

An inclusive account of the permissibility of sex: considering children, non-human animals, and people with intellectual disabilities.

Adrià R. Moret

Independent Researcher/Currently unaffiliated

Barcelona, Spain

adriarodriguezmoret@gmail.com

ORCID: 0000-0002-2270-3730

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Abstract: A complete theory of the permissibility of sex must not only determine the permissibility of sex between typical adult humans. In addition, it must also adequately take into consideration sex acts involving non-human animals, children, and humans with intellectual disabilities. However, when trying to develop a non-discriminatory account that includes these beings, two worrying problems of animal sex arise. To surpass them, I argue for a reformulation of the standard theory. To produce a truly inclusive account our theory should be focused on assent, dissent, the significance of sex, and the similarity of the beings engaging in the sex act.

Keywords: Sexual Ethics · Animal Ethics · Consent · Children · Intellectual Disability · Discrimination

1. An inclusive account

There is general consensus among philosophers (to which I will refer to as the standard theory of the permissibility of sex) that valid or genuine consent by all the parties of a sex act is necessary for the moral permissibility of the sex act (Archard 1998; Halwani 2020; Mappes 2017; Miller and Wertheimer 2010; Primoratz 2001; Wertheimer 2003).¹ However, almost all accounts of the permissibility of sex have been solely focused on the sexual relationships and interactions between typical adult humans.² And, since a complete theory of the permissibility of sex should aim at accounting for all possible instances of sex, it should also take into account and examine the sex had with and between all kinds of individuals. Even so, as I will now discuss, there are three kinds of individuals that have traditionally been somewhat excluded from the literature.

It has been estimated that the 99% of sentient beings in existence are wild non-human animals (Tomasik 2009). If this is so, the vast majority of the sex that takes place in this world is not between adult humans, but rather, between wild non-human animals. Thus, a theory of the permissibility of

¹ An exception to this general consensus is (Gardner 2018) which denies that valid consent is required for the moral permissibility of sex. However, this is one of the few, if not the only, instance in which this minority view is defended in the literature.

² The term “permissibility” throughout this paper refers to moral and ethical permissibility; what is right and wrong (when a moral agent is involved) and what is good or bad. My argument is not intended to imply anything regarding what should be allowed in a good society or specifically what is reasonable in contrast to moral recklessness.

sex, ought to tell us something about sex between non-human animals (including both domestic and wild one's). Ignoring animal sex is like ignoring the elephant in the room.

Furthermore, it has been estimated that the global prevalence of child sexual abuse is 19.7% for girls and 7.9% for boys (Pereda et al. 2009). This indicates that (even if not willingly) a significant proportion of human children engage in some form of sex with an adult. A complete theory of the permissibility of sex should also take these cases seriously, especially because of their ethical importance. Furthermore, it should say something about the permissibility of sex between children.

Finally, there are also human adults who have sexual urges and are sexually mature but have significantly lower intellectual capacities than the average human adult. This also raises important questions for a theory of the permissibility of sex. For example, whether sex can ever be permissible between people with such conditions, between someone without the average intellectual capacities and a human adult with such capacities, and also, what is relevant in determining the permissibility of these kinds of relationships.

An adequate theory of the permissibility of sex does not only have to take into account the sex had by these other kinds of beings but should also be free of any unjustified bias, such as discrimination. This raises two problems for the standard theory, and in order to avoid these, it will have to be reformulated in fundamental and important ways.

The paper's structure is the following. In the second section, I argue for the importance of rejecting discrimination with regard to non-human animals, children, and people with severe intellectual disabilities when evaluating the permissibility of sex involving them. In section three, I present the first problem of animal sex (which emerges once we have rejected discrimination against non-human animals) and I argue against three accounts in the literature which have addressed it. Additionally, I also show how a possible solution to this first problem (i.e. extending the standard theory of the permissibility of sex to include non-human animals), raises the second problem of animal sex. In the fourth section, I put forward and argue for a solution to both problems based on assent, the significance of sex, and the similarity between the beings involved in the sex act. Finally, in section five I argue against two possible objections to my account.

2. Rejecting discrimination

If a theory of the permissibility of sex ought to take into account new and different kinds of beings, it should do so without unjustifiably neglecting their interests or rights. In other words, they should be included without being discriminated against. What is relevant in determining what entities should be of concern to a theory of the moral permissibility of a given act is whether those entities can be affected in any morally relevant way by that kind of action. Therefore, since sentient humans and non-human animals are moral patients, and engage in or are affected by sexual relations, if discrimination wants to be avoided, they should all be the kind of entities a complete theory of the permissibility of sex is concerned about.

Species membership in itself, I contend, is morally irrelevant in relation to the permissibility of sex. Usually, belonging to any given species is highly correlated with possessing a set of capacities, these sets vary widely from species to species, and thus, individuals of the same species share many more of the same capacities with each other than between them and individuals of other species. However, this does not imply that species membership is in itself morally relevant, instead, what may be morally relevant are the capacities of the individuals independently of the species that they are classified as. In general terms, one's species is, according to the *Biological Species Concept* definition in the field of biology, a description of the group of individuals with whom one can produce fertile offspring (Queiroz 2005), or according to the *Genetic Species Concept* definition, the group of individuals with whom one shares a sufficiently similar DNA (Baker and Bradley 2006). The

similarity in some beings' DNA and one's ability to produce fertile offspring with other beings are morally irrelevant features in relation to granting or withdrawing the right to have sex. A rule or criterion that appeals to any given fact about any given kind of relationship between two beings in order to justify why such a relationship is morally impermissible must appeal to a fact about the relationship that is in some sense, bad. But it seems that having a very different organization of cytosine, guanine, adenine, and thymine or not being able to biologically create through reproduction a being that is herself able to reproduce, is not in itself harmful to any of the beings involved in the sex act. The actuality or truth of either of these facts when having sex does not in itself cause suffering, entail the violation of rights, constitute a harm to dignity or count against either of the interests of the beings involved in the sex act nor to third parties. If the beings involved in interspecies sex are harmed or wronged it is not intrinsically because of a difference in species membership, but rather due to differences in certain capacities or traits that may be usually associated with species membership even if they are not by themselves differences in species, that is, in DNA or in the capacity to produce fertile offspring. This can be illustrated by the case of Superman. He is not of the human species, he is a Kryptonian. We can imagine that he cannot produce fertile offspring with any human and that his DNA is very different from the DNA that humans have, however, this would not render the sex between Superman and a human (such as Lois Lane) impermissible.³ If Superman had sex with Lois Lane the fact that he is not human is not in itself bad for anyone. Furthermore, the predominant view in animal ethics is indeed that species membership by itself is not morally relevant, in other words; there is a wide rejection of speciesism. Here are only some of the most prominent accounts that reject such discrimination (Cochrane 2012, 2018; Donaldson and Kymlicka 2011; Korsgaard 2018; McMahan 2003; Nussbaum 2007; Pearce 1995; Regan 2004; Singer 2009). Then, species membership cannot by itself be used as a criterion to determine the permissibility of sexual relationships or interactions.

