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## Consent to Sex in an Unjust World

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*Abstract:* This essay explores the moral significance of consent in an unjust world by developing the view that the validity of consent depends on its causes. It defends the view that the causes of consent make it valid or invalid. It then shows how this idea helps us to distinguish different ways in which consent might matter morally where it has problematic causes. Finally, it uses this analysis to explore the moral significance of a range of problematic causes of consent, including objectification, arranged marriage, and third party threats of violence.

The decision to have sex is often made in, and shaped by, unjust circumstances. For example, a person's self-conception, including her sexual self-conception, may result from powerful sexist social norms that influence her decision to have sex. Homophobic societies restrict the opportunities of gay people for sexual expression, which influences sexual choices. Consent is given in the context of arranged marriages that are supported by wider sexist social structures and enforced with powerful social and legal sanctions. People enter into sex work because they are impoverished, and their alternatives are

bleak. And people decide to have sex because of direct pressure, threats and coercion, either by the person who seeks consent or by third parties.

These facts can make a great deal of consent to sex seem invalid, and the resulting sex wrongful. Yet sexual autonomy sometimes seems important even when it is exercised against a background of injustice. If the only permissible sex is purified of unjust causes, people are almost always unable to give valid consent, and their ability to shape their sex lives by permitting others to have sex with them is severely restricted. So we face a difficult problem: how to develop a theory of the validity of consent to sex that on the one hand recognises the moral significance of the unjust causes of consent, whilst at the same time respecting the exercise of sexual autonomy in unjust circumstances. My aim is to show how the theory that consent is valid, or not, because of how it is caused can help us to get clearer about this problem, and to respond to a range of difficult cases.

Let us be a bit more precise about the relationship between consent and validity. X validly consents to Y performing an action by intentionally and directly releasing Y from a consent-sensitive duty that Y owes to X not to perform that action. There are different views about what constitutes consent. Is consent merely a mental action? Or does it involve either an attempt to communicate, or successful communication? And if it requires communication, or an attempt to do so, what words or deeds are sufficient? Nothing I say here depends on particular answers to these questions. My focus is on the validity of consent to sex. Where Y owes X a consent-sensitive duty not to have sex with her, actual consent is normally necessary but not sufficient for Y not to wrong X by having sex with her.

One reason why it is insufficient is that *X*'s consent may be invalid. Consent can be made invalid by many things, including lack of capacity, restricted choice, pressure or coercion, and error or deception. How do these factors bear on the validity of consent? I defend the *Causal View* – that certain factors can either undermine or support valid consent by causally contributing to it.<sup>1</sup> This account is contrasted with the *Counterfactual View* that factors invalidate consent only if consent counterfactually depends on them.<sup>2</sup> The initial appeal of the latter view derives from a focus on a person's attitudes to what is consented to. But this also fails to capture the fact that consent itself matters morally, independently of those attitudes. And this failure is especially problematic in the context of consent to sex.

Furthermore, the *Causal View* is contrasted with another idea that is initially appealing – that consent is valid only if it is given in circumstances where the person had an adequate range of choices. The *Causal View* suggests that valid consent can be given even where choice is heavily restricted, if it is caused in the right way.

I then explore how the *Causal View* is best understood. That view helps us to distinguish different ways in which unjust causes of consent might be significant. Consent can be valid, in that it releases the recipient of the consent from her consent-sensitive duty, but morally deficient due to the background injustice that causes it. This is because consent can involve a valuable exercise of autonomous agency, even where it is unjustly caused. In such cases, consent is morally deficient in that it is unjustly caused, and yet valid because the consentee is released from the duty that he otherwise owes to the consentor.

This contrast between invalidity and other deficiencies of consent is then explored in the context of gender injustice. I show how it helps to resolve a dilemma found in feminist writing on consent to sex between recognising the significance of structural injustice for women's sexual choices, and respecting the importance and value of women's agency in unjust societies. I will examine both the significance of patriarchal power structures, including those that result in objectification and restriction of choice and opportunity, as well as direct violent threats by third parties.

I show that the fact that unjust power structures causally contribute to a person's consent need not invalidate that consent. Whether they do often depends on the ability of the consentee to permissibly improve the person's circumstances, especially with respect to her sexual autonomy, either by refraining from having sex, or by providing her with more options before relying on consent. Even in circumstances of serious injustice, the inability to give valid consent may diminish the consentor's sexual autonomy still further, whatever the consentee does. Then consent that is unjustly caused will often be valid, at least if the consentee acts with good intentions.

## **I. The Basic Case**

*A Counterfactual View* of the moral significance of threats and deception is that a threat or deception undermines the validity of consent only if the consenting person would not have consented without the threat or deception.

This view is at least initially tempting. One attraction is that some test seems needed to pick out those threats and deceptions that are sufficiently important to undermine valid consent and those that are not, and the counterfactual test has some promise as the appropriate test. For example, a person might deceive another about his natural hair colour by dyeing his hair. This trivial deception does not seem to undermine valid consent even if it influences the other to have sex with him. Something similar seems true of trivial threats.

There is some doubt whether this really supports the counterfactual view, though, because trivial threats and deception often seem insufficient to make consent invalid even when consent counterfactually depends on them – the fact that consent would not have been given but for the hair dye does not seem decisive. Perhaps it might be argued that if a person's decision to have sex with another counterfactually depended on the colour of that person's hair, he must have cared quite a bit about hair colour. And it is wrong to have sex with a person on the basis of a deception about something that he cares quite a bit about.

However, some people are fickle about their sexual choices, and small things can tip the balance between consent and refusal. Furthermore, his partner's hair colour, or whether he colours his hair, is often not something that a person really values or cares about, but rather just something that immediately attracts or repels him. So the sex that he has need not differ significantly in meaning or value to the sex he believes he has. But perhaps the counterfactual test might partly explain why trivial threats and deception do not make consent invalid.

A second reason is that the counterfactual test may seem to capture the idea that a person's consent is valid if, and only if, the person makes a free choice to consent to sex. Threats and deception can make a choice unfree. But where she made that choice for reasons that would have been sufficiently strong to cause her to make that choice without the threat or deception, her choice is sufficiently free to make consent valid. Nevertheless, once we see more clearly how to distinguish the *Counterfactual View* from an alternative *Causal View*, we see that the latter view is better.

i) *Pre-emption*

To understand the difference between the *Causal View* and the *Counterfactual View* let us see how causal efficacy and counterfactual dependence come apart more generally, as well as in the context of consent. A fact or event can be causally efficacious without making a difference to whether some outcome occurs, because other facts or events are sufficient to cause that outcome. In contrast with the *Counterfactual View*, the *Causal View* is that the validity of consent depends on what causes consent regardless of whether consent counterfactually depends on its causes.

