**DIABOLICAL DISREGARD FOR CONSENT**

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*Abstract* (100 words): There is a theological puzzle concerning the way in which Satan – an angel – was able to sin, despite lacking knowledge of no relevant fact about the world. Anselm and Aquinas explain Satan’s sin as malicious in virtue of Satan’s indifference to what mattered. I appeal to their account of Satan’s sin as a paradigm case clarifying the way in which those who intentionally engage in nonconsensual sex are always acting maliciously. Assuming competence, those who engage in nonconsensual sex fail to attend to what matters and are willing to harm others merely for their own gratification. Such attitudes are diabolical.

Consent is often portrayed as having a special role in fixing obligations. Consent of one party can release another party from obligations they would otherwise have in some situation.[[1]](#endnote-1) Take Samantha who goes into her neighbor’s lawn and takes five tomatoes out of their garden. A standing invitation by the owner that Samantha may take as many tomatoes as she wants from the garden removes any moral fault from Samantha in what could otherwise appear to be an instance of theft. Where one is ceding property rights, it is also uncontroversial that I must have ownership to cede my rights over my property to others – if I were to consent that Samantha take her neighbor’s tomatoes, and I have no rights over that neighbor’s garden, my consent does not release Samantha from her moral obligations and her taking those tomatoes would be theft.

The role of consent in releasing one from obligations, however, is not as straightforward in cases involving sex. For example, it would not be as morally problematic if Samantha deceived her neighbor about her moral character – making herself to appear a better person than she is – before requesting consent to take tomatoes from the garden as it would be if she were to lie about her character in order to induce her neighbor to enter into sexual relations.[[2]](#endnote-2) And the morally loathsome and repulsive character of nonconsensual sexual relations, sexual assault in its many forms, is not obviously reducible or even analogous to something like a violation of property rights.[[3]](#endnote-3) Thus, most everyone agrees consent is necessary for morally permissible sexual relations. Much of the literature surrounding sexual consent focuses on the quality of consent, whether it is given freely or externally manifested in certain ways, or whether societal power relations serve to undermine conditions for consent, arguing that improperly given consent (however it should be characterized) would make sexual relations impermissible.[[4]](#endnote-4) Nevertheless, as I will show, there is broad consensus both that morally permissible sex requires consent and that violations of consent constitute a serious wrong.

In this paper, I will argue that there is good reason for this: the moral failure involved in nonconsensual sexual relations always involves malice. A classical theological puzzle involving the way in which the angel Satan sinned against God explains the way in which the central fault of those who engage in nonconsensual sex is not an epistemic but a moral fault. No ignorance of the facts was possible on Satan’s part. The tradition holds that Satan’s sin consisted in the fact that he simply did not *care* in the right way, in a morally serious situation. Satan’s malice illustrates the way in which we should understand the wrong involved in nonconsensual sex. Competent agents who intentionally engage in nonconsensual sex fail to be concerned about other people in the right way, in a situation where failure to be so concerned constitutes serious harm. Even when the situation appears to make such agents epistemically blameless in holding otherwise false and sexist beliefs about consent, these failures to be concerned about consent are malicious – well-nigh diabolical.

1. **Diabolical Disregard for Another**

According to tradition, Satan is a purely intellectual spirit without any material parts, and he was created with no flaws in his psyche, whether in will or intellect. He was created good, not inclined to evil by any defect or bad habit, possessed of knowledge of right and wrong from the first instant of his creation, along with a preternaturally perfected intellect complete with all the innate ideas he would need. Satan therefore could be under no illusions about his own intentions, the result of his acts, or the moral norms governing them. He is an ‘ideal’ reasoner, fully in possession of all facts relevant for any decision. And, as a spiritual being, Satan had no bodily emotions, pleasure, or pain. He could not be moved by passions to commit a sin like lust, for example, because he has no sexual organs or brain. For all these reasons, the tradition therefore identifies Satan’s sin as a sin that was *malicious* in that it involved Satan willing evil in a fully intentional way.[[5]](#endnote-5)

The claim that Satan acted maliciously, and that malice consists in knowingly and intentionally doing evil, stands in apparent tension with a view adopted by many classical thinkers that everyone necessarily can only desire or choose something in virtue of it appearing good to them. While there is no explicit contradiction between these claims, this ‘guise of the good’ thesis about moral action seems to be in tension with the claim that Satan intentionally chose what was evil: Satan would have to intend evil *knowingly* while it simultaneously *appears* good to him. How can someone intend evil knowingly and culpably, while that evil appears to them not as evil but as good? It would seem such a person is merely mistaken rather than malicious. Thomas Aquinas, for instance, holds that practical reasoners always act on something that appears good to them. One would not have a reason to do something they knew was simply and in all respects evil, because (for Aquinas) to say an act is simply evil in that way is to say nobody ever has a reason to do that act.[[6]](#endnote-6) We cannot directly choose something that is evil except accidentally, by connection with some good that we intend.

Anselm of Canterbury and Thomas Aquinas offer a response that aims to dissolve this tension. These authors offer a way to resolve the apparent implicit contradiction that the malicious agent intentionally choosing evil also intends something that appears good. They deny that malicious acts, such as Satan’s sin, would involve *commission* of a sin rather than *omission*. The malice involved lies not so much in rejectingintentionally what one knowsto be the right thing to do or the true good, as in *not caring* about whether a given action is right. The malicious agent goes ahead with their actions despite culpably failing to consider what they ought. They therefore intentionally prefer whatever good they are aiming to obtain *more* than whatever the alternative possibilities might be. They are weighing reasons such as to prefer evil to good, as what they ignore are moral considerations in a serious situation – concretely, such agents prefer the goods involved in their sin (sex, food, self-love) to greater goods, such as doing what is right or seeking union with God. Malice thus consists in a failure of practical reasoning: failing to *care* appropriately.

As Anselm put it: “since [Satan] was so rational that nothing prevented him from using his reason, he was not ignorant of what he ought or ought not to have willed.”[[7]](#endnote-7) Satan’s sin was not the product of *mere* ignorance but culpable ignorance. When people act maliciously, they can and ought to consider some moral norm, although they do not act upon it or consider it when they should. The norm might only be accessible to them, not necessarily something they are considering at any point. Their ignorance of the norm, however, is itself immoral. The agent had the ability to consider the norm, allowing it to influence their moral decision making, and yet failed to attend to what was morally relevant. Such ignorance of moral norms is culpable.[[8]](#endnote-8) When someone drives down a neighborhood street at night, at high speed, without their headlights activated, and then hit a child, the driver will not be exempt from responsibility on the excuse that he could not have seen the child in the dark. Moral wrongdoing thus always necessarily involves *disregard* of a moral norm, but not always true ignorance of that norm.

