don’t trust.[[42]](#footnote-42)

It is easiest to trust a sexual partner when one assumes that one’s partner has respect for them. To respect someone in the way foundational for trust is to have a type of admiration for that person that is not based merely on what they do, or what instrumental value they may have, but it is admiration which is in virtue of who they are. In trust one imagines another as respecting one. This is to assume that features of oneself which are importantly tied to who we are, would be valuable and important to them were they to be known. So for one to lie about these traits would be inconsistent with the desires and assumptions which it would be rational to have about what one’s sexual partner values. Those assumptions facilitate one’s trust and lay the groundwork for the types of vulnerability often involved during sex.

In summary then, I have argued that moral character is likely to figure in many cases of sexual consent. Research by Strohminger et. al. shows that these features are important to how people conceptualize the persons who others are and it is natural to assume that how one understands who a person is will be relevant to how they are described and picked out by one’s intentions. Sometimes it isn’t identity that matters to one’s intention but rather it is what features of a person matter to one at that specific time. But I have argued that in lots of different kinds of contexts one thing that matters to people about their sexual partners are the features that they consider most closely aligned with who their partners really are. Granted, such things won’t matter in all cases. We may be surprised to learn that Alice really did intend the sexual encounter with Brian based solely on her perception that he also enjoys cake. And in this case what appeared to be an innocent white lie could have interfered with Alice’s consent. But this example is unusual. I am not saying that the moral traits of persons are what ought to matter to sexual consent. This proposal is not intended to be a new brand of sexual moralism. I have only proposed here that in many cases the moral character of partners simply does matter to people who give sexual consent, even if it’s not a deal breaker (remember Ed and Bill). And since we have good reason to think those facts will be relevant in many cases, it follows that in the absence of clear evidence that such facts are irrelevant to one’s sexual partner, one ought not to deceive sexual partners about one’s own moral character traits.

In the remainder of this paper I want to draw out a few of the specific implications that these observations have for lies it would be impermissible to tell from the standpoint of consent.

6.

Based on these considerations, I propose that there is a moral prohibition against telling lies to a sexual partner which would promote false beliefs about one’s own moral character, at least without evidence that one’s moral character is irrelevant to one’s partner. In general, a lie will support a false belief if the deceived has good reason to accept the erroneous testimony as true and whatever false belief they derive from it is well warranted. Any false belief that is implied by the content of the lie will certainly count as well warranted. So one thing that follows is that one shouldn’t tell lies to a sexual partner that are directly about features of one’s identity. We can consider Bill’s false assertion to Jane that he is Ed as an exemplary case. Jane is being responsible in taking Ed’s testimony to be true both because doing so conforms to the moral and epistemic norm of charitable interpretation, and because it is standard to accord a high degree of evidential value to testimony a speaker offers about him or herself; barring evidence to the contrary, we assume people to be authoritative with respect to their own person.

Of course, in the case of Bill and Jane, Bill lies about his identity without deceiving Jane about his moral character. But I have been arguing that many people do consider a person’s moral character to be important in how they are understood. So we should expect lies about one’s moral character to function in a similar way. Some analogs to Bill’s deception involving moral qualities could include:

1. Ed tells Jane that he is loyal but he is not
2. Ed falsely tells Jane that he is fair
3. Ed tells Jane he is honest

In each of 1-3, an individual asserts something false with the intention that his or her interlocutor form a false belief where that false belief concerns an aspect of themselves that is central to how their partner will understand the person who they are. In the case where Jane consents to Ed after believing these falsehoods, we can imagine that she expresses consent to a target person who does not meet the description of the person to whom she intends to grant her permission. Because Ed does not match in the ways most relevant with the description of the person for whom Jane intends the moral boundary to be lifted, Ed has compromised Jane’s consent in the sexual act with him.

