

# Antioch's "Sexual Offense Policy": A Philosophical Exploration\*

**She: For the last time, do you love me or don't you?**  
**He: I DON'T!**  
**She: Quit stalling, I want a *direct* answer.**  
Jane Russell and Fred Astaire<sup>1</sup>

## 1. "When In Doubt, Ask"

Consider this seemingly innocuous moral judgment issued by philosopher Raymond Belliotti:

**"teasing" without the intention to fulfill that which the other can reasonably be expected to think was offered is immoral since it involves the nonfulfillment of that which the other could reasonably be expected as having been agreed upon.<sup>2</sup>**

This might be right in the abstract; provocative and lingering flirtatious glances sometimes can reasonably be taken as an invitation to engage in sex; hence brazenly flirting and not fulfilling its meaning, or never intending to fulfill its meaning, is, like failing to honor other promises or invitations, *ceteris paribus* a moral defect--even if not a mortal sin.<sup>3</sup> Abstractions aside, however, how are we to grasp "can *reasonably* be taken as"? A woman's innocent, inquisitive glance might be taken as a sexual invitation by an awfully optimistic fellow, and he and his peers might judge his perception "reasonable." This is the reason Catharine MacKinnon says that to use "reasonable belief as a standard without asking, on a substantive social basis, to whom the belief is reasonable and why--meaning, what conditions make it reasonable--is one-sided: male-sided."<sup>4</sup> Similarly, a man's innocent, inquisitive glance might be taken as a sexual leer by an anxiously sensitive woman, and she and her peers might judge this perception "reasonable." Belliotti writes as if all were well with "reasonable":

**Although sexual contracts are not as formal or explicit as corporation agreements the rule of thumb should be the concept of reasonable expectation. If a woman smiles at me and agrees to have a drink I cannot reasonably assume . . . that she has agreed to spend the weekend with me.<sup>5</sup>**

I suppose not. But why not? We do not now have in our culture a convention, a practice like the display of colored handkerchiefs, in which a smile before an accepted drink has that meaning. But nothing intrinsic to the action prevents its having, in the proper circumstances, that very meaning. And an optimistic fellow might say that the *special* sort of smile she, or another he, gave him constituted a sexual invitation. Belliotti continues his example:

**On the other hand if she did agree to share a room and bed with me for the weekend I could reasonably assume that she had agreed to have sexual intercourse.**

Not true for many American couples as they travel through foreign lands together. Or maybe in accepting the invitation to share a room or sleeping car she agreed only to snuggle. Cues indicating the presence and kind of sexual interest are fluid; at one time in the recent past, a woman's inviting a man to her apartment or room carried more sexual meaning than it does now--even if that meaning still lingers on college campuses and elsewhere.<sup>6</sup> To forestall such objections, Belliotti offers these instructions:

**If there is any doubt concerning whether or not someone has agreed to perform a certain sexual act with another, I would suggest that the doubting party simply ask the other and make the contract more explicit. . . . [W]hen in doubt assume nothing until a more explicit overture has been made.<sup>7</sup>**

What could be more commonsensically true than this? But it is wrong. The man who thinks it reasonable in a given situation to assume that the woman has agreed to have sex will not have any doubt and so will have no motive to ask more explicitly what she wants. His failure to doubt, or his failure to imagine the bare possibility of doubting, whether the other has consented to engage in sex is brought about by the same factors that determine, for him, the reasonableness of his belief in her consent. It is silly to suggest "*when* in doubt, ask," because the problem is that not enough doubt arises in the first place, i.e., the brief look is taken too readily as reasonable or conclusive evidence of a sexual invitation. A man touches the arm of a woman who briefly glanced at him; she pulls away abruptly; but he is not caused to have doubts about her interest. Even if he does not take her resistance as further evidence of her desire, the reasonableness, for him, of his belief that her earlier glance was intentionally sexual is enough to prevent doubt from taking root when it should--immediately.

## 2. "'No' Means 'No'"

According to Susan Estrich, a man who engages in sex with a woman on the basis of an unreasonable belief in her consent should be charged with rape; only a genuinely reasonable belief in her consent should exculpate an accused rapist. Estrich wants it to be legally impossible for a man accused of rape to plead that he believed that the woman consented, when that belief was unreasonable, even though *he* thought it was reasonable. Estrich realizes that "reasonable belief" is a difficult notion. Still, she heroically proposes that "the reasonable man in the 1980s should be the one who understands that a woman's word is deserving of respect, whether she is a perfect stranger or his own wife." The reasonable man "is the one who . . . understands that 'no means no'."<sup>8</sup> The man pawing the arm of the woman who pulls abruptly away--the physical equivalent of "no"--had better immediately doubt the quality of his belief in her sexual interest. At the

psychological level, this man might not doubt that she is sexually interested in him; Estrich's normative proposal is that he is to be held liable anyway, because he *should* be doubtful. Beyond this crude sort of case, I think Estrich means that, for the reasonable man, a woman's qualified locution ("Please, not tonight, I think I'd rather not"; "I don't know, I just don't feel like it") is not an invitation to continue trying, but "no." Her wish is expressed softly because she is tactful or frightened or because this is the women's language she has learned to speak. For the reasonable man, her "I'm not sure I want to" is either a tactful "no" or a request to back off while she autonomously makes up her own mind.