When angels sin, then, they choose “something good in itself, but not according to proper measure or rule… Such a sin does not presuppose ignorance, but *merely absence of consideration of the things which ought to be considered*. In this way the angel sinned, by seeking his own good, from his own free-will, insubordinately to the rule of the Divine will [emphasis mine].”[[9]](#endnote-9) Angels like Satan cannot be swayed in their reasoning by bodily passions nor be mistaken. What goes wrong in Satan’s sin is that he deliberately willed something without attending to morally relevant facts. On Aquinas’ moral analysis, Satan was in possession of the facts but *weighed* them improperly, giving greater weight to what he wanted than what God wanted (i.e., what was right). The key point of the explanation is that acting in favor of some good while failing to weigh reasons appropriately, in serious circumstances, is what constitutes malicious behavior.[[10]](#endnote-10)

Some have argued that it could not be the case that Satan could persist in his sin for eternity, since he would be acting irrationally/capriciously if he realizes his pride leads to eternal suffering and nevertheless continues to resist God. Satan would eventually learn by experience that his prideful resistance to God’s grace only brought him suffering.[[11]](#endnote-11) These objections presume that Satan was somehow acting under ignorance –he did not *really* know that his act would bring him suffering or that God was his ultimate good. Satan’s decision seems irrational. And Satan is not (by anyone’s lights) stupid.

Anselm deals with this question when he considers: “how could [Satan] freely have willed that which would make him unhappy?”[[12]](#endnote-12) Anselm needs to affirm that Satan was subjectively rational in choosing to sin, despite in some sense being aware the act was evil and would result in bad things for him. While the official theological tradition is loath to speculate too much on the specific motivations of Satan, given the paucity of biblical evidence, Aquinas and Anselm attempt to respond to such objections by constructing scenarios on which Satan’s decision-making appears subjectively rational. Anselm concedes that Satan knew he *ought* to be punished for sin. But Anselm argues that Satan did not and could not have known (not being able to know the future) whether God *would* *impose* punishment. “Because he was rational he was able to understand that he could be justly punished if he were to sin. But …he was unable to discern whether God would do what he justly could do.”[[13]](#endnote-13)

Anselm entertains that Satan “was not at all able to believe that God was going to damn… His own creature whom He had created by means of such great goodness.” [[14]](#endnote-14) Satan knew that God was the Good and capable of restoring all His creatures to good moral standing. Satan was thus the first ‘universalist’ who banked his life on the belief that God would necessarily restore all creatures to grace, despite their sins, and inevitably forgive Satan whatever he would do. In presuming on God’s mercy in this way, Satan did not properly care about God Himself, let alone God’s wishes for his life. For Anselm, then, the model of malicious sin is the sin of presumption*.*

Aquinas gives a slightly different explanation from that of Anselm. Aquinas speculates that Satan wanted to be like God in the sense of being perfectly happy, but that Satan did not desire this (good) thing in the right way. Satan desired

…something which he could attain by the virtue of his own nature, turning his appetite away from supernatural beatitude, which is attained by God's grace. Or, if he desired as his last end that likeness of God which is bestowed by grace, he sought to have it by the power of his own nature; and not from Divine assistance according to God's ordering. This harmonizes with Anselm's opinion, who says that "he sought that to which he would have come had he stood fast." These two views in a manner coincide; because according to both, he sought to have final beatitude of his own power, whereas this is proper to God alone.[[15]](#endnote-15)

On Aquinas’ account, Satan was an arch-Pelagian. Instead of relying on God’s grace, Satan desired to come by his own power to ultimate happiness. Presumption on God’s grace in either Aquinas or Anselm’s story involves the same fundamental feature: a lack of care about God, and God’s wishes, in a morally serious situation. Satan presumes that he *deserves* God’s grace, whether God’s forgiveness or supernatural happiness, and so does not weigh reasons appropriately. Satan should have preferred righteousness and love of God for its own sake, regardless of what he thought God might do. What makes the act malicious is that Satan simply did not care about God the right way.

 Some might worry that both Aquinas and Anselm’s speculative case involves Satan making what looks like a simple mistake about God’s character. Satan seems to believe something heretical about God, such as that God will necessarily forgive him or that Satan can merit grace. Yet heresies involve false beliefs about God. If Satan’s actions were caused by his Pelagian beliefs, and these beliefs were not in his control, Satan would not be culpable. This objection is nevertheless to misunderstand the Aquinas-Anselm account. For that reason, I want to expand on the classical account in a direction that will illustrate that the objection involves a misunderstanding and help establish the overall conclusion of their article.

There are well-known attempts to excuse the wrongs involved in nonconsensual sex on account of ignorance. Assailants appeal to their ignorance of the *possible* (or actual) harm that their act constituted for their victim as a morally excusing factor or whether the individual *really* wanted the sex. Very often, strikingly, sexual predators, when confronted, typically attempt to justify what they have done as reasonable from their perspective – e.g., that the other ‘wanted’ or ‘deserved’ the assault or made some gesture that the predator took to be consent. They did not know what harm the act would cause their victim; maybe they even *really thought* the victim enjoyed sex with them. They claim to have innocently not known that consent was not given or needed to be given. Maybe it was how they were raised.

Acting maliciously in the realm of sexual behavior can go unnoticed because of many factors, such as societal norms, that make assailants apparentlyunaware of what they have done wrong and as resulting in no other ‘deformations’ of their moral character. Many predators thus appear, for all other intents and purposes, to be ‘good folks.’ Assailants do not often appear to outsiders to be morally deranged individuals that lack concern for others.[[16]](#endnote-16) Not everyone who commits sexual assault therefore appears to others to be a ‘bad guy.’ In a sense, it obviously follows that anyone who commits a serious moral wrong *is* a bad person. But the person who commits sexual assault might *appear* to everyone, to their society, and to their victim (and to themselves) as a ‘nice guy,’ if one knew no facts about whether they have committed sexual assault.

Satan was being invited by God to enter into intimate friendship, a paradigm social activity of mutual sharing of life and self-knowledge that Aquinas characterizes as the ‘indwelling’ of the Trinity in the soul of all those in a state of grace (including the ordinary Christian believer).[[17]](#endnote-17) God was open to friendship with Satan from the first moment of that latter’s creation and there was no ill-will on God’s part, nor a defect somewhere in the situation such that Satan was unable to choose to love God. What went wrong is that Satan did not want union with God on God’s terms. Instead, Satan wanted union with God on his own terms, contrary to the normative order in some way. Satan’s sin involved desiring God *wrongly* in the sense that he wanted to have or enjoy God in a way that violated the norms that were constitutive of the life of sharing to which God was inviting Satan.[[18]](#endnote-18)

Here we can speculate a bit more than Aquinas or Anselm did. Consider the case that Satan wanted God for himself in a way that God did not want for Satan; Satan’s sin could have involved jealousy and pride, for example, if he wanted to enjoy God without others being able to do so. On Aquinas’ theory, love is usually thought of as consisting in two desires: desire for good of the beloved and desire for union with that beloved.[[19]](#endnote-19) Satan’s love of God is wrongbecause, while he intends *to possess* the good of God in a kind of union, he does not desire the good of God Himself for God’s own sake. Indeed, what he has done is wrong because Satan knows and nevertheless intentionally disregards what God wants for Satan’s life. Satan’s preferring his own enjoyment of God, rather than acting in accord with God’s desire to share Himself with Satan as a friend, is for Satan to disregard the desires of God wanting to force God to enter into a different kind of relationship with him. His act is one in which Satan intentionally and knowingly violates the norms constitutive of God’s offer of friendship, disregarding God’s own desires, and instead aiming at what he takes to be better.