Pre-emption cases clearly illustrate causation without counterfactual dependence. In those cases, some fact or event, F1, causes an outcome, O, where had F1 not caused O, some other fact or event, F2, would have caused O; and F2 plays no causal role in bringing O about because F1 occurs. F1 then pre-empts F2 from causing O. Because F2 would have

caused O without F1, O does not counterfactually depend on its cause. A causally inert backup ensures that counterfactual dependence fails without affecting causation.

For example, suppose that Billy and Suzy independently throw rocks at a bottle. Billy's rock smashes the bottle, and Suzy's immediately goes through the space where the bottle had been. Had Billy's rock not smashed the bottle, Suzy's rock would have. Billy's throw causes the bottle to smash, but its smashing did not counterfactually depend on his throw. Suzy's throw is a causally inert backup that was sufficient to smash it in the absence of Billy's throw.<sup>3</sup>

Pre-emption cases illuminate the basic case for the *Causal View*. Suppose that X's grave threat or deception causes Y to consent to sex, but without the threat or deception, she would have consented for better reasons, such as sexual desire. These better reasons are causally inert because they are pre-empted by the threat or deception. Consent does not counterfactually depend on the threat or deception, but it is invalid.

Similarly, threats and deception fail to make consent invalid where they are causally inert. Suppose that a person's consent is caused in the best way possible – X desires sex with Y, and values sex with Y, and consents as a result. X is threatened and deceived, but the threats and deception play no role in explaining why X consented. Then the threats and deception do not make her consent invalid.

ii) *The Bad Pre-empt the Good*

Here is an example of the first kind of case:

*Threat:* Alice is on a date with Bob. She is strongly attracted to him and would consent to sex without his threatening her. He thinks that she will not consent, and so threatens her. Her consent is caused only by his threat, and not by her attraction to him.

One challenge for the *Counterfactual View* is to determine which alternative is relevant to deciding whether Alice's consent is valid. Is it the world where Bob does nothing, or where he asks for sex without threatening Alice, or some other world? But on any view, Alice's consent to have sex with Bob is invalid, yet her consent does not counterfactually depend on his threat.

A similar thing is true in cases of deception:

*Deception:* Charles pretends to be Dave's husband to secure sex with Dave. He enters Dave's bedroom in the dark wearing the distinctive clothes that Dave's husband wears, and imitates his voice. Dave consents to sex. Dave has always been attracted to Charles and would have consented to sex with him without the deception.

Dave consents because he thought that it was his husband who was asking, and thus Charles's deception causes Dave to consent. Although his consent does not counterfactually depend on the deception, it makes his consent invalid.

We have already briefly considered the familiar problem that counterfactual dependence of consent on deception or a threat might be insufficient for the deception or threat to be serious, and thus insufficient for it to invalidate consent. We can now also conclude that counterfactual dependence is unnecessary. A threat or deception may be very serious, because the threat is to do something seriously wrong, or the deception is about some matter of fundamental importance to consent, and the threat or deception may be the central cause of consent. But because some other reasons would have been sufficient to cause consent, reasons that had no bearing at all on the person's consent in the actual world, the counterfactual test fails.

Some might think that these cases do not support the *Causal View* but rather the *Fine-Grained View* that whether consent is valid depends on the person consenting to just what they get. Alice and Dave have consented to sex with certain qualities because they were threatened or deceived. The fact that they would have consented to sex with other qualities had they not been threatened or deceived is irrelevant. Alice would have consented to enjoyable sex, for example, not terrifying sex. But terrifying sex is what she gets. Dave would have consented to adulterous sex with Charles not sex as a part of a marital relationship. But sex as part of a marital relationship is what he thinks he gets.

But the *Causal View* is better than the *Fine-Grained View*. The latter view aims to explain the validity of consent by picking out features of what is consented to that are independent of how consent is brought about. I offered an explanation of this kind in the previous paragraph by picking out enjoyable as opposed to terrifying sex, for example, rather than sex caused by a threat rather than sex caused by desire.<sup>4</sup> This differentiates

the *Fine-Grained View* from the *Causal View* – the former explains the invalidity of consent by the difference between what the person would consent to and what she gets rather than the explanation why she consents.

Once we see this, we also see that the *Fine-Grained View* fares worse than the *Causal View*. The grounds of the invalidity of Alice's consent are not reducible to the fact that she does not get the outcome that she wants. Alice's consent is invalid because forced consent is not given autonomously, and autonomous consent is valuable in itself. This idea is not reducible to the idea that Alice prefers unforced sex to forced sex. Perhaps we could test for this by holding constant all of the features of the sex she gets. Even if she would have consented to sex with all of these features voluntarily without the threat, it still matters that she actually did so because she was threatened. That test would involve constructing some bizarre cases. But perhaps the *Fine-Grained View* could be developed in a way that is extensionally equivalent to the *Causal View*.

But we need not run this test to defend the *Causal View*. The *Causal View* can be defended in a more theoretical way. The role of consent in ordinary life is not simply to ensure that people get the sex that they want, or would want were things otherwise. Consent matters as such, because of the direct effect that it has on the rights and duties of others, and not simply because it is a reliable way of ensuring that desired sex occurs. The *Causal View* coheres with the way in which consent functions. Consent is a normative power – the consentor performs an action (perhaps a communicative action, or just a mental action) that directly affects the appropriate practical reasoning of the consentee.<sup>5</sup> That kind of action is quite different from a person revealing her preferences, and it is

morally significant in itself – a person’s preferences may explain why the person consents, but the moral significance of the exercise of consent is not reducible to the reasons why it is exercised. We can see this from the fact that it is wrong to have sex with a person who wants sex, or would want it in more ideal circumstances, if she does not consent; even if she is about to consent. The fact that a person would consent to sex under some circumstances may be enough to ensure that a person gets the sex that she wants, but the actual decision to release others from their duties counts, not the fact that the person has sufficient reason to make that decision.

