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FLIRTING

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Philosophers are finally taking sex seriously, considering in detail what sex involves, who can have sex and with whom, when sex is and is not permissible, how sex relates to identity, and the role sex plays in systems of oppression. Yet there remains a conspicuous absence in this growing field: little attention has yet been paid to the interactions which often lead up to sex (with the notable exception of Kukla 2018). With some exceptions (like in cruising contexts), sex typically does not spontaneously occur, apropos of nothing. Rather, sex, and the invitations and negotiations that give rise to it, are often preceded by an age-old social ritual: flirting. If we are interested in sex, we should be interested in flirting.

Given that it happens all the time and that most of us have engaged in it, one would expect to find it easy to give a definition of flirting. And yet just as flirting interactions themselves can be opaque and uncertain, the concept of flirting proves slippery and hard to pin down. This slipperiness has unfortunately played into the hands of those seeking to excuse or even justify the behaviors of sexual harassers and abusers. For example, sexual harassers often protest that they were “only flirting,” in order to get themselves off the hook.¹ Rapists and those defending them, meanwhile, often accuse victims of assault of having “flirted with” the perpetrator in a way that either made their assault excusable, or in fact rendered the interaction ultimately consensual.² Without a clear-cut account of what it means to flirt, it is harder than it needs to be to counter these kinds of argument.

In this chapter, I offer a definition of flirting, using the tools of philosophy of language. In doing so, I broaden our philosophical understanding of sex, and I offer a new way of tackling apologism and victim-blaming. Flirting, I argue, is a kind of conversational game in which agents presuppose intimacy that initially does not exist, but which comes into being throughout the course of the interaction. Flirters typically make two moves. *Push* moves presuppose that there is a level of intimacy between the flirters that does not yet exist, typically via acts like complimenting and teasing. *Pull* moves are pretend attempts to block the other’s presuppositions, often involving faux indignation or feigned disinterest. Flirters perform a mixture of these moves in order to create a precarious, non-committal intimacy between them. This definition shows that harassment is quite different from flirting; the latter is a joint activity, the former is not. This definition also makes it clear that flirting does not constitute consent to subsequent sexual activity, nor does its occurrence make it reasonable to *assume* that the flirters consent.

What Flirting Is Not

My plan to analyze flirting using tools from philosophy of language may seem odd, or even misguided—how could technical discussions about language possibly help us understand flirting? For one thing, flirting is often non-verbal. It can involve lightly touching someone, fluttering our eyelashes, leaning toward them, brushing our feet against theirs, or holding eye contact for a little

longer than normal. It might also involve various “paralinguistic” behaviors, for example, the use of a particular tone, rhythm, or intonation when we speak. These are all bodily behaviors, and so surely, one might think, theories of language cannot help us here.

Yet, though these are all bodily behaviors, they are still communicative; flirts employ a particular form of *body language*. When we engage in these behaviors, we typically want to send some kind of message to someone. Moreover, though flirting is often non-verbal, it is often verbal, too. Flirting exchanges typically involve both distinctive non-verbal behaviors *and* distinctive verbal behaviors working together.

I will assume, then, that flirting is a kind of communicative practice. Sometimes flirting is verbal, sometimes it is not, and it has both a distinctive set of rules and a distinctive phenomenology (i.e., it feels a certain way to flirt or be flirted with, subjectively). I will focus on flirting in British and American cultures, as those are the ones with which I am most familiar, and I will attempt to offer a model of flirting that is broad enough to accommodate the fact that flirting styles vary wildly even within such cultures (Hall et al. 2010).

In *How to Do Things With Words*, J.L. Austin (1976) observed that we can perform several different kinds of acts when we speak: locutionary acts, perlocutionary acts, and illocutionary acts, as defined below. A good place to start when trying to understand the nature of flirting is to consider whether flirting could be individuated by its locutionary, perlocutionary, or illocutionary content.

To perform a locutionary act is to utter words with a particular sense and reference (Austin 1976). It is to say something meaningful. We can immediately set aside the possibility that flirting necessarily involves saying particular things, since often flirting does not involve saying anything at all; as I noted, it can be non-verbal. Even if we focus on verbal flirting only, it may still be hard to isolate any characteristic content. Exaggerated and caricatured flirting often involves talking about sex, or using sexual euphemisms, innuendos, and double entendres.³ Yet it also seems possible to flirt without mentioning or even alluding to sex at all. One could presumably transform even the most mundane conversation into a flirting interaction, for example by asking someone what seem like inappropriately personal or intimate questions (more on these later).