Satan is not able to infringe on God’s autonomy except in some highly metaphorical sense, so that description of what went wrong with Satan’s sin is not apropos. We might compare Satan’s act, instead, to a betrayal of trust in an offer of friendship – God desires to be friends with Satan, opening His inner life to Satan, and Satan, perceiving that God is supreme goodness, betrays God’s trust and forgoes the terms on which God offers his friendship to Satan, instead desiring to ‘possess’ God for himself or by himself – regardless of God’s desires in the relationship.

Even though his act could not in any way hurt God, what Satan did, on my reconstruction, was akin to maliciously betraying the intimate trust of a friend in a serious context, and these kinds of acts are gravely wrong. Sexual acts, to the contrary, involve harm that goes beyond mere betrayal. We can harm each other in ways that Satan could not harm God. For example, as a very bodily and intimate act, in which there is great vulnerability, sexual assault is far worse than betrayal. Nevertheless, there is a parallel in that everybody understands betrayal to be such an act that it would constitute a wrong even if no direct harm results from it. Circumstances can constitute such intentional or malicious betrayal of another to be a gravewrong if the act involves betrayal in a serious domain. And that clearly applies to Satan’s sin, since his decision-making at the first moment of his creation involved a choice fundamentally to love God for His own sake – to become God’s friend – or to betray God’s trust.

By analogy with betrayal, however, we can see that Satan can be responsible for his sin of this kind *despite* forming false expectations about what would result. Choosing to betray a friend *because you think they will forgive you,* for example, requires a culpable ignoring of the will and desires of your friend. There is a sense you are ignorant whether they *will* forgive you, but that is not really what is wrong with the act. Satan was negligent in failing to be appropriately concerned about what mattered, objectively speaking, during his actions – namely, Satan disregarded or gave inappropriate weight to God’s own desires. Satan is unconcerned about what matters. As Anselm thought, then, Satan’s sin constitutively involvesthe forming of false expectations of the results of his actions, because Satan formed those expectations in ignoring or disregarding God’s desires as having appropriate weight for him.[[20]](#endnote-20)

Putting these elements together predicts relevant features of Satan’s psychological state, as envisioned traditionally. A person ‘obsessed’ with an object of their affections, such as a stalker, can experience psychological torment at the knowledge that their beloved shows affection toward another, or is having others do so to the beloved, and then – if he cannot harm the beloved – lashes out at these others. The tradition often portrays Satan and the other demons as wishing ill toward human beings, tempting them to commit sins against God, as well as tormented by the sight of signs of God’s love for humanity (e.g., the sign of the cross, holy water, etc.). Aquinas, for example, claims that Satan’s sin results in his envy of all those whom God loves and showers His affections upon – Satan takes the good of human beings “to be a hindrance to his own” because, insofar as God showers His love and grace upon human beings, Satan thinks himself to have lost something of his own excellence.[[21]](#endnote-21) In light of my analogy, what Satan fears or dislikes is that he is not the unique object of God’s affections, and he loses this excellence insofar as anyone else is in a state of friendship with God; e.g., he wants God to have no choice but to love him alone. Signs of God’s love for humanity, similarly, understandably cause psychological torment to Satan, obsessed in this way about God.

Even knowledge that he is acting contrary to the norms of the friendship God offers will not affect Satan’s resolve. Satan aims to act in such a way that he disregards God’s desires for their friendship, and not because Satan is ignorant of God’s desires – Satan merely disregards those desires as binding because he values the possession of God more highly than fulfilling God’s desires. For this reason, it is psychologically plausible that Satan’s ‘ignorance’ of his future punishment is not so much the cause of Satan’s moral dispositions as their *effect*. Satan is not ignorant of God’s goodness, as that is precisely what motivates him to his malicious desire. Knowledge, too, that God is someone who can be friends with infinitely many persons without diminishing God’s goodness or love does not matter to Satan; it is not God’s goodness that he thinks is diminished by God having more lovers, but rather his own. It is plausible that no increased knowledge of facts about God or himself would help Satan reform this malicious attitude for the same reason that it is psychologically comprehensible that an obsessed person does not care about the harm that might ensue to their own person as a result of their obsession.

As he does not aim at possessing God through the indwelling characteristic of believers, but rather in his own way, Satan’s overwhelming desire for God will never result in obtaining God’s friendship; there is no obvious way that any increased experience or time will dissuade Satan from his purpose. Satan could even be content in thinking that he remains in some kind of relationship with God that involves mutual recognition and desire; as God necessarily loves all His creatures, Satan is still beloved by God in some respect even after his sin. In some sense, Satan aims to bring about harm to himself intentionally. He knows the moral badness of the sin he commits constitutes a harm to himself, whom he knows God loves, but he thinks incurring this harm is justified in light of the goods he will achieve.[[22]](#endnote-22) Satan’s sin is irrational not because he is acting on subjectively irrational grounds or from poorly formed instrumental reasoning, but because he is acting in disregard of the fact that God’s consent or desires *really are* important. On Aquinas and Anselm’s account, malice (like that of Satan) consists essentially in failing to attend to relevant facts that one could have attended to, within morally serious situations, and these failures are not morally excused by meeting various standards for subjective rationality. What goes wrong in malice is a failure to love another person appropriately – which is why acting in disregard of others is to prefer what is morally evil to doing right toward them.

**Malice and Consent**

What I will now turn to defend is that the sort of acts in which someone intentionally engages in nonconsensual sex are malicious, on basis of those distinctions regarding malice we saw in Anselm and Aquinas. Acts of nonconsensual sex are malicious, regardless of other harms that might result, because the offender cannot but intentionally perform such actions in ways that are gravely harmful to another, in contexts in which their failure to attend to the harm of their acts is itself morally wrong (a failure to care appropriately). The analogy with Satan is helpful because it helps delineate two characteristics of malicious action of at least one type.

Call ‘malicious negligence’ those acts that involve [1] acting in such a way as to constitute or bring about grievous harm to another person while [2] disregarding morally relevant factors about the occurrence or nature of that harm which were nevertheless epistemically accessible. These do not constitute necessary *and* sufficient conditions for malicious negligence but seem to me to constitute at least sufficient conditions – i.e., if someone meets conditions [1] and [2], they are acting in such a way as to be maliciously negligent.

My argument, in outline, will be to establish both characteristics as always applying to nonconsensual sexual relations:

1. Intentionally engaging in nonconsensual sex involves disregarding or failing to attend to the consent of the other party as relevant to whether to perform that action.
2. The facts about the harms inflicted upon another person by nonconsensual sex are accessible to any competent adult in such a way that failure of a competent agent to attend to these harms itself constitutes a moral fault.
3. Therefore, since malicious negligence is defined in terms of these two conditions, nonconsensual sex necessarily involves malicious negligence.