Someone's age, by itself, may or may not be morally relevant in determining the permissibility of that individual having sex with someone else. Whether age is morally relevant in this sense depends on how one defines it. Among other accounts, Joonas Räsänen puts forward three standard accounts of age (Räsänen 2020). On the first account, which he calls the Chronological account, the amount of time one has been alive determines how old one is. Age is the number of days, months, or years one has existed after one's birth. According to the second account, the Experiential account, the amount of time one has been conscious and lived one's life determines how old one is. And, finally, on the Biological account, one's biological fitness and health determine how old one is. Later on, I will argue against the Biological account, on the grounds that one's biological or sexual maturity, in fact, does not matter in itself when determining the permissibility of sex. In what follows I will focus on the two other accounts.

On any of these two definitions, age by itself cannot be morally relevant when determining the permissibility of sex. If it were morally relevant, its moral relevance would, presumably, deem impermissible sex with five-year-olds. However, similar to the five-minute hypothesis put forward by Bertrand Russell in his book *Analysis of Mind* (Russell 1921), imagine that everything began to exist five years ago and that all of our records and memories before that time were illusions. If this were the case, both according to the Chronological and the Experiential account, all of us, would be no more than five years old. However, even though according to these definitions we would be five-year-olds, it is not the case that all sex between humans would become impermissible. Then, it is not the case that age, at least using some of the most common definitions, is, by itself, morally relevant when

³ At the very least, non-reproductive sex between Superman and Lois Lane is permissible assuming that she knows about his secret identity. According to some, the fact that Superman hid this relevant piece of information would render Lois' choice unable to meet the criteria for genuinely informed consent.

determining the permissibility of sex. We must, again appeal to some other morally relevant capacities instead of appealing to age even if these are highly correlated.

Finally, we also ought to avoid appealing to someone's disability if that kind of disability is morally irrelevant when determining the permissibility of sex. Not doing so would be ableist. However, it is not the case that disabilities are never relevant. For example, when determining who should be able to drive a car, it is clearly relevant whether the individual *can* drive the car, and whether the person has the ability to do so safely for herself and for others. Some people have disabilities that make it impossible for them to meet the required criteria to drive a car, and thus, because their disability is indeed relevant in this example, not granting them the right to drive a car is not ableist nor discriminatory in any way. Thus, there will also be cases where the permissibility of sex depends upon having certain traits or abilities. In these cases, having certain severe intellectual disabilities or not will in itself be relevant in determining the permissibility of sex.

By adopting a non-discriminatory attitude towards non-human animals, children, and humans with intellectual disabilities we will be able to adequately take them into consideration in relation to sexual permissibility, and thus, further advance a complete theory of the permissibility of sex.

3. The two problems of animal sex

The first and most apparent problem of animal sex raised by an inclusive theory of the permissibility of sex is whether rejecting discrimination based on species membership implies that human-animal sex is sometimes permissible. Now I shall present three accounts present in the literature that target this problem, and argue why they are ultimately unsatisfactory.

In a book review, Peter Singer contended that the taboo against human-animal sex highly resembles all of the once-present taboos against any form of non-reproductive sexual activity such as masturbation, sex with contraception, or homosexual sex. These taboos are now widely seen as unjustified and he holds that the one against human-animal sex may well be so since it is not necessarily the case that this kind of sex causes suffering to non-human animals (Singer 2001).

Singer only focuses on whether the sexual act, like any other action, will produce suffering or not, and on his view if it does not, and if there is no alternative action that would produce more net positive well-being, then the taboo against it is irrational (Lazari-Radek and Singer 2016). If Singer is right and his hedonistic act utilitarian position leads to this implication, it would also imply the very implausible conclusion that the "taboo" against having sex with a child or a human with a severe intellectual disability is irrational if there is no suffering caused. These extremely implausible implications follow not from a rejection of speciesism but follow from his interpretation of his normative theory, which only attaches importance to consent in terms of the degree of utility it produces.

Neil Levy develops Singer's view and completely endorses the permissibility of sex with animals granted that there is no harm caused to the nonhuman animal (Levy 2003). He contends that the animals' consent is not required for the permissibility of human-animal sex, since, consent is only required when "the subject who is to give or withhold consent is normally, or at some time in the future will be, able adequately to understand the psychosocial significance of sexual activity" (Levy 2003: 447). However, as he acknowledges, this criterion by itself entails the absurd conclusion that harmless sex between an adult human and a child with severe intellectual disabilities (who will never be able to adequately understand the psychosocial significance of sexual activity), is permissible (Levy 2003: 448). To avoid this conclusion he appeals to virtue ethical considerations arguing that it is unvirtuous to have harmless sex with humans who cannot give informed consent because it would make typical adult human beings acquire the disposition to treat others as mere objects.

The author only extends this last principle to members of the human species and leaves out all non-human animals (Levy 2003: 449). Why should harmless sex without informed consent with any other human be considered unvirtuous, but unproblematic when it is with someone of a different species? The criterion employed by Levy is almost certainly discriminatory since it differentiates between all of those who are human and all of those who are not, and he presents no justification for the claim that not being able to produce fertile offspring with any human or having very different DNA should make any difference on the virtuousness of having sex. Thus, since we must avoid discriminatory judgments, we ought to reject Levy's criteria. Both Levy's and Singer's arguments fail since they either lead to the extremely implausible view that the taboo against having sex without suffering and without informed consent with a severely intellectually disabled child is irrational or they must resort to arbitrary discrimination in order to explain why this kind of sex is not permissible.

Thirdly, in contrast with Singer and Levy, Tony Milligan does argue that even if we reject the moral relevance of species membership, sex between non-human animals and human beings is wrong. According to his view, for sex to be permissible there not only needs to be genuine consent given by all parties involved but there must also be the possibility of subsequent complaint. This complaint need not be to some individual in particular. But, on the other hand, it cannot be only a hypothetical appeal to some ideal Kantian tribunal or to a Rawlsian committee of disinterested agents. Instead, the complaint must be directed towards some non-specific actual audience which has some relevant authority (Milligan 2011: 250). And, since actual non-human animals cannot give any meaningful kind of subsequent complaint, sex with them is off-limits. According to the author, the possibility of subsequent complaint is necessary for two reasons. First, because the other person might have harmed us during the sex act, exposed us or someone we care about in a harmful way, or might have concealed some information from us that, if known, would have changed our disposition to engage in the sexual interaction with them (Milligan 2011: 249). And secondly because, it seems that on this view, the possibility of subsequent complaint is required for the parties involved to have practical wisdom about sex. That is, for them to be able to "know how to interact, engage with, and attend to others (of whatever sort and whatever species) in a loving, respectful, and sexualized manner" (Milligan 2011: 252). The possibility of subsequent complaint is a learning mechanism and a way in which the possession of practical wisdom by the individuals engaging in the sex act can be secured.

