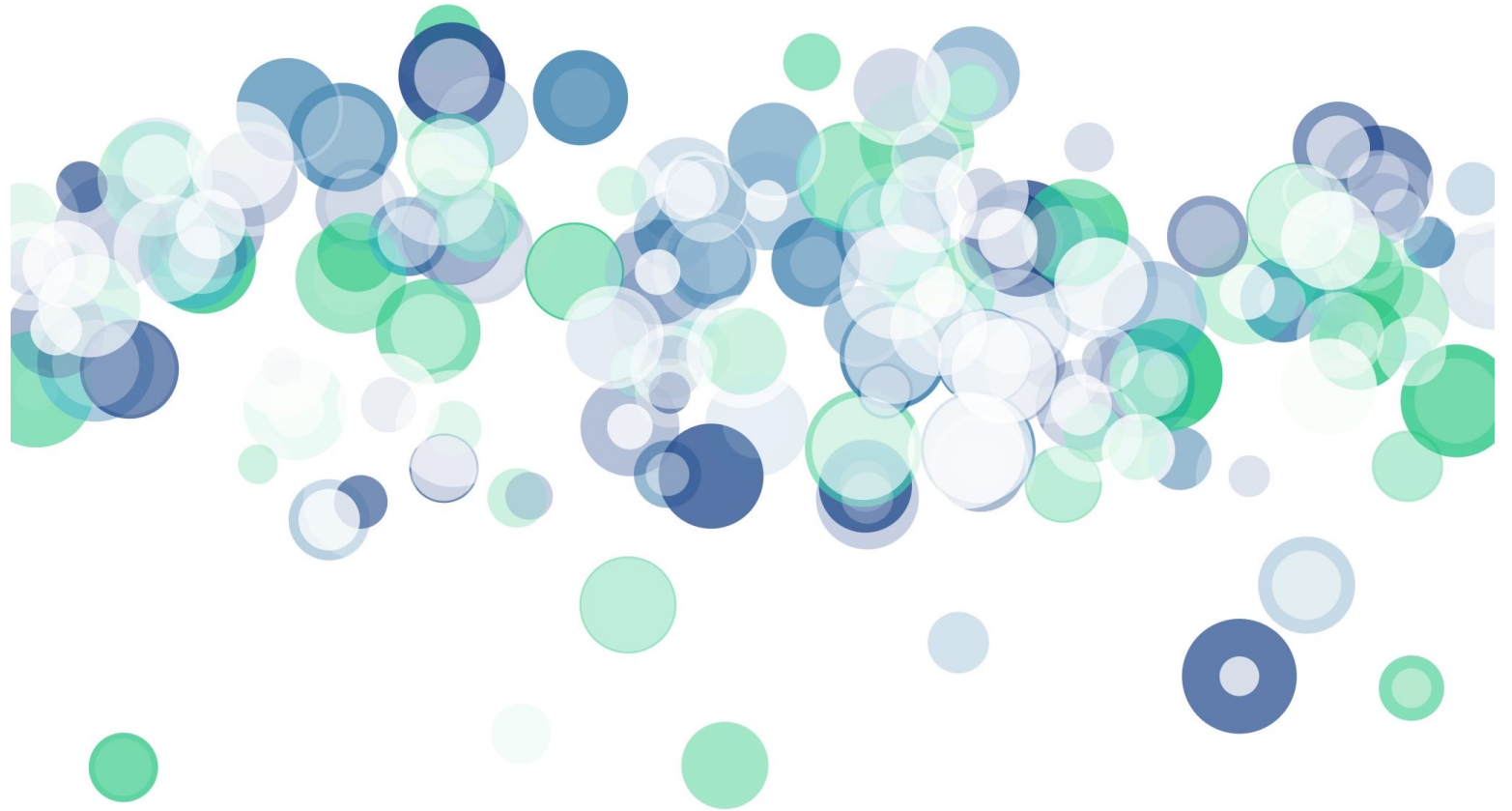


Consent, Trust, & Sexual Ethics

Elise Woodard (KCL)

University of Leeds

March 19, 2026



Consent is Everywhere



SEXUAL OFFENCES ACT 2003 (UK)



Φ THE LAW LIBRARY

Sexual Offences Act

Sexual Assault

(1) A person (A) commits an offence if:

- (a) A intentionally touches another person (B);
- (b) The touching is sexual;
- (c) **B does not consent to the touching;** &
- (d) A does not reasonably believe that B consents.

