

A Euthyphro Problem for Consent Theory

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Abstract

Consent theory in sexual ethics, Jonathan Ichikawa argues, has a Euthyphro problem.

It is widely held that sexual violations are explicable in terms of non-consensual sexual contact. But a notion of consent adequate to explain many moral judgments typical of sexual ethics — a notion that vindicates the idea that consent cannot be coerced, that it must be sober, that children cannot consent to sex with adults, etc. — cannot, Ichikawa argues, be articulated, motivated, or explained in a way independently of moral judgments about sexual wrongs. Consequently, if there is as tight a connection between consent and sexual violation as many people think there is, there is good reason to suppose that that connection must ultimately explain consent in terms of sexual wrongdoing, rather than vice versa. The paper highlights some costs and drawbacks to this horn of the Euthyphro dilemma in sexual ethics. One central upshot of the argument will be that mainstream accounts of sexual ethics fail in their explanatory ambitions. Consent cannot play its canonical explanatory role.

1 Introduction

In this paper, I shall argue that contemporary liberal discourse is confused in a significant way about the relationship between consent and sexual ethics. The confusion derives in part from an attempt to cast consent in a role for which it is ultimately ill-suited. This is not a new conclusion — my argument develops tradition deriving from second-wave radical feminism, along with a number of contemporary treatments that I'll discuss below. But I will develop what I take to be a new argument that augments those extant critiques.¹

¹I gestured at the kernel of the argument of this paper in a single paragraph in Ichikawa (2020, p. 24); this paper develops that thought in much more detail.

My target phenomenon is sexual violation. How to demarcate the boundaries of this kind of violation is one of the substantive disputes on which my project bears, but we can at least begin to home in on the subject matter with some paradigms and platitudes: rape is a paradigmatic sexual violation, as are other obvious sexual assaults like forced kisses, instances of nonconsensual groping, etc. Not all sexual acts that are wrong are sexual violations — sex may be wrong because it breaks a promise, for example, but it is not thereby a sexual violation. On one common way of laying out the conceptual terrain, sexual violations are targeted wrongs in which their victims are subjected to sexual behaviour against which they have a right.²

Contemporary consent theorists face a problem, I'll argue, having to do with a kind of anxiety about the boundaries of sexual violation, combined with the emphasis on consent for defining it. These commitments create pressure to adopt an *inflationary* theory of consent, in order to deliver consent theorists' preferred moral verdicts about certain cases. The cases in question are ones where the victim acquiesces to sexual contact, but where the subsequent sex seems intuitively, nevertheless, to be violative. I shall argue that the most plausible versions of inflationary notions of consent face a *Euthyphro problem*, closely analogous to the one Socrates raises in Plato's famous dialogue.

2 Consent Theory

Liberal discourse about sexual ethics and sexual violation is full of “consent” talk, casting consent in central explanatory, epistemic, and educational roles. I'm sure you'll find ideas familiar:

- Sexual violation is wrong because it happens without consent.
- Morally permissible sex is morally permissible because it is consensual.
- One can recognize the circumstances when sex is OK by attending to questions about consent.
- One can recognize the circumstances when sex would be violative by attending to questions about consent.

Call someone a *consent theorist* to the degree to which they accept these claims. Consent theory is the current orthodoxy about sexual violation, within both academia and the broader public. If you want to see some examples, I'm confident that you can find some on your university's student services website or sexual misconduct policy.

Liberal consent theory arose as a response to deeply sexist and violent cultural attitudes about male entitlement to women's bodies. On what Keith

²I do not assume that the category of sexual violation is coextensive with that of sexual assault. As I'll discuss near the end of the paper, one possible upshot of some of my arguments may be that there is good reason to think that there are sexual violations that are not sexual assaults.