Perhaps, then, flirting is a *perlocutionary* act instead. A perlocutionary act is the production of a particular psychological effect on one’s hearer (Austin 1976). For example, if I shout, “Boo!” and you jump, I have performed the perlocutionary act of startling you. If flirting is a perlocutionary act, this means it can be individuated by its distinctive *effects* on the hearer. Maybe flirting is the act of causing someone to believe that you are sexually attracted to them, or that you want to have sex with them.

There are several problems with such an analysis. First, if flirting is merely the act of causing someone to have a particular belief, then we are not in complete control of whether we are flirting. Narcissistic hearers who are overly disposed to interpreting other people as flirting with them will have the power to make it the case that we were flirting with them, even if we had no intention of doing so. Women in particular will end up flirting much more than they realize, according to this definition, since multiple studies have shown that men often interpret a woman’s behavior as flirtatious even when she did not intend to flirt (Abbey 1982, 1987; Abbey and Melby 1986). This is worrying because the fact that a woman flirted with someone is often held against her—either to accuse her of being wrongfully “promiscuous,” and/or to justify or excuse any assault that she later experienced. We therefore have a strong stake in our flirting being something that is “up to us.”

Second, even if we modified the definition under consideration such that flirting is the *intentional* production of certain effects in one’s hearer, it still falls short. This is because there are many ways one can produce the characteristic effects of flirting without actually flirting. One way of making someone believe you find them sexually attractive and/or want to have sex with them is to flirt with them. Another is to simply tell them, “I find you sexually attractive and I want to

have sex with you.” Many of us would regard the latter assertion as too forthright to qualify as an act of flirting.

Flirting does seem to have characteristic effects, but there is more to it than this. Perhaps, then, flirting is not a locutionary act, nor a perlocutionary act, but rather an *illocutionary* act. Illocutionary acts are the acts we perform *in* speaking, like promises, assertions, and commands. Each type of illocutionary act has a distinctive normative force. Promising, for example, creates an obligation for the promiser to do as they have promised, and an entitlement for the promisee to have the promise fulfilled. Perhaps flirting, too, can be individuated by the kinds of obligations and entitlements it creates for interlocutors.

Yet once again, this definition falls short. For starters, flirting does not seem sufficiently transparent to qualify as an illocutionary act. To perform an illocutionary act, I must make it clear to my hearer what I intend to do. For example, to perform a promise I must express to my hearer both an intention to promise, and an intention that she recognize my intention to promise (Searle 1969: 47). If my hearer does not recognize my intention to make a promise to her, my promise will not succeed (Austin 1976: 116–117). Yet flirts typically do not make it clear to their hearers what they intend to do. This is part of the fun of flirting; we leave our interlocutor guessing. Flirting is thus a bit like insinuation, which speech act theorists believe is not an illocutionary act. Peter Strawson says of insinuation:

The whole point of insinuating is that the audience is to suspect but not more than suspect, the intention, for example to induce or disclose a certain belief.

(1964: 33–34)

Just as the insinuator’s intentions are not transparent enough for insinuation to count as an illocutionary act, the flirter’s intentions are also not transparent enough for flirting to count as an illocutionary act. Flirters have good reason to keep their intentions opaque, since flirting is a risky business. Sometimes our interlocutor will respond in a hostile way, or make us feel embarrassed, and so if we keep our cards close to our chest, by semi-concealing our intentions, we can retain plausible deniability. If accused of flirting, we can assure our interlocutor that they have misjudged our intentions and that we were in fact doing something quite different. In contrast, illocutionary acts typically involve pinning one’s colors to the mast, by staking oneself on a claim (as in the case of an assertion) or overtly creating obligations for oneself (as in the case of promising).

So it seems flirting cannot be neatly categorized as a locutionary act, a perlocutionary act, or an illocutionary act. In fact, there are features of the verb “to flirt” which suggest that flirting is not a singular act one person performs at all. Flirting seems to be an activity we engage in *with* others; we say that “She flirted with him,” or “They were flirting.” This points us toward an account of flirting as a joint activity.