As congenial as Estrich's proposal is, she muddies the water with a tantalizing piece of logic:

**Many feminists would argue that so long as women are powerless relative to men, viewing a "yes" as a sign of true consent is misguided. . . . [M]any women who say yes to men they know, whether on dates or on the job, would say no if they could. I have no doubt that women's silence sometimes is the product not of passion and desire but of pressure and fear. Yet if yes may often mean no, at least from a woman's perspective, it does not seem so much to ask men, and the law, to respect the courage of the woman who does say no and to take her at her word.<sup>9</sup>**

Estrich's reasoning seems to be: if something as antithetical to "no" as "yes" can mean "no," then surely something as consistent with "no," "no" itself, means "no." This argument has a curious consequence. If "yes" can mean "no," at least from a woman's *own* perspective (the woman who consents for financial reasons but whose heart and desire are not wrapped up in the act; a woman who agrees, but only after a barrage of pleading),<sup>10</sup> then it will be difficult to deny that "no" spoken by some women can mean "maybe" or even "yes." From the perspective of some women, "no" can mean "try harder to convince me" or "show me how manly you are." Charlene Muehlenhard and Lisa Hollabaugh reported in 1988 that some women occasionally say "no" but do not mean it; 39.3% of the 610 college women they surveyed at Texas A&M University indicated that they had offered "token resistance" to sex "even though [they] had every intention to and [were] willing to engage in sexual intercourse."<sup>11</sup> Susan Rae Peterson partially explains these findings: "typical sexual involvement includes some resistance on the part of women . . . because they have been taught to do so, or they do not want to appear 'easy' or 'cheap'."<sup>12</sup>

Men cannot always tell when a woman's resistance is real or token, serious or playful; men are, moreover, often insensitive, even callous, as to what a woman does intend to communicate; and, after all, Muehlenhard and Hollabaugh's figure is only 39% and not 99%. For these reasons, as well as her own, Estrich's proposal is a wise suggestion. Men, and the courts, should always assume, in order to be cognitively, morally, and legally safe, that a woman's "no" means "no"--*even in those cases when it does or might not*. A man who takes "no" as "no" even when he suspects that a woman is testing his masculinity with token resistance is advised by Estrich to risk suffering a loss of sexual pleasure and a

possible blow to his ego, in order to secure the greater good, for both him and her, of avoiding rape.

But if men are always to assume that "no" means "no," even though there is a nontrivial chance that it means "keep trying" or "yes," then Estrich, to be consistent, should permit men to assume that a woman's "yes" always means "yes"--even though, on her view, a woman's "yes" sometimes means "no."<sup>13</sup> If, instead, Estrich wants men to sort out when a woman's "yes" really means "yes" and when it does not, in order that he be able to decide whether to take the "yes" at its face value and proceed with sex, she should propose some workable procedure for men to follow. Yet her description of the reasonable man mentions only what his response to "no" should be, and not what his response to "yes" should be. Encouraging women to abandon the token resistance maneuver, to give up saying "no" when they mean "maybe" or "yes," is helpful. But it will not take theorists of sex, or men in the presence of an apparently consenting woman, very far in deciphering when "yes" means "no."<sup>14</sup>

### 3. The Antioch Policy

I propose that we understand Antioch University's "Sexual Offense Policy" as addressing the issues raised in our discussion of Belliotti and Estrich. The Policy's central provisions are these:<sup>15</sup>

- A1. "Consent must be obtained verbally before there is any sexual contact or conduct."**
- A2. "[O]btaining consent is an on-going process in any sexual interaction."**
- A3. "If the level of sexual intimacy increases during an interaction . . . the people involved need to express their clear verbal consent before moving to that new level."**
- A4. "The request for consent must be specific to each act."**
- A5. "If you have had a particular level of sexual intimacy before with someone, you must still ask each and every time."**
- A6. "If someone has initially consented but then stops consenting during a sexual interaction, she/he should communicate withdrawal verbally and/or through physical resistance. The other individual(s) must stop immediately."**
- A7. "Don't ever make any assumptions about consent."**

In an ethnically, religiously, economically, socially, and sexually diverse population, there might be no common and comprehensive understanding of what various bits of behavior mean in terms of expressing interest in or consenting to sex. In the absence of rigid conventions or a homogeneous community, a glance, either brief or prolonged, is too indefinite to be relied on to transmit information; an invitation to come to one's room, or sharing a room, or a bed, on a trip might or might not have some settled meaning; clothing and cosmetics in a pluralistic culture are equivocal. (Young men, more so than young women, take tight jeans and the absence of a bra under a top to signal an interest in sex.)<sup>16</sup> Because physical movements and cues of various kinds can be interpreted in widely different ways, sexual activity entered into or carried out on the basis of this sort of (mis)information is liable to violate someone's rights or otherwise be indecent or offensive. Antioch insists that consent to sexual activity be verbal (A1) instead of behavioral.<sup>17</sup> Following this rule will minimize miscommunication and the harms it causes and encourage persons to treat each other with respect as autonomous agents.