In my view, there are three main problems with this proposal. Firstly, there is no need to come up with the further requirement regarding the possibility of subsequent complaint because when the reasons that are given above (such as the causing of harm or the concealment of relevant information) take place, the impermissibility of the sex act can already be justified just in terms of the usual conditions. It would be wrong because one of the parties causes non-desired harm or suffering to the other and because, as I shall further explain below, the consent then given would not be valid because it would not be genuinely informed.

Secondly, even though it is indeed the case that the possession of practical wisdom about sex by the parties involved in any given sex act might be required for the moral permissibility of the sex act, it seems implausible to suggest that the possibility of subsequent complaint is required for this to be the case. According to Milligan, the complaint has to be directed to an audience with some kind of authority, and in some cases, for it to be adequate it may have to be directed towards the other party involved in the sex act (Milligan 2011: 250). Imagine, then, someone who only has sex on one-night stands or other forms of casual sex where the parties involved lose contact forever and know that they will never be able to give subsequent complaint to each other. Does this person necessarily lack practical wisdom about sex? It seems not. They may be perfectly able to adequately and respectfully interact, engage with, and attend to others when having sex. Therefore, appealing to the necessity of practical wisdom about sex also seems to be unsatisfactory in justifying why the possibility of subsequent complaint is necessary.

Thirdly, as the author himself acknowledges, a possible problem with this view are the cases in which one of the parties involved in the sex act might be “on the brink of separation from any audience whatsoever” (Milligan 2011: 250). It is implausible that sex between two consenting typical human adults is morally impermissible just because one of them will be unable to give a subsequent complaint. This view is too demanding. It entails that sex with someone who might be about to die, or who might face some other form of radical isolation just after the sex act, is impermissible in the same way in which sex with non-human animals is since what would make sex with non-human animals wrong would also be present in these cases. Furthermore, this also includes the already discussed instances of one-night stands or other forms of casual sex, in which there will be no possibility of subsequent complaint. It is implausible that both these more uncommon and more familiar instances of consensual sex between human adults are as wrong as sex with non-human animals.

To respond to this objection Milligan points out that these cases are unusual, that they are not under the normal conditions (Milligan 2011: 250), but on the one hand, as we have seen, they need not be unusual, and on the other hand, even if all the cases were unusual, according to the complaint condition it still follows that they are impermissible. It is not clear why an exception to the rule should be made in the cases which seem to break it, even if they are unusual. An account of the necessary conditions of the permissibility of sex must not evade those cases which could precisely be used to argue against the account because they show how it leads to implausible conclusions.

Then, the view that the possibility of subsequent complaint is necessary for the permissibility of sex acts does not seem very plausible. Since it is not the case that what plausibly seems relevant to determine the permissibility of sex acts is whether there is the possibility of subsequent complaint, the theory does not successfully explain why sex with non-human animals is impermissible even if species membership is not morally relevant.

A first *prima facie* alternative to these three accounts to solve the first problem of animal sex is basically to endorse the standard theory of the permissibility of sex and apply it to these other three kinds of beings. According to the standard theory, genuine consent by all the parties to a sex act is required for the moral permissibility of the sex act. This can explain why sex between typical adult humans and non-human animals, human children, or humans with severe intellectual disabilities is impermissible—these beings cannot consent to sex.

The central claim of the usual proposals to determine the permissibility of sex is that genuine or valid consent is necessary for the moral permissibility of any given sex act. This type of consent is not only morally relevant in sex but rather, it is supposed to be morally transformative in many facets of life. It can turn “a battery into a handshake; a sexual assault into a kiss . . . a theft into a gift” (Hurd 2018), an aggression into surgery, and murder into voluntary euthanasia (Primoratz 2001: 201). It is a kind of consent that is capable of transforming morally impermissible acts into morally permissible ones. It has been argued that in order for genuine consent to be morally transformative in this way, in order for it to transform non-consensual sex (or rape)⁴ into consensual and permissible sex, it has to meet two conditions. It has to be genuinely *informed* and genuinely *voluntary* (Eyal 2019, Fall 2012; Mappes 2017; Wertheimer 2003, 2017).

For sex to be genuinely informed, all of the parties involved in the sex act must understand the consequences and the nature of the act. And none of the parties involved can withhold or lie about information to the other parties if that information would be relevant in their decision-making in relation to the sex act. This requirement can not only fail to be met due to someone’s deceitful actions but also as a result of the nature of the beings involved. Because of a being’s capacities, she may not be able to understand such information and thus fail to meet one of the requirements of genuine consent. This is, of course, the case of children and people with severe intellectual disabilities, they

⁴ For discussion on whether rape is adequately described as non-consensual sex, see (Hörnle 2018).

lack the capacity to understand the social, psychological, and physical implications of sex (Archard 2018: 179; Ehman 2000; Finkelhor 1979; Mappes 2017: 277; Primoratz 1999; Spiecker and Steutel 1997).

As we have seen, the other condition necessary for genuine consent is for it to be genuinely voluntary. This is clearly another crucial aspect necessary for consent to be morally transformative. If X has sex with Y, it is also crucial that the X wants to have sex with Y and does so voluntarily. A way in which X can fail to do so voluntarily is if she is coerced by Y. Thomas Mappes has pointed out three ways in which Y may coerce X to have sex with her. The first kind of coercion is occurrent coercion: Y may simply employ the use of physical force to make it impossible for X not to have sex with her. X would not be giving voluntary consent because she would not be acting at all, she would be entirely incapable of having any kind of control over the sex act (Mappes 2017: 279). Secondly, there can be dispositional coercion: if X has sex with Y, Y dispositionally coerces X if she threatens to harm X unless she has sex with her. Here, the consent is not genuine because it is not voluntary in the relevant sense. If X does not comply, she will be harmed and thus, her capacity to freely choose has been extremely reduced (Mappes 2017: 279). And finally, there is vulnerable coercion: Y takes advantage of X's desperate and vulnerable situation in order to have sex with her (Mappes 2017: 287). This may involve a case where Y only gives resources that X desperately needs or only helps X to get out of the desperate situation if X agrees to have sex with her. This second condition of voluntary consent can also fail to be met due to the capacities of the beings involved in the sex act. For example, people that have severe intellectual and/or physical disabilities may always be unable to report disapproval or to physically resist.