Rape = lack of consent to *penetration*.

France

French parliament votes to add consent to rape law after Gisèle Pelicot case

A historic move to change French criminal law would bring its legislation in line with many other European countries



📷 Gisèle Pelicot's mass rape case centred on consent, which is now in the process of being added to French criminal law. Photograph: Christophe Simon/AFP/Getty Images

Kim Willsher in Paris

[The Guardian](#)

Wed 29 Oct 2025 19:27 GMT

Changing Rape Law

Before:

Rape = “any act of sexual penetration of any kind whatsoever, or any oral-genital act committed... by violence, coercion, threat, or surprise.”

- Proof of *intent* required.

Now: Rape/sexual assault = “any non-consensual sexual act”

- Consent must be “informed, **specific, prior**, and revocable.”
- It “**cannot be inferred** solely from the silence or lack of reaction of the victim.”
- No consent when the act is committed with violence, coercion, threat, or **surprise**.

Consent-Centered Sexual Ethics

Consent-Centered Sexual Ethics: Consent is a core concept in sexual ethics, helping us distinguish permissible from impermissible sexual acts.

- (Valid) consent is **necessary**, and often **sufficient**, for rendering sex permissible.
- Action-guiding standard: Act *only if* you have sufficient reason to believe you received consent.

Challenges

Sufficiency

- Consent is not *sufficient* for permissible⁺ sex.
- Ex: Bad Sex

Necessity

- Consent is not *necessary* for permissible⁺ sex.
- Ex: Good Sex

The Necessity Challenge

Motivating case: Good sex

Gardner (2018: 60):

[W]hen the sexual going is good, consent is also unnecessary. Before you explode, bear in mind that my case proceeds, not from the thought that consent is too high an expectation for our sex lives, but rather from the thought that it is **too low** an expectation. **Ideally, I suggest, the question of consent does not arise between sexual partners.**

Palmer (2016: 13):

[W]hile consent is clearly absent from the worst sexual encounters it will also be absent in the most positive sexual encounters jointly instigated by mutually active partners, because both partners are in a state **beyond consent, a state of active involvement.**

MacKinnon (2016: 450):

No one says, “We had a great hot night, she (or I or we) consented.”



Two Claims

Asymmetry Thesis

Even if the *absence of consent* grounds the *wrong of rape*, that does not mean the *presence of consent* grounds *permissible sex*.

Joint Action

When sex is *mutual* or constitutes a *joint action*, then consent is *unnecessary*.

Joint Action

The Main Argument for the No Consent Thesis

01

Ideal Sex Premise. If sex is ideal, then it is something two people do together.

02

Joint Action Premise. If two people do something together, then consent is unnecessary.

03

No Consent Thesis. Therefore, if sex is ideal, then consent is unnecessary.

Joint Action

The Main Argument for the No Consent Thesis

01

Ideal Sex Premise. If sex is ideal, then it is something two people do together.

02

Joint Action Premise. If two people do something together, then consent is unnecessary.

03

No Consent Thesis. Therefore, if sex is ideal, then consent is unnecessary.

Moral Argument for Joint Action

01

Conceptual Premise.

If a person divests themselves of their relevant rights by some mechanism other than consent, then consent is unnecessary.

02

Joint Action Explanation.

If two people do something together, then each person thereby divests themselves of their relevant rights.

03

Joint Action.

Therefore, if two people do something together, then consent is unnecessary.

The Joint Action Explanation is not Explanatory

Joint Action Explanation: If two people do something together, then each person thereby divests themselves of their relevant rights.

Chadha's Objection: The consent explanation is more explanatory: it explains why both symmetric and asymmetric cases are permissible.

Chadha's Hybrid Account: X can consent to Y by either (a) intending that Y's action not wrong X, or (b) choosing Y's action.

Does the Objection Succeed?

1. **Interpretation:** Is this interpretation distorted by its reliance on a deontic framework centered on rights and permissions?
2. **Explaining Asymmetry:** Chadha claims that consent explains both good (symmetric) and permissible (asymmetric) sex. But that may flatten important moral distinctions.
3. **Explanation:** Can consent really explain all the good cases?

Burden is still on the No-Consenter: Why would mutuality render consent *unnecessary*?

Consent's Explanatory Limits

The Familiar Cases

Comfort.