Now focus on the significance of consent itself, rather than the person’s preferences for what is consented to. Consent has moral significance only if it is brought about in the right way – if its relationship with the values and judgement of the decision-maker is not undermined. Consent does not play a role in releasing others from their duties where it is caused by grave threats or deception because they undermine that relationship. Because the *Fine-Grained View* is not concerned with the consent as such, but only with the person’s attitudes about what she consents to, it inevitably fails properly to capture the moral significance of threats or deception. The *Causal View*, in contrast, captures that idea.

Further developing the causal view requires us to explore which causes of consent make it invalid – trivial threats or deception, for example, might not invalidate consent even where they are causally effective. But this is not a reason to reject the *Causal View*; only a reason to develop it carefully.

iii) *The Good Pre-empts the Bad*

Just as bad causes can make consent invalid where they pre-empt good causes, so good causes can make consent valid when they pre-empt bad causes. This is closely related to a view in the philosophy of responsibility, autonomy and freedom that has become familiar since Harry Frankfurt's ground-breaking work, and we can draw lessons from that work.<sup>6</sup>

Consider the simple view that a person acts freely, autonomously, or is responsible for her conduct, only if she could have refrained from acting thus. Here is Frankfurt's challenge: suppose that a person is in a good psychological state with respect to an act, which results in the person acting in the appropriate way. The person performs the action freely and autonomously, and is responsible for her conduct. Now introduce a causally ineffective backup that this causal sequence pre-empts, which would have caused the same act to occur, but in a defective way – for example, a hypnotist who would have hypnotised the person into acting in just the same way had the person not acted for her own reasons. The ineffective backup makes the person unable to refrain from acting, but has no bearing on the fact that the person acts freely and autonomously and is responsible for her conduct. Thus freedom, autonomy and responsibility for action do not depend on the ability not to act.

As valid consent to sex is (or, at least, is closely related to) autonomously given consent, this general idea informs the validity of consent to sex. Consider:

*Threat 2*: Bill is strongly attracted to Lisa, who is in love with Bill. Bill consents to sex with her only for these reasons. Lisa's violent brother wants Bill to have sex with Lisa, and would have threatened Bill with death to get him to consent had he not done so already.

Bill's consent is valid because it was given freely and autonomously, even though he lacked an adequate opportunity not to consent. It might be argued that this is true only if Bill is unaware of the threat. I doubt it. If Bill is aware that her brother will make the threat, but this has no influence over his decision, it has no bearing on the validity of consent.<sup>7</sup>

This has an important implication for theories of valid consent to sex. An initially attractive idea is that consent to sex is valid only where a person had an adequate opportunity not to give consent. *Threat 2* shows that this view is false. A person who consents for good reasons can give valid consent even in the absence of adequate opportunities to refrain, something that we will explore in more detail below.

Perhaps things are different where Bill consents because he thinks he has options that he lacks. Suppose that Bill is unaware of the threat that Lisa's brother poses, and consents because he thinks that he is free not to. Perhaps then his consent is made invalid by the fact that it is caused by something significant that Bill is in error about. That is one way in which options might make a difference to the validity of consent to sex - they might causally impact on a person's decisions. But *Threat 2* shows that such options are not necessary for consent to be valid.

iv) *Specification and Qualification*

We have seen powerful reasons in favour of the *Causal View*. However, it needs to be carefully developed, and it is not the whole story. I won't be able to provide a complete account of that view, and how it should be supplemented, here. But I will at least be able to illustrate two of the main issues.

One reason why the *Causal View* needs to be carefully developed is that the causal relationship between the kind of thing that tends to undermine, or support, consent and the person's consent needs to be of the right kind to affect validity. Whilst it is very hard to give an account of the right kind of causal relationship, we at least have clear intuitions where the relationship is not right – where there is a funky causal chain between a fact that causes a threat and consent.

For example, suppose that Meg threatens Claudia that she will set fire to her car unless Claudia has sex with her. Claudia is not at all bothered about her car, but finds Meg's passion extremely alluring, and so consents to sex with her. Although Meg's threat caused Claudia to consent, it did not do so in the right way to undermine the validity of consent. Of course, the implications of the *Counterfactual View* are no better in this case. Claudia wouldn't have consented had Meg not made the threat. What is needed is an account of the distinction between standard and non-standard ways in which threats might causally influence choices.

Here is why the *Causal View* needs qualification. Earlier, I suggested that the validity of consent does not simply depend on a person's attitudes to what is consented to, but because of the way that consent comes about. This led me to prefer the *Causal View* to the *Fine-Grained View*. But although this is right, what is consented to can also make a difference to the validity of consent. And the causes of consent interact with what is consented to where together they determine whether consent is valid.

To see this, begin with an example outside the sexual context. Suppose that I am intoxicated and you ask if you can stay in my house. I might validly consent to you staying there for a night, but my intoxication might be sufficiently severe that my consent to you to stay there for a year is invalid. The same thing is true of sexual consent. Some degree of intoxication might make all consent to sex invalid. But lower levels of intoxication may invalidate consent to some kinds of sex but not others. Consider a heavily intoxicated young woman who consents to sex. In one case, she consents to sex with her boyfriend with whom she is in a loving and respectful relationship; in another she consents to sex with three strangers. The causal effects of the intoxication on her decision might invalidate the latter consent, but not the former. We might say that it is 'easier' to consent to sex with her boyfriend than sex with three strangers – easier in the sense that validity is not so easily undermined in the former case when compared with the latter.

If this is roughly right, there is a difficult question what makes it easier to consent to some kinds of sex than others. This might be an objective matter – whether the sex is valuable or disvaluable, or good or bad for the person, for example. These objective

questions might themselves depend on states of mind of the person – whether she will enjoy sex, or desires or values it, might affect how valuable or disvaluable it is for the person. Alternatively, we might favour a more thoroughgoing subjective theory. On that view, how strongly the person actually values or desires the sex she will have, or how much she will, or might, value or disvalue it in the long run, might matter as such to the validity of consent independently of whether this makes the sex more or less good or valuable.

These questions are difficult because they concern the relationship between well-being and consent. The role of desire and value in a theory of well-being is itself a deeply contested issue. And the role of well-being in explaining when we have normative powers is also deeply contested. I leave these questions for another occasion.