Burgess-Jackson calls the “conservative” theory of rape, women were conceptualized as the property of their fathers or husbands, and sexually infringing on a man’s woman was likened to trespass or theft against him.³ Contemporary liberal consent theory, and its attendant “liberal” theory of rape, was a badly-needed corrective — it emphasized that women themselves are people with their own rights, and that women can and should choose for themselves what kind of sexual access to their bodies to permit. On the liberal theory, sexual assault is a violation of *the person assaulted*, and her consent makes the difference between rape and sex. Carolyn Shafer and Marilyn Frye (1977) express this liberal theory when they write that

rape is sexual intercourse performed without the consent of the woman. Since we share the public view that rape is morally wrong and gravely so, and since we would not want to say that there is anything morally wrong with sexual intercourse per se, we conclude that the wrongness of rape rests with the matter of the woman’s consent.⁴

This passage from 1977 feels dated only for its explicit restriction to *women’s* consent (and its implicit restriction to heterosexual sex) — contemporary ethicists at least pay lip service to the broader possible patterns of sex, including sex that does not involve exactly one woman, and to the importance of consent by all parties in a sexual encounter, including men and nonbinary people. But the idea that lack of consent is what makes sexual violations wrong remains contemporary orthodoxy.⁵

3 Feminist Critiques of Consent Theory

Consent theory certainly represented an improvement over the conservative theory, but the emphasis on women’s consent carried baggage of its own, much of which has been critiqued by subsequent feminist theorists. The central difference between the conservative theory and the liberal theory concerns whose rights are at issue, and so, whose consent is morally important. The liberal

³Burgess-Jackson (1996, p. 44). For discussion, see Cahill (2001, pp. 168–72).

⁴Shafer and Frye (1977, p. 334), cited in Cahill (2001, p. 169).

⁵Dempsey and Herring (2007, pp. 468–9), describe this as the orthodox view — they reject it for reasons quite different from my own. (They argue that all sexual penetration of women by men is *prima facie* wrong, regardless of consent.) A few contemporary commitments to this idea include Hurd (1996, 123), Archard (2007), Alexander (2014), and Dougherty (2021).

As discussed below, some feminist scholars have dissented from this orthodoxy. For example, Susan Brison (2002, 6–7), (2022) has argued against understanding rape as “sex minus consent,” rejecting the idea that consensual sex and rape involve the same kind of activity. But even some theorists who follow Brison in this respect — Hallie Liberto (2022, 66–71), for example — posit a central role for consent in explaining the difference between sex and rape. On Liberto’s model, consent is an essential condition for the activity of sex, which helps explain why sex is so different from rape. So Liberto, like other consent theorists, does think that lack of consent plays a key explanatory role in why sexual assaults are violative.

theory’s focus on consent retained the assumption that sex is, at least typically, something a man does to a woman, for his own ends. This has been a focus of feminist critique. See, for instance, this passage from Carole Pateman:

Consent must always be given *to* something; in the relationship between the sexes, it is always women who are held to consent to men. The “naturally” superior, active, and sexually aggressive male makes an initiative, or offers a contract, to which a “naturally” subordinate, passive woman “consents.” An egalitarian sexual relationship cannot rest on this basis; it cannot be grounded in “consent.” (Pateman, 1980, 164)

Consent theory emphasizes the importance of the question: did she agree to him doing that to her, or did he do it without her consent? This is an extremely important question, in the cases in which it applies. But it assumes a fairly specific kind of sexual interaction that should not be assumed universal, or even paradigmatic.

When I say the focus on consent suggests this picture of sex, I do not mean that we cannot talk of consent in homosexual relationships, or involving nonbinary people, or involving mutually chosen and pleasurable activities. Obviously we can, and do. But I would like to suggest that in so doing, we stretch the term. It’s easy not to notice the stretch, because we’re so used to it. At least, those of us who came of age under the liberal theory’s regime are used to it. We grew up listening to sex educators emphasizing “consent” language and watching viral videos about forcing unwelcome tea on our friends.⁶ Older feminists seem to notice the odd fit of “consent” language for this kind of sex more easily than younger ones do. Catherine MacKinnon wrote (2016, 450), for example, that “[s]ex women want is never described by them or anyone else as consensual. No one says, ‘We had a great hot night, she (or I or we) consented.’” My students today do not typically share MacKinnon’s linguistic intuition here. (Neither did I, when I first read it, but I’ve since come to better understand what she had in mind, and am now much more sympathetic to her thought.)