Further, bodily movements or behaviors of a sexual sort that occur in the early stages of a possible sexual encounter can also be ambiguous and do not necessarily indicate a willingness to increase the intensity of, or to prolong, the encounter (hence A2, A3). Verbal communication is supposed to prevent misunderstandings rooted in indefinite body language; we should not assume consent on the basis of expressions of desire (lubrication, groans) or failures to resist an embrace (A1). Neither of these bodily phenomena--reacting with sexual arousal to a touch; not moving away when intimately touched--necessarily mean that the touched person welcomes the touch or wants it to continue. There are times when one's body responds with pleasure to a touch but one's mind disagrees with the body's judgment; Antioch's insistence on verbal consent after discussion and deliberation is meant to give the mind the decisive and autonomous say. Similarly, the verbal request for, and the verbal consent to, sexual contact must be not only explicit, but also specific for any sexual act that might occur (A4). Consenting to and then sharing a kiss does not imply consent to any other sexual act; the bodily movements that accompany the sexual arousal created by the kiss do not signal permission to proceed to some other sexual activity not yet discussed.

One provision (A7) is a rebuttal of Belliotti's advice, "when in doubt, ask." Antioch demands, more strictly than this, that the sexual partners entertain *universal* doubt and therefore *always* ask. Doubt about the other's consent must be categorical rather than hypothetical: not Belliotti's "when in doubt, assume nothing," but a Cartesian "doubt!" and "assume nothing!" To be on the cognitive, moral, and legal safe side, to avoid mistakes about desire or intention, always assume "no" unless a clear, verbal, explicit "yes" is forthcoming (A1, A3, A4). Men no longer have to worry about distinguishing a woman's mildly seductive behavior from her "incomplete rejection strategy,"<sup>18</sup> about which men and boys are often confused; in the absence of an explicit "yes" on her part, he is, as

demanded by Estrich, to assume a respectful "no." There's still the question of how a man is to know, when obvious consent-negating factors are lacking (e.g., she's had too much alcohol), whether a woman's "yes" truly means "yes." Antioch's solution is to rely on explicit, probing verbal communication that must occur not only before but also during a sexual encounter (A3, A5). The constant dialogue, the "on-going process" (A2) of getting consent in what Lois Pineau calls "communicative sexuality,"<sup>19</sup> is meant to provide the man with an opportunity to assess whether the woman's "yes" means "yes," to give her the opportunity to say a definite even if tactful "no," and to clear up confusions created by her silence or passive acquiescence. At the same time, there is to be no constant badgering--especially not under the rubric of "communicative sexuality"--of a woman by a man in response to her "no." A man's querying whether a woman's "no" really means "no" is to disrespect her "no" and fails to acknowledge her autonomy. It is also to embark on a course that might constitute verbal coercion.<sup>20</sup>

It is illuminating to look at the Antioch policy from the perspective of the sadomasochistic subculture, in particular its use of "safe words." A set of safe words is a language, a common understanding, a convention jointly created (hence a Cartesian foundation) in advance of sex by the partners, to be used during a sexual encounter as a way to say "yes," "more," "no," to convey details about wants and dislikes, without spoiling the erotic mood. Thus the use of safe words attempts to achieve some of the goals of Antioch's policy without the cumbersome apparatus of explicit verbal consent at each level of sexual interaction (A3, A4). And a tactful safe word can gently accomplish an Antiochian withdrawal of consent to sex (A6). But there is a major difference between sadomasochism and Antiochian sex: a sadomasochistic pair want the activities to proceed smoothly, spontaneously, realistically, so one party grants to the other the right to carry on as she wishes, subject to the veto or modifications of safe words, which are to be used sparingly, only when necessary, as a last resort; the couple therefore eschew Antiochian constant dialogue. In dispensing with the incessant chatter of on-going consent to higher levels of sexual interaction (A2, A3), the sadomasochistic pair violate another provision (A7): consent is assumed throughout the encounter in virtue of the early granting of rights. No such prior consent to sex into an indefinite future is admissible by Antioch (A2, A3, A4).<sup>21</sup>

#### 4. Pleasure

Does Antioch's policy make sex less exciting? Does it force a couple to slow down, to savor each finger and tooth, when they would rather be overwhelmed by passion? Sarah Crichton criticizes the Antioch policy on the grounds that "it criminalizes the delicious unexpectedness of sex--a hand suddenly moves to here, a mouth to there."<sup>22</sup> But this consideration is not decisive. One goal of the Policy is to decrease the possibility that a person will unexpectedly experience (i.e.,

without being warned by being asked) something unpleasant that he or she does not want to experience: a mouth sucking on the wrong toe, a finger too rudely rammed in the rectum. The risk of undergoing unwanted acts or sensations is especially great with strangers, and it is in such a context that the requirement that consent be obtained specifically for each act makes the most sense. Sometimes we do not want the unexpected but only the expected, the particular sensations we know, trust, and yearn for. So there is in the Antioch policy a trade off: we lose the pleasure, if any, of the unexpected, but we also avoid the unpleasantness of the unexpected. This is why Crichton's point is not decisive. Perhaps for young people, or for those more generally who do not yet know what they like, verbal consent to specifically described touches or acts might make less sense. But in this case, too, reason exists to insist, for the sake of caution, on such consent.