Importantly, it is not the failure of match between Ed as he is characterized by Jane’s intention, and Ed as he actually is, alone that accounts for the problem with Ed taking consent as morally transformative here. We can imagine plenty of scenarios in which a person gets important features of their partner wrong but where we wouldn’t want to say their partner had done anything blameworthy. For instance, Jane could have fallen victim to her own cognitive biases, or succumbed to wishful thinking or self-deception about Ed. The moral difference between Jane’s consent in the case where her misunderstanding is the result of her own epistemic vice, and the case where Ed deceives Jane, is that in the latter but not the former Ed is the cause of Jane’s frustrated intention. Had it not been for Ed’s lie, Jane would not have developed the false belief about Ed that she did. And insofar as this counterfactual holds, he is responsible for the sexual encounter with Jane that she did not intend. Even if Jane would have had sex with Ed had she known, Ed’s lie interferes with her ability to provide consent that is transformative for him. In summary, lying to a sexual partner about one’s moral character can negatively affect the consent of one’s sexual partner. But this isn’t the only type of deception whose moral impermissibility follows from my account.

It was mentioned that a lie supports a rational false belief if the deceived is justified in accepting what is asserted to be true and if the deceived arrives at the false belief from the content of the lie by some process that warrants the belief. In general, I think it is prudent to consider both induction and deductive reasoning to be good ways for drawing inferences. In the case of induction however, a lot needs to be said to clarify exactly when an inference based on some information about someone’s character is well warranted. One complication is that unique factors such as a person’s history or other contextual factors influence the strength of evidence making it hard to make general claims about when a proposition supports an inductive inference.[[43]](#footnote-43) But what counts as a valid deduction is the same across reasoners. Since the intention here is to say something that is both specific and at the same time generalizable about which types of lies would support false beliefs about one’s character, I will focus on lies that support false beliefs vis-a-vis deductive inferences.

Consider the following three cases in which Mara reports something that she knows to be false.

1. Mara tells Matteo that she volunteers at a hospice.
2. Mara tells Matteo that the suffering of others is deeply disturbing.
3. Mara tells Matteo that she thinks that institutions should be more equitable.[[44]](#footnote-44)

Taken independently, none of Mara’s lies provide Matteo with false evidence which would entail that Mara has some specific moral character trait. Certainly there is a relationship between the actions, feelings, and thoughts described in each of 4-6, and some specific moral traits. A generous person might volunteer her time. A compassionate person would be moved by the suffering of others. A just person will want to see resources allocated equitably. But one generous action, compassionate feeling, or just belief, does not entail that an agent really embodies the corresponding virtue. For instance, a person could act equitably based on ulterior motives such as to impress others by one’s moral righteousness or to receive praise. Or an act of charity could be a one-off occurrence.

Things are different, however, if we consider each of 4-6 as a part of a larger pattern of deception. Imagine for instance that Mara makes all of the above claims to Matteo. Now Matteo has stronger support for the belief that Mara has a moral character trait, namely that Mara is benevolent. To understand exactly how 4, 5, and 6 collectively imply Mara’s benevolence requires a brief digression to discuss the nature of character traits.

A character trait encompasses a relatively stable set of behavioral dispositions, which bring together in an integrated way conative and cognitive dimensions of a person’s psychology.[[45]](#footnote-45) These include dispositions to perceive, to feel, to behave and to think in specific ways that uniquely express a trait. As an example, consider the trait of loyalty. A loyal person, using this definition, would be someone who is disposed to be attuned to the circumstances in which loyal behavior is required, they would behave in ways described as loyal as that situation demands, and they would be disposed to have the affective responses consistent with their appreciation of what is called for. For example, they would approve of acts of loyalty and disapprove of disloyal behavior. But loyalty doesn’t just encompass these dispositions. Possessing these dispositions is constitutive of the trait. One way to describe this relation is to say that loyalty supervenes on the dispositions. So when Mara lies to Matteo all of 4, 5, and 6, then, insofar as Matteo grasps competently what benevolence is, he should be able to recognize that Mara’s benevolence follows from the manifest dispositions she reports.

Of course, it would be hard to know exactly how many lies one would have to tell about one’s behavior in order for those lies to support a false belief about one’s moral character. Most likely, character traits come in degrees. On one end of the spectrum, a single act of generosity does not thereby make one a generous person, but a sustained pattern of dispositions over time could count as a clear case. And in between absolute virtue and its absence there will be many cases that will seem to be best described as manifesting a trait to a greater or lesser degree.