Simply by extending the standard theory of the permissibility of sex to non-human animals, it seems that the first problem of animal sex can indeed be resolved: even if we reject the relevance of species membership, human-animal sex is not permissible, because non-human animals, like children and people with severe intellectual disabilities, cannot give genuinely informed and voluntary consent. However, if non-human animals cannot meet the criteria of genuinely understanding the nature and the consequences of sex, if they cannot give genuine informed consent to sex, how can *any* kind of sex involving non-human animals not be bad? This is the second problem of animal sex. Is the majority of sex that occurs (sex between non-human animals of the same species) always morally undesirable, since it is not consented to? This view, like the one that affirms the permissibility of human-animal sex, is also very implausible.

Milligan has suggested something similar to this second problem of animal sex. He considers an objection to his proposal of subsequent complaint according to which since there could be no recourse to subsequent complaint in consensual sex between non-human animals, his proposal, contrary to the common-sense view, should consider it wrongful (Milligan 2011: 253). However, Milligan dismisses such objection by arguing that such sex, in his view, cannot be wrong since any given action can only be morally salient if there is a moral agent that can be responsive to moral considerations as reasons for acting or refraining to do so or that is herself culpable for lacking such responsiveness (Milligan 2011: 253). And since non-human animals lack this kind of moral agency or responsiveness to moral reasons and cannot be blamed for it, "consensual" sex between them cannot be wrong.

There are two problems with Milligan's dismissal of the second problem of animal sex. First, as he suggests, it may be the case that what has been outlined above does not rule out the permissibility of sex between humans and non-human animals. In this view, sex between non-human animals and humans could be permissible if, as the non-human animal, the human were not able to be responsive to action-related moral considerations of the relevant sort, this he suggests might include "(genuinely) feral humans", but more plausibly, in my opinion, people with some specifically relevant intellectual disabilities and human children (Milligan 2011: 253). Then, on his proposal, the implausibility of the moral permissibility of sex between humans and non-human animals is not entirely avoided.

Secondly, and most importantly, while it is plausible that non-human animals cannot wrong each other due to a lack of moral agency, they can still hurt and harm each other. They can interact in ways that are morally undesirable and bad. To make his point Milligan compares the objection he is trying to respond to with the “familiar argument in defense of meat-eating: *they do it to each other so why can't we?*” (Milligan 2011: 253). Despite the fact that this is a bad justification for eating meat, there has been much scholarly debate on what has been known to be “the predation problem”, in which the ethics of the harms that wild animals inflict upon each other through predation are discussed, see, for instance (McMahan 2015; Milburn 2015 and Sapontzis 2011). Then, like tsunamis, children fighting and hurting each other or non-human animals killing one another, sex between non-human animals might also be bad and morally undesirable even though no agent is responsive to the action-related moral considerations. Therefore, the second problem of animal sex still stands.

It seems that when we adequately extend the standard theory to non-human animals, if we want to explain why human-animal sex is impermissible without making discriminatory judgments by arguing that non-human animals cannot consent to sex, we are led towards the other implausible view that all sex between non-human animals is morally undesirable. It appears that either human-animal sex is permissible or that all sex between non-human animals is morally undesirable. To solve this conundrum, we must not only extend the standard theory of the permissibility of sex to non-human animals but an important reformulation of the theory is also required.

4. Sexual assent, similarity, significance, and the morality of sexual relations

As shown by the second problem of animal sex, the solution to the first problem of animal sex is problematic, thus in some sense, none of the problems are resolved. Here I will now present a reformulated version of the standard theory of the permissibility of sex in order to solve these two problems.

As already discussed above, consent is morally transformative beyond sexual relations. There are many actions such as the already mentioned example of a medical surgery where it is through consent, that the action becomes permissible. By giving consent one waives one's rights or claims against others. This means that consent is a normative power. That is to say, it enables individuals to directly change the duties and rights possessed by themselves and others. Some have argued that in order for one's rights or claims to be waived, by giving consent, the consent (as other normative powers) must be intentionally given (Owens 2012: 165; Enoch 2014: 302–03; Tadros 2016: 209). While others contend that it need not be intentionally given, but that it must be given either via a directive (such as ordering or proposing the other party to do something) or via expressing permission (Dougherty 2021: 117, 121). Either way, as pointed out (in part) by Richard Healey and Angie Pepper, non-human animals are not only unable to give sexual consent, but cannot give any kind of consent (Healey and Pepper 2020: 1231).

While some non-human animals may indeed possess some normative concepts it seems implausible that they meet the conditions necessary for intentionally giving consent (Healey and Pepper 2020: 1231) or giving directives or permission to have their rights or claims waived. These conditions are understood to be: being able to understand the concepts of right, consent, or permission, the knowledge of the relevant normative facts, and the ability to form and communicate the relevant complex intentions concerning such concepts (Enoch 2014). Without understanding these normative concepts, it is not only the case that non-human animals cannot consent intentionally, but they are also unable to give directives or permission to consent, that is, to do that which they cannot

even understand.⁵ Thus, independently of whether consent must be intentionally given or not, non-human animals are unable to consent because they do not have the capacity to understand that by performing a certain action they are waiving a claim and freeing other agents from an obligation they would have otherwise had towards them. They cannot understand either that by performing another action they may be waiving a right and permitting others to do that which would otherwise have been impermissible for them to do (Healey and Pepper 2020: 1231).

However, Healey and Pepper contend that there is yet another—albeit less powerful—way to determine the scope of permissible and impermissible interactions between humans and other animals. These other normative tools that they develop are animal assent and dissent (Healey and Pepper 2020: 1233). An individual assents to X if they wilfully affirm X. And in order to establish wilful affirmation there needs to be observable non-linguistic behaviour (in the case of non-human animals) “that gives us reason to believe that an individual desires, prefers, or chooses the option or state of affairs” (Healey and Pepper 2020: 1234).

In their paper, Healey and Pepper mainly discuss everyday interactions between humans and domesticated animals, such as petting or going for a walk. For example, if a dog comes towards you in a playful manner, if she touches your leg and stays when you pet her, she is (plausibly) assenting to the petting, but, in contrast, if you go towards the dog and try to pet her but she moves away, then, she is (plausibly) dissenting, and if you were to chase her and pet her anyways you would not be respecting her autonomy. In this case, it is quite clear what are the conditions to determine if the individual assents or dissents. But importantly, this is not what is only relevant, rather, as in the case of consent, for the assent to be morally transformative it must be valid, which means that it must “be proffered voluntarily and with sufficient understanding” (Healey and Pepper 2020: 1237). These are the conditions for valid assent which, as in the case of valid consent, can be called *genuinely informed assent* and *genuinely voluntary assent*.