Julia Reidhead also attempts to rebut the objection that Antioch's policy begets dull sex.<sup>23</sup> She claims that the Policy gives the partners a chance to be creative with language, to play linguistically with a request to touch the breast or "kiss the hollow of your neck" and to "reinvent [sex] privately." But Antioch thinks that sexual language needs to be less, rather than more, private; more specific, not less.<sup>24</sup> Hence Reidhead's praise for Antioch's policy misses its point: common linguistic understandings cannot be assumed in a heterogeneous population. To encourage the creative, poetic use of language in framing sexual requests to proceed to a new level of sex is to provoke the misunderstandings the Policy was designed to prevent. Thus, when Reidhead queries, "What woman or man on Antioch's campus, or elsewhere, wouldn't welcome . . . 'May I kiss the hollow of your neck'," her homogenizing "or elsewhere" betrays the insensitivity to cultural and social differences and their linguistic concomitants that Antioch is trying to overcome.

Reidhead defends Antioch also by arguing that vocalizing creatively about sex before we do it is a fine way to mix the pleasures of language with the pleasures of the body. Indeed, the pleasures of talk are themselves sensual. "Antioch's subtle and imaginative mandate is an erotic windfall: an opportunity for undergraduates to discover that wordplay and foreplay can be happily entwined." Reidhead is right that talking about sex can be sexy and arousing, but wrong that this fact is consistent with the Antioch policy and one of its advantages. This cute reading of communication as itself sex almost throws Antioch's procedure into a vicious regress: if no sexual activity is permissible without prior consent (A1), and consent must be spoken, then if a request for sexual activity is constructed to be a sexually arousing locution, it would amount to a sexual act and hence would be impermissible unless it, in turn, had already received specific consent (A1, A4). So *Y*'s consent to nonverbal sexual activity must be preceded by *X*'s request for that activity *and* by *X*'s request to utter that request. Further, to try to get consent for the sexual act of kissing the neck by talking sensually about kissing the neck is to employ the pleasure elicited by one sexual act to bring about the occurrence of another sexual act. But obtaining consent for a sexual act by causing even mild sexual pleasure with a seductive request is to interfere with calm and rational

deliberation--as much as a shot or two of whiskey would. This is why Antioch insists (A3) that between any two sexual levels there must be a pause, a sexual gap, that makes space for three things: (1) a thoughtful, verbal act of request, (2) deliberations about whether or not to proceed, and then (3) either consent or denial. A well-timed hiatus respected by both parties provides an obstacle to misreadings; Augustinian bodily perturbations are to be checked while the mind reconsiders.

## 5. Body Talk

The body should not be dismissed. When two people in love embrace tightly, eyes glued to the other's eyes, bodies pulsating with pleasure, they often do know (*how*, is the mystery) without explicit verbalization, from the way they touch each other and respond to these touches, that each wants and consents to the sex that is about to occur. Other cases of successful communication--in and out of sexual contexts--are explicit and specific without being verbal. So even if the truth of the particular claim that the mouth can say "no" while the body exclaims an overriding "yes" is debatable, the general idea, that the body sometimes does speak a clear language, seems fine. Maybe this is why Antioch, even though it requires a verbal "yes" for proceeding with sex (A1), allows a nonverbal "no" to be sufficient for *withdrawing* consent (A6); nonverbal behavior can have a clear meaning. Certain voluntary actions, even some impulsive, reflex-like, bodily movements, do mean "no," and about these there should be no mistake, in the same Estrichian way that about the meaning of the simple verbal "no" there should be no mistake. But if such motions can be assumed or demanded to be understood in a pluralistic community--*pulling away when touched means "no"*--then some voluntary behaviors and involuntary bodily movements must reliably signal "yes."

According to the Policy, a verbal "yes" replaces any possible bodily movement or behavior as the one and only reliable sign that proceeding with sexual activity is permissible. If I ask, "may I kiss you?" I may not proceed on the basis of your bodily reply, e.g., you push your mouth out at mine, or groan and open your mouth invitingly, because even though it seems obvious what these behaviors mean ("yes"), I might be making an interpretive mistake: I see your open mouth as presented "invitingly" because I have with undue optimism deceived myself into thinking that's what you mean. So I must wait for the words, "yes, you may kiss me,"<sup>25</sup> about which interpretive unclarity is not supposed to arise, else the problem Antioch set for itself is unsolvable. The verbal "yes," *after* communicative probing, is Antioch's Cartesian foundation. But can the ambiguities of the verbal be cleared up by language itself? How much communicative probing is *enough*? This question opens up a hermeneutic circle that traps Antioch's policy. Her "yes," repeated several times under the third-degree of communicative sex, can always be probed more for genuineness, if I

wanted to *really* make sure. But, losing patience, she shows her "yes" to be genuine when she grabs me. The body reasserts itself.

My continuing to probe her "yes" over and over again, to make sure that her heart and desire are wrapped up in the act to which she is apparently consenting (must I ask her whether her agreement has been engineered for my benefit by "compulsory heterosexuality"?), is a kind of paternalism. Because the robust respect that Antioch's policy fosters for a woman's "no" is offset by the weaker respect it fosters for her "yes," conceiving of the Antioch policy not as attempting to foster respect for the autonomy of the other, but as attempting to prevent acquaintance rape, i.e., harmful behaviors, is more accurate. At best, the relationship between Antioch's policy and autonomy is unclear. One Antioch student, Suzy Martin, defends the Policy by saying that "It made me aware I *have* a voice. I didn't know that before."<sup>26</sup> Coming in the mid-90s from a college-age woman, the kind of person we expect to know better, this remark is astonishing. In effect, she admits that what Antioch is doing for her, at such an advanced age, is what her parents and earlier schooling should have done long ago, to teach her that she has a voice. Thus Antioch is employing an anti-autonomy principle in its treatment of young adults--*in loco parentis*--that my college generation had fought to eliminate.