8.

In the previous two sections, I identified several types of lies that compromise sexual consent, at least in the context of any kind of intimacy. But this is not the only form of epistemic harm that can interfere with the consent of sexual partners. The final case I bring up involves lies that undermine a partner’s consent by concealing facts relevant to how they grasp one’s moral character, specifically by preventing a person from having access to information that would be highly relevant to their understanding of the person who one is.

This requires some explanation. Lacking information might seem relevantly different from forming a false belief. When a person has a false belief about their partner, the consequence may be that the person to whom consent is expressed does not match the intended target. But when facts about a person are concealed, there need not be a lack of fit between the target as described in the consenter’s intention and the recipient to whom it is expressed. Moreover, concealment does not necessarily result in a situation that is too far from the ordinary. Although this might not be the most comforting thought to bear, it is unlikely that we ever fully know even our closest intimate partners. Our characters are complex and dynamic. Even our accurate descriptions of others are likely to be grossly over-generalized. This isn’t to say that we don’t know our partners at all. But rather we overestimate just how fully we know them. In the typical cases, however, we do not say that consent is problematized by this fact. So why should it make a difference if the information is concealed by an act of deception?

One issue is that it is not clear that such cases really involve a lack of information. Evidence shows that people tend to have default beliefs about others that ascribe positive moral traits.[[46]](#footnote-46) In the absence of evidence to the contrary a person will persist in holding these beliefs. So concealing contrary evidence about one’s moral character may lead a partner to persist in holding a false belief. And now this looks more like a case of deception by omission than ordinary concealment.

But there are other moral problems with this kind of concealment. First, in these cases of deception, unlike standard ignorance, information that might otherwise have been obtainable is concealed. Second, that information is prevented from being accessible to the partner due to the act of deception. And finally, in these cases the concealed information is of the sort that could have made a difference to the act of consent. Consent expresses a person’s willingness or permission to take part in something specific with a specific person or persons. And just as there may be facts about what the encounter involves that could have been deal-breakers if only a person had known, there may also be facts about one’s partner that could have made a difference to whether they would want to give that person in particular their permission. This is what I mean by information that ‘could have been relevant’. The point is that Jane should be free to decide if and when both facts about what she is consenting to, as well as who the consent is for, are relevant to her. And lying can interfere with her freedom to make that decision if it prevents her from having access to information that could be relevant in this way. For instance, we have already seen how morally valenced information figures in fixing one’s ongoing sense of obligation and commitment.

To be clear, I am not arguing for the claim that we ought not conceal aspects of our characters that would have been deal-breakers. Dougherty has already argued for that. Rather, I am claiming that we ought not to use lies to conceal facts about the target of consent that are relevant to how the consent giver understands one’s identity – even if those facts are not deal-breakers. Again, this idea is supported by the assumption that the morally transformative power of consent is compromised when a person is prevented from knowing some feature of what they are consenting to that could have been relevant. But I don’t take this to be particularly controversial. What I am proposing isn’t so different from the principle of informed consent that is already widely accepted in medical ethics. If a doctor recommends a medical procedure to a patient but prevents them from knowing about potential bad outcomes, the patient’s consent to the procedure is not valid. And this is true regardless of whether or not their consent would actually have depended in a counterfactual sense on that information. What I am proposing here about sexual consent is less demanding than the principle of informed consent. I am not suggesting that consent is valid only if the recipient of consent reveals everything potentially relevant. I am saying that lies interfere when the recipient employs them to conceal such facts.

Sometimes a lie does not prevent a fact from being accessible when it is considered on its own. But when it is part of a collection of lies, it may prevent a person from having access to information that would otherwise have been accessible. Suppose the following,

Padma and Darryl are married. Darryl is a moral nihilist, he does not believe in the value of morality and he is never motivated by moral considerations, but he conceals his amoralist thoughts and feelings from Padma, often by lying.