In response to these worries, feminist scholars like Carole Pateman (1980), Ann Cahill (2001), Catherine MacKinnon (2016), John Gardner (2018), Quill Kukla (2018), Linda Martín Alcoff (2018), Jonathan Ichikawa (2020), Susan Brison (2021; 2022) and Jordan Pascoe (2023) have argued that ‘consent’ is ill-suited for its canonical role in sexual ethics. The word presupposes a certain kind of sexual interaction that many of our paradigms of good sex do not match. In cases where partners are mutually deciding on a sexual activity, or

⁶The famous video analogizing sex and tea is at <https://www.youtube.com/watch?v=oQbei5JGiT8>. Perhaps tellingly, it does not use the word ‘consent’ at all, except in its title (“Tea Consent”), its opening promise (to help people “still struggling with consent”), and its tagline summary at its conclusion (“Whether it’s tea or sex, consent is everything”). It is a testament to the ubiquity of consent theory in popular culture that the video’s creators felt no need to connect the idea of consent to the actual content of the video.

where one offers or invites sexual contact as opposed to requesting it, ‘consent’ language is inappropriate.

Moreover, even in cases where the question is applicable, consent is a quite a low bar for permissible sex. If one consents to sex even though one didn’t really want to, for fear of what might have happened if one said no, feminists rightly withhold the gold star of morally unproblematic sex. So likewise if one consents out of desperation, or in a moment of intoxicated weakness, or under a certain age. Perhaps the same goes if one consents to sex with one’s manager, one’s professor, or someone else with whom one stands in a potentially worrisome power imbalance.⁷ One can consent to all manner of what Ann Cahill (2014; 2016) calls “unjust sex”. Many contemporary thinkers, recognizing the serious harms that occur in some of these cases, want to describe them as sexual violations. But if these encounters really do — as described above — involve consent, this would mean that consent is consistent with sexual violation, thus undermining the role of consent in explaining when sex is and isn’t violative.

4 Inflationary Notions of Consent

A popular response to this tension is to suggest that “consent” in liberal sexual discourse is used with a different meaning than that involved in the ordinary notion of consent. Perhaps a child might tacitly and reluctantly consent to having his hair ruffled by his enthusiastic aunt, if he stands there and lets it happen without objecting. But *sexual* consent, the thought goes, is quite different — it must be “affirmative” and “enthusiastic” and “ongoing”. And no matter how enthusiastic, it doesn’t count as consent if you’re drunk, or if you’re a child. Call this an *inflationary* notion of consent.⁸

So-called “age of consent” laws, for example, are widely interpreted as pertaining to the age at which a person becomes capable of giving sexual consent.⁹ One also often sees the suggestion that in at least some circumstances, sex involving certain kinds of power imbalances — between professors and their students, for instance — cannot be consensual.¹⁰ According to inflationary approaches to sexual consent, genuine sexual consent requires much more than

⁷See Alcoff (2018, p. 81), Yap (2019, p. 56), and Rees and Ichikawa (forthcoming) on consent involving children and power-over relationships.

⁸The inflationary notion of consent has been tempting in sexual ethics and also in medical ethics; it does not tend to be invoked in discussion about consenting to a handshake, or to a police search of one’s car.

⁹But Rees and Ichikawa (forthcoming, §3) argue that this popular conception misreads the relevant statutes, and that it is a mistake to explain the impropriety of such relationships in terms of consent.

¹⁰E.g. Coleman (1988, p. 123): “If the reason is transference, the dependent person is damaged per se because she never actually consented to sex.”, or author Heather O’Neill’s 2018 remark that “there is no consent in a power relationship like that,” referring to student–professor relationships, due to the power imbalance. Quoted at <https://www.nationalobserver.com/2018/01/10/analysis/award-winning-author-slams-twisted-perk-university-jobs-after-scandal-rocks>. See also the citations in Rees and Ichikawa (forthcoming, 5). For a contrary take, similar to my own, see (West, 2009, p. 233) or Srinivasan (2021, pp. 127–8).

mere permission. Certainly this richer inflationary notion sounds like the one described on student services websites and in sex education campaigns. And it is a way to preserve the letter of liberal consent theory, while also recognizing that the mere acquiescence to sex is too low a bar. Mere acquiescence doesn't imply consent in the inflationary sense.

But inflationary approaches to consent come with costs, many of which have not, in my view, been adequately appreciated. Here is one cost of stretching the notion of consent to fit our moral intuitions. I think that the influence of the ordinary meanings of words runs subtle and deep, and we delude ourselves when we tell ourselves we're freeing a word from the baggage it has always carried. Like the brief-lived 20th-century attempt to pretend that 'he' and 'man' were gender-neutral, talking of 'consent' in a way that does not suggest that one person is acting on another, out of his will and with her mere permission, succeeds mostly in hiding the sexist assumptions we continue to bring to our thoughts. This can lead to material harms.¹¹

Below, however, I focus on a different problem for inflationary approaches to consent.