What Flirting Is

Flirting seems to be a joint activity involving an evolving relationship between two or more agents. It is, therefore, in some ways, analogous to another kind of joint activity; tennis. Tennis requires the participation of at least two people. The same seems true of flirting. In addition, you cannot make it the case that someone is playing tennis with you unknowingly or accidentally. The same seems true of flirting. You cannot just walk up to someone in the park, hit a tennis ball at them with your racquet, and bring into being a game of tennis. However many times you do this, you will not count as playing tennis unless that person responds to you in a particular way. A game of tennis can begin if and only if that person picks up a racquet and tries to hit the ball back, roughly in accordance with the rules of tennis. Whether you are playing tennis depends on what

this other person is doing, and vice versa. Similarly, repeatedly uttering chat-up lines to someone in a bar does not mean that you and that person are flirting with one another, nor even that *you* are successfully flirting (rather, you may be *attempting* to initiate a “game” of flirting). That person has to actively participate in the interaction, and in a particular way, for this interaction to become an instance of flirting.

Finally, flirting is like tennis in so far as there seem to be characteristic moves one must make to count as participating in the activity. In tennis, players must perform serves, backhands, forehands, and volleys. If these moves (or at least attempts at them) are not present, it is difficult to say whether the interaction in question is really tennis. In flirting, too, there appear to be some distinctive moves, which I will henceforth call “push” moves and “pull” moves.

We already saw that flirting cannot be fitted neatly into the standard framework of Austinian speech act theory. Yet philosophy of language has other tools at its disposal. The characteristic push and pull moves of flirting are best made sense of using the concepts of *presupposition*, *blocking*, and *accommodation*, which I will now explain.

Let us start with the notion of presupposition. If you presuppose a certain proposition during a conversation, you act as if everyone in that conversation already both accepts that proposition and believes that everyone else accepts it, too. For example, imagine I am chatting to colleagues over lunch and I say, “I’ve got to take my dog to the vet later.” When I utter this sentence, I presuppose that I have a dog. I do not say, “I have a dog, and I’ve got to take her to the vet later.” Rather, I act as if the fact that I have a dog is already in what Robert Stalnaker would call the “common ground” of our conversation (2002). The common ground is the set of attitudes and beliefs mutually accepted by everyone in the conversation.

So, what happens after we presuppose something? If the thing we presuppose is already in the common ground, then our utterance will smoothly integrate into the course of the conversation. So, if my colleagues already know that I have a dog, saying “I have to take my dog to the vet” will cause no problems. If the thing we presuppose is not already in the common ground, then one of two things can happen. Our hearer might challenge us, or more specifically, “block” the presupposition. Kai Von Stechow calls these “Hey, wait a minute!” maneuvers (2008). For example, you might respond to my comment about the vet with, “Hey, wait a minute! You don’t have a dog!”

Alternatively, hearers might *accommodate* the presupposition. Accommodation is the process through which the common ground is automatically updated by conversational participants to ensure that what the speaker said is permissible and appropriate in the context of that conversation (see Lewis 1979). So, when I make my comment about the vet, you might briefly think to yourself, “Oh, I didn’t know they had a dog.” Yet because people are often co-operative in conversations, you will likely automatically update your beliefs, assumptions, and/or presumptions to include the idea that I have a dog. If everyone in the conversation does this, and believes that everyone else does it, then the claim that I have a dog enters the common ground, and my comment about the vet becomes an acceptable contribution to the conversation.

In addition to presupposing *beliefs*, we can also presuppose that certain features of the *context* make what we say appropriate or polite. For example, a comedian doing stand-up who tells a risqué joke that would ordinarily violate conversational taboos presupposes that something about this particular context—the comedy gig—makes her utterance permissible. It is then up to her audience to decide whether they will grant the presupposition and therefore make her utterance permissible (maybe by laughing) or block it (maybe by heckling), making her utterance impermissible.

Flirters seem to presuppose the existence of *intimacy*, and they do this by saying and doing things that would only be acceptable and appropriate if such intimacy already existed. They thereby invite the other person to grant that presupposition (bringing the intimacy into existence) or block it. Intimacy is a relationship of mutual understanding and mutual vulnerability between at least two people. It can be friendly, romantic, and sexual; I will focus on the latter. With it

often comes a suspension of politeness norms; we feel more comfortable violating conversational taboos, and we feel more able to discuss controversial or personal topics. Depending on the nature of the intimacy, we may also feel able to violate taboos concerning physical proximity and touch.