Note that here Darryl is not lying about a character trait directly; he is not claiming to have a trait that he does not have, nor is he claiming to not have a trait that he does have. Rather, he is lying about more specific thoughts, feelings, intentions, and behaviors. Taken independently of the others, each of these individual lies does not prevent Padma from knowing that Darryl is amoral, since the trait is not implied by any singular disposition. Rather, the trait supervenes on a consistent pattern of dispositions. So insofar as each lie is part of a pattern of lies that Darryl tells which conceal the evidence of his amoralism, Darryl’s lies do prevent Padma from knowing about the trait. If Padma does the morally and epistemically responsible thing, which is to believe Darryl’s claims on their face, the evidence will be concealed from her by the lies. And since amoralism is the type of trait that people take as central in how they understand the person who one is, it is the kind of information that would likely have been relevant to her intention. Given that the autonomy of our sexual partners as well as their unimpeded access to reality is important, it follows that these lies will also be morally impermissible.

All of the varieties of deception that have been identified up to this point involve an intention to either present oneself as having a character trait that one doesn’t have, or to conceal a character trait that one does have. I want to end this discussion by highlighting a kind of case that does not involve an intention to control how one’s partner understands the person who one is. Suppose that Darryl does not intend to misrepresent himself specifically, but he still lies indiscriminately and whenever the urge strikes him. He lies about his age. He lies about his job. He lies about his past. No one of Darryl’s lies, we will stipulate, concerns his character directly. Nor does any of their contents involve evidence that would bear specifically on his character, even when considered alongside the contents of other lies. Darryl doesn’t lie about anything that correlates in any way with who Padma understands Darryl to be deep down. And yet, if Padma were to find out about each of Darryl’s deceptions, she would feel that Darryl had concealed something relevant to her about himself in the process of being deceptive.

The account that I have developed explains why this is so. Although none of Darryl’s lies in this case concern his character, the lies collectively manifest a character trait. In virtue of his pattern of deceptive behavior, Darryl is, at the very least, a very dishonest person. But Darryl’s acts of deception, the lies, prevent Padma from having access to the evidence of his dishonesty. In presenting falsehoods as though they are truths, lies not only cause the listener to form false beliefs, but at the same time they conceal this by mimicking another type of speech act, an assertion. When a person makes an assertion, he or she represents themself as knowing, or as sincerely believing to know, that what they assert is true. Likewise, when an interlocutor hears an assertion, he or she, in taking it to be an assertion, implicitly assumes its truth, or at the least that the speaker believes what is asserted to be true. G. E. Moore demonstrated this when he pointed out the discordance of conjunctions like the following, “Dogs bark, but I do not know that they do”.[[47]](#footnote-47) The strangeness of this utterance comes from the fact that the second part of the conjunction negates something implied by the first part. Effective lies conceal that they are lies by exploiting these facts about assertions. If Jane could have known that each of Ed’s lies was in fact an act of deception, she would have also known something important about his moral self.

In the beginning of the discourse, I appealed to a scenario in which Bill pretends to be a person he is not to show that who we believe our partner to be is an important consideration in consent. I then appealed to empirical research that showed that in addition to facts like name and personal history, moral character traits are important to how people understand the people they consent to; there is evidence that they are in fact among the most essential parts of who we are as a person, at least in other peoples’ eyes.

**Conclusion**

In general, consent is morally significant because, in the good case, it facilitates a person’s ability to live the sort of life they intend and desire. In the case of sex, consent allows one to shape and control those aspects of one’s life related to their body and relationships. But consent can be degraded when a person’s autonomy or their access to an accurate understanding of reality is sabotaged by another person. Sexual consent expresses an intention to remove a boundary for a specific kind of sexual access for a particular person or persons. The specific person(s) for whom the boundary is to be lifted is understood in a particular way. And as I have shown, we have reason to think that morally valenced character traits- the kinds of traits that we think of as virtues and vices, play an important role in how people understand the people they give consent to. Given this, we should assume that unless we know otherwise, these features are likely to figure in the description of the person for whom the sexual boundary is intended to be lifted. One way to interfere with the sexual consent of a partner is to lie to them about the intended recipient of their consent. These lies can take various forms. Lies can cause a partner to form false beliefs about their partner’s moral character, or they can conceal moral traits. They may involve false assertions about who one is morally, or they can imply or conceal something about one’s character as part of a collection of falsehoods.