## II. What Causes Make Consent Valid and Invalid

The *Causal View* relies on an independent account of the kinds of causes of consent that tend to make it valid and those that tend to make it invalid. Consent, I am assuming, is the attempt to exercise a normative power to release another person from a consent-sensitive duty owed to the person consenting. Valid consent involves the successful exercise of that power. Speaking very crudely, to consider whether X's consent to sex releases Y from a duty not to have sex with her, we should consider reasons to favour or disfavour X having the ability to alter Y's duties where certain facts cause that consent. The main reasons are the interests that X and Y have in X being able directly to alter Y's

duty not to have sex with her where her consent will be caused in a certain way and any countervailing interests.

There are three kinds of case to consider. The first is unproblematic. In that case, X and Y are in circumstances where it is in the interests of X and Y that X is able to release Y from his duty not to have sex with her without Y doing anything more. In the second, whatever Y does, X's consent will be caused by facts that make it against her interests that Y is released from the duty that he owes her not to have sex with her, and that is decisive. Y is then required not to have sex with X even if she consents, and Y cannot alter the circumstances to make X's consent valid. That is normally true where X's consent will not amount to a valuable exercise of autonomous agency whatever Y does to improve the way in which X's consent comes about.

In the third, Y is able to improve X's circumstances. Where this is decisive, Y may be able to make X's consent valid by altering X's circumstances, but if Y does not do so, X's consent is invalid. There is then a question about the grounds and limits to Y's duty to improve X's circumstances to ensure that any consent that X gives is valid. As we shall see, this can depend on the interests of both X and Y. Let us consider the latter two kinds of case in turn.

i) *Immutable Bad Facts*

Sometimes, whatever Y does, or whatever Y is permitted to do, if X consents to sex, her consent will not be a valuable expression of sexual autonomy. Furthermore, were Y to

respond to X's consent by having sex with her, she would just be worse off in all other respects than she would be were Y to refrain. Y, in that case, can do nothing to secure valid consent from X, and must not have sex with her.

Lack of capacity is an obvious example:

*Drug:* Milly has been given a date rape drug by a third party against her will that makes her especially compliant. Jake can get Milly to consent to sex with him, but the drug that Milly has been given will be a central cause of any consent that she gives him.

Jake is required not to have sex with Milly, regardless of any consent she gives. A similar thing is true where Jake could remove the impediment to valid consent, but could only do so impermissibly; for example, where Jake could counteract the effects of the drug, but only by stealing the antidote. Then, although he is able to secure valid consent, he is not permitted to do so.

There are also cases of threat and deception of this kind such as:

*Pimp:* Pimp threatens to harm Xena unless she consents to sex with Yoshi. Whatever Yoshi does, any consent that Xena gives will be caused only by the threat. No harm will come to Xena if Yoshi declines to have sex with her.

*Undercover:* Yoshi is an undercover police officer who has infiltrated a political organisation suspected of terrorist activity. Xena is a member of that organisation. If Xena consents to sex with Yoshi, she will inevitably do so because she is deceived about his commitment to the organisation. It is not imperative to Yoshi's operation that he have sex with Xena.<sup>8</sup>

Yoshi is not permitted to have sex with Xena in either case. In the first, Yoshi cannot eliminate the causal effect of the threat, and Xena is much better off if Yoshi simply ignores her consent. In the second Yoshi is not permitted to eliminate the deception, and that deception will lead to Xena fundamentally misunderstanding the nature of the sexual encounter.<sup>9</sup>

ii) *Improving the Circumstances in Which Consent is Given*

Sometimes, X is required not to have sex with Y, even if Y consents, unless she does enough to improve the circumstances in which Y gives consent. If she does not do so, there will be a defective cause of consent that she can remove, and that makes consent invalid. Sometimes, she may refrain from improving Y's circumstances as long as she does not have sex with her. In other cases, she is independently required to improve Y's circumstances.

For example, suppose that Y is in error about some fact, *f*, that is relevant to her decision whether to have sex with X, such as X's identity. X is required not to have sex

with Y unless she improves her circumstances by revealing her identity. Y is able to give her valid consent only if X does this. Of course, if she reveals her identity, Y may decide not to consent. In that case, X cannot create the circumstances in which Y will give her valid consent; she can only create the circumstances where she is able to do so. A similar thing can be true in threat cases. For example, in a case similar to *Pimp*, Yoshi might be able to have Xena's pimp arrested. Xena may then be in a position validly to consent to sex with Yoshi. Yoshi is required not to have sex with her until the pimp has been arrested, and then only if Xena consents.

An important feature of these cases is that any duty that Y has not to have sex with X without improving X's circumstances does not imply a duty to improve those circumstances. There is only a duty *either* to improve those circumstances *or* not to have sex. This is especially significant in the context of deception. A duty to refrain from sex unless one reveals some fact about oneself is not equivalent to a duty to reveal that fact – one has the option of preserving one's secret and refraining from sex. For this reason, there is no straightforward relationship between a person's general right not to reveal certain information, and the role of information in sex.<sup>10</sup>

iii) *Costs to Consent-Seekers*

Nevertheless, costs to the person seeking consent sometimes bear on what a person is required to do if she is to secure valid consent. Deception cases again illustrate this: sometimes, a person who seeks to act on the basis of valid consent has reasons not to

correct another person's errors even where those errors impact the latter's sexual autonomy. A requirement on a person either to reveal the information, so that any consent given will be valid, or to refrain from sex, has severe implications for her – either for her privacy or her ability to shape her sex life. She may then be permitted to have sex that is in a way morally defective.

To understand this, compare these two general situations that a person will be in if the validity of consent depends, or does not depend, on her revealing some information:

- 1) If certain people's consent is invalid without Y revealing the information, Y can either reveal the information to people who might be motivated by it and seek consent, where sex with them is permitted if consent is given; or not reveal the information and not have sex with these people.
- 2) If certain people's consent is valid without Y revealing the information, Y can seek consent to sex without revealing the information, and if they give consent, sex with them will normally be permitted.

One way in which 1) might leave Y badly placed is that very few people, or no one, will consent to sex with Y if the information is revealed, and Y may then have no adequate opportunity to have a sex life. This is especially problematic where the person could not avoid being disadvantaged in this way, and even more so where the disadvantage arises because others have inappropriate attitudes to that information.

Here are two examples. Many men are reluctant form sexual relationships with rape victims. If rape victims reveal that they have been raped, they will be left without the opportunity to get married, have children, or have a sex life. This can be extremely disadvantageous, especially in the many societies where unmarried women are much worse off than married women. This is normally sufficient to make consent valid without these women revealing what has happened to them. Even if this has an impact on the sexual autonomy of men to some degree, any such disadvantage is too small to require these women either to refrain from sex or reveal the information.