Certain ways of speaking presuppose the existence of intimacy. Consider, for example, the fact that certain pronouns and terms of endearment are only polite or acceptable when used among friends, romantic partners, or family. When we call a person “darling,” or when we use pronouns like “tu” in a language with a distinction between familiar and unfamiliar pronouns (such as French), we presuppose that our relationship with our hearer is sufficiently intimate so as to make this appropriate.

Similarly, when we compliment someone, especially in sexual terms, we presuppose that there is some feature of our relationship with that person—namely, some kind of sexual intimacy—that makes this acceptable.⁴ Ordinarily, it is considered rude, and an assault on what politeness theorists call a person’s “face” (roughly, some combination of their self-image and their sense of independence) to give sexually explicit compliments.⁵ Finally, when we insult or tease someone, we presuppose that there is a sufficient level of intimacy between us to make this acceptable. Like sexual compliments, insults are usually considered rude and face-threatening, but among intimates, their potential hostile force is neutralized, due to a general assumption of goodwill.⁶

Flirting involves performing precisely these kinds of “presumptuous” actions, which presuppose a level of intimacy that does not exist, with the goal of making that presupposed intimacy a reality. When a person uses an intimate term of endearment, or gives you a sexual compliment, or insults you, you might initially consider such utterances to be impolite. Yet you may also allow the context to adjust to make them appropriate; that is, you might allow the intimacy these utterances presuppose to enter the common ground and thereby become real.

This process can also work non-verbally. Consider a game of “footsie” under the table during a meal. When the person next to you puts their foot on top of yours, and it becomes clear that this is deliberate and not accidental, you might feel affronted, especially if you do not know them very well. However, if you are willing to entertain a higher level of intimacy between the two of you, you might allow their foot to stay, or even place your foot on theirs, thereby accommodating the intimacy that their initial move presupposed.

To perform the characteristic push move of flirting, I propose, is to presuppose a level of sexual intimacy that is not yet in the common ground, in the hope that this presupposition will be accommodated. Push moves are therefore a kind of presumptuous invitation to intimacy. This is often how flirting interactions get off the ground: one person dares to do something that is technically inappropriate, in the hopes of creating an intimacy which could make it appropriate.

In addition to push moves, flirts often perform pull moves, too. A pull move involves pretending to block someone’s presupposition of intimacy, for example, by feigning affront or disinterest. In doing so, one appears to *pull away*, pulling the intimacy that has developed between the interlocutors off the table. Yet one does not actually block the presupposition of intimacy, nor destroy the intimacy in the common ground. Rather, one *plays* at blocking the presupposition, but actually accommodates it, and in the process dares the other person to proceed with their presuppositions despite the apparent rebuke. A flirt will typically demonstrate the insincerity of their apparent blocking by continuing to participate enthusiastically in the exchange, and by performing their own push moves in turn. This behavior is what gives flirting an element of ambiguity; interlocutors keep each other on their toes, by introducing elements of uncertainty and making the common ground precarious. In doing so they insure themselves against being described as too forward, and they make the interaction more entertaining.

We can see both push and pull moves in action in the following scene from the Bond film *Dr. No*. James Bond is waiting for a meeting with his boss, M, when M’s assistant, Miss Money Penny, strikes up a conversation with him:

MISS MONEYPENNY: James! Where have you been? I've been searching all over London for you. [...]

JAMES BOND: Moneypenny! What gives?

MISS MONEYPENNY: Me, given an ounce of encouragement. You've never taken me to dinner looking like this. You've never taken me to dinner...

JAMES BOND: I would, you know. Only M would have me court-martialled for... illegal use of government property.

MISS MONEYPENNY: Flattery will get you nowhere...but don't stop trying.

(Young 2016)

Moneypenny performs a number of push moves at the beginning of the interaction, for example telling Bond that she would "give in" to him "given an ounce of encouragement," indirectly complimenting his outfit, and playfully chastising him for never having taken her on a date. Bond then performs a push move in turn, telling Moneypenny he would take her out to dinner. He then performs a pull move by saying that he is unable to do so, before following up with another push move with the sexual innuendo of "illegal use of government property." Moneypenny responds with her own pull move: "Flattery will get you nowhere." She then immediately makes obvious the insincerity of this apparent rebuke by following up with a clear push move: "but don't stop trying." As a result of this push and pull dynamic, a common ground containing increasing levels of sexual intimacy develops.