It could appear that we are now left with a new kind of relativism about which specific attributes of partners will be likely to matter. This relativism would be undesirable because it would make a general policy about which lies not to tell impossible. For example, suppose a man insists based on religious grounds on his wife’s moral purity where moral purity is understood as absolute chastity. If his wife conceals from him that she had been sexually assaulted prior to meeting him by lying, has she interfered with his consent? On the account that I have given, it may appear that her lie would have been impermissible. But I think that readers will nonetheless feel that this lie was permissible.

This need not be a significant cause for worry, however. The account I have offered is compatible with objectivism about moral traits. Assuming objectivism, people can be right or wrong about which traits count as virtues and vices. We can then assume that people are culpable when they lie about actual moral traits, but they are not to blame in cases where lies conceal or support false beliefs about non-moral traits that their partner mistakenly represents as part of their moral self. In this case we can consider chastity to be one such trait[[48]](#footnote-48).

And yet even in the good cases it would be hard to know when deception about who our partner understands us to be completely undermines the validity of consent.[[49]](#footnote-49) For one thing, our identities, including our moral identities, are complex. We are not just generous or kind or thoughtful or rude. Our characters are composites of many virtues and vices. And our partner’s understanding of us will reflect this to varying degrees. No doubt some of our features will loom larger in their understanding of us than others. And this creates various concerns. How much is our partner’s consent compromised if we deceive them with respect to just one character trait, our honesty or conscientiousness? In some cases, a trait may be of central importance to how a person is understood and here deception may have a significant impact on whether the person to whom consent is expressed sufficiently resembles the person it is intended to be morally transformative for. But in many cases consent is not likely to be completely undermined by one such deception. So how do we know at what point one has been deceived to the extent that one’s consent is problematic?[[50]](#footnote-50) If one takes the permissibility of deception to depend on whether that deception will impact the validity of consent, then the consequence will be that this view is not able to offer even a general moral prescription concerning which specific lies are impermissible.

But I propose that a more useful way to look at the moral problem under consideration here is to focus first on the impact of deception on the quality of consent. When it comes to consent, quality is not an all or none affair. Both the autonomy and accuracy upon which consent depends come in degrees. Our sexual choices can be compromised in various ways including pressure, ignorance, adaptive preferences, and deception. Consent is invalidated when the quality of consent has been sufficiently degraded. But we don’t have to determine where precisely that degree of degradation lies before we can know when a lie is impermissible. And this is because what we ought to be looking for from our sexual partners is sexual consent that is unambiguous. This means that some sexual encounters that meet the threshold for valid consent may still be morally problematic. And it is because of these considerations, I would argue, that we should not tell lies about who we are generally, and specifically about our moral selves. This is not to imply that determining where to draw the line between an encounter that is consensual and one that is not, is not also important. It is important and although I have not attempted to resolve that issue here, this paper has made some progress in identifying factors, specifically lies about one’s self, that may make a difference to that end.