Similarly, gay sexual relationships are difficult to form and sustain in homophobic societies. Some gay or bisexual people in such societies will prefer to have heterosexual sexual relationships rather than having no sex life. But revealing their sexual preferences may leave them with few options, as they will be victims of discrimination. Sometimes, the cost to their straight sexual partners is too high, and consent is invalid: a long-term sexual relationship with a person who does not find their partner sexually attractive may be challenging and unrewarding, and deception of this kind sometimes deprives people of the opportunity to develop more satisfying and less fractured long-term sexual relationships. I only claim that this is not always decisive.<sup>11</sup>

### **III. Consent and Gender Injustice**

In the cases we have just considered the causes of consent make the consent either defective or invalid. Where deception causes consent, consent is a less than full

expression of sexual autonomy, and that is regrettable. But, we have seen, this is not always decisive - defective consent is sometimes valid. This idea also illuminates the significance of gender injustice for consent.

i) *Defective Consent*

Feminist analysis of pervasive gender injustice has involved a range of responses to two ideas. First, consent is often given in the context of gender injustice, where social and economic inequality between men and women, power dynamics, and cultural norms and practices that lead to the objectification of women play an important role in explaining why women consent to sex with men. These considerations suggest that consent is rarely, if ever, a full expression of sexual autonomy, and may often be badly defective in that respect. Catherine MacKinnon famously treats the distinction between consensual sex and rape as problematic in circumstances of systematic injustice against women. She writes 'perhaps the wrong of rape has proved so difficult to define because the unquestionable starting point has been that rape is defined as distinct from intercourse, while for women it is difficult to distinguish the two under conditions of male dominance.'<sup>12</sup>

But now a second idea comes into view – even in circumstances where there is a great deal of injustice in the power dynamics that lead women to consent to sex with men, women's agency, including the agency involved in consent to sex, demands respect.

Respecting women's agency counts strongly against the idea that consent to sex is typically invalid in conditions of gender injustice.

We evaluate moral principles by considering their implications if people abide by them. It is no argument in favour of a moral obligation that it will have good effects because people will fail to comply with it. For example, to determine the extent to which people are required to sacrifice themselves to save others, we consider the implications that such a principle will have for those who might be required to save, and those who might be saved, if people comply with such a principle. The fact that people will in fact do more or less than the principle commands does not count either in favour of it or against it.

Suppose, for example, that if people are not required to save others from lethal threats at little cost to themselves, many people will in fact bear those costs to save others. The fact that just as many will in fact be saved whether or not people are required to do so has no bearing on whether people are required, or only permitted, to save others at little cost to themselves. Or suppose that more people will be saved if people are required not to save others, because people enjoy acting wrongly. That could not make it wrong to save people. The truth of moral principles depends on the implications that the principle will have if it guides conduct, not its implications given the actual psychology of those it applies to.<sup>13</sup>

If all consent is invalid in circumstances of gender injustice, and men do what they are required to do, gender injustice is exacerbated, for there are then severe limits on the ability of women to shape their sex lives by deciding whom to consent to sex with and

whom not to.<sup>14</sup> The fact that men will continue to have sex with women in these circumstances, so that women will not actually be badly off in this way, does nothing to support the view that consent in circumstances of gender injustice is invalid.

A good theory of consent, then, should both respond appropriately to injustice as a cause of consent, and show proper respect for the exercise of agency, even where it is the result of injustice. Here is how the *Causal View* that I have been outlining might be developed to respond to this challenge. Suppose that we are considering the moral significance of X consenting to sex with Y, where Y has sex with X because of the consent she gives. Consider three ways in which the causes of X's consent might make that consent morally defective, broadly understood. First, the causes of Y's consent may either erode or undermine the value of consent, and the sex that follows, as a contribution to her sexual integrity. Second, the sex that she has may make her the victim of wrongdoing by those who develop and sustain the unjust norms and practices that cause her to consent. Third, Y may not be released from his duty not to have sex with her, and will thus wrong her by having sex with her. Consent is morally invalid only if the third of these things is true. But they can come apart, and where they do sex may be defective, unfortunate, or morally problematic, without Y wronging X.

To see how these evaluations come apart, consider three variations on a case where consent to sex is given in order to conceive a child. Here is the first:

*Underdeveloped Society:* Meg, a lesbian, lives in a just but technologically underdeveloped society with Dave. She desperately wants to have a child, but due

to her medical circumstances and the lack of equipment there is no way for her to achieve artificial insemination, so she consents to sex with Dave. He has sex with her, and she has a child as a result.

There is something defective or unfortunate about Meg's consent, at least in this sense: although Meg's consent is autonomously given, her ability to realise the sex life that she values is limited by the restriction on her options. She has sex only for instrumental reasons – to conceive a child – and not because she values the sex that she has as such. One way of understanding this is that Meg's opportunity for sexual integrity is limited by the unavailability of artificial insemination, where sexual integrity is understood as a sex life that a person values for its own sake.

It is, of course, difficult to provide a full picture of what it means to value sex for its own sake, but whatever that means, this is not such a case. We can see this from the fact that she would clearly be better off, in being able to develop her sex life according to her own desires and values, were artificial insemination available to her. Dave does not wrong Meg by having sex with her, but it is nevertheless regrettable that she is unable better to realise sexual integrity. That is something that Dave should acknowledge, rather than seeing Meg's circumstances as a valuable opportunity for him to fulfil his own sexual desires.

This kind of regret does not make a decisive difference to Dave's duty not to have sex with Meg – he is permitted to have sex with her, as I have already suggested. But it does make a difference to the value of the sex they have, and as a result to attitudes that

Dave should have about having sex with Meg. One distinctive value of sex is that it is a shared and mutual activity where each helps the other to realize their sexual integrity. That kind of mutuality is something distinctively valuable about sexual relations, and it is a value that cannot be realised here. But sex with Meg need not be wrong as a result, and there may be other ways in which Meg and Dave can value the sex act.

Here is the second case:

*Unjust Society:* Meg, a lesbian, lives in an unjust society with Dave. Religiously minded political leaders believe that the only morally legitimate way to conceive a child is through heterosexual sex, and so restrict the availability of artificial insemination. Meg desperately wants to have a child, but due to her medical circumstances and the lack of equipment, there is no way for her to achieve artificial insemination. Dave can do nothing about this, although he would make artificial insemination available to her if he could. She consents to sex with Dave. He has sex with her, and she has a child as a result.