## 6. Consent

The Policy lays it down that previous sexual encounters between two people do not relax or change the rules to be followed during their later encounters (A5); the casual sex of one-night stands and that of on-going relationships are governed by the same standards. Nor does a person's sexual biography (reputation) count for anything. No historical facts allow "assumptions about consent" (A7). Indeed, in requiring consent at each different level of a single sexual encounter, Antioch applies the same principle of the irrelevance of history to each sub-act within that encounter. Earlier consent to one sub-act within a single encounter creates no presumption that one may proceed, without repeating the procedure of obtaining explicit and specific consent, to later sub-acts in the same encounter, in the same way that one sexual encounter does not mean that consent can be assumed for later encounters. The history of the relationship, let alone the history of the evening, counts for nothing.<sup>27</sup> The Antioch policy, then, implies that one cannot consent in advance to a whole night of sex, but only to a single atomistic act, one small part of an encounter. Similarly, in denying the relevance of the historical, Antioch makes a Pauline marriage contract impossible.<sup>28</sup> In such a marriage, one consents at the very beginning, in advance, to a whole series of sexual acts that might comprise the rest of one's sexual life; consent to sex is presumed after the exchange of vows and rings; each spouse owns the body and sexual powers of the other; and so marital rape is conceptually impossible, replaced by a notion of fulfilling the "marriage debt." In rejecting the possibility of such an arrangement,

even if voluntarily contracted, Antioch cut backs on a traditional power of consent, its ability to apply to an indefinite, open future. For Antioch, consent is short-lived; it dies an easy death, and must always be replaced by a new generation of consents.

Antioch also cuts back on the power of consent by making it not binding: one can withdraw consent at any time during any act or sub-act (A6). Nothing in the Policy indicates that the right to withdraw is limited by the sexual satisfaction or other expectations of one's partner. Any such qualification would also run counter to the Policy's spirit. This is a difference between Antioch's policy and Belliotti's libertarianism, according to which breaking a sexual promise is at least a *prima facie* moral fault. It is also contrary to the indissolubility of Pauline marriage. But that Antioch would be indulgent about withdrawing consent makes sense, given Antioch's distrust of the historical. Consenting is an act that occupies a discrete location in place and time; it is a historical event, and that it has occurred is a historical fact; thus consent is itself precisely the kind of thing whose weight Antioch discounts. Consenting to a sexual act does not entail, for Antioch, that one ought to perform the act, and not even that one has a *prima facie* duty to do so; the act need not take place because the only justification for it to occur is the act of consenting that has already receded into the past and has become a mere piece of impotent history. When consent into the future, today for tomorrow, is ruled out, so too is consent into the future, now for ten seconds from now. How could consent have the power to legitimize any subsequent sexual act? An air of paradox surrounds the Policy: it makes consent the centerpiece of valid sexual conduct, yet its concept of consent is emaciated. Of course, "unless refusal of consent or withdrawal of consent are real possibilities, we can no longer speak of 'consent' in any genuine sense."<sup>29</sup> But that withdrawing consent must be possible does not entail that we have *carte blanche* permission to do so. My guess is that Belliotti is right, that withdrawing consent to an act to which one has consented is *prima facie* wrong. The logical possibility that consent is binding in this way is necessary for taking consent seriously as a legitimizer of sexual activity.

Still, if *X* has promised a sexual act to *Y*, but withdraws consent and so reneges, it does *not* follow from libertarianism that *Y* has a right to compel *X* into compliance.<sup>30</sup> Nor does it follow from the terms of Pauline marriage, in which the spouses consent to a lifetime of sexual acts. Neither the fact that each person has a duty, the marriage debt, to provide sexual pleasure for the other whenever the other wants it, nor the fact that in such a marriage the one initial act of consent makes rape conceptually impossible, imply that a spurned spouse may rightfully force himself upon the other. Pauline marriage is egalitarian; the wife owns the husband and his ability to perform sexually as much as he owns her capacity to provide pleasure. In patriarchal practice, the man expects sexual access to his wife in exchange for economic support, and even if rape is conceptually impossible he might extract the marriage debt: "if she shows unwillingness or lack of inclination to engage with him in sexual intercourse, he may wish to remind her of the nature of the bargain they struck. The act of rape may serve conveniently as a

communicative vehicle for reminding her."<sup>31</sup> Neither violence nor abuse are legitimated by the principles of Pauline marriage; perhaps their possibility explains why Paul admonishes spouses to show "benevolence" to each other (1 Cor. 7:3).<sup>32</sup>

Finally, Antioch's policy also does not permit "metaconsent," or consent about (the necessity of) consent. Consent, in principle, should be able to alter the background presumption, in the relationship between two people, *from* "assume 'no' unless you hear an explicit 'yes'" *to* "assume 'yes' unless you hear an explicit 'no,'" or *from* "don't you dare try without an explicit go-ahead" *to* "feel free to try but be prepared for a 'no'." This power of consent is abolished by Antioch's making history irrelevant; consent to prior acts creates no presumption in favor of "yes" tonight (A5). Further, to give consent into the future allows one's partner to make a prohibited assumption (A7). There is no provision in the Policy that empowers a couple to jettison the Policy by free and mutual consent; here is another way Antioch's policy is not designed to foster autonomy. In Pauline marriage, by contrast, one act of consent, the marriage vow, has the power to change presumptions from "no" to an ongoing "yes." Such is the power of consent for Paul, that it both applies to the future and is binding: we make our bed and then lie in it. Antioch's notion of consent has freed us from such stodgy concerns.