5 A Euthyphro Problem

Consent theorists don't merely accept the conditional: *if it is sex without consent, then it is violative*. As characterized above, they often wish to posit an explanatory claim: the lack of consent is part of what *makes* it violative.¹² Consent theorists also often assume an epistemic connection — that attending to questions about consent is a good way to *recognize* sexual violation — as well as an educational one about the importance of *teaching* people how to avoid perpetuating or experiencing sexual violations. In what follows, I shall argue that inflationary notions of consent are inconsistent with these aspirations.

My argument is inspired by Socrates's famous Euthyphro problem. In Plato's dialogue, Socrates asks Euthyphro for an account of piety. Euthyphro suggests a version of divine command theory: what is pious is that which is loved by the gods. Socrates does not challenge the extension of this account — he offers no counterexamples, in the form of things the gods love that are impious, or pious things the gods don't love. Instead, Socrates offers an explanatory challenge. A theory of piety should explain what piety is. But even if the gods do love the pious things, Socrates wheedles Euthyphro to admit, they do not do so by random chance. Rather, they love the pious things *because they are pious*. Things are not pious because they are loved by the gods. Even

¹¹Ichikawa (2020, pp. 25–29) and Rees and Ichikawa (forthcoming) develop versions of this argument in detail, each focusing on different kinds of harms.

¹²One recent theorist who is admirably clear about these explanatory ambitions is Hallie Liberto (2022, 26–9), who describes a 'mechanistic' approach to the role of consent in sexual ethics. Liberto emphasizes the importance of a theoretical approach to permissive consent that *explains* — instead of merely *reflecting* — antecedent moral judgments. Ichikawa (forthcoming) argues, however, that the view Liberto goes on to defend doesn't always deliver on Liberto's mechanistic ambition.

if we grant that for every act, it is pious if and only if it is loved by the gods, the order of explanation would run from piety to divine love, not vice versa. So Euthyphro's account of piety fails as an account of piety, even if it avoids miscategorizing any cases.

Contemporary consent theorists who embrace inflationary approaches to consent face a problem similar to Euthyphro's. I'll grant for the purpose of argument that there is an idiomatic, *sui generis* notion of 'consent' that modern liberals use in their sexual theorizing, according to which it's true that a sex act is a sexual violation if and only if it is nonconsensual. Perhaps this is a kind of "consent" that is inconsistent with intoxication, and entails that one is an adult who really does want to have sex. Maybe it even has to be "enthusiastic" or "affirmative" to count.

So let's assume, even if only for the purpose of argument, that sex is violative if and only if it is not "consensual" in the inflationary sense. To vindicate consent theory, we'd need more: we'd need it to be a violation *because* it is nonconsensual. Its being nonconsensual is supposed to explain why it is a violation, and why it is not OK. And I think consent theory, with "consent" understood in this inflationary way, fails in this explanatory sense in just the same way Euthyphro's theory of piety did. If the gods love pious acts, they do so because they are pious — things aren't pious because of divine love. And in the same way, maybe sex that falls short of the inflationary sense of 'consent' is violative, but it isn't violative because it's nonconsensual. At best we have characterized a notion of consent that itself encodes sensitivity to the moral facts. We use our judgments about moral permissibility to decide whether the agreement in question counts as real consent. In other words, sexual violations are nonconsensual because they are sexual violations; they are not violations because they are nonconsensual.

Once this hypothesis is clearly articulated, I think it looks extremely plausible, when one attends to discourse about sexual consent. Think about how one decides what to think about cases in the greyer, harder-to-pin-down regions at the penumbra of sexual violation.¹³ Maybe someone says yes to a sexual request, with clear reluctance and hesitation, and does so regretfully, but voluntarily given the limited options as she perceives them. Should we categorize a case like this as involving genuine consent to the subsequent sexual encounter? A consent theorist can barely hear the difference between that question and this one: "was this a sexual violation?" They then use their moral sensitivities to decide whether it was, and give the corresponding answer to the question about consent.

I think this dynamic is especially pronounced in discourse about children and statutory rape. The idea that children cannot consent to sex with adults reflects a sex-specific moral judgment; it is not, I think, motivated by any restrictions within the idea of consent itself.¹⁴ When one focuses on the nature

¹³Philosophical discussions of this penumbra include Cahill (2016), Woodard (2022), Dougherty (2022), and Rees and Ichikawa (forthcoming).