In the case of giving genuinely informed sexual assent and genuinely voluntary sexual assent, we can borrow and keep in mind the previously mentioned conditions for the case of consent. Genuinely voluntary sexual assent must not be occurrently, dispositionally or vulnerably coerced and genuinely informed sexual assent must consist in adequately understanding the nature and the consequences of the sexual act. Furthermore, it is important to mention that while Healey’s and Pepper’s paper focuses on non-human animals, the concepts of assent and dissent can be also extended to all the other individuals who do not meet the criteria required to waive one’s rights and claims by giving consent, which includes children and humans with severe intellectual disabilities.

So, why then are non-human animals able to give genuinely informed and genuinely voluntary assent to sexual relations between each other but not with humans? To understand why it is important to take into account the *significance* of sex.⁶ There are many activities humans cooperatively engage

⁵ Lacking this capacity to understand the relevant normative concepts makes it impossible for them to give intentional consent, which is what distinguishes the cases involving non-human animals, children and people with severe intellectual disabilities from the cases with “typical” humans presented in (Dougherty 2021: 97–86) to argue against the view that intentionally given consent is required. The typical humans in each of the cases have the capacity to intentionally consent but fail to do so due to mistakes or false beliefs (Dougherty 2021: 87, 93), which (under the conditions of the cases presented) makes it reasonable for the consent receiver to believe that intentional consent (or something very closely related to it) is being given. This does not hold in the cases of non-human animals, children and people with severe intellectual disabilities. Due to their lack of the relevant intellectual capacities for understanding the relevant normative concepts, it is always unreasonable for the consent receiver to believe that they are intentionally waiving their rights or claims.

⁶ In employing the terminology “the significance of sex” I am in no case referring to the significance view of sex employed by David Benatar (Benatar 2002) which rejects liberal sexual morality. Even if there is something significant about sex in the way I contend, it does not follow that it must be experienced only in the context of love, deep affection, etc. Rather, all sex, including casual or promiscuous sex may be permissible if valid consent is secured even if sex is significant (Halwani 2018).

in. We talk with each other, we work collaboratively, we play music and sports together and sometimes we have sex with one another. Sex has a sort of significance for us that usually playing sports or eating do not have. In contrast to other activities, sex between any two humans does not only consist of the certain ways in which their bodies interact with each other, the subjective sensorial experiences they have, or the amount and kinds of physical pleasure and pain that they may feel and lack thereof. The consequences are much broader, these *other* (mainly psychological and social) consequences can be understood in terms of the significance of sex. This significance is both private and social. We give considerable importance to the privateness of our sexual experiences with others but also to how these are perceived by other members of our social groups. Sex is something deep and messy, and to a greater or lesser extent, it taps into our hopes, fantasies, insecurities, and weaknesses in a way that, other activities usually do not. Having sex with someone involves directing our attention to them and stirring it away from them, showing our affection and love for them but also our indifference (Milligan 2011: 252). It involves sharing our bodies, our most private space with another who usually also stands in a more-than-usual vulnerable state. All of these aspects of the significance that sex has for each of us plausibly vary among individuals and are a result of the various intellectual, emotional and social capacities that we possess. Furthermore, by having these capacities we are not only able to experience this significance, but we are also able to understand and perceive the significance that having sex with us has for others. Then, we are only able to understand what it signifies for another being to have sex with us if we have capacities relevantly similar to theirs. If we do not, their capacities might be so different from ours that we plausibly may not be able to understand the significance that it has for them to have sex with us due to its highly private, subjective and intimate nature. And for the same reason, the other being is only able to understand what it signifies for us to have sex with them if they too have capacities relevantly similar to ours.

Therefore, the significance of sex depends on the various intellectual, emotional and social capacities had by the parties involved. In addition, in any given sex act there are also expectations and assumptions by each party on what the other party may be able to communicate and understand and in which manners their body may be able to move or react. Understanding what are the actual capacities of this sort possessed by the other party and their expectations and assumptions towards your capacities of this kind is also dependent on either having capacities similar to those of the other party and knowing so or having high intellectual capacities and having some kind of knowledge about their nature. And although this may depend in part on the biological or morphological similarity between the beings in question, what is most and ultimately more relevant are the previously mentioned psychological, social, and intellectual capacities, the latter of which also determines the ability to understand the (more bodily or biological) capacities of the other being and what (more bodily or biological) consequences could the sex act have for them.

Even though in any given sex act being able to understand the consequences that result from these communicative and physical capacities may be important, quite plausibly, understanding the consequences that result from the significance that the sex has for each being is much more important. Understanding these latter consequences of a given sex act is crucial for its moral permissibility, and thus, the beings must have similar intellectual, emotional and social capacities for the sex to be permissible. This is so because, if one lacks or has the given capacities but to a lower degree, they will not be able to understand the consequences that result from the possession of those specific capacities by the other party. This then would be morally problematic. At least one of the beings involved in the sex act, would not understand the consequences of the sex act that if understood, could have plausibly shaped their willingness or predisposition to engage in the sex act. The criteria for genuinely informed assent would not be met. And this would merely be a result of the capacities possessed by the being in question.

To better illustrate this we can compare sex between non-human animals of the same species (sex between two horses) and interspecies sex between a horse and a human. Each of the beings involved possesses the typical intellectual, social, psychological, communicative, and physical capacities for their species. Furthermore, imagine that in both acts, none of the beings endures any kind of suffering or physical injury and that in both cases, the two parties involved show a desire to engage in sex and voluntarily move their bodies in such a way that makes the sex take place. They both wilfully affirm the sex act in both cases.

When it comes to same-species sex, the consequences of the sex act for one horse or what it might mean for them may be quite similar to what it might mean for the other horse since they have very similar intellectual, social, emotional, communicative capacities, whereas this is not the case when having sex with the human. The human and the horse do not share the same relevant capacities. This results in the fact that the horse cannot perceive and is not aware almost in any shape or form of what it signifies for the human to have sex with them. Crucially, what is most important is not that the horse cannot know the content of the significance, but rather that they cannot even begin to understand in what kind of ways having sex with them may be significant to the human. The horse cannot understand that by using them sexually the human may be satisfying some hopes or fantasies. That the human may be putting both of them in a position to be perceived in a particular way socially or that the human may have certain kinds of expectations or assumptions related to being sexually gratified by a non-human animal. All of this does not occur in the sex had between the two horses, and if the horse knew what having sex with the human may signify for that human, very plausibly there is the possibility that they would be less inclined and willing to engage in such sex.