I will begin by examining the reasons we care about consent in sexual relations and addressing those accounts on which consent is not morally required for permissible sex. My aim is to motivate that a competent adult intentionally engaging in nonconsensual sex with another person has done something seriously wrong, merely in virtue of that sex being nonconsensual – this supports condition 1. I will then turn to presenting the case that nonconsensual sexual relations fulfill the epistemic condition 2. Finally, I will return to the first condition and examine objections that, even if the epistemic condition were fulfilled, such acts might fail to be culpable, given social conditions that often hold in our contemporary world.

1. **The Harms of Nonconsensual Sex**

It is not generally controversial that sexual activity requires consent – although some have argued that consent is not sufficient for morally normative sexual activity, given the widespread disparities of power.[[23]](#endnote-23) Igor Primoratz points out that, even if it were true that these facts render consent insufficient, “we will still want to know *just how wrong* rape is” – as, for example, comparing the wrong involved in sexual assault with various other lesser situations where someone does not want sex or does not initiate it.[[24]](#endnote-24) For my purposes, too, I am merely concerned with whether and how wrong it is to have sex withoutconsent; I do not need to suggest that consent alone is morally sufficient.

Others have argued that consent is not necessary for sex, because, if sex is had in ideal circumstances, it is a fully mutual action and does not require consent.[[25]](#endnote-25) As Chadha points out, this kind of position depends either on the presupposition that fully mutual actions do not require consent to be morally permissible, because consent applies only to what one person does to another (and not to ‘something two people do together’), or that engaging in such activities waives the rights of the participants.[[26]](#endnote-26) I agree with Chadha that these presuppositions are mistaken. Sex always involves one person doing something to another, as the joint activity of sexual intercourse involve “actions of their partner that partly constitute the joint action.”[[27]](#endnote-27) Similarly, the reason ideal sex seems to involve waiving rights is because that act is conceptualized, implicitly, as involving consent: if what it is for X to consent to Y’s action is for X to choose Y’s action, then ideal sex clearly involves the partners *choosing* to engage in the act together and *ipso facto* consenting.[[28]](#endnote-28) In short, I see no good reasons otherwise to think that consent is not morally necessary for permissible sexual activity, even if it were not sufficient.

It is my contention that if a competent agent intentionally engages in nonconsensual sex with another person, then that intercourse counts as harm of that non-consenting party merely in virtue of the fact that this other person does not consent to it. That is, having sex with a person who does not consent is to harm that person. And this position is eminently plausible. What makes it particularly damaging and *horrible* about nonconsensual sexual intercourse is that one experiences the sexual activity involuntarily, an experience that is damaging for the exact reason that it was not consented to. Even though the act was forced upon them, without their consent in any way, victims of nonconsensual intercourse tend unconsciously to associate the involuntary experiences of the sexual intercourse as a sign that they were responsible for or implicitly consenting to the intercourse.[[29]](#endnote-29) And the same is true of learning about the act, even if one was not consciously experiencing the intercourse due (for example) to being under anesthesia. Thus, the harms of nonconsensual sex include not merely in violence often accompanying it, nor in the experienced pain or trauma, or in remembering or learning about its occurrence, but include the violation of consent itself.

Nevertheless, some reject that nonconsensual sex constitutes a harm to another. Some think that cases where the victim never learns about or experiences that they have been raped would lack any clear evidence that harm has occurred.[[30]](#endnote-30) The presupposition here is that harm consists in setting back (what Karamvir calls) someone’s ‘experiential interests.’[[31]](#endnote-31) But it is not plausible that the well-being of individuals consists only in experiences. Rather, as many note, well-being plausibly consists also in facts about living life autonomously, under your own control, as opposed to having others lead your life for you.[[32]](#endnote-32) The question is then whether nonconsensual sex consists in a *serious* wrong to another. And that in turn requires us to ask what is harmed in violating consent. For example, some might think that nonconsensual sex only involves a violation of autonomy, in some cases, and that such violations need not be, in themselves, very serious wrongs to another person.

There are distinct approaches to the harm of violating the norms that require such consent. On one end are accounts such as Roger Scruton’s view of sex. Scruton seems to believe the moral norms surrounding sexual activity can be derived from the way in which sexual acts aim to relate inter-subjectively. Morally good sexual desire aims at respect of the sexual partner in their interpersonal intersubjectivity: “I want you as the free being that you are, and your freedom is wrapped up in the thing I want…I want you to want me in just the same way and likewise to want me to want you, in an escalating mutuality of desire.”[[33]](#endnote-33) Scruton therefore sees sexual activity directed toward individual pleasure as radically morally perverse; sexual activity that aims at ends such as mere mutual pleasure is wrong in terms of failing to respect the other person *qua* person.[[34]](#endnote-34) Scruton therefore explains the wrong of nonconsensual sex as attacking the victim in their very subjectivity or freedom.[[35]](#endnote-35) This is indeed a very elevated account of the potential harm in sexual activity, since to engage intentionally in nonconsensual sex is, roughly, to assault the very personality of another.[[36]](#endnote-36)

On another end, Igor Primoratz, critiquing Scruton’s account, concedes that “in sex, as elsewhere, one is indeed morally required to treat the other as a person, i.e. to take into account the other’s thoughts, feelings, wishes, interests, and to conduct one’s intercourse with the other on the basis of the other’s consent and co-operation, rather than by deception or coercion,”[[37]](#endnote-37) but does not concede that causal sex involves an *attack* on the personality or subjectivity of another, because casual sex need not involve “engaging the other as *the* total, unique person he or she is.”[[38]](#endnote-38) On views such as Primoratz, where consent alone is morally sufficient for sexual intercourse, the harm involved in nonconsensual sex would seem to consist merely in violating one’s preferences or autonomy. Accounts such as these, unlike that of Scruton, might appear to call into question whether nonconsensual sex – absent other circumstances – constitutes a *serious* harm.

Intuitively, preferences or even autonomy are not always weighty values in all contexts. For example – allowing your neighbor’s children to play on your lawn. If those children were not to ask you, it would be potentially wrong of them to enter your lawn, but it does not seem a very serious violation of my preferences. I might be morally blameworthy, in fact, if I were to get overly distressed or outraged at the children for coming onto my lawn without my permission. Or, the waiter at a restaurant would violate my autonomy if they were to ignore my order preferences and change my order for what they took to be a more healthy option – while annoying, this is not plausibly a serious violation of autonomy. And *real-world* as opposed to ideal autonomy in sex looks even less valuable. Consent is often given under “nonideal, substantially autonomy-compromising conditions.”[[39]](#endnote-39) Thus, “when it comes to consent, quality is not an all or none affair,” and, in the bad case, “our sexual choices can be compromised in various ways including pressure, ignorance, adaptive preferences, and deceptions.”[[40]](#endnote-40) Long-standing feminist criticisms that sexual relations are permeated by asymmetric power relations, making nonconsensual sex prevalent, seem to undermine the value of what consent *actually* consists in.[[41]](#endnote-41) Since not all sexual interaction involves exemplary autonomy, one could argue that the autonomy lost in nonconsensual sex might not be have been terribly worthwhile in the first place.