The political leaders wrongly restrict Meg's options, contributing to her decision to have sex with Dave. The wrong they do to her is not only that of restricting her options. They causally contribute to her decision to have sex that she does not value as such, but only instrumentally, by restricting those options, and that characterises the wrong.

Some conclude that Meg cannot give valid consent to Dave in these circumstances. Valid consent can be given only where a person has the options that she is entitled to, at

least if her options affect her deliberations.<sup>15</sup> But although Meg is a victim of wrongdoing, in that the injustice of the religious leaders causally contributes to her decision to have sex with Dave, Dave does not have wrongful sex with Meg. The consent that she gives him is valid – through her consent, she releases him from the duty that he would otherwise have had not to have sex with her. Here is why. At least part of an assessment whether a person has the power to consent is to consider whether her having that power is valuable. As suggested earlier, in assessing whether it is we suppose that people do what duty requires of them. In assessing whether consent is valid, then, we then consider whether it is valuable that one person is directly able to release another from a duty that not to have sex with her, where the second person will refrain from sex if the first does not consent, and will have the option of having sex if the first consents.

If her consent were invalid, assuming that Dave does what he is required to, she would be unable to choose between having sex with Dave and conceiving a child, if he is willing, or not having sex with Dave and not conceiving a child. It is obviously better for her to have this kind of control than for Dave to be required not to have sex with her regardless of whether she consents. For then, although her sexual integrity is protected, she is denied the opportunity to conceive a child in her actual circumstances. Furthermore, Dave can do nothing to improve her circumstances, beyond being willing to have sex with her if she consents. So he does not wrong her by having sex with her rather than improving her opportunities. Her having the ability validly to consent to sex with him is as good as it gets as far as his conduct is concerned. He thus does not wrong her by having sex with her if she consents.

Here is the third case:

*Unjust Dave*: Meg, a lesbian, lives in an unjust society with Dave. Religiously minded political leaders believe that the only morally legitimate way to conceive a child is through heterosexual sex, and so restrict the availability of artificial insemination. She desperately wants to have a child, but due to her medical circumstances and the lack of equipment available to her there is no way for her to achieve artificial insemination. Dave has the equipment to ensure that artificial insemination is available to Meg, but he withholds that equipment knowing that Meg will consent to sex with him as a result, which she does. He has sex with her, and she has a child.

There are different variations on this case. In one variation, it is very dangerous for Dave to provide the equipment, because of sanctions that he will face if he does so. In that case, Meg's consent may be valid but defective. That variation is morally similar to *Unjust Society*.

But suppose that it is easy and safe for Dave to provide Meg with the equipment and Dave withholds it because he wants sex with Meg, and knows that this is a way to get it. Or suppose that Dave endorses the views of the political leaders, and withholds the equipment as a result, knowing that this will cause Meg to have sex with him, but without intending that. In both these latter cases, both the political leaders and Dave wrong Meg, though his wrongdoing may be worse in the first variation. Meg's consent

to sex with Dave is invalid. He is not released from the duty that he would have not to have sex with her had she not given consent, because he was required to make an alternative – artificial insemination – available to her, and his failure to do this caused her to consent to sex with him.

Distinguishing these defects also helps us to distinguish relational and non-relational aspects of the moral significance of consent.<sup>16</sup> The question whether X's consent to sex with Y is valid is a relational matter in two ways. First, X's consent may release Y from his duty not to have sex with her without determining whether others wrong X, or whether X's decision should be valued as an expression of her autonomy, or her sexual autonomy. Consent, then, is directed rather than general – it only determines whether X wrongs Y, and not whether others wrong her.

Second, whether X's consent is valid depends on whether Y has done enough to respect X's sexual autonomy by providing her with choices, information, and so on, that have a causal influence over her decision to consent. X's consent is valid, or not, depending on the influence of Y's conduct on X. I now explore these ideas in three socially important contexts where the moral significance of consent seems questionable.

## ii) *Objectification and Consent*

The first concerns the way in which sexist norms and practices shape women's self-conception, affecting their decision to consent to sex. Consider a woman, Beth, who tends to see herself as an object for the sexual pleasure of men, rather than valuing her own

sexual satisfaction, as a result of the perpetuation of sexist norms and practices in her society. She consents to sex with Harry as a result. Beth's sexual decisions are either not fully autonomous, or not a fully valuable expression of sexual autonomy, where they are deeply shaped in the wrong way by powerful cultural and social norms that objectify women in a way that systematically privileges men's sexual desires and sexual autonomy over women's, and that provide men with greater opportunities and resources to shape their self-conception than women.<sup>17</sup> What is the moral significance of Beth's consent?

The first thing to note is that it is hard to see how the *Counterfactual View* of the validity of consent can make good sense of the idea that Beth's consent might be invalid because of these objectifying norms. The question whether Beth would have consented to sex with Harry had she not been subject to these norms is hard to grasp, and the answer to it seems irrelevant. The norms may be pervasive and may have a profound influence on Beth's sense of self. It is difficult to get a grip on what we should hold constant and what we should alter when asking the question whether Beth would consent in a non-sexist world.

Moreover, that question just seems irrelevant – it is clear that the causal influence of sexist norms on decisions to consent is morally troubling regardless of how Beth would decide in non-sexist worlds. The *Causal View* allows us to assess the significance of these norms in a way that seems more direct and relevant, and that captures the moral significance of objectification on distinct ethical questions. Those who perpetuate these norms wrongly shape the context in which sexual decisions are made, and those who perpetuate them commit a kind of sexual wrongdoing on Beth – they wrongly shape her

sexual decisions by unjustly shaping her self-conception. There are powerful reasons to develop and organise resistance to such norms where women engage with each other, and with men, to challenge these norms (though, of course, how this is best done, and what exactly should be aimed at, are thorny issues).<sup>18</sup>

But this does not fully determine whether Beth gives Harry valid consent, for Harry may not establish or perpetuate these norms, and he may not be able to eliminate their causal contribution to Beth's consent, or to do so in a permissible way. Furthermore, if Beth's consent is invalid, the injustice that she faces is not eliminated. To see this, suppose that Harry concludes that Beth's consent is invalid because it is caused by objectifying social norms, and her self-conception is unjustly shaped. Her sexual autonomy may not be advanced, and may even be further diminished, because she is now unable to exercise the autonomy that she retains in shaping her sex life.