Indeed, sometimes when we choose not to have sex with someone it is as a result of knowing some of the social implications it may have or how it may relate to our hopes and expectations, as well as theirs. In typical sex between humans we know the possibilities of what it can signify for other people to have sex with us; we know that our sexual partners have hopes, fantasies, expectations, assumptions, and desires to be perceived in a certain way socially which are related to sex even if we do not know what the content of these are. We are aware of what the significance of having sex with them might be for them. And all of this, which is not present or sufficiently less present in cases of human-animal sex, is present in typical human sex as a result of the fact that having sex with other typical adult humans is significant in similar ways for us than it is for them due to the fact that we share the same relevant capacities.

From all of this, then it can be concluded that because typical adult humans have very similar intellectual, social, emotional, communicative, and physical capacities between each other, they can indeed understand the relevant consequences of these capacities, meet the criteria for genuinely informed consent and give valid consent to sex with each other. But since the relevant capacities had by them are very different ones than the ones possessed by non-human animals but also by children and humans with severe intellectual disabilities, they cannot sufficiently understand the consequences of the significance that sex for typical humans, they are unable to meet the criteria for genuinely informed assent and thus, cannot give valid assent to having sex with typical adult humans.

The standard theory of sexual permissibility has to shift towards taking into account the fact that having sex with different kinds of beings, results in different degrees of understanding the consequences of engaging in such sex, and that this, in turn, might make sex with some beings permissible and sex with other beings impermissible or morally undesirable. However, determining the understanding of the nature and the consequences of the sex act that each of these beings has is largely contingent on empirical data and case-by-case analysis. Here I will only be able to make vague generalizations about the implication of the reformulated theory.

What are the ethical consequences of sex involving non-human animals according to the proposal I have put forward? There are various cases in which the necessary conditions for the permissibility of

sex involving non-human animals could be met: One case is between animals of the same species. They are very similar beings and, thus, as in the case discussed above, they present no ethical problem from the reformulated account. Another case might be some of the actual instances in which animals of different (but closely related) species have sex (Gröning and Hochkirch 2008). They may not be significantly more distinct than two beings from the same species. Depending on the degree of understanding of the nature and consequences of having sex with the other being, which very plausibly depends upon the degree to which the two beings resemble each other, these cases of interspecies sex may sometimes not be undesirable.

The last case that comes to mind is the sex between possible (but not actual) non-humans and humans. If some non-human animals from another species that highly resembled the human species had sufficient relevant agency and intellectual capacities, sex between the two species could be permissible. Now, of course, there is no actual non-human animal species, that we know of, that meets these criteria. We can, however, conceive of two possible kind of cases in which they could be met. First, cognitively sophisticated extraterrestrials like Kryptonians, and alike. And secondly, if as some authors have proposed we were to enhance the intellectual capacities of non-human animals (Chan 2009; Pearce 1995), then if these capacities were sufficiently enhanced, sex between enhanced non-human animals and humans, could also be permissible in at least some scenarios. These two examples show that while in practice the theory can distinguish between the permissibility of same-species sex and interspecies sex, this is due to how certain relevant capacities have come to be correlated with certain species, but not due to the alleged importance of belonging or not to any given species.

Although in some non-human species sex usually occurs only when both parties assent and act in a way for the sex to take place, it is also the case that many non-human animals are also forced to have sex with other animals of the same species even if they dissent to such sex. These sex acts, as in the human case, are bad and morally undesirable.

This is so because, on the one hand, when one of the animals involved in the sex act dissents, but the sex act takes place anyway, it will almost always involve the use of coercion and physical force by part of the other animal which will almost certainly cause undesired physical harm or suffering to the dissenting animal. And, on the other hand, in the strange case that a non-human animal is not willfully affirming the sex act, the sex act takes place but they, somehow do not suffer undesired physical harm or suffering, this sex is very plausibly still bad because their body would be used by another being in a way they do not want it to be used. The interests in free agency, autonomy, and self-determination of the dissenting animal would not be respected, and this is a harm to them. As we have seen, even if these harms aren't caused by moral agents, they are still bad for the dissenting non-human animals, and thus, morally undesirable.

What about sex involving adult humans with severe intellectual disabilities? Many of them are clearly sexual beings, they have sexual desires and sometimes act upon those desires, an inclusive theory must take their interests and actions into account. The permissibility of the sex between humans with intellectual disabilities depends upon the kind and the degree or severity of their disability. There are some people with only mild intellectual disabilities that may be capable of adequately understanding the consequences and the nature of the sex act, while others with a more severe intellectual disability may not fulfil these requirements due to their limited agency and capacity to understand the consequences and the nature of any kind of sex. In the case of sex between someone with an intellectual disability and someone with no such disability, a worry arises especially with the voluntary aspect of assent. If the person with the intellectual disability is directly dependent upon the person with whom she is having sex, for example, a caretaker, the former may take advantage of her vulnerable position, and this, as we have seen, is one of the ways for the permissibility condition not to be met; the assent would not be genuinely voluntary. To determine the permissibility or

impermissibility of the sex had by people with intellectual disability, a case-by-case analysis is required since the degrees of disability can vary widely and, as noted earlier, the matter ought to be ultimately determined through the use of empirical data.

Lastly, there are the cases of sexual relations or interactions involving children. In the same way that in the case of humans with intellectual disabilities, the permissibility of sex largely depends upon the degree of the disability, with children, the permissibility of sex will depend on the abilities and capacities possessed by the child. And it is almost always the case that sexual development and the capacity to understand the consequences of sex acts go hand in hand with the age of the child, and thus it can instrumentally or indirectly be used as a measure to determine the permissibility of sex. While no pre-pubescent nor early pubescent children can meet the requirements for genuinely informed assent to have sex with adults nor (plausibly) between themselves, sex between late adolescents is certainly permissible in some cases.

In the account I have presented we find a justification for why sex between late adolescents is permissible if all the parties involved show and act upon a desire to engage in the sex and there is no harm to third parties, while under the same conditions it is not permissible for a full-fledged adult and a late adolescent to have sex. Many of the adults that the average late adolescent knows are usually people that have power over them, such as parents, family members, teachers, or instructors. And thus, the adolescent is in a state of dependence and vulnerability in relation to these adults, the adult may—even if they do not do so consciously—take advantage of their position of power, and this, would be enough to deem such sex impermissible. But here, as in the case of people with intellectual disabilities, to adequately determine the permissibility of the sex involving late adolescents, a case-by-case analysis is also required.

5. Objections

Now that I have presented the reformulated version of the standard theory of the permissibility of sex and explained its consequences, I shall now proceed to present and respond to two possible objections.