What I want to suggest is that those views which hold that consent alone is sufficient for sexual relations do not need to build a case for the serious wrong of nonconsensual sex merely on the value of autonomy. Some who hold that consent alone is sufficient for permissible sex also hold that this follows from a deontological duty of respect, where our respect for individuals should extend to any kind of consensual sexual relations that they wish to engage in. Our respect for them should thus make it permissible for others to “conduct their individual lives as they see fit” in the sexual domain without interference or criticism from others.[[42]](#endnote-42) If the duty is deontological, then a violation of the norm can be serious even without aggravating circumstances.

But we do not even need to appeal to the deontological such duties of respect in order to arrive at a consensus as to the way in which nonconsensual sex is a serious harm. Those views on which consent alone is sufficient for morally permissible sex would be implausible if they lacked implicit qualifications that only adults, or the mentally competent, can consent appropriately to sexual relations. Those who hold that consent alone is sufficient to legitimate sexual relations would reject that someone could give vicarious consent for, e.g., an incapacitated person in their charge to be the object of sexual acts by someone else. Those views which appear to claim that mere consent is sufficient for the liceity of sexual relations do not ultimately deny that that species of consent sufficient for permissible sexual acts also require something like a *higher quality* of consent than would be necessary for other activities.

First, the agent must be competent. It is common to affirm that minors (and animals?) are incapable of giving morally normative consent to sexual activity. Since minors are often asked for their consent in other contexts (e.g., whether they want to play a game), or where many actions regarding children can be legitimated by the vicarious assent of their parents (e.g., receiving a vaccine), it seems plausible to hold that minors cannot give consent of the ‘right’ quality for sexual relations, nor could their parents permissibly consent for them to do so vicariously.[[43]](#endnote-43) Second, there are intuitively more demanding standards for seeking consent in sex than in, for example, property rights. The fact someone desires sexual relations does not by itself justify or make permissible non-consensual sexual relations, just as the fact that sexual relations would be good for someone (perhaps, for health benefits that would result) would not justify nonconsensual sexual relations with that person.[[44]](#endnote-44) But it is often the case that parents wanting their children to have their property, for instance, is taken as permission for those children to inherit a given piece of property. Eminent domain exceptions represent an intuition that one can sometimes permissibly override property rights in virtue of the common good; or, more generally, a fine or confiscation of property can be imposed as a punishment. Yet it is not permissible for anyone to consent vicariously for another to be the object of sexual acts; neither could we admit forced sexual activity as a punishment for crimes, nor could we permit someone to be raped to save their life.[[45]](#endnote-45) Clearly, then, the way we ordinarily treat sexual activity as subject to norms of consent in ways that are higher than we might demand for other social activities.

Even these views on which consent alone is sufficient for sex, then, are compatible with the view that we can recognize that sexual activity potentially involves a more serious harm than merely failure to respect. Something about the nature of sexual acts, and what is done to another person, is what grounds the seriousness involved in these higher standards of consent. There are many such prospective harms: “infringement of autonomy and attack on bodily/sexual integrity,”[[46]](#endnote-46) or “objectification” of someone as a mere object for sexual pleasure of others,[[47]](#endnote-47) or an “abuse of power” of an offender against the other.[[48]](#endnote-48) Whatever the specific values we wish to highlight as harmed by nonconsensual sex, the point is that, even if sex were permissible merely on account of consent alone, the nature of sexual intercourse (as a particularly personal, intimate, or vulnerable activity) demands moral seriousness, reflected in higher standards of consent.[[49]](#endnote-49) To violate those norms of consent *ipso facto* constitute a serious harm to another person, given the demands for consent and its moral gravity are intuitively higher.

Thus, an act of nonconsensual sex can be considered as gravely wrong regardless of the social roles or standing of either offender or victim, and even abstracting from details about *why* the offender committed the offense, e.g., aiming to objectify the victim. Of course, circumstances will heighten the gravity of the wrong. If, for example, the offender directly aimed to humiliate, objectify, reinforce their power over, cause grave bodily harm to, or terrify a victim, their offense is all the more heinous for it. But it is plausibly *sufficient* for the act to be gravely wrong that it was intentional nonconsensual sexual activity. We do not need to be committed to any account of the specific value or normative significance of sexual activity to conclude thus.

**The Epistemic Situation of Malicious Negligence**

It is my contention that any competent agent who intentionally engages in nonconsensual sex with another person/s always acts with malice. I qualify that I am concerned about the malicious character of *intentionally* engaging innonconsensual sex, as a *competent agent*. I will leave aside giving an account of what being a competent agent involves, and merely note that there are many cases that intuitively fail to meet either condition. In these cases, we ordinarily would say that the person acting involuntarily, under coercion, or was not competent to begin with. For instance: sexually aggressive parasomnia, being forced with threats of violence to engage in nonconsensual sex acts with another, or children or mentally ill persons engaging in these acts. I bracket such cases. Instead, my position is that a competent agent who intentionally engages in nonconsensual sex is someone to whom facts about sexual intercourse are epistemically accessible. That person *should have known* that this act was wrong. The malice comes insofar as such persons nevertheless engage in nonconsensual sex with another person/s anyway.

It might seem implausible at first glance whether malice would characterize every instance of nonconsensual sex. The rapist, for example, could be acting under ‘passion’ (without premeditation) or could, aside from a very general grasp, be ignorant of the effects that their action will have upon the victim. There is a difference between the case of a person *intentionally* disregarding the norms of consent and *consciously* intending to violate the norms. ‘Intentionally’ in this context merely means an act where the agent acts for a reason, as opposed to those bodily movements where the action did not result from the agent intending to do anything, e.g., a seizure or a fall. People can act intentionally in disregard of the norms of consent, without acting consciously against those norms. ‘Malice’ in our context does not require that the agent have *consciously examined* whether they were negligently disregarding the value of consent to be culpable, but only that their action was *intentional* and was characterized by that disregard – the agent *should have known* that their action would result in grave harm.

This claim that the harm involved in nonconsensual sex is epistemically accessible to the perpetrators in a standing way – that they *should have known* – can look dubious to some. While there is broad consensus on these claims that ensuring sex is consensual has significance for living the life we want – few people would see the good in being involuntarily made a sexual slave for life – and many now take it that greater recognition of this value should *inspire* vigilance as to the fulfillment of normative conditions of consent in sexual relationships, this was not always the case. We care today about consent generally in a way that we have not in the past. As with informed consent to medical procedures,[[50]](#endnote-50) careful legal protections for sexual consent have increased dramatically in recent years. But that raises the issue of epistemic accessibility: until recent memory, norms of sexual consent have not been taken seriously and not been publicly protected.