We can use this "push and pull" account of flirting to explain different flirting styles. Sometimes both flirts perform roughly equal amounts of both push and pull moves; this is true of the Bond/Moneypenny interaction. Other times, one interlocutor might do more pushing and the other more pulling. This is often true of heteronormative flirting; gender norms typically dictate that men should pursue and women should (playfully) resist. In fact, women who perform too many push moves can often face social penalties—they can be characterized as "slutty," or, worse, blamed for any assaults they later endure. The danger of lopsided flirting, where men perform more push moves and women more pull moves, is that in the absence of any unambiguous push moves by the woman which make clear her sexual interest, the man must be extra confident that the woman's pull moves are only pretend blocking maneuvers and not genuine acts of resistance.

The account of flirting I have developed seems vulnerable to two objections. First, it does not seem able to accommodate the fact that flirting can seem one-sided; can't we count as flirting when we say "flirtatious" things to another person without them reciprocating? It certainly doesn't sound too strange to say, "She was flirting with him, but he didn't realize." I propose we bite the bullet here and concede that these are not instances of flirting. They are instead attempts to start a flirting interaction (like the person hitting balls in the park). I grant that this means my proposed definition of flirting is revisionary, in so far as it diverges slightly from ordinary language uses of the notion of "flirting," but I think this is a price worth paying. The account can still capture *most* of our intuitions about flirting, but by sacrificing the idea that flirting can be one-sided, it allows us to draw a sharp distinction between paradigmatic harassment and paradigmatic flirting. This distinction, I will argue shortly, can be morally and politically advantageous.

Second, while this account can explain flirting between people who do not yet have an intimate relationship, for example, people who meet at a bar or who are on a date, it is not obviously applicable to flirting within relationships in which intimacy has already been established. Surely people in long-term relationships can flirt, too? Thankfully we can get around this problem. Intimacy, I suggest, requires maintenance and constant reinforcement. A couple of fifty years may have a long-standing intimate relationship, but that intimacy may not be salient in all of their interactions. When the couple flirts, they bring the intimacy that was otherwise in the background of their relationship

into the foreground of that particular conversation, by engaging in push and pull moves. This can be a way of reminding one another of the intimacy, as well as a way of strengthening it.

Flirting and Abuse

The concept of flirting is often put to nefarious uses. For example, some attempt to disguise and excuse sexual harassment under the smokescreen of mere flirting, and others weaponize the notion of flirting to blame victims for their own assault. In this section, I will show how my account of flirting can be marshaled against these uses of the concept.

Let us consider first the attempt to deflect or deflate charges of sexual harassment with the claim that one was “just flirting.” When faced with this kind of defense despite obvious harassment having taken place, we have two complementary strategies available to us. The first was made possible by the development of the concept of sexual harassment. This strategy involves showing that regardless of how the accused personally conceived of their behavior, that behavior satisfied the criteria for harassment. This usually amounts to showing them that the threshold for behavior to qualify as harassment is lower than they think it is.

So what is harassment? According to the UK Equality Act, it is unwanted conduct of a sexual nature which has the purpose or effect of violating a person’s dignity and/or creating “an intimidating, hostile, degrading, humiliating or offensive environment” for them (Equality Act 2010: s.26). The idea that sexual harassment involves unwanted sexual conduct is widely endorsed across jurisdictions. In the landmark case of *Meritor Savings Bank v. Vinson* (1986), the US Supreme Court held that “the gravamen of any sexual harassment claim is that the alleged sexual advances were ‘unwelcome’” (*Meritor Savings Bank v. Vinson*, 477 U.S. 57, 68). So, when a person is accused of harassment, we need to establish that their behavior constituted unwelcome sexual conduct. We do not need an account of flirting to do this. We simply need to identify behaviors that were sexual and unwelcome, regardless of how the harasser conceived of these behaviors themselves.⁷

A second strategy, made possible only by the existence of a definition of flirting, is to examine the accused’s behavior and demonstrate that it does not satisfy the criteria for flirting. Showing that something *does not* constitute flirting is not the same as showing that it *does* constitute harassment, but these two strategies work together to show that the accused’s defense fails on two fronts; their claim that their behavior *was not* harassment is false, and so too is their claim that their behavior *was* flirting.