Freda and Greta are very good friends. Greta receives terrible news, and Freda, who is sitting next to Greta, rubs her back.



Committed Kiss.

Harriet and Inga are in a long-term committed relationship. Harriet comes home one day, sneaks up on Inga, and kisses the back of her neck.



Oral Sex.

A man is awakened by the woman he had intercourse with the night before performing oral sex on him. When he wakes up, he thinks, "This is the best alarm clock ever." He proceeds to do nothing to indicate his acceptance of this act.



Marriage.

Married couple, Jane and Ken, are reading books in bed. As is their practice, Jane indicates that she would like to have sex by reaching over and placing her hand on Ken's groin.

Inconsistent Triad

01

Consentless.

Consent is absent in the
Familiar Cases.

02

Permissibility.

The physical contact is
permissible.

03

Necessity.

Intimate physical
contact is impermissible
w/o consent.

Why Consentless?

Location Problem: Where is the consent?

Three Accounts of Consent. X consents to Y when:

1. **Choice:** X chooses or intends Y's action.
2. **Normative Power:** X intends that Y's action not wrong X.
3. **Acceptance:** X chooses to allow or accept the conduct, or to waive one's right to object.

Problems:

- #1 & #2: You can't *choose* or *intend* something you didn't know was going to happen!
- #3: Consent can't be retrospective, but there may be time between action and acceptance.