Charles Mills described ‘white ignorance’ as that phenomenon where an ignorance of racial discrimination was perpetuated by structural features of society that reinforce distinctions along the lines of race and perpetuate cognitive distortions (false beliefs, absence of correct beliefs) among certain privileged groups.[[51]](#endnote-51) There has similarly been a long-standing socially reinforced ignorance around norms of sexual consent – nonconsensual sex was notwidely held to be wrong under all the circumstances we today find objectionable. For example, martial exemptions helped perpetrate what we today call ‘marital rape.’[[52]](#endnote-52) Women have been treated horribly as sexual objects, incapable of giving consent or persons whose consent does not matter. To this end, at least the sexual consent of *some* people has not always been widely recognized as valuable or normatively important.

Nevertheless, historically, what was ignored was not the value or normative character of consent itself within sexual relations. I know of no instance where those who were in positions of privilege did not recognize that nonconsensual sex for at least a subset of persons (themselves), under some circumstances, was seriously wrong. Instead, the differing perceptions concern whether certain circumstances would obviate moral requirements for obtaining consent. Relatedly, it is not the case that the *harm* of nonconsensual sex went unperceived. For example, raping of enemies has occurred in the context of warfare. The context of such horrendous acts makes clear there is no ignorance that rape is bad for all involved, as rape in this context is clearly inflicted to harm the enemy in many different aspects.[[53]](#endnote-53)

It might be true that nonconsensual sex with certain classes of person was not always understood to constitute a grievous harm, as witnessed by ancient pedophilic practices with minors alongside general disregard for the consent of women, but the existence of such unjust and cruel practices co-existed alongside criminalization of many forms of nonconsensual sex. Those situations where nonconsensual sex was permitted with some persons typically occurred within a social context where those people were under someone’s dominion and treated as non-competent agents.

In short, the relevant competent party who consented to sex was not the individual, but their parents, guardians, etc., and so rape was considered an offence when *their* consent was lacking. Roman law, for instance, understood rape in this context to involve primarily a wrong against the *family* to whom the woman belonged – *raptus* of a marriable virgin being considered, under Constantine’s law, a theft from the parents. Only under later Christian influence, when women were empowered to choose a life of virginity, even against the wishes of others, did the consent of women themselves begin to enter into consideration of the wrong of *raptus* – and these moral developments presage a notable shift between the treatment of *raptus* in the shift from the Constantinian code to that of Justinian.[[54]](#endnote-54)

These historical facts obviously do not justify such practices. They rather show that, even amid social-structural factors that systematically led to oppression and disempowerment of certain persons, these structures did not eliminate the underlying awareness of the harms involved in nonconsensual sex generically. We now perceive clearly that those structures promoted and maintained false beliefs or other misapprehensions about the harms that were happening to the persons it was widely but falsely believed – at the time – were not harmed by sexual activity to which they themselves had not consented. And, for this reason that they were operating under false beliefs or under widespread social approval of such practices, we often might be unwilling to judge those living under these older social-structures as having committed a serious infraction of moral norms when they engaged in nonconsensual sex.

This attitude of refraining from judgment is, I contend, a mistake as concerns the harms associated with nonconsensual sex. The kind of ignorance involved constitutes culpable or willful ignorance, rather than the sort of ignorance we think of as exculpatory.[[55]](#endnote-55) I have already argued that to engage in sexual activity with another is a morally serious matter. Failure to pay attention to the risks of doing something morally wrong, while undertaking that kind of serious action, constitutes a kind of willful indifference. “What I notice or attend to reflects what I care about; and my very failure to notice something can display my utter indifference to it.”[[56]](#endnote-56) Other authors too agree that nobody can reasonably ignore the moral weight of consent in sexual relations; it is plausible that, if one approaches sex with blatant indifference to consent, one is already engaging in such an act in a way that is reckless and involves willful ignorance.[[57]](#endnote-57) These accounts on which there can be culpable indifference to the normative and serious moral weight of consent clearly parallel Anselm and Aquinas’ account of the angelic sin and its malice: what is at issue is an ignorance that comes from *not caring* about what is morally serious.[[58]](#endnote-58)

Mason has argued that sexist ideology – particularly but not exclusively those ‘rape myths’ that perpetuate an exculpatory attitude toward rape and nonconsensual sex (‘he couldn’t help it’ ‘rape is a trivial event’ ‘she wanted it really’ ‘she liked it’) – constitutes more than mere recklessness, since the person in the midst of a social situation where they are raised on sexist ideology might seem to be acting ‘reasonably’ given their upbringing. For example, an individual embracing such beliefs when surrounded by sexist ideology promoted in pornography or other social means, and widely embraced by others, looks to be “what we would expect from a normal agent in [those] circumstances.”[[59]](#endnote-59)

A person in the grip of sexist ideology has many false moral beliefs; “He thinks that women often say ‘no’ when they mean ‘yes’, that they don’t know their own minds, and that dressing and acting in certain ways indicates consent. He thinks that resistance is normal, and that it is compatible with consent. He also thinks consent is not a high stakes issue….”[[60]](#endnote-60) Mason argues that there is no problematic indifference in this person but that, given the situation in which he lives, his beliefs look to be epistemically reasonable. The ‘morally bad mistakes’ that follow from his bad beliefs which were epistemically reasonable. Mason proposes instead that, while these beliefs would be *epistemically* reasonable (given that agent’s situation), they are not morally so. The man in the case who engages in nonconsensual sexual activity in virtue of his sexist ideology “does not know something that [he] should have known, where that means that a morally well-informed agent would have known.”[[61]](#endnote-61)

Anselm and Aquinas’ perspective helps us understand that these positions – that of Mason as well as the other authors who hold that there is problematic indifference in all nonconsensual sex – are compatible. The indifference in question is not an epistemic failure of *subjective rationality* to advert to what was epistemically accessible but *a moral failure* of failing to weigh one’s reasons for acting appropriately, of failing to attend to what was morally obligatory when engaging in the morally serious act of intercourse. The latter moral failure constitutes a kind of failure to care appropriately about the good of others and the harm that results, that is, a failure to care about the victim who is raped by them. The agent acts primarily to pursue the pleasure of sexual activity *regardless* of the potential harm this might bring to others, *and thus* negligent about whether the act is seriously morally wrong. As Aquinas puts it, such an agent acts maliciously because they will moral evil directly. The agent would rather do something morally wrong than give up what they want. “…he does not shrink from incurring the deformity of sin which he perceives to be conjoined to what he wills, not only will he be said to will that good he principally wills, but even that very deformity… to avoid being deprived of the desired good.[[62]](#endnote-62)

Clearly, on the Christian vision of Aquinas and Anselm, there is simply no good to be found in sex which would justify failing to love and be concerned about the well-being of other people such as to attend to whether they consent to sexual relations. I have argued it is plausibly epistemically accessible even amid pervasive sexist social structures that nonconsensual sex constitutes a grave harm (at minimum, the offender would take *themselves* to be harmed by nonconsensual sex) and that sexual activity involves a morally serious context in which standards of consent are higher than in other contexts. Even granting that social structures make sexist ideology widespread and subjectively ‘epistemically reasonable,’ what goes wrong in the practical reasoning of the agent lies ultimately in their *moral negligence* regarding the good of another.[[63]](#endnote-63) Nonconsensual sex involves the preferring of one’s own goods and goals to the disregard of what is morally right, intentionally disregarding and being indifferent to the harms that one’s actions might cause. That is, the agent who intentionally engages in nonconsensual sex disregards the harm that will potentially occur as a factor relevant in whether to perform that action. It is for this reason that nonconsensual sex is essentially a malicious act.