So, how can we use our account of flirting to establish that a person’s behavior did not constitute flirting? It offers us several criteria. For flirting to have occurred, there must have been an ongoing interaction with an evolving common ground containing increasing levels of intimacy. Flirting, I have argued, is not a single act, nor is it a series of acts by one agent; rather, it is a temporally extended interaction involving active participation by at least two agents. If the behavior in question simply involved one person (the one accused of harassment) repeatedly engaging in certain behaviors and receiving no response from the target, flirting is unlikely to have occurred.

Even if the harasser can prove that there was some kind of extended interaction involving a back and forth between all involved, for that interaction to count as flirting it must also have contained specific kinds of conversational moves by each agent, namely, push and pull moves. In a typical flirting interaction, all agents engage in these moves, even if due to prevailing gender norms some agents prefer to perform more push moves and others more pull moves. If only one agent is engaging in these kinds of moves, the interaction doesn’t qualify as flirting.

Wishful thinking can make it difficult for would-be flirts to ascertain whether a person is actually participating in a flirting interaction with them, that is, whether the person is performing genuine push and pull moves. Rae Langton defines wishful thinking as having “a belief that something is so, given a desire that it be so” (2009: 247). Sometimes we want something so much that we come to believe it is true. For example, my desire that you like me might make me believe that

you do in fact like me. Individuals of any gender can both engage in and or fall foul of this kind of wishful thinking, but feminist philosophers have long warned of how men's beliefs about women in particular are warped by desire in this way. Catharine MacKinnon, for example, observes that victim-blaming often involves this kind of complicated projection; "raped women are seen as asking for it; if a man wanted her, she must have wanted him" (1989: 141). In heterosexual flirting interactions, wishful thinking can leave a woman trapped; every attempt she makes to reject the other person will be interpreted as confirming evidence of his desire-driven belief that she is flirting with him.

Patriarchal conditioning makes such misinterpretations more likely by encouraging us not to take a woman's behavior at face value. We are repeatedly told that women are mysterious because this mystery offers men who abuse women an "alibi," as Simone de Beauvoir puts it, which "flatters laziness and vanity at once" (2011: 318). Sometimes, for a flickering moment, a man who believed he was participating in a consensual flirting interaction with a woman might suddenly doubt whether he has correctly interpreted her behaviors. Yet he can reassure himself with the myths that women are mysterious and deceitful, and that, at least in a woman's mouth, "no means yes."

Despite these problems, a robust account of flirting certainly makes it easier than it was before, at least for those not involved in the interaction, to identify flirting, as it gives us key moves to look for. And moreover, social conditioning does not exculpate those who do misinterpret behaviors in flirting interactions. Misinterpretation can be a form of culpable negligence. One *should* be able to distinguish flirting moves from genuine acts of refusal. To do so, one must think critically about gender norms and myths, and one must also cultivate a general interpersonal receptivity and sensitivity to verbal and non-verbal social cues, which will make distinguishing between genuine rejection and playful pull moves easier.⁸

The account of flirting I have developed thus strengthens our hand against those who seek to disguise harassment under the banner of flirting. We already had the conceptual tools to show that even if a person only intended to flirt, and even if they had a sincere belief that they were in fact engaging in flirting, their behavior could still constitute harassment. Now, we have the tools to show that, in addition to their behavior constituting harassment, it also did not constitute flirting. The "I was only flirting" defense typically succeeds because flirting is for many a slippery, indistinct concept which can be twisted and stretched to obscure even serious moral offenses. A robust account of flirting as a specific form of interaction, involving specific behaviors, rids this defense of its power.

Let us turn now to a second way in which the notion of flirting can be manipulated. In the harassment case just discussed, the accused described *themselves* as flirting in order to exculpate themselves. In the cases I will examine next, the accused describes *the victim* as flirting in order to exculpate themselves. Often, sexual abusers claim that what looked like assault was not in fact assault, because the victim consented via flirting. Though its premises are rarely made explicit, this defense seems to rely on the following argument, where A and B are two parties involved in some kind of sexual interaction.