¹⁴This is especially clear, I think, for older children — teenagers, say. Very young children are plausibly unable to understand sex well enough to give genuine consent, even in the non-

of consent, without particular attention to sex, it is clear that children can consent to, or refuse, many kinds of treatments from adults. I can ask my nephew for permission to take his Lego construction apart, and he can consent or refuse. If he consents, then I can disassemble his toy without violating his property rights.¹⁵ If he refuses, then I would wrong him by doing so.

But contemporary consent theorists typically think of sexual consent very differently. On the inflationary notion, children's agreement to sex can't count as genuine consent. Why not? The pressure to say that consent works very differently for sex, I think, derives from a (wholly appropriate) moral abhorrence of sexual relationships between children and adults, combined with the (rather questionable) idea that citing consent is the only way to talk about sexual violation. Because most people presume consent theory, it is extremely difficult to suggest that children can consent to sex without sounding like a pedophilia apologist. But if one rejected consent theory, one would have different conceptual space available: one could say that consent *is* possible in these cases, but that this does *not* mean such consensual sex needn't be violative. Indeed, this is my own stance. But the consent theorist forecloses this option.

If the consent theorist is letting their moral judgments about sexual violation guide their intuitions about consent, then they have given up on the project of using consent in central explanatory roles in sexual ethics. Instead, judgments about sexual ethics are explaining judgments about consent. 'Consent', in effect, becomes something of a shorthand for 'those features of a sexual situation that are necessary to prevent it from being violative.'

6 Substantive Inflationary Views

The other option for inflationary 'consent' theorists is to attempt to articulate a *substantive* inflationary theory of consent, spelling out just what it is that makes an encounter consensual, in a way that might allow consent to explain why some sexual interactions aren't violative. It needn't be a constraint on that project that the explanans be given in "purely descriptive" terms — moral and otherwise normative evaluative concepts may well be essential to understanding the conditions under which there is genuine consent. But for consent to play the explanatory roles in question, it had better not be that the only way — or even the primary way — to tell whether someone has consented is by first deciding whether they were sexually violated.

Consider, by way of analogy, murder. Murder, like sexual violation, is a serious wrong. It involves conduct — killing someone — that sometimes amounts to that serious wrong, and sometimes doesn't (i.e., when it is in self-defence, or euthanasia). A theory of murder would specify the conditions under which killing someone amounts to murdering them. A standard way to do this

inflationary sense. See Rees and Ichikawa (forthcoming) for much more discussion on these points.

¹⁵This is so even if my nephew would have preferred to keep his arrangement assembled, and only consents in a strategic effort to win my favour in the hope of a better Christmas present.

is to characterize murder as homicide in the absence of an adequate *justification*, where self-defence and euthanasia, in certain circumstances, amount to such a justification. It is a constraint on this project that such justifications must not themselves be understood only in terms of murder. We need to be able to identify instances of homicide in self-defence without deciding first whether they amount to murder. Relatedly, the explanation of what makes something an instance of self-defence must not itself derive from the verdict that it wasn't murder.

Ellie Anderson (2022) articulates an attempt at such a substantive inflationary approach to sexual consent. Anderson emphasizes the importance of perception and phenomenological attunement between sex partners. The kind of sex Anderson describes involves subtle attention to the interaction between participants' respective erotic desires and intentions, rather than the potentially cold or disinterested permission-giving that traditional approaches to consent emphasize. I am very sympathetic to the ethical dimensions of sex that Anderson describes. But while I would express her insights as yet further reason to step away from consent theory, Anderson implements her idea as a heterodox characterization of consent.¹⁶ Anderson (2022, 15) characterizes consent as "an intercorporeal and dynamic coexistence of desiring bodies," and goes on to focus on subtle and multifarious components of the relevant kind of desire.

My disagreement with Anderson is primarily terminological. While I generally agree with her moral instincts about sex, I do not think she gives a plausible understanding of 'consent'; I think it lacks too many of the characteristics most central to any shared understanding of consent we have. One important feature of consent that Anderson's view fails to capture, for instance, is that consent exhibits an important possible asymmetry between sex partners. In characterizing consent as a "coexistence" of desiring bodies, Anderson's view leaves no room for differences in consent between sex partners.