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1. For a comprehensive account of rape laws see Posner and Silbaugh, “A Guide to America’s Sex Laws” (1996). [↑](#footnote-ref-1)
2. The BDSM community emphasizes the importance of mutual respect between sexual partners in its now popular ethical principle, “safe, sane, and consensual”. Although this slogan has made its way into many aspects of the sexual landscape, the phrase was introduced by David Stein of New York’s Gay Male S/M Activists Organization in 1983. [↑](#footnote-ref-2)
3. Many state statutes have abandoned the language of ‘force’ to focus on ‘consent’ (Alabama and North Dakota are exceptions). More recently, the Federal Bureau of Investigation has followed suit and changed the definition of rape used in collecting data from, “the carnal knowledge of a female forcibly and against her will” to, “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim”. By contrast, Wertheimer in Consent to Sexual Relations (2003) claims that the previous focus on force in rape law is consistent with the valuing of consent since what counts as force could be interpreted case-by-case in a way sufficiently broad that any non-consensual activity might be included. The recent revision, however, was important in that it took the power away from local authorities to determine on an ad hoc basis whether or not lack of consent is tantamount to force. [↑](#footnote-ref-3)
4. Although exact consent laws differ by state, most states agree that sexual consent cannot be granted by persons who are too intoxicated, under a certain age, or lacking in mental capacity. [↑](#footnote-ref-4)
5. Muelenhard and Shrag (1991) take the stronger stance that any verbal coercion that causes emotional distress invalidates consent. And Sarah Conly (2004) argues that sometimes emotional pressure does amount to a type of coercion that is morally on par with forceable rape, specifically where it involves asking for things that one does not have a right to ask for (see for example 2004, p. 118). Conly’s view resembles Wertheimer’s (1987) in that she takes whether coercion undermines consent to depend on whether it is intended, harmful and illegitimate. Offering an alternative to Conly, Scott A. Anderson (2005) argues that background considerations influence the wrongness of pressuring. Due to the gender hierarchy implicit in our cultural norms and institutions, men pressuring women is uniquely wrong. Gendered social institutions impact women’s choices in ways that pressure exacerbates because women already live under the awareness that men, especially those who would employ pressure, may resort to violence if their pressuring tactics are rebuffed. [↑](#footnote-ref-5)
6. Although this definition of deception is not entirely uncontroversial it seems to me to be highly plausible and to avoid many of the objections that could be directed at earlier accounts. See Mahon, (2007). [↑](#footnote-ref-6)
7. It should be noted that it is one thing to wear make-up and hair-dye within the context where these manipulations conform to social expectations or are widely practiced and consequently don’t aim to deceive about the actual state of one’s hair or skin. It is another to conceal with the aim to deceive. While there may be a moral difference, I suspect that many would still take some set of deceptions to be morally innocuous. Dougherty (2013) argues against what he calls the Lenient Thesis on which there are a subset of deceptions which are always permissible, but his view is still compatible with the idea that these lies are permissible in some cases, and perhaps even most. Some have argued that innocuous deception is a desirable and possibly necessary part of romantic pursuit. For example, Larson writes, “Exaggerated praise, playful suggestions, efforts to impress, and promises intended to reassure and trigger emotions but not to be strictly believed are all part of the ritual of erotic fascination that makes up a ‘seduction’ in the colloquial sense”(1993). See also Werheimer 2003 esp. pp. 193-214, and Buss, 2005. [↑](#footnote-ref-7)
8. I have chosen to focus on lies over deceptions more generally due to issues that arise in distinguishing the different types of deceptions. That topic deserves to be addressed in a separate paper. [↑](#footnote-ref-8)
9. A slight modification from what is found in Isenberg (1973); Primoratz (1984); see Mahon (2015). [↑](#footnote-ref-9)
10. Consider the case against doctor Ryan Williams at the Cleveland Clinic who told several of his patients that he was going to perform a rectal examination on them and instead of inserting an examination device, inserted his own penis. (“Ohio Medical Board Investigating former Cleveland Clinic Surgeon Over Rape Allegations” (*https://www.usatoday.com/story/news/politics/2018/01/30/ohio-medical-board-investigating-former-cleveland-clinic-surgeon-over-rape-allegations/1044736001/)* [↑](#footnote-ref-10)
11. See for example Buss (2005), Dougherty (2013, 2018), see also Archard (1998), O’Neill (1985), Wertheimer 2003, Liberto (2018) [↑](#footnote-ref-11)