- P1: A and B were flirting with each other before their sexual interaction
- P2: Flirting constitutes consent to all subsequent sexual interactions
- P3: Sexual consent, once given, is irrevocable
- C: The sexual interaction between A and B was consensual

One way of undermining this defense would be to show that P1 is false. Often the victim did not flirt at all, and the perpetrator is either willfully constructing false narratives, or culpably misinterpreting the victim's behavior as flirting. Yet even if the victim did in fact flirt with the perpetrator (i.e., even if P1 is true), this fact alone cannot render what would otherwise have been assault consensual. The argument under consideration is unsound even if the first premise happens to be true.

One reason why it is unsound is because P2 is false, which we can show using our account of flirting. For flirting to constitute consent, it would have to involve or constitute the illocutionary act of consent-giving. I argued earlier that flirting is not an illocutionary act, and though the push and pull moves of flirting can take the form of illocutionary acts, they do not resemble conventional illocutionary mechanisms of consent-giving. I stressed that flirting involves deliberate ambiguity and opacity; flirterers are not exercising their normative powers by expressing their intentions in the decisive, unambiguous way required for consent, but rather they hint, suggest, and insinuate. Flirterers negotiate and collaboratively construct a precarious, evanescent sexual intimacy, but they are most definitely not negotiating each other's consent. In fact, as I mentioned, flirterers need not even talk about sex at all, so even if flirting were to constitute consent, it is impossible to ascertain what exactly flirterers would be consenting to.

Another reason why the argument is unsound is that P3 is also false. Even if flirting did constitute sexual consent (which it does not), this does not mean that any sexual interaction that follows flirting is consensual. Sexual consent can be revoked at any point in time; current refusal trumps past consent.⁹ The fact that at time t , A consented to later having sex with B at time $t+1$, does not mean that the sexual interaction that occurred between A and B at time $t+1$ was necessarily consensual. The same is true of other kinds of consent. Suppose that I consent—and even sign a consent form—to undergo a surgery tomorrow at 10 am. If 10 am rolls around and, for whatever reason, I no longer feel comfortable going through with the surgery, and so retract my consent, not even the previously signed consent form can exonerate the surgeon who nevertheless proceeds.

For all of these reasons, that the victim flirted with the perpetrator does not entail that the victim consented to any subsequent sexual interaction. Sometimes those accused of assault try to use the fact that the victim flirted with them not as evidence that the assault was in fact consensual, but as evidence that, though the assault occurred and the victim was wronged, the perpetrator should be *excused*, that is, they bear less moral responsibility for the assault than a rapist whose victim did not flirt with them. The thought behind this is that by flirting with the perpetrator, the victim made it reasonable for the perpetrator to assume that they consented to any subsequent sexual interaction, even though they did not actually consent. And because the perpetrator's misinterpretation was reasonable, and thus they were acting on a reasonable belief, they are ultimately less culpable for the assault than they would have been had no flirting occurred.

This defense involves, one again, faulty understandings of both consent and flirting. Even if it were true that flirting was universally recognized as a way of giving consent, it remains true that consent is revocable at any time, and in a sexual interaction, parties retain what Tom Dougherty calls a "duty of due diligence," which is a duty to "to take adequate measures to investigate whether "our sexual partners are willing to engage in sexual activity" (2018: 93). Even if someone seems to have consented earlier on in the interaction, one has a duty to remain alert to their consent or lack thereof throughout the interaction; there is no point at which it is acceptable to stop paying attention to consent. So, the fact that the victim flirted does not make the perpetrator's later failure to recognize their non-consent reasonable or non-culpable.

Moreover, there is no consensus that flirting constitutes an act of consent, in the same way, there *is* consensus, or something close to it, that saying "I promise" constitutes an act of promising (provided certain conditions are met). As such, the fact that you flirted with someone does not make it reasonable for them to assume you consent to subsequent sex, whereas it might be reasonable to assume that someone who uses the words "I promise" made a promise.

Lurking in the background of the defense under consideration may be a thought that flirting ordinarily or naturally leads to sex, such that a reasonable interpretation of what it means to be flirting, and/or why one flirts, is that all parties flirting want to have sex with the other parties, and would consent to doing so should the opportunity arise. Yet the relationship between flirting and sexual intercourse is not so simple. Flirting is simply an entertaining conversational game that

serves many purposes; sometimes we flirt because we hope that it will lead to sex, but sometimes we flirt simply for fun. Flirting involves creating a precarious, fleeting state of intimacy, and that is all. Flirters need not discuss sex nor be interested in it. Flirting might make the possibility of sex salient, as Carrie Jenkins suggests (2006), but it does not involve any parties waiving any sexual rights, nor expressing any kind of sexual intentions (as noted earlier, one of the most recognizable features of flirting is the opacity of participants' intentions). Nothing about a flirting interaction makes it reasonable to assume that participants give their consent to subsequent sexual interaction.