Tony Milligan has argued that the mastery of information cannot be the only relevant criterion in determining the permissibility of a sex act (Milligan 2011: 245). Since there could be some kind of child prodigies in sex in the same way that there are mathematical child prodigies who could know the relevant information, and this would, according to such a view, make sex between an adult and this child morally permissible. He finds this implausible so, as we have seen, he proposes that what is relevant instead is whether the parties involved in the sex act have practical wisdom about sex (Milligan 2011: 246). This might be formulated as an objection to my proposal since it heavily relies upon the aspect of genuinely informed consent and assent to determine the permissibility of sex acts and also to determine the difference between the permissibility of sex between typical adult humans and sex between these and the other kinds of beings discussed.

Milligan in different instances both refers to practical wisdom about sex as the knowledge to “adequately interact, engage with, and attend to others ... in a loving, respectful, and sexualized manner” (Milligan 2011: 252) and as having a “practical and adult appreciation of how sex fits into a life, how it can affect the dynamics of relations with others, and how it can involve vulnerability to harm” (Milligan 2011: 246). What is crucial here is whether practical wisdom about sex is something that can be understood and known or if it requires a practical component such as actually having experience in sexual interactions. It is not clear what of these attributes Milligan ascribes to practical wisdom about sex. But, if practical wisdom about sex is not just some kind of information that can be known and understood without actually having had sexual experiences and instead, it is something like having practised sex which results in having some kind of special insight on what it involves or

how it feels like, it could not be required or very relevant in determining the moral permissibility of sex. This is so because no one would have practical wisdom about sex the first time they engage in it, which would implausibly imply that having sex for the first time is always impermissible. If alternatively, practical wisdom about sex is having some kind of knowledge or understanding about sexual relations, it is something very similar to understanding the consequences of the significance of sex for the beings involved in the sex act. But then, we can conceive of a similar but broader child prodigy in sex objection. In it, the child knows or understands not only the information known by the child in Milligan's objection but also has both practical wisdom about sex and a genuine understanding of the consequences and the nature of the sex act to the same degree as an adult. Thus, the objection still would not be avoided. From now on I shall conceive of the child prodigy in sex as having this broader kind of understanding.

Why is it counterintuitive to believe that adult-child sex could be permissible even if the child is a prodigy in sex? As previously mentioned, if everyone came into existence just five years ago, it would not be the case that all sex would become impermissible. Sex between these biologically and psychologically mature five-year-old humans (using the chronological or experiential accounts of age) would still be permissible. So, what is the difference between these beings and child prodigies in sex? Why does sex with or between the first group seem permissible, while impermissible in the second case? To find the answer to this question it is useful to establish what are the differences and similarities between the two kinds of beings. The common features between the two kinds of beings are the following: First, the psychological or mental capacities relevant to satisfying the informed and voluntary aspects of consent and the conditions for practical wisdom. Secondly, age, according to the chronological or experiential accounts. And the only (non-trivial) difference between the beings is sexual or biological maturity, or in other words, age, according to the biological account. Then, the critic may propose that the theory is incorrect because it does not take into account sexual maturity, which is what explains that sex is permissible in the case of the sexually mature humans that came into existence just five years ago, but not in the case of child sexual prodigies due to a lack of sexual maturity.

However, this alternative principle we are left with if we want to reject the permissibility of sex with or between child prodigies in sex has one very negative consequence. While the child sexual prodigies that I have described are not actual, but merely conceivable, sexually immature human adults do actually exist. Kallmann syndrome is a genetic disorder that prevents a person from starting or fully becoming sexually mature in the absence of treatment. People who have this condition have underdeveloped sexual organs and poorly defined secondary sexual characteristics (National Institutes for Health 2016; Balasubramanian and Crowley 2017). People with Kallmann syndrome can adequately understand the consequences and the nature of any kind of sexual interaction that they may have, they are also equally able to meet the voluntariness condition of consent equally as other people without the condition.

In trying to avoid the *reductio* and explain why sex between fictional child sexual prodigies and adult humans is impermissible, one would have to adopt the view that we must restrict the sex rights of people with Kallam syndrome on the grounds that, as the child sexual prodigies, they are not sexually mature individuals.

Apart from appealing to the counterintuitiveness of sex involving the child prodigies in sex, in order to justify the relevance of sexual maturity, another justification could be proposed: sexual immaturity will cause any sexual interaction to be harmful, and thus as a precautionary principle, sex involving sexually immature beings should be avoided. However, plausibly there are non-harmful sexual interactions that people with sexually immature organs can and may want to engage with, and in the cases where there is harm due to the immaturity of the organs, there is no need to appeal to the immaturity since one could appeal directly to the harm caused.

Therefore, even though biting the bullet on the permissibility of sex involving child prodigies in sex is very counterintuitive, it is preferable to reject sexual maturity as a principle to determine the permissibility of sex and to protect the right of people with Kallmann syndrome to do whatever they want with their bodies if there is genuine consent and no harm to third parties. Therefore, understanding certain information such as the consequences and the nature of the sex act is still relevant in determining its permissibility even if it entails the permissibility of sex with child prodigies in sex, because the most plausible alternative to this view, is even less plausible since it entails the restriction of the sexual rights of people with Kallmann syndrome.

Having addressed the first objection I shall now turn to analyse how my account must respond to the second one, which questions the need for consent and assent in sexual relations involving non-human animals or children. Joseph J. Fischel has argued that grounding the impermissibility of sex with non-human animals and children in their lack of consent is inadequate (Fischel 2019: 130–131). Somewhat (but not completely) in opposition to this, I have argued that sex between non-human animals or children and typical adult humans is impermissible since they never give valid consent nor assent to this kind of sex. Fischel's main argument to reject the need for valid consent (which can also be used to reject the need for valid assent) in certain sexual relationships, seems to be the following: consent cannot be required for the moral permissibility of sex with children and animals since it is not required for many other actions or activities that typical human adults pursue with children and animals (Fischel 2019: 118, 128). Although Fischel acknowledges that neither human children nor non-human animals can give consent to sex with adult humans, on his view, this is not morally relevant. In the same way that is nonsensical and besides the point to ask "if a horse consents to be washed or trained" (Fischel 2019: 118) or "whether young children consent to be bathed, be spanked, ... be fed vegetables they do not like" (Fischel 2019: 128) so is considering whether they consent when engaging in sexual activity. If sex with them is impermissible, in Fischel's view, it is not because of a lack of consent. And, he further contends, that even though children and non-human animals sometimes express wants, urges, willingness and unwillingness, these are not to be taken as meaningful consent (Fischel 2019: 121, 128).