Responses



Offer

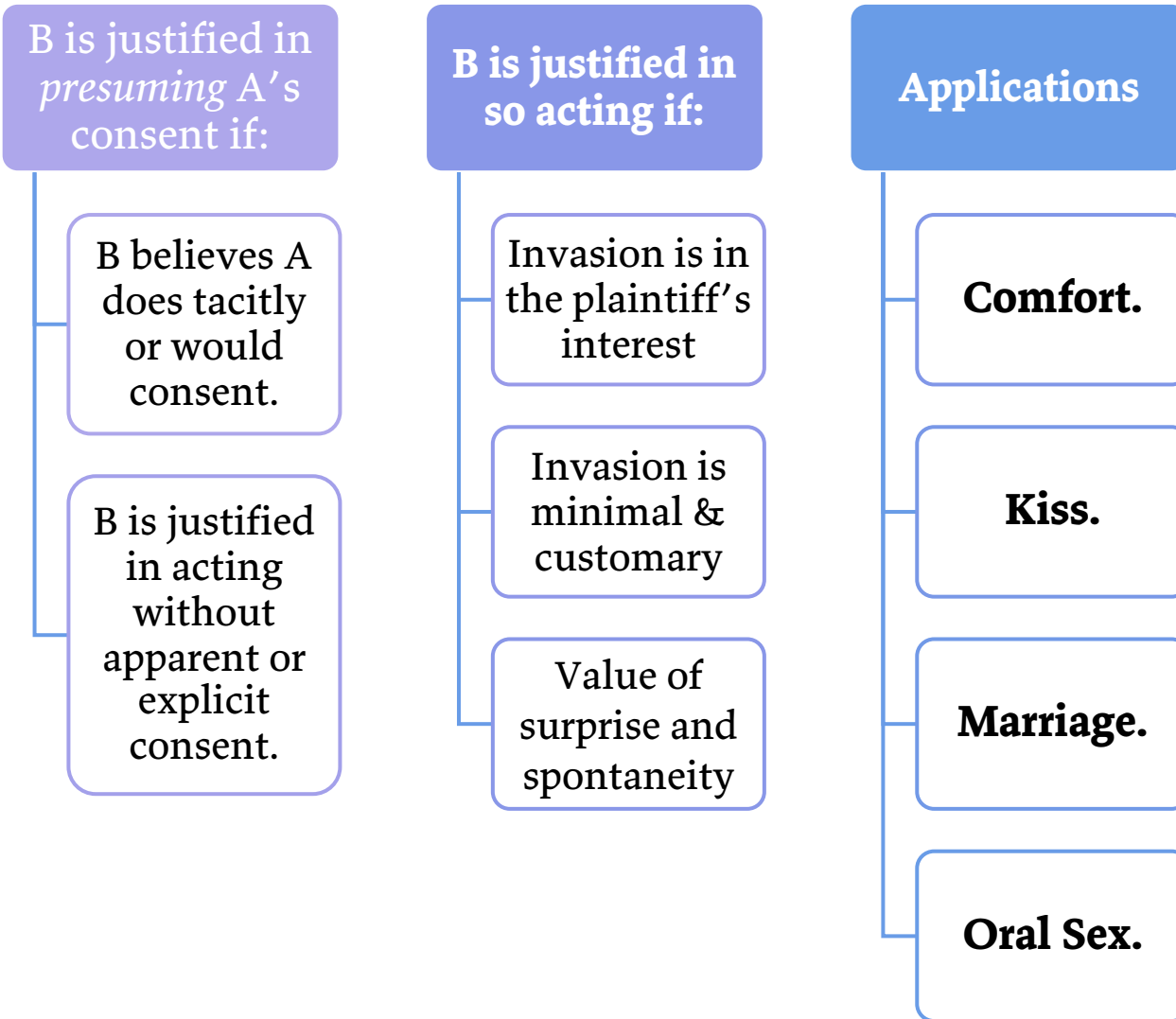
A new theory of consent



Appeal

To implied or presumed consent

Presumed Consent



#1. Presumed Consent as Second Best



“We should not generally be permitted to presume the other’s consent.” (Goodin)



“In most circumstances, an actor should seek the plaintiff’s actual consent and is not entitled to rely on presumed consent.” (Simons)



All else equal: Seek a higher grade of consent!



Problem: Relational Costs



Asking for consent risks signaling a lack of closeness or mutual understanding, & it misses an opportunity to affirm the relationship.

#2.

Presumed Consent as Insufficient



Some argue that consent to sexual activity requires 'actual' consent.



"There is no substitute for the complainant's *actual consent* to the sexual activity at the time it occurred. It is not open to the defendant to argue that the complainant's consent *was implied by the circumstances*, or by the relationship between the accused and the complainant." (R. v. J.A., 2011)

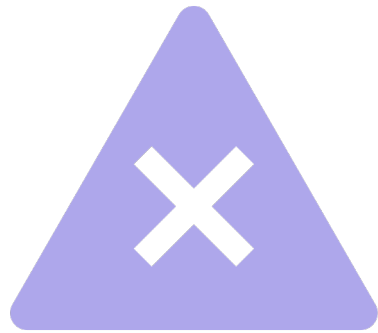


Recall French law: "Consent must be informed, **specific, prior**, and revocable."



"The truth is that consent can change any minute. It's ongoing, it's not implied, and in a healthy relationship it's still necessary to ask. Consent in a long-term relationship (yes, even marriage) is the same as consent with your latest Tinder date." ([The Internet](#))

#3. Limited Scope



Low-stakes cases • Clear Norms •
Minor escalation



Are there cases this leaves out?

Rejecting Necessity, Retaining Rape Law

Necessity

- (Intimate) physical contact is impermissible without consent.