12. When I say that deception interferes with consent I mean specifically that it interferes with consent to the sexual encounter about which one is deceived. [↑](#footnote-ref-12)
13. Dougherty (2013), p. 719 [↑](#footnote-ref-13)
14. Dougherty (2013), p. 740 [↑](#footnote-ref-14)
15. It is worth mentioning that the idea that a person’s moral character is essential to their capacity to stand in various personal relationships to others is not new; both Aristotle and Cicero, for example, believed that friendship requires virtue or good character. This paper approaches the link between character and the suitability to specific personal relations to others in a different way. see Arisottle, Nichomachean Ethics; Cicero, On Frienship. [↑](#footnote-ref-15)
16. Dougherty (2013) 734-735 [↑](#footnote-ref-16)
17. Dougherty (2013) 734-735 [↑](#footnote-ref-17)
18. Heidi M. Hurd (1996). [↑](#footnote-ref-18)
19. By ‘sexual partner’ I mean someone who one has a sexual encounter with. Since at least some deceptions interfere with one’s partner’s consent, deceiving an actual or intended sexual partner is impermissible. [↑](#footnote-ref-19)
20. Another framework compatible with what I have said about the moral value of consent is Nozick’s idea that consent facilitates the basic moral norm of ‘voluntary cooperation’. According to Nozick, conforming to the norm of voluntary cooperation helps to ensure that our interactions aren’t in conflict with our benefit. Making consent a requirement for engaging with others in various ways, including sexually, prevents many interactions at odds with mutual benefit by preventing others from doing to us things that are in conflict with our goals. It follows that partners must heed each others’ choices about consent in whatever sexual encounters they share. [↑](#footnote-ref-20)
21. We sometimes see autonomy described more generally as “the power to control of one’s life”, or “the ability to shape one’s life in accord with one’s desires” (see for example Wertheimer 2003, p. 126). My discussion here follows much of the philosophical discussion on the impact of deception on sexual consent in taking autonomy in the more restricted sense identified in the body of the paper (see Buss 2005). On this reading, autonomy is a necessary but not sufficient feature for living a life that one has real control over. [↑](#footnote-ref-21)
22. A popular view is that autonomy has intrinsic value and that it alone can justify moral constraints. [↑](#footnote-ref-22)
23. Much of the literature concerning the impact of deception on sexual consent is centered on the effect of deception on the consenting person’s autonomy and Dougherty himself follows in this tradition. Whether or not deception degrades the autonomy of a sexual partner will depend in part on what one understands autonomy to involve. I want to remain neutral on this, though I am sympathetic to the idea that it might. Buss (2005) identifies autonomy as the practice of, “making up one’s own mind, determining one’s own intention, thinking for oneself about what is wroth doing and then on that basis deciding to do it”. On her view it is difficult to see how being deceived could undermine autonomy. Others have argued that in providing false information, the deceiver prevents the deceived from acting on reasons that are, in a relevant sense, “truly her own”. For instance, Barbara Herman (1993) offers an elaboration along this line. For her, reasons for acting should be the agents in a deep sense, “all the way down”. But as Buss points out, this seems to entail that choices are never autonomous since all of our reasons are already causally determined by external factors in some way or another. And even where we acknowledge determination we don’t take this to be incompatible with moral responsibility and hence, autonomy. Buss argues that sexual deception is compatible with acting with respect for autonomy since not only could agents endorse a policy of being deceived by romantic partners, but they would and in fact they often do. A bit of deception about, for example, our interest may be a necessary part of romantic love. Moreover, she notes that early love is too fragile to withstand the truth. In fact, the lover wants to be deceived and fascinated. This said, whether deception does or does not degrade our partner’s autonomy in her strict sense does not settle the matter concerning whether it undermines or degrades the general quality of her consent since, as I am arguing, that depends on additional factors. [↑](#footnote-ref-23)
24. It may be that having reliable access to reality is also valuable in its own right. As evidence, notice that people generally do want this for themselves so deceiving people (romantic partners or others) may be impermissible on these grounds alone. For a similar argument see Buss (2005). [↑](#footnote-ref-24)
25. We can stipulate that his lying would not have been a deal-breaker for Jane [↑](#footnote-ref-25)