Strikingly, then, appeal to ‘rape myths’ testifies that the agent was aware that consent is morally normative since those myths often concern the willingness of someone to engage in sex or having given consent in some implicit way – these mirrors exactly the sort of malicious attitude which Anselm and Aquinas attribute to Satan, on which the agent justifies their failing to attend to the good of another by appeal to the other goods involved, and thereby illustrates that they *willingly* do evil. They would rather have the pleasures of sex than be bothered to consider the harm it might inflict upon that person.

**Conclusion**

Anselm and Aquinas’ analysis of malice centers on the way in which indifference toward moral norms constitutes a failure to weigh reasons for actions appropriately, failing to *care* about what matters. What matters in sex is the good of the other person – and that is precisely what the person who is willing to engage in nonconsensual sex, or is otherwise inattentive to matters of consent, does not care about. In this respect, persons who engage in nonconsensual sex are malicious because what they desire has a necessary connection to moral evil, and they intend this evil insofar as they are negligent whether their acts bring it about. The agent is *maliciously* indifferent to the good of the other, because they take those evils involved in their action to be *worth the price.*

The moral reasoning and attitudes of those who engage in nonconsensual sex thus resemble, non-coincidentally, that of the demons in two respects. What lies at the root is an attitude of diabolical pride: that *I* am more important than others. And this not only in terms of willingness to treat the consent of others to sex casually, but in terms of its apparent subjective rationality and imperviousness to rational correction. Those who engage in this behavior imbibe and spread ‘rape myths,’ excuse or turn a blind eye to such attitudes and beliefs, and so forth. Such faults in human beings often involve epistemic failures – but the character of malice in the angels illustrates that the central fault is not epistemic at all. It is a moral one that can exist even in epistemically faultless contexts. Being amid such an environment of prideful indifference to the suffering of others is no excuse for engaging in these attitudes or excusing them in others – “For we do not wrestle against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this age, against spiritual hosts of wickedness in the heavenly places” (Eph: 6:12).[[64]](#endnote-64)

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NOTES

1. E.g., Heidi Hurd, “The Moral Magic of Consent,” *Legal Theory* 2, 2 (1996): 121-146; Vera Bergelson, “The Meaning of Consent,” *Ohio State Journal of Criminal Law,* Vol. 12 (2018): 171-180. [↑](#endnote-ref-1)
2. Jennifer Matey, “Sexual Consent and Lying About One’s Self,” in *Philosophy and Phenomenological Research* (2019): 1-21. [↑](#endnote-ref-2)
3. Roger Scruton, *On Human Nature* (Princeton: Princeton University Press, 2017), 118-121. [↑](#endnote-ref-3)
4. E.g., David Archard, *Sexual Consent* (Boulder, CO: Westview Press, 1998). [↑](#endnote-ref-4)
5. E.g., Augustine, *De civitate Dei contra paganos,* XIV, Ch. 4. [↑](#endnote-ref-5)
6. See, e.g., Thomas Aquinas, *Summa Theologiae* [ST], trans. Dominican Fathers of the English Province, Second and Revised Edition (New York, NY: Benzinger Bros., 1920), I-II, q. 19, a. 5, resp. [↑](#endnote-ref-6)
7. Anselm of Canterbury, *De Casu Diaboli* in *Complete Philosophy and Theological Treatises of Anselm of Canterbury,* trans. Jasper Hopkins and Herbert Richardson (Minneapolis, MN: The Arthur J. Banning Press, 2000), c. 22. [↑](#endnote-ref-7)
8. ST I-II, q. 6, a. 8, resp. [↑](#endnote-ref-8)
9. ST I, q. 63, a. 1, ad. 4. [↑](#endnote-ref-9)
10. See Rene Ardell Fehr, “Thomas Aquinas on Malice,” *Res Philosophica,* Vol. 11, No. 2 (Apr. 2023): 251-272, esp. 265-269. [↑](#endnote-ref-10)
11. E.g., Thomas Talbott, *The Inescapable Love of God,* 2nd ed.(Eugene, OR: Cascade Books, 2014), esp. 167-176; David Bentley Hart, *That All Shall Be Saved* (New Haven, CT: Yale University Press, 2019), esp. 174-177. [↑](#endnote-ref-11)
12. *De Casu Diaboli,* c. 22, p. 254. [↑](#endnote-ref-12)
13. *De Casu Diaboli,* c. 23, p. 254. [↑](#endnote-ref-13)
14. Ibid. [↑](#endnote-ref-14)
15. ST I, q. 63, a. 3, resp. [↑](#endnote-ref-15)
16. Kate Manne discusses examples in *Entitled: How Male Privilege Hurts Women* (New York, NY: Penguin Random House LLC, 2020). [↑](#endnote-ref-16)
17. ST I, q. 43, a. 5 & 6. [↑](#endnote-ref-17)
18. See Jacques Maritain, *The Sin of the Angel*, trans. William Rossner (Westminster: Newman Press, 1959), esp. 18-27, 73-96. [↑](#endnote-ref-18)
19. See ST I-II, q. 27, a. 2. [↑](#endnote-ref-19)
20. William Wood, “Anselm of Canterbury on the fall of the devil,” *Religious Studies*, Vol. 52, No. 2 (June 2016): 223-245. [↑](#endnote-ref-20)
21. ST I, q. 63, a. 2, resp. [↑](#endnote-ref-21)
22. E.g., ST I-II, q. 78, a. 1, resp. & ad. 2. [↑](#endnote-ref-22)
23. E.g., Pamela Foa, “What’s Wrong with Rape,” in *Feminism and Philosophy*, eds. M. Vetterling-Braggin et al. (Totowa, NJ: Littlefield, Adams & Co., 1977), 347; Catherine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 245. [↑](#endnote-ref-23)
24. Igor Primoratz, “Sexual Morality: Is Consent Enough?” *Ethical Theory and Moral Practice* 4 (2001): 210. [↑](#endnote-ref-24)
25. John Gardner, “The Opposite of Rape,” *Oxford Journal of Legal Studies* 38 (2018): 48-70; Catharine A MacKinnon, “Rape Redefined,” *Harvard Law & Policy Review* 10 (2016): 431-477; Tanya Palmer, “Distinguishing Sex from Sexual Violation: Consent, Negotiation and Freedom to Negotiate,” in *Consent: Domestic and Comparative Perspectives,* eds. Alan Reed and others (New York: Routledge, 2017), 9-24. [↑](#endnote-ref-25)
26. Karamvir Chadha, “Sexual Consent and Having Sex Together,” *Oxford Journal of Legal Studies,* Vol. 40, No. 3 (2020): 622. [↑](#endnote-ref-26)
27. Ibid., 629. [↑](#endnote-ref-27)
28. Ibid., 634-635. [↑](#endnote-ref-28)
29. Alexander Pruss, *One Body* (Notre Dame, IN: University of Notre Dame Press, 2012), 126. [↑](#endnote-ref-29)
30. Victor Tadros, *Wrongs and Crimes* (Oxford University Press, 2019), 106–107, 201–203. [↑](#endnote-ref-30)
31. Karamvir, 53. [↑](#endnote-ref-31)
32. Roger Crisp, “Medical Negligence, Assault, Informed Consent, and Autonomy,” *Journal of*