Conclusion

In this chapter, I have offered an overdue account of flirting. This account, I hope, helps broaden and enrich the philosophy of sex by illuminating the kinds of interactions that can precede sexual activity. I have defined flirting as a conversational game involving two moves: push moves, which involve presupposing an intimacy that does not yet exist, and pull moves, which involve playfully pretending to block those presuppositions. As flirters perform rallies of these moves, they gradually increase the intimacy between them through a process which philosophers of language call accommodation.

This model can explain both verbal and non-verbal flirting; we can perform push and pull moves in speech, for example by complimenting our interlocutor at one moment, then playfully lambasting them the next, as well as via physical gestures, for example, by leaning closer and lightly touching our interlocutor at one moment and then pulling away or gasping in faux outrage the next.

This model can also accommodate the fact that flirting interactions are heavily affected by gender norms; the latter shape who performs more push moves and who performs more pull moves, and they also make it harder for women's acts of rejection to be recognized as such. Often women who participate in flirting, as well as women who refuse to engage in a flirting interaction or attempt to exit it, will have particular sexual intentions, or even sexual consent, wrongfully attributed to them, due to the historic mystification of women and damaging cultural heuristics like "no means yes."

Finally, the model I have developed can also be used to undermine attempts to minimize, excuse, and justify sexual assault and harassment. With this account in hand, we can show that many harassers who attempt to disguise their behaviors as flirting most definitely were not engaging in flirting. We can also show that flirting does not constitute sexual consent, nor does it make it reasonable to assume that someone consents or would consent. Flirting can make sex more likely, but it is ultimately just a fun, non-committal game. Indeed, it is fun precisely *because* to participate in it one need not declare, or even know, one's precise intentions, nor must one make any kind of sexual commitment.

Notes

- 1 The European Institute for Gender Equality recognizes "She/he was only flirting" as a common way of excusing sexual harassment (2020: 24).
- 2 For example, one third of men and 21% of women in the UK think that if a woman flirts with a man on a date, any sex that occurs between them later cannot be rape (End Violence Against Women Coalition 2018).
- 3 This kind of language is a fixture of James Bond films. The most famous exchange of these occurs in *Tomorrow Never Dies*; Bond tells Miss Money Penny, "I always enjoyed learning a new tongue," to which Money Penny replies, "You always were a cunning linguist, James" (Spottiswoode 1997).
- 4 That to give someone a sexual compliment is to presuppose that you have a sufficiently intimate relationship with them can also explain why the "compliments" doled out by street harassers seem inappropriate, especially if the target is engaged in activity which suggests she is not open to developing an intimate relationship with a stranger.
- 5 On "face" and its connection to politeness norms, see Goffman (1967) and Brown and Levinson (1987).

- 6 Though it is not normally linked to the topic of flirting, several linguists have discussed this phenomenon of intimacy accommodation. Wayne Beach and Phillip Glenn, for example, note that speech which might initially be regarded as a “potential impropriety” can be interpreted as a “bid” for intimacy, which the hearer may accept or decline (2011: 221). Similarly, in his analysis of banter, Geoffrey Leech notes that “underpoliteness can have the opposite effect of establishing or maintaining a bond of familiarity” (1990: 144).
- 7 Sometimes legal definitions place requirements on the contexts in which sexual harassment is possible, for example stating that sexual harassment can occur only in contexts in which there is an asymmetric power relation between the harasser and the victim. Such legal notions seem to diverge from our everyday understanding of sexual harassment, which does not require such contexts.
- 8 Developing a general sensitivity to social cues may be easier said than done for neurodiverse people, and we should be more lenient when they misinterpret others’ actions. More work must be done to explore how flirting interactions can be accessible and enjoyable for neurodiverse people; it may be that flirts need to be more transparent about what they are doing in these cases.
- 9 This is certainly how sexual consent is regarded in UK law (Sexual Offences Act 2003). See Dougherty (2014) for a philosophical defense of the revocability of consent.

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