26. Examples of places where rape-by-fraud has been successfully prosecuted include California USA, Israel and the United Kingdom. [↑](#footnote-ref-26)
27. D. Archard. Sexual Consent (1998) Oxford: Westview p. 46. Archard writes, “There are aspects of a sexual act- what, why and with whom- about which, and there are also degrees to which a person may be misled in respect of the act. The more completely a person is misled in respect of the act, the less willingly she can consent to the act.” [↑](#footnote-ref-27)
28. Dougherty 2013 p. 730 [↑](#footnote-ref-28)
29. Dougherty 2013 p. 731 [↑](#footnote-ref-29)
30. For instance, if Bill had no reason to think that Jane was mistaken about his identity then I don’t think we would fault him for taking his sexual partner’s consent at face value, as one typically does. [↑](#footnote-ref-30)
31. I will leave open the possibility that there could be purely de re intentions in some cases of consent, but these de dicto intentions have priority in directing consent toward a specific recipient. [↑](#footnote-ref-31)
32. Dougherty (2018) [↑](#footnote-ref-32)
33. Qualitative identity means that two things share qualities and it can come in degrees depending on the amount of qualitative similarity. Numerical identity, on the other hand, is a relation that something can only have to itself. [↑](#footnote-ref-33)
34. Buss (2005) [↑](#footnote-ref-34)
35. Strohminger et. al. (2017) [↑](#footnote-ref-35)
36. Strohminger and Nichols, (2013); Strohminger et. al. (2017) [↑](#footnote-ref-36)
37. When subjects were asked to explain their responses they gave answers such as, “Our moral conscience, our moral compass, is a huge component of what makes up our identity and our soul” and, “The surgery resulted in Jim losing his moral conscience and his ability to empathize with the suffering of others. These are essential aspects of personal identity so I concluded that in a profound way Jim is no longer himself after the surgery.” [↑](#footnote-ref-37)
38. For instance, agnosia for loved ones rated higher than agnosia for celebrities and memories with social or personal reverberations out-rated other types of memory. Strohminger and Nichols conclude that to the extent that we consider other psychological traits important to how we think of a person’s identity it is driven by whether traits relate to our socio-moral lives. [↑](#footnote-ref-38)
39. Strohminger, Newman and Knobe (2017) have demonstrated that positive moral traits or virtues, are more likely to be associated with conceptions of a person’s true self than are negative moral traits or vices. [↑](#footnote-ref-39)
40. This would also make good evolutionary sense since one of the primary things that we need to keep track of in the social community is how cooperative or potentially dangerous others are. [↑](#footnote-ref-40)
41. Dougherty argues that this is in fact the case (2015). [↑](#footnote-ref-41)
42. LaFollette (1996) p. 179 [↑](#footnote-ref-42)
43. For example, differences in gender or race might lead different people to draw different conclusions about whether or not it is safe to walk in a particular neighborhood after dark. [↑](#footnote-ref-43)
44. It is a further question whether lies about which political party one votes for should be included. This may depend on situational facts such as the social climate of the time. [↑](#footnote-ref-44)
45. Hudson (1980), Deonna & Fabrice Teroni (2012) [↑](#footnote-ref-45)
46. Strohminger et.al. (2017) [↑](#footnote-ref-46)
47. Moore, (1942), (1962) [↑](#footnote-ref-47)
48. Even if we assume that chastity is not a moral trait, it may seem that the account here would still deem it to be impermissible to lie about it insofar as this aspect of one’s sexual history is something that one’s partner cares about. Perhaps in some cases this may be correct. Particularly, it may be correct where a partner’s concern about chastity is idiosyncratic and not based on following a cultural norm. But where the concern is conditioned by cultural norms and likely to be prevalent across the community, the moral prohibition may not hold since the norm would unfairly exclude persons from the sexual community. [↑](#footnote-ref-48)
49. One uncontroversial case might be if one is wholly deceived about one’s partner’s moral character. Finding out that one’s partner has been living a secret life as a serial killer, for example, would likely result in the disorienting feeling that the actual person one has been sleeping with does not at all resemble the person to whom romantic agreements were intended. [↑](#footnote-ref-49)
50. It should be noted that in pointing out the moral problem deception poses for consent, the argument is not meant to support implications for consent law, which would involve other considerations such as the possibility of meeting standards of evidence, etc. Nor does the argument entail that consent that is compromised by deception even where validity is undermined, amounts to the same offense as does forceable rape. [↑](#footnote-ref-50)