Although the best sex is often a collaborative, joint activity, sexual *consent* is primarily a state or action an individual sex partner has or does. On mental approaches to consent, consent is a mental state of an individual, like having a particular intention or desire.¹⁷ On performative views of consent, consent is an action an individual performs, like making a certain speech act.¹⁸ This is not to say that consent couldn't be an essentially social matter; maybe whether *A* consents to *B*'s action depends in essential part on *B*'s reaction to *A*.¹⁹ There

¹⁶In her paper, Anderson engages with my (2020), where I gave a brief argument similar to the main point of this paper, arguing that inflationary approaches to consent are tautological and uninformative. In my brief discussion in my older paper, I didn't distinguish between substantive inflationary views and tautological ones. Because Anderson does characterize consent in terms independent of moral permissibility and sexual violation, I think her view escapes the version of my argument given in my older paper; strategies like hers require a separate response, like the one I give here.

¹⁷See e.g. Hurd (1996), Alexander et al. (2016), Alexander (2014).

¹⁸See e.g. Shiffrin (2008), Owens (2012), Dougherty (2015).

¹⁹See for instance the literature on 'uptake' conditions to illocutionary acts, e.g. Langton and Hornsby (1998), Langton and West (1999), Wyatt (2009).

may also be important social/conventional factors that influence what content exactly one is consenting to, when one consents.²⁰ But on any plausible view of consent, in a given sexual encounter between *A* and *B*, whether *A* consents to it and whether *B* consents to it going to be importantly different questions.

That asymmetry plays obvious central roles in cases of sexual assault. If *A* sexually violates *B* by subjecting them to sexual contact that *B* does not want or agree to, the standard thing to say — one that I think very central to the idea of sexual consent — is that *A* has wronged *B* because *B* did not consent. It is not at all standard or plausible to say that *B* has wronged *A*, because *B* did not do anything to *A* that *A* didn't consent to. But if, as on Anderson's view, consent is a property of sex acts, rather than of individual participants in them, this asymmetric response is impossible. Since it is obvious that when *A* sexually assaults *B*, *A* wrongs *B* but *B* does not thereby wrong *A* in the same way, Anderson's view is inconsistent with the standard explanation of sexual assault.

Anderson recognizes that her approach to consent is somewhat heterodox. She writes: “Phenomenology often utilizes technical definitions of terms that do not line up with the way they are used in ordinary language, but that does not mean that these concepts are not meaningful for opening up thinking and shaping possible future meanings of existing terms.” (Anderson, 2022, p. 20) I have no objection to the general possibility of ameliorative analyses, but any such analysis of consent must be guided by that ideas or definitions that best serve the role we want consent to play. And while I agree with Anderson that questions about permission-giving in sexual ethics — and more generally, the question of what kinds of actions constitute sexual violation — have been given disproportionate emphasis in recent decades, I do think they are central to any recognizable conception of consent. Anderson is defining something important, but it isn't consent.

Anderson's, of course, is but one possible example of a substantive inflationary approach to consent. I have no general argument that no such view can be successful, but I think my discussion of Anderson's example provides grounds for pessimism. Anderson avoids the vacuous nature of the tautological strategies, at the cost of articulating a notion that is too far removed from anything recognizable as consent. I think there is good reason to expect this to be a common pattern. It may be the inevitable result of trying to use the wrong tool for the job. The challenge of articulating an adequate substantive inflationary strategy, I think, is why most consent theorists tend towards the tautological horn of the Euthyphro dilemma instead.

7 Costs of Tautological Strategies

So what's wrong with tautological strategies? Suppose that, unlike Anderson, one wanted to hold on to consent theory, without attempting to give informative criteria for consent, but rather making use of moral intuitions or judgments

²⁰See e.g. Tilton and Ichikawa (2021), Dougherty (2021), Liberto (2022, ch. 6).

about sexual violation to determine whether someone had consented to a given sexual encounter. I think that this is what a lot of contemporary consent theorists do, at least implicitly. Is there anything wrong with just defining ‘consent’ as *the kind of agreement that means the conduct was not a sexual violation*?

I think there is. This is straightforwardly a terminological question, but I would not label it a “mere” verbal dispute. Choices about which words to use for which ideas can come with normative significance that is deep, but easy to overlook.