Necessity*

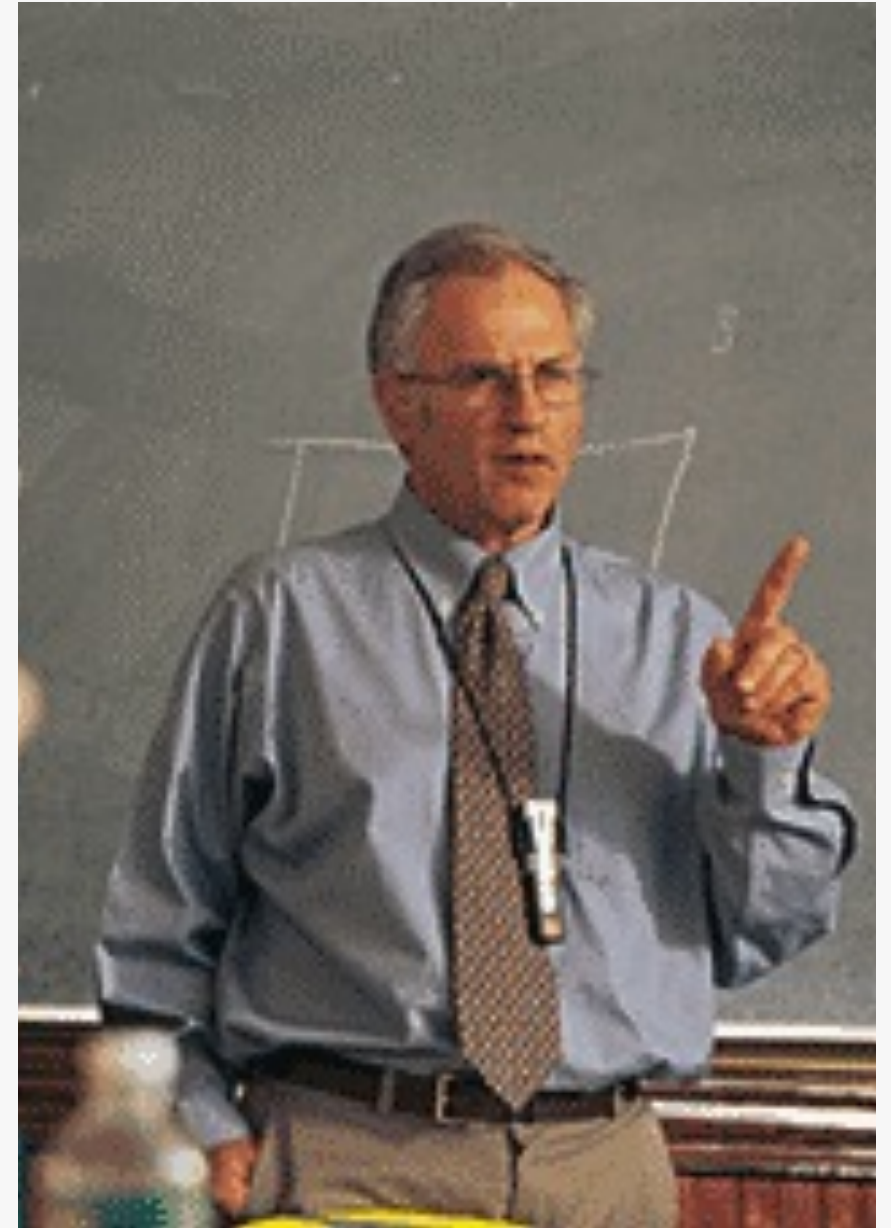
- Sex (esp. penetrative sex) is impermissible without consent.
-

Necessity*

“It is doubtful that consent should be regarded as a necessary condition of all sexual bodily contact. There are good physical, psychological, and moral reasons to draw a reasonably bright line between intercourse and other forms of sexual contact...

If A and B have embarked on the kind of relationship in which sexual contact is a normal feature, **it is arguably permissible for A to initiate a low-level sexual contact without B's consent and then move to a marginally higher level of intimacy without prior consent** if he does not persist when asked to stop.

Obtaining prior consent for every action is awkward and can diminish the value of the activity itself. It is not that one should be able to **presume consent** for such actions, but that **the costs of not requiring consent are relatively low compared with the benefits.**”

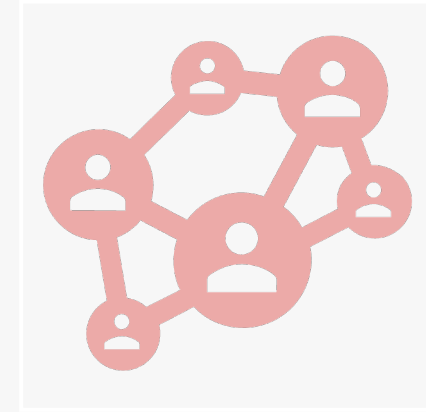


Challenging Necessity*?



Sleep.

“S and A are lovers who, having made love earlier in the evening, both fall asleep. A awakens at 3:00 a.m. and finding S still asleep, initiates an act of sexual intercourse with her while she is sleeping. During the course of the act, S awakens, embraces A, saying, ‘This is nice—we should do it this way again.’”



Surprise.

D and S are in a loving relationship. They have extensively explored boundaries, preferences, etc. S deeply trusts D and has consistently expressed a desire for D to take the lead. D unexpectedly introduces a new sex toy that they have never used together before. S feels surprised but not threatened. S does not object; the encounter unfolds positively. S and D feel closer.

Consensual vs. Permissible

No 'actual' consent & presumed consent not justified.



Dilemma: The clearer the lack of consent, the less clear the permissibility.



At the same time, these cases don't seem like sexual assault.



"If A's behavior in Sleep is certainly not abhorrent, this shows that it is a mistake to conceptualize the wrong of nonconsensual intercourse purely as a violation of someone's bodily boundaries or one's sexual autonomy."
(Wertheimer 2003: 156)

Taking Stock: Case-Based Challenges

“Good Sex” (enjoyable, mutual, hot)

- **Advantage:** Intuitive to many; explains ‘linguistic data’
- **Problem:** Consent theorists can explain it via choice.