As we have seen, the expressions Fischel is referring to here, are what Healey and Pepper have called willful affirmation. And the account I have presented, which extends the assent and dissent framework also to other kinds of beings apart from non-human animals is in line with Fischel's assessment that non-human animals and children cannot give valid consent. However, it differs from Fischel's proposal on whether willful affirmation can be morally transformative in certain cases if it meets the required criteria for genuinely informed and genuinely voluntary assent. As I explained, the presence of valid assent can make the difference between morally undesirable coerced sex between animals and morally unproblematic sex between them if the parties involved have willfully affirmed. Or, for example, whether a dog gives valid assent or not can make a difference to whether it is permissible to pet them or not.

Fischel could, as in the case of consent, push back and point out that the animal's valid assent seems not to be required in many instances, such as when we wash them or vaccinate them. The same, he may contend, is true of children. So then, why would we require, their valid assent when having sex with them?

The fact that some actions towards non-human animals, children, and also people with severe intellectual disabilities do not require their valid assent, is no reason for their valid assent not to be required in the case of sex. This can be exemplified by analysing the typical adult human case. Even though it is not the case that there must be valid consent in all interactions between typical adult humans in order for the interactions not to be morally impermissible, it is still the case that sex between typical human adults must be validly consented to in order for it not to be impermissible. When one is being treated as an end in itself by others, when others take actions towards one that are

good for one or in accordance with one's good, one's consent is usually not required. And when it is required it is because one of these actions may indeed not be good for one since one may not want them in a specific and important way. For example, one need not give one's consent, to be praised, benefited, or given a gift.

In contrast, consent seems to be required when one is being used as a means to some end rather than an end in itself. If a boss wants to use a worker's labour or if one wants to use a friend to achieve something, all of this must be done consensually by the party being used, if not, it is impermissible. If there were no valid consent given by the used party, the boss would be exploiting or enslaving the worker and one would be taking advantage of a friend behind their back. The actions become morally impermissible, since, one of the parties is treating the other merely as a means. That is, one of the parties is not acting towards the other in a way that is good for their own sake, but rather, as a way to achieve their goal and is doing so without the party's valid consent (Nozick 1974: 30–31; Scanlon 2008: 107).

Sex is indeed one of the instances in which this is clearest. When two typical adult humans have sex, they are—usually or at least partially—using each other for sexual gratification. If the two parties give valid consent to the sex act it is morally unproblematic, but if one of the parties does not consent to be used in such a manner, sex becomes impermissible.

Then, even if not all actions between typical adult humans need to be consented to in order not to be morally impermissible, others, usually when someone is being used as a means instead of having done to them something that is in line with their good, are indeed impermissible if no valid consent was given.⁷ In the cases involving children, non-human animals and people with severe intellectual disabilities something very similar occurs, but with assent instead of consent. Here, contrary to what Fischel may contend, it is also the case that valid assent is required for the moral permissibility of some actions towards these beings, including sexual acts.

As we have seen, Fischel puts forward the examples of non-human animals getting washed or trained, and children getting spanked, getting fed vegetables they do not like, getting vaccinated or circumcised (Fischel 2019: 118, 128). Here we should non-discriminatorily apply the same standard as in the case of typical human adults but using the framework of assent due to these beings' lack of the capacities required to be able to give valid consent. Thus, it indeed may not make sense to ask for animals' and children's valid assent when doing that which is for their own sake and in accordance with their good, such as getting washed, getting fed vegetables they do not like or getting vaccinated.⁸ But, if what is done to the child, to the animal or also to the human with a severe intellectual disability, is not good for them, a lack of valid assent will (usually) make the action morally impermissible. These kinds of actions towards these beings may be the result of false beliefs that the actions will benefit these beings or an explicit intention to use them to achieve one's goals (although a combination of the two is also possible). While children getting spanked or circumcised might—very plausibly, in my view— be a result of the former, an adult human having sex with a non-human animal or a child and animal or child labour, are plausibly a result of the latter. In these cases where valid assent is required, the individuals being used do not have the capacity to give genuinely informed and genuinely voluntary assent to these actions. However, there are instances where the individual being used can indeed give valid assent and it is morally required or preferable. For instance, the already mentioned case of petting (Healey and Pepper 2020: 1236).

⁷ This moral rule or imperative, however, need not be absolute, and indeed in my own view can be overridden by other ethical considerations. There may be some instances or scenarios where treating others as means even if it is without their consent is the most morally preferable decision since it might be the only way in which to prevent some greater harm such as, for example, some great amount of negative utility.

⁸ This, however, does not rule out the possibility that it may still be better, more morally desirable to do these actions towards these beings when they give valid assent than when they do not.

This, though, as we have seen is not the case with sex since neither non-human animals nor children have the relevant capacities to meet the criteria for genuinely informed and genuinely voluntary assent to have sex with typical human adults. And the fact that valid assent is not required for certain actions between typical adult humans and these beings is not a reason to reject its importance in determining the permissibility of sex. Since, in sex, as with other actions or activities, children and animals are being used as means, and this is what requires the presence of valid assent. Therefore, (partially) contra Fischel, assent (which is analogous in many respects to consent) does successfully determine the moral permissibility of sex involving non-human animals and children.

6. Conclusion

I have argued that the standard theory of the permissibility of sex falls short of being a complete and adequate theory since it only covers sex between adult humans who have average intellectual capacities. To have a complete and adequate account of the permissibility of sex, I have contended, we need to determine the permissibility of the sex had by children, non-human animals, and adult humans with intellectual disabilities. And, to adequately include these individuals, the standard theory of the permissibility of sex has to dispense without unjustified forms of discrimination against them and instead focus on their truly morally relevant features. This has ultimately led me to develop an account that goes beyond the usual focus on consent and, while paying attention to the significance of sex, uses the theoretical framework of assent and dissent, to determine the permissibility of sexual acts involving these individuals.

The consequences of the reformulated account I have presented are not only intuitively appealing but also largely depend on the actual capacities of the beings in question. Thus, using this account, the permissibility of sex acts has to be largely determined by a case-by-case and down-to-earth analysis.

An important contribution of the theory I have presented is its inclusion of non-human animals in the analysis of sexual consent and of sexual ethics more generally. Unlike other authors, I have shown how including other animals without discriminating against them does not entail undesirable and controversial views (such as the permissibility of human-animal sex) that could undermine or be used to argue against non-speciesist theories or animal rights.

Furthermore, by extending the already animal-inclusive framework of assent and dissent to other beings usually somewhat excluded from the sexual ethics literature, I have developed a truly inclusive account that not only covers non-human animals, humans with severe intellectual disabilities and children but that fundamentally changes the core principles of the standard theory of the permissibility of sex to truly take these beings, their rights and their claims into account.

adriarodriguezmoret@gmail.com

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