#### Notes

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1. The epigraph to Chapter 9 of Susan Haack's *Evidence and Inquiry* (Oxford: Blackwell, 1993), 182. Professor Haack thanks David Stove for supplying it.

2. "A Philosophical Analysis of Sexual Ethics," *Journal of Social Philosophy* 10, no. 3 (1979): 8-11, at 11.

3. According to John Sabini and Maury Silver ("Flirtation and Ambiguity," ch. 6 of *Moralities of Everyday Life* [New York: Oxford University Press, 1982], 107-23, at 116 n. 11), "Flirtation . . . offers no commitment and gives no right to claim abuse. To claim you were teased is to claim [the other] went beyond flirting to committing. Of course, the disappointed one may be inclined to see a tease in a flirt." That is indeed the problem.

4. *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), 183; see 181.

5. "A Philosophical Analysis of Sexual Ethics," 9.

6. See T. Perper and D. Weis, "Proceptive and Rejective Strategies of U.S. and Canadian College Women," *Journal of Sex Research* 23, no. 4 (1987): 455-80, at 462.

7. Belliotti repeats the "when in doubt, ask" advice in his essay "Sex" (in Peter Singer, ed., *A Companion to Ethics* [Oxford: Blackwell, 1991], 315-326, at 325) and in his treatise *Good Sex. Perspectives on Sexual Ethics* (Lawrence, Kan.: University Press of Kansas, 1993), 106-107. See my "book note" in *Ethics* 105, no. 2 (1995): 447-48.

8. *Real Rape* (Cambridge: Harvard University Press, 1987), 97-98.

9. *Real Rape*, 102.

10. These examples are Robin West's ("The Harms of Consensual Sex," *American Philosophical Association Newsletters* 92, no. 2 (1995): 52-55, at 53), who might not approve of my use of them. I am not sure that the examples capture what Estrich's brief remark, that some women who say "yes" would say "no" *if they could*, means. She makes the point, elsewhere, this way: "many women who say 'yes' are not in fact choosing freely but are submitting because they feel a lack of power to say 'no'" ("Rape," in Patricia Smith, ed., *Feminist Jurisprudence* [New York: Oxford University Press, 1993], 158-87, at 177).

11. "Do Women Sometimes Say No When They Mean Yes? The Prevalence and Correlates of Token Resistance to Sex," *Journal of Personality and Social Psychology* 54, no. 5 (1988): 872-79.

[Note added/extended in August, 2002.] Muehlenhard *might* have changed her mind. This is what Judith Levine says about more recent research carried out by Muehlenhard (from *Harmful to Minors: The Perils of Protecting Children from Sex* [Minneapolis, Minn.: University of Minnesota Press, 2002], pp. 171 and 268n18):

A heartening study of sexual consent conducted by Charlene Muehlenhard and Susan Hickman at the University of Kansas psychology department showed that while college women and men often make their willingness to have sex known in different ways, they almost universally understand the cues from a partner of the other sex. And -- good riddance to bad myths -- "a direct refusal (saying 'no') was not perceived as representative of sexual consent by either women or men," Muehlenhard wrote me. "They seemed to agree that 'no' meant 'no'." [Levine's reference: Susan E. Hickman and Charleen [sic] L. Muehlenhard, "By the Semi-Mystical Appearance of a Condom: How Young Women and Men Communicate Sexual Consent," paper presented at the Annual Meeting of the Society for the Scientific Study of Sex, Houston, Texas, November 1996.]

12. "Coercion and Rape: The State as a Male Protection Racket," in Mary Vetterling-Braggin, Frederick A. Elliston, and Jane English, eds., *Feminism and Philosophy* (Totowa, N.J.: Littlefield, Adams, 1977), 360-71, at 365. See also Muehlenhard and Hollabaugh on the wide variety of reasons women have for carrying out this sometimes "rational" strategy (875, 878).

Rae Langton suggests that men's failure to take a woman's "no" as "no" is an effect of pornography ("Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22, no. 4 [1993]: 293-330, at 324-25). This thesis is surprising, because in most pornography women are portrayed as active seekers of sexual activity, as eschewing the traditional games, and not as reluctant participants. Consistent with men's fantasies, women's favorite word, it seems, is "yes." Still, Langton supposes that because women as portrayed in pornography rarely say "no," men who learn "the rules of the [sexual] game" from pornography do not learn to recognize refusals for what they are. But do men learn about sex (only, mostly, or at all) from pornography? Do men really (and stupidly) take the fact that women rarely say "no" in pornography to mean that women do not mean "no" when they do say it? Beatrice Faust proposes a way, more plausible than Langton's, in which pornography might have an effect:

**Many nonviolent rapes are simply results of scrambled signals between the sexes. Pornography is relevant to this category of rape, since it reinforces the belief that women respond to sex exactly as men do. (*Women, Sex, and Pornography* [New York: Macmillan, 1980], 132.)**

Women in pornography energetically seek sexual encounters and respond to the sexual advances of others without hesitation; they are portrayed as being as much interested in sex for its own sake, as eager to consent, and as easily aroused as men are (or as men think they are). Men who believe that women are as quick-triggered as they are might have difficulty comprehending a woman's unwillingness to proceed directly from a long kiss to more intimate sexual touches; a man, being already aroused and wanting to proceed, might assume that

she is just as aroused and hence also wants to proceed--despite her pauses or silence. But men, especially when young, likely assimilate the sexuality of women to their own not in virtue of pornographic portrayals of sexually assertive women, but out of simple sexual inexperience.

Indeed, boys discover that "no" does not always mean "no" when they are young (i.e., pre-pornographically). Boys detect the maneuver in girls who say "no" but soon show they do not mean it; these girls say "no" only because they have been pushed by their mothers to say "no," even though pushed by their mothers, without complete success, to mean it. Muehlenhard and Hollabaugh's research shows that the phenomenon extends beyond grade school into college and strongly suggests that mechanisms other than pornography are at work. If we are worried, as we should be, about where college-age men get the idea, or have it reinforced, that a woman's "no" does not always mean "no," we might want to consider the effects of Muehlenhard's publication itself, which let a popular cat out of the scholarly bag. Men can read "39.3%" in print in a refereed, respected journal, which must be a more persuasive documentation of women's artifice than the fantasy world of pornography. Robin Warshaw and Andrea Parrot ("The Contribution of Sex-Role Socialization to Acquaintance Rape," in Andrea Parrot and Laurie Bechhofer, eds., *Acquaintance Rape. The Hidden Crime* [New York: John Wiley, 1991], 73-82) claim that "men's social training tells them . . . that women who say 'no' don't really mean it" (75) and "men are socialized to believe . . . that women do not mean 'no' when they say 'no'" (80). But if men discover that "no" does not always mean "no" *first hand*, from women who say "no" but do not mean it, it is a conceptual disaster to point the causal finger at "socialization" or "social training."

13. Carole Pateman turns this around: "if 'no,' when uttered by a woman, is to be reinterpreted as 'yes,' then . . . why should a woman's 'yes' be more privileged, be any the less open to invalidation" ("Women and Consent," *Political Theory* 8, no. 2 [1980]: 149-68, at 162)--that is, if men do not take "no" as "no," they have no right to take "yes" as "yes."

14. Stephen Schulhofer ("The Gender Question in Criminal Law," in Jeffrie G. Murphy, ed., *Punishment and Rehabilitation*, 3rd ed. [Belmont, Cal.: Wadsworth, 1995], 274-311, at 308-309) discusses some cases in which "yes" does not mean "yes": the man obtains a woman's consent through fraud or deception. Estrich does not seem to have this sort of case in mind. Maybe she agrees with MacKinnon's point about the indistinguishability in patriarchy of rape and consensual sex, or with her rhetorical skepticism: "What is it reasonable for a man to believe concerning a woman's desire for sex when heterosexuality is compulsory?" (*Toward a Feminist Theory of the State*, 183). "Nothing" is the implied answer; he may never assume that "yes" means "yes."

15. I quote from a copy of the Policy and its Introduction sent to me in 1994 by the Office of the President, Antioch University. The numbering of the provisions

is my own. The Policy was intended to be gender- and sexual orientation-neutral, allowing the possibility of gay or lesbian acquaintance rape and the rape of a man by a woman.

16. Jacqueline D. Goodchilds and Gail L. Zellman, "Sexual Signaling and Sexual Aggression in Adolescent Relationships," in Neil M. Malamuth and Edward Donnerstein, eds., *Pornography and Sexual Aggression* (Orlando, Fla.: Academic Press, 1984), 233-43, at 236. In any event, "males have a more sexualized view of the world than females, attributing more sexual meaning to a wide range of behaviors" (239).

17. At least seven times in the Policy and its Introduction, it is stated that consent to sexual activity must be verbal. Only once does the Policy depart from this formula: "the person with whom sexual contact/conduct is initiated is responsible to express verbally and/or physically her/his willingness or lack of willingness when reasonably possible." Because the bulk of the Policy insists that consent be verbal, I discount this one awkward and *possibly* contradictory sentence. Further, "reasonably" here nearly destroys the power of the Policy to resolve issues *about* reasonableness.

The Policy also says, "If sexual contact . . . is *not* mutually and simultaneously initiated, then the person who initiates sexual contact . . . is responsible for getting the verbal consent of the other individual(s) involved" (italics added). From the statement that when mutual and simultaneous initiation is absent, verbal consent is required, it does not follow (nor does the Policy ever assert) that when mutual and simultaneous initiation is present, verbal consent can be dispensed with. To claim otherwise--to deny that the Antioch policy always requires verbal consent--is to commit an elementary logical fallacy. (This mistake was made by my commentator at the APA session.) Anyway, if we are to construe the Antioch policy as an interesting and novel approach to the problems we are discussing, we should not read it as asserting that "mutual and simultaneous initiation" cancels the need for verbal consent. The aroused and optimistic person who subjectively has no doubt that the other person is consenting, but is mistaken about that, is a version of the aroused and optimistic person who assumes that his initiation is reciprocated mutually and simultaneously by the other, but is similarly mistaken. Thus the good intentions of the Antioch policy would fall prey to the same psychological and moral delusions that undermined Belliotti's principle, "when in doubt, ask."