“The Familiar Cases”

- **Advantage:** Harder to locate the consent
- **Problem:** Appeal to presumed consent; don’t show that consent *to sex* is unnecessary.

New Cases: Sleep & Surprise

- **Advantage:** Better contenders for challenging Necessity*
- **Problem:** Intuitions may diverge regarding permissibility.

Upshot: Case-Based challenges have limits!

A Structural Challenge



The need to exercise a normative power can indicate non-ideal circumstances.



Methodological Tool: Compare consent to other normative powers.

Normative Powers

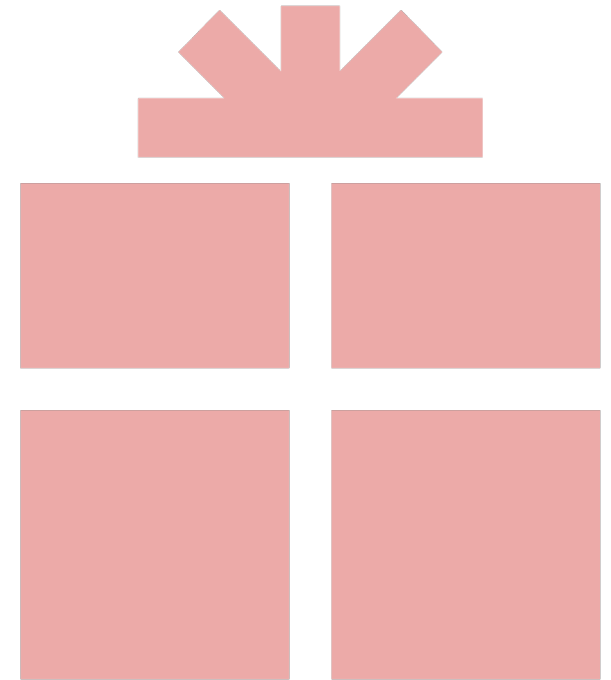
Promising. (Ex: Gift-giving boyfriend • Punctual friend)

The need to extract a promise reveals something non-ideal.

- “Promises are largely untypical between intimates and essentially deal with human frailties and pathologies which would otherwise work to undermine agreements... [they] provide a questionable tool which can at times be used to manage and assuage the pathologies of relationships, although there are usually better ways forward.” (Penner 2014: 127)

Compare *commanding*. (Ex: Leading a group project)

Compare *consent* in other contexts. (Ex: Hosting)



Relationships & Powers



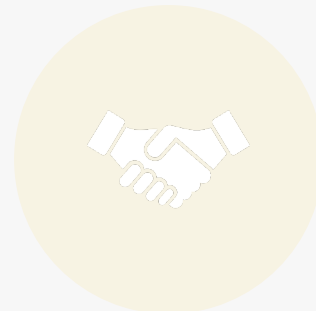
Why would the need to exercise a normative power be *non-ideal*?



Normative Powers alter rights, duties, and reasons.



Relationships: Rights-speak is awkward, pathological, or unfortunate.



Need to seek or secure consent can signal lack of intimacy & trust.

Detour: Kant vs. Hegel on Marriage

- Kant: Marriage = contract between two people for “life-long reciprocal possession of their sexual faculties.”
- Hegel *hated* this contractual conception: “shameful is the only word for it.” (*Philosophy of Right*, §75)
 - “Marriage... is not a contractual relation. On the contrary, though marriage begins in contract, it is precisely a contract to transcend the standpoint of contract, the standpoint from which persons are regarded in their individuality as self-subsistent units.” (§163)
 - “The ethical aspect of marriage consists in the parties' consciousness of this unity as their substantive aim, and so in their love, trust, and common sharing of their entire existence as individuals.” (§161)





Rights & Intimates

“To have no interest except in one’s formal right may be pure obstinacy, often a fitting accompaniment of a cold heart and restricted sympathies. It is uncultured people who insist most on their rights, while noble minds look on other aspects of the thing.”

- Hegel, *Addition to the Philosophy of Right* §37



“To stand on one's rights is to distance oneself from those to whom the claim is made; it is to announce, so to speak, an opening of hostilities; and it is to acknowledge that other warmer bonds of kinship, affection, and intimacy can no longer hold.”

- Waldron, “When Justice Replaces Affection: The Need for Rights”

Whence Rights?