*Law and Society* 17 (1990): 77, 81. [↑](#endnote-ref-32)
33. Scruton, 72-73. [↑](#endnote-ref-33)
34. Scruton, 74. [↑](#endnote-ref-34)
35. Scruton, 118-121. [↑](#endnote-ref-35)
36. Other accounts appeal to similar values as underlying the normativity in sex, e.g., Sascha Settegast, “Prostitution and the Good of Sex,” *Social Theory and Practice,* Vol. 44, No. 3 (July 2018): 377-403. [↑](#endnote-ref-36)
37. Primoratz, 207. [↑](#endnote-ref-37)
38. Ibid., 208. [↑](#endnote-ref-38)
39. Quill Kukla, “A Nonideal Theory of Sexual Consent,” *Ethics* 131 (Jan. 2021): 270-292. [↑](#endnote-ref-39)
40. Matey, 20. [↑](#endnote-ref-40)
41. For two recent examples of such critiques relevant to sexual consent and justice, see Theresa Kulbaga and Leland Spencer, *Campuses of Consent* (Amherst: University of Massachusetts, 2019); Joseph Fischel, *Screw Consent* (Oakland, CA: University of California Press, 2019). [↑](#endnote-ref-41)
42. Thomas Mappes, *Social Ethic* (Columbus, OH: McGraw-Hill, 2002), 208. [↑](#endnote-ref-42)
43. Pruss, 68-69. [↑](#endnote-ref-43)
44. See Pruss, 71-72. [↑](#endnote-ref-44)
45. E.g., Pruss, 73-74. [↑](#endnote-ref-45)
46. David Archard, “The Wrong of Rape,” *Philosophical Quarterly* 57 (2007): 391. [↑](#endnote-ref-46)
47. See Martha Nussbaum, “Objectification,” *Philosophy and Public Affairs* 24, 4 (Fall 1995): 249-291; Rae Langton, “Love and Solipsism,” in *Sexual Solipsism* (Oxford: Oxford University Press, 2009), 123-152; Rae Langton, “Projection and Objectification,” in *The Future for Philosophy,* ed. Brian Leiter (Oxford: Oxford University Press, 2004), 285-303; Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), esp. ch. 9. [↑](#endnote-ref-47)
48. Michal Buchhandler-Raphael, “The Failure of Consent,” *Michigan Journal of Gender & Law,* Vol. 18, Is. 1 (2011): 147-228. [↑](#endnote-ref-48)
49. For my purposes, I bracket exactly what the right conditions are under which consent has been given in a permissibility-conferring way and assume only that there is some good, possible account of the conditions under which consent is given appropriately and of sufficient quality to legitimate sexual relations. [↑](#endnote-ref-49)
50. Sheila McClean, *Autonomy, Consent, and the Law* (New York, NY: Routledge, 2009). [↑](#endnote-ref-50)
51. Charles Mills, “White Ignorance,” in *Race and Epistemologies of Ignorance,* eds. S. Sullivan and N. Tuana (New York, NY: SUNY Press, 2007), 13-38. [↑](#endnote-ref-51)
52. Raquel Kennedy Bergen & Elizabeth Barnhill, “Marital Rape: New Research and Directions,” at *VAWnet* (National Resource Center on Domestic Violence, Feb. 2006): https://vawnet.org/material/marital-rape-new-research-and-directions. [↑](#endnote-ref-52)
53. Ruth Seifert, “The Second Front: The Logic of Sexual Violence in Wars,” *Women’s Studies International Forum*, 19, 1 / 2 (1996): 35–43; Natalie Nenadic, “Genocide and Sexual Atrocities: Hannah Arendt’s Eichmann in Jerusalem and Karadzic in New York,” *Philosophical Topics*, 39, 2 (2011): 117–144. [↑](#endnote-ref-53)
54. Nghiem L. Nguyen, “Roman Rape: An Overview of Roman Rape Laws from the Republican Period to

Justinian's Reign,” 13 *Mich. J. Gender & L.* 75 (2006). [↑](#endnote-ref-54)
55. See Alexander Sarch, “Willful Ignorance in law and morality,” *Philosophy Compass* 13, 5 (2018): https://doi.org/10.1111/phc3.12490. [↑](#endnote-ref-55)
56. R. Anthony Duff, *Intention, Agency, and Criminal Liability* (Hoboken, NJ: Blackwell, 1990), 163. [↑](#endnote-ref-56)
57. David William Archard, “The Mens Rea of Rape,” in *A Most Detestable Crime,* ed. K. Burgess-Jackson (Oxford: Oxford University Press, 1999), 213-229; Lois Pineau, “Date Rape,” *Law and Philosophy* Vol. 8, No. 2 (Aug. 1989): 217-243; Marcia Baron, “I Thought She Consented,” *Philosophical Issues,* Vol. 11 (2001): 1-32. [↑](#endnote-ref-57)
58. Duff, *Intention, Agency, and Criminal Liability*, 169. See also R. Anthony Duff, “Recklessness and Rape,” *Liverpool Law Review* 3 (1981): 49-64. [↑](#endnote-ref-58)
59. Elinor Mason, “Rape, Recklessness and Sexist Ideology,” in *Agency, Negligence and Responsibility,* eds. V. Rodriguez-Blanco and G. Pavlakos (Cambridge: Cambridge University Press, 2000), 210. [↑](#endnote-ref-59)
60. Mason, 212. [↑](#endnote-ref-60)
61. Mason, 221. [↑](#endnote-ref-61)
62. Thomas Aquinas, *On Evil* [Quaestiones de Malo], trans. Jean Oesterle (Notre Dame: University of

Notre Dame Press, 1995), III.12, co. [↑](#endnote-ref-62)
63. For further contemporary work on this, see Jennifer Frey, “Anscombe on the Voluntary Character of Negligence,” in Teleological Structures in Human Life, ed. C. Kietzmann (New York: Routledge, 2022). [↑](#endnote-ref-63)
64. Thanks particularly to two anonymous referees and to Alexandra Romanyshyn for their helpful suggestions in improving this paper. [↑](#endnote-ref-64)