It may be objected that men won't refrain from having sex with Beth, even if they are required to, so her sex life will not be restricted by Harry's decision not to have sex with her. But this response misses the mark for the reason I noted earlier: when we consider whether some putative moral obligation is valid, we consider what would occur were the putative obligation complied with – in particular the effect on those who comply with it, and those whose interests are supposed to ground it. We do not consider the effects that it will have on behaviour in the real world, where people are not disposed to do what they are required to do. So we must consider the effects on Beth of an obligation not to have sex with her even if she consents. And that may not be a world in which her sexual autonomy is better realized than the world where her consent is valid.

It might be argued that Harry is permitted to have sex with Beth only if he takes steps to eliminate her objectification, or its effects. Perhaps there are steps that he ought to take to do this. But there are also limits both on his ability and his duty to do this. It will often be impossible, in very sexist societies, to eliminate the effects of objectification. And many steps that might be taken are problematically intrusive and paternalistic.

I do not propose to decide whether Beth's consent is valid. That depends on a wide range of considerations – some deeper account of the remaining value of her sexual autonomy, the alternatives available to her if her consent is invalid, and so on. But it does not follow from the fact that her consent is unjustly caused that it is invalid. Those who perpetuate the sexist norms that cause her to consent may wrong her, yet her consent may release Harry from his duty not to have sex with her.

iii) *Restricted Opportunity*

A similarly complex analysis is warranted in the case of oppressive societies that significantly limit the opportunities that women have to work, where sex outside marriage is strictly prohibited and the prohibition is enforced through legal and social sanctions, and where getting married and having children is one of a very small set of options for many women to have a reasonably fulfilling life.

Even in those circumstances, although consent to sex is deeply shaped by the perpetuation of extremely unjust gender norms, women's consent may sometimes be

valid. For if consent is not valid, and men abide by their moral duties, these women will be left even worse off with respect to both autonomy, and even sexual autonomy.

Consider:

*Arranged Marriage:* Vida lives in a very oppressive male dominated society, where all legitimate and socially acceptable marriages are arranged through a religious institution. Any attempt to form sexual relationships outside this context is likely to be met with male violence. Unmarried and childless women are socially ostracised. On her wedding day, Vida meets her future husband, Mal, for the first time. She is not at all attracted to him, and would much prefer that someone else had been chosen (or, even better, that she could have chosen herself). However, as there is no real alternative available to her, she remains married to him for the rest of her life, and consents to sex with him, resulting in their bringing up several children together.

How should Vida's consent to sex be evaluated? On the one hand, she is the victim of serious wrongdoing by those in her society who develop and uphold the very restrictive social and legal norms that govern women's sex lives. But nevertheless, her consent to sex with Mal may be valid.

To see this, suppose that Vida's consent is invalid, so that Mal is not released from his duty not to have sex with her. This may be severely detrimental to Vida, assuming that he does what he is required to do. She may find her life of being married and having

and raising children rewarding compared with the alternatives available to her. Even her sex life with Mal may be valuable to her when compared with no sex life at all. Given the very significant limits on the options available to her, the validity of her consent to sex with Mal may improve both her sexual autonomy, and the more general quality of her life.

Of course, the unjust causes of her consent are deeply troubling. Mal has strong reasons to provide her with other opportunities to develop her sex life if he can. For example, he may even be required to give Vida options to develop clandestine sexual relationships if he can, to ensure that her options for a sex life are expanded. If this is not too costly to him, and he fails, the consent that she gives him may be invalid, as it will then be caused by his unjust perpetration of the sexist norms in their society, or his failure to ameliorate them. But subject to these limits, Vida's consent may be valid.

This also illuminates a significant concern with Catherine MacKinnon's view that I outlined earlier. The idea that there is little difference between consensual sex and rape in deeply sexist societies like Vida's seems deeply problematic, even though her sex life with Mal is morally troubling. Vida's sexual autonomy is severely compromised, but it would be diminished much further were Mal to secure sex with her whenever he feels like it by threatening her. Mal must respond to Vida's autonomous decisions by having sex with her only when she consents. That reinforces the idea that the significance of her sexual autonomy, although severely diminished, is not eliminated altogether.

*iv) Threats and Clients*

I have just outlined the view that severely unjust restrictions on sexual autonomy need not make consent to sex invalid, because if the consent does not release the recipient from his duty not to have sex, autonomy in general, and sexual autonomy in particular, may be further diminished. That view, though, might be thought to have problematic implications in cases of third-party threats of violence.

Earlier, when discussing *Pimp*, I suggested that clients must sometimes refrain from sex with sex workers who are subject to threats. But one feature of *Pimp* is that Pimp will not harm Xena, the sex worker, if Yoshi refrains from sex with her. Thus she is better off if he refrains. This is not true in:

*Pimp 2*: Pimp has trafficked Xena. He will inflict serious violence on her unless she proves that she is profitable to him, and she can do that only by having sex with her client, Yoshi. If Yoshi and Xena do not have sex right now, Pimp will break Xena's arm. Yoshi cannot prevent Xena's arm from being broken except by having sex with her. Xena consents only in order to avoid having her arm broken, and Yoshi has sex with her.

Obviously, Xena's consent has no bearing on whether Pimp wrongs her. It is uncontroversial that he does. Assuming that one person can commit rape by causing another person to have sex with the victim, it is also uncontroversial that Pimp rapes Xena.

Now consider whether Yoshi wrongs Xena. Here are four views to consider. First, Xena's consent is invalid, and therefore Yoshi wrongs her if he has sex with her, regardless of the reason why he does so. Second, Xena's consent is valid with respect to Yoshi, and thus he does not wrong her, regardless of the reason why he has sex with her. Third, whether Xena's consent is valid with respect to Yoshi depends on Yoshi's dispositions. It is valid if and only if Yoshi is disposed to have sex with her only where doing so is necessary to avoid having her arm broken by Pimp, but not if he is disposed to have sex with her regardless of what Pimp will do. Fourth, whether Xena's consent is valid with respect to Yoshi depends on why he has sex with her. He is released from his duty not to have sex with her *in order to prevent her from having her arm broken*, but not for any other reason.<sup>19</sup>

We can see from these possibilities that this case requires us to reflect on the difficult question whether intentions, or dispositions, make a difference to permissibility. I cannot make significant progress with answering that general question here.<sup>20</sup> Here I only aim to show that the fourth view is the most intuitive, and that is a particular instance of the significance of intentions to permissibility.