18. Perper and Weis, "Proceptive," 476.

19. A man "cannot know, except through the practice of communicative sexuality, whether his partner has any sexual reason for continuing the encounter"--or any other reason for doing so ("Date Rape: A Feminist Analysis," *Law and Philosophy* 8 [1989]: 217-43, at 239). The essays in Leslie Francis's anthology

*Date Rape* (University Park: Penn State University Press, 1996) explore both the Antioch policy and Pineau's essay.

20. Is a man's badgering a woman for sex "coercion"? Charlene Muehlenhard and Jennifer Schrag think so: "We define verbal sexual coercion as a woman's consenting to unwanted sexual activity because of a man's verbal arguments, not including verbal threats of physical force" ("Nonviolent Sexual Coercion," in Parrot and Bechhofer, *Acquaintance Rape*, 115-28, at 122). Muehlenhard and Schrag describe ways in which they think "women are coerced into having unwanted sexual intercourse," ways that are "more subtle" than being violently raped (115). Among the things listed that *coerce* women into unwanted sexual intercourse are "compulsory heterosexuality" (116-17), "status coercion" (119), "verbal sexual coercion" (122-23), and "discrimination against lesbians" (121). In agreement with Muehlenhard, Mary Koss uses the expression "sexually coercive men" to refer to those who obtain sex "after continual discussions and arguments" or by false avowals of love (Mary P. Koss and Kenneth E. Leonard, "Sexually Aggressive Men: Empirical Findings and Theoretical Implications," in Malamuth and Donnerstein, *Pornography and Sexual Aggression*, 213-232, at 216). For discussion, see Neil Gilbert, "Realities and Mythologies of Rape," *Society*, May/June, 1992, 4-10, at 7; and Alan Wertheimer, "Consent and Sexual Relations," in this volume, pp. 341-66.

21. Pineau proposes that consensual sadomasochism be admissible by law, if "the court has a right to require that there be a system of signals whereby each partner can convey to the other whether she has had enough" ("Date Rape," 242). The safe words of consensual sadomasochism apparently fulfill the requirements of communicative sexuality (see her note 23).

22. "Sexual Correctness. Has It Gone Too Far?" in Susan J. Bunting, ed., *Human Sexuality 95/96* (Guilford, Conn.: Dushkin, 1995), 208-11, at 209.

23. "Good Sex" [letter], *The New Yorker* (January 10, 1994), 8.

24. Antioch, however, does very little to make specific the "specific" of A4. Thus the Policy is vulnerable to wisecracks:

**[X and Y sit on a couch, face-to-face.]**

**X: May I kiss you?**

**Y: Of course. Go ahead.**

**[Y makes Y's mouth available; X slides X's tongue deeply into Y's oral cavity. Y pulls sharply away.]**

**Y: I didn't say you could *French* kiss me!**

25. According to the Policy, "Consent must be clear and verbal (i.e., saying: yes, I want to kiss you also)."

26. Jennifer Wolf, "Sex By the Rules," *Glamour* (May 1994), 256-59, 290, at 258.

27. According to the Model Anti-Pornography Law drafted by Catharine MacKinnon and Andrea Dworkin (see "Symposium on Pornography. Appendix," *New England Law Review* 20, no. 4 [1984-85]: 759-77; section 3.1, 760), that a woman is or has been a prostitute outside of the making of an item of pornography means nothing in deciding whether she has been coerced into making this particular item. The historical fact of earlier or concurrent prostitution cannot be used as evidence by the defendant to show that her acts of prostitution in the making of this item of pornography were entered into by her free consent. So the Model Law resembles the Antioch policy, which makes history irrelevant. Several other clauses in the Model Law have similar rationales. That a woman is connected by blood or marriage to, or has had sexual relations with, anyone involved in the making of the pornography, or that she has made pornography before, does not negate a legal finding that she has been coerced into the making of this particular item of pornography.

28. See 1 Cor. 7: <sup>4</sup>The wife hath not power of her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife. <sup>5</sup>Defraud ye not one the other, except it be with consent for a time, that ye may give yourselves to fasting and prayer; and come together again, that Satan tempt you not for your incontinency.

29. Pateman, "Women and Consent," 150.

30. Some teenagers (of both sexes) think that male anger and even assault are justified by a girl's apparently reneging on a sexual deal. See Goodchilds and Zellman, "Sexual Signaling," 237, 241-42.

31. Carolyn Shafer and Marilyn Frye, "Rape and Respect," in Mary Vetterling-Braggin et al., *Feminism and Philosophy*, 333-46, at 342.

32. "It is in fact justly observed that a conjugal act imposed upon one's partner without regard for his or her condition and lawful desires is not a true act of love, and therefore denies an exigency of right moral order in the relationships between husband and wife" (Paul VI, "Humanae Vitae," in Robert Baker and Frederick Elliston, eds., *Philosophy and Sex*, 2nd ed. [Buffalo, N.Y.: Prometheus, 1984], 167-83, at 173).