“When Justice Replaces Affection”

Functions of rights:

- 1. Fallback:** Offer assurance & security if affection fades or resources dwindle.
- 2. Expanding Circle:** Basis for initiating *new* relations.

Rights are a backstop, not a minimal standard.

Background: Communitarians vs. Liberals

When & Why We Need Consent

We need consent in non-ideal conditions, e.g.:

1. **Wills are opaque:** You lack reliable knowledge of the other person's preferences or boundaries.
2. **Risk of wrongful invasion is high:** Acting without authorization risks violating bodily or sexual authority
3. **Autonomy is at stake:** Acting without consent threatens self-governance as the core value.

Consent is a **default rule** for managing moral risk under uncertainty, asymmetry, and non-ideal conditions.

- *Compare:* Intimate or relational contexts
- In ideal contexts, the default may **shift**.

Shifting Defaults



Shifting Defaults.

Relationships can make actions permissible by changing the moral default.

Consent-sensitive duty



Dissent-sensitive permission



Dissent-Sensitive Permissions

Permissions to perform certain actions *absent consent* but not *present dissent*.



Conventions, context, & relationships can switch the default.

Touch only if consent



Touch unless dissent

How Relationships Flip the Default

Reduced Opacity of Will: Shared history, familiarity, & mutual understanding make wills less opaque.

Altered Risk Structure: Risk of violation reduced • Inaction can itself be a moral failure. • Lower chance of a false positive; higher cost of a false negative.

Vulnerability Runs Both Ways: Actors also make themselves vulnerable. Getting it wrong carries emotional and relational costs.

Shift in Values: Autonomy, control, sovereignty → to vulnerability, intimacy, trust, responsiveness.

Meaning Depends on Context: The “same act” can be an invasion or a way of expressing care, depending on history, expectations, and vulnerability.

Dissent- Sensitivity: Clarifications

**Local and
defeasible**

**Risk-
sensitive**

Dynamic

**Against one-
size-fits-all**

**Vagueness &
Disagreement**

Tests for Consent- vs. Dissent- Sensitivity



Epistemic Bar. Do you need reason to think they would *consent* or that they wouldn't *dissent*?

If former → CS
If latter → DS



Gold standard. Would it always be *better* to secure a higher grade of consent?

If so → CS
If not → DS



Misjudgment. Suppose Inga *wouldn't* have consented to Harriet's kiss. Was Harriet merely *excused*? Or did she act *permissibly*?

If former → CS
If latter → DS



Standards. As Ferzan notes, there may be distinct standards governing consent vs. dissent (e.g., former may be a mental state, but latter requires communication)

Consent by another name?

*Objection: Isn't this just implicit or
expanded consent under another name?*



Conceptual Choices

“The answer to this question may turn on **what we work we think ‘consent’ should ideally do.**

Is it a concept that aims to capture all instances in which by one’s will, one changes rights and duties, rendering previously impermissible contacts permissible? Or do we need a clear term for the contemporaneous, immediate, cognitive authorization that applies at one time and a different notion for the fuzzier and less well-defined authorizations?

Notice that if we take the latter approach, our notion of consent will be **more amorphous and fluid**, and we may also be prone to make mistakes by **assimilating disparate cases** with disparate groundings together.” (Ferzan 2021: 415)



Consent by Another Name?

Methodological choice: Either consent names a specific power, or it becomes a catch-all label for whatever makes sex permissible.

- **Temptation:** Stretch “consent” to include any permission-granting mechanism (Dougherty 2021)
- **Risk:** Treating consent as a placeholder collapses important distinctions.

Constructive Fictions?

- But, we still need better accounts of how relationships alter the standards for consent and make presumptions of consent easier & sometimes preferable.
- We shouldn't assume that 'explicit' consent is always the gold standard!

So, Is Consent Necessary?

- **What Gardner & Co get right:** In good sex, people often do not *experience themselves* as giving or receiving consent. But they fail to show that consent is not necessary for permissibility.
- **My proposal:** Consent is necessary only when the consent-sensitive default is in force. In some intimate contexts, that default rationally shifts. Lack of *dissent* is necessary.
- → **De-centering the deontic?** The Right vs. The Good.
- **Upshot:** Sexual ethics should center trust, vulnerability, and responsiveness, while retaining consent and rights as indispensable safeguards in a non-ideal world.

Thank you!

elise.woodard@kcl.ac.uk