Here, for instance, is a hidden cost of the inflationary consent strategy, understood the way I’ve been developing it: it means that consent is impotent to illuminate what’s wrong with sexual violations. If we are using our moral sensitivities to recognize sexual violations, and concluding on this basis that there was no consent, our judgment about consent didn’t help us reach our conclusions about sexual violation. We need to already have the requisite moral sensitivity, in order to identify the case as nonconsensual. In other words, inflationary consent theory is useful only to thinkers who already know how to recognize sexual right from wrong.

‘Sex without consent is a sexual violation,’ in the inflationary sense, is literally tautological. The cognitive significance of the inflationary notion of consent just *is*, ‘that which keeps sex from being sexual violation.’ So saying that sex without consent is violative is no more informative than saying that the gods love only the things that the gods love. One can preserve a conditional, perhaps even a biconditional, linking consent and sexual violation, but at a high cost: one must give up on the project of explaining sexual violation. Consent as such also becomes useless as an educational tool. It cannot be used to guide moral decision-making; recognizing consent itself requires the antecedent moral sensitivities.

8 Future Directions

My argument in this paper, like Socrates’s, has been primarily negative: theorists *shouldn’t* try to do so much of their theorizing in sexual ethics in terms of consent. What positive alternatives might these arguments motivate? While I lack to space to go into detail, here are a few questions and directions for future theorizing that seem to me like natural next steps.

The main motivation I have posited for inflationary approaches to consent was a recognition of apparent cases of sexual violation, where a minimal standard for consent seems to have been met. If a student chooses to accept her professor’s sexual advances because she wants to — or even if she does so because she fears that a refusal would bring unwelcome complications into her life, this *is* consent, in at least a minimal way. (Compare the ways that many of us often consent to having our photographs taken, or to corporations’ collection of our private data.) But, many contemporary progressives think, she may still be the victim of a sexual violation. So, to preserve the link between sexual

violation and consent, inflationary consent theorists say that genuine sexual consent requires something beyond minimal consent, leading to the problems discussed above.

But there is another option. One might offer a different explanation for the violative nature of these sexual interactions, distinguishing them from clearer cases of sexual assault. Perhaps consent *can* play central roles in explaining a narrower category of sexual violation — this is something the liberal theory of rape, I think, got right. Maybe sexual *assault* is best theorized as nonconsensual sexual contact. But perhaps we should have resisted the temptation to explain other sexual violations in the same terms. Maybe when one consents to unwanted sex due to unfair social pressure, or when one consents to sex to someone in a role with certain kinds of authority over one, one gives genuine consent and so does not suffer a sexual assault, but nevertheless suffers a different sexual violation that is not explained in terms of consent.²¹ (This distinction needn't map on to the *severity* of a violation — just to its source. We shouldn't assume that consent-violating sexual assaults are always *worse* than sexual violations that have a different explanation.)

An obvious question, if one draws a distinction along these lines, has to do with the explanation for the wrongness of sexual violations in cases where there is consent. I won't go into that project here, but I consider it central.²² One possibility would be to propose sexual rights that can be violated even in cases of consensual sex — rights against certain kinds of sexual *relationships*, example, rather than rights against sexual contact *per se*. Another possibility would be to ground this ethical discussion in terms other than rights.

The central question has to do with what explains what goes wrong, ethically speaking, in the cases that motivated inflationary approaches to consent. It has been a mistake, I think, to try to answer that question by focusing on consent; instead, we need to focus on sexual ethics more directly. When someone has sex they agree to only reluctantly, because they felt pressured to accept it, for example, the problem isn't that they didn't consent — it's that they're being pressured into intimate acts they don't want. This is the key idea to develop, explain, and cultivate, both in our moral theorizing, and in sexual education. There is no good reason, I think, to force that conversation into the 'consent' mould.²³

²¹This is one alternative response to apparent sexual violations in cases of minimal consent; it's the one I'm most interested in, but there are others. One option in logical space is to deny that sex can be violative if there is even minimal consent — a somewhat libertine reaction to these complex sexual interactions. This is a popular response amongst some self-styled “sex-positive” feminists. West (2009) also attributes something like this response to some queer theorists. Another option would be to retain, as inflationary consent theorists do, the close connection between sexual assault and other sexual violations, but to accept, with me, that consent cannot play an explanatory role in sexual violation. A theorist going this way would seek an alternate explanation for the wrongness of all sexual violations, not merely of those that are not sexual assaults.

²²Melissa Rees and I make some preliminary remarks about that question in Rees and Ichikawa (forthcoming, 19–20).

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