The first view is clearly wrong. If Xena is unable to release Yoshi from his duty not to have sex with her, and he does what he is required to do, she is unable to protect herself from having her arm broken by Pimp. She will certainly either have her arm broken or have unwelcome sex with Client, and if Client is willing, she should have the choice to have sex with him to avoid the broken arm. Of course, it is sometimes better to have fewer options rather than more,<sup>21</sup> but this is not true in this case. It is worth noting that there

may nevertheless be reasons, and perhaps duties, for Yoshi not to have sex with Xena – doing so might incentivise the enslavement of women. But even if it is wrong for Yoshi to have sex with Xena for these reasons, they have no bearing on whether he wrongs her, and they are thus irrelevant to whether her consent is valid. For consent is concerned with whether a person is able to release others from particular directed duties that the consentor is owed, not with whether the person is able to make another person’s conduct permissible all things considered.

This might incline some to the second view. But that view implausibly implies that Yoshi does not act wrongly even if he seeks out trafficked women to have sex with; even if he is motivated to have sex with Xena because he likes having sex with women who are threatened with violence. The type of act that he performs – sex with Xena – may be justifiable because there is a token of that type that is justified. But tokens where he has sex with the wrong intentions are wrongful.<sup>22</sup>

Those who reject the significance of intentions to permissibility may attempt to explain fact that Yoshi’s conduct seems so problematic by suggesting that although Yoshi acts permissibly, what he does reveals a bad character, or his act has a bad meaning. But these descriptions are inadequate in this case. To reinforce that conclusion, if Yoshi acts out of these problematic motives, he is surely liable to defensive harm and to punishment, and owes Xena compensation. But we are normally liable to defensive harm, punishment and to pay compensation only where we have acted wrongly.

The third view is similarly permissive, as long as Yoshi seeks out women who will be made even worse off if he does not have sex with them. This is only slightly more

plausible than the implication of the second view. Furthermore, the third view suffers from the difficulty that it is hard to explain why dispositions should make a difference to whether acts are wrong.<sup>23</sup> Of course, there are serious challenges to the view that intentions make a difference to permissibility too. But it is at least plausible that intentions change the character of a person's action in a way that can make it wrong. It seems much harder to see how a person's dispositions have any bearing on the character of an action at all, let alone in a way that can make it wrong.

The fourth view is best. Xena's consent is valid only if Yoshi has sex with her in order to ensure that she is prevented from having her arm broken, which explains why she gave him consent. If he has sex with her simply in order to have sexual pleasure, or because he enjoys having sex with a coerced person, he wrongs her. His permission is limited to executing an intention to protect her from serious violence by having sex with her. I do not claim that a person is always required, in general, only to have sex with others in order to advance the reasons why they gave consent. I only claim that it would be wrong to exploit a person who is threatened with serious violence in order to secure sexual pleasure.<sup>24</sup>

If this view is right, further complications arise. When is a person required to act on good intentions, and when is he or she entitled to act simply out of sexual desire? What should we say about a person who has mixed motives, in cases such as *Pimp 2* – the person who acts both from a desire to protect others but also out of sexual pleasure or, more disturbingly, because he enjoys sex with coerced women? And is it possible for social and legal institutions to tell the difference between permissible and wrongful sex

in these cases? I do not pretend to have the answers to these difficult questions. But at least I am confident that Yoshi acts permissibly if he acts simply in order to protect Xena, but wrongly if he acts simply in order to satisfy perverse desires to have sex with coerced women. And to that extent intentions make a difference to the permissibility of sex, and limit the effects of valid consent.

### **Conclusion**

The validity of consent depends on how consent is caused, and in particular the role of the person whose conduct is being evaluated in causing it. But the moral assessment of sex is not restricted to the question whether consent was valid. A wider set of causes of sex can make it morally troubling, or morally wrongful, even where consent is valid in ensuring that those who have sex do not do so wrongly.

Once we see this, we are well placed to develop a more complex set of analyses of sex in a sexually unjust world. Sexual autonomy retains some value, and can sometimes ground permissible sex, even in societies that are deeply unjust with respect to sex, and even where the injustice in those societies plays a very significant role in causing consent. But where this is so, we should not conclude that sex is without its moral problems. Those having sex may not act wrongly, but others, who cause consensual sex to occur under these unjust conditions, do. We can thus respect sexual autonomy in an unjust world, whilst acknowledging the deep injustices that continue pervasively to determine who agrees to have sex with whom.

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• I am grateful to participants at a consent conference in Cambridge and the workshop in Villanova and to two anonymous reviewers from *Ethics*. Special thanks go to Tom Dougherty.

<sup>1</sup> For an initial defence of this idea, see V Tadros *Wrongs and Crimes* (Oxford: OUP, 2016) chs.12 and 13.

<sup>2</sup> The idea that counterfactual dependence is necessary for consent to be invalidated by deception is familiar. See, for example, J Herring 'Mistaken Sex' (2005) *Criminal Law Review* 511. H Lazenby and I Gabriel 'Permissible Secrets' (2018) 68 *Philosophical Quarterly* 265, argue that deception invalidates consent only if the deception involves a deal-breaker, where a deal breaker involves information that would make a person decide differently were the person to know the information. But the deception is morally significant only if the person giving consent has a right to know the information. The idea that deception must involve a deal-breaker is drawn from T Dougherty 'Sex, Lies and Consent' (2013) 123 *Ethics* 717, though it is less clear whether Dougherty intended his view to be understood counterfactually.

<sup>3</sup> Counterfactualists about causation reply by developing more complex counterfactual views, where the relevant counterfactual is not the nearest world where F1 does not occur, or where causation depends on the way O varies across worlds where there are variations in F1. David Lewis, for example, who was the most prominent defender of the counterfactual view developed a more complex version of the view. See D Lewis 'Causation as Influence' (2000) 97 *Journal of Philosophy* 182. For a rich exploration of that view, see L A Paul and N Hall *Causation: A User's Guide* (Oxford: OUP, 2013). For a powerful critique, see J Schaffer (2001) 'Causation, Influence, and Effluence' 61 *Analysis* 11. We can set aside whether this reply works. If a complex counterfactual view of causation is right, the contrast between the *Causal View* and the *Counterfactual View* is best understood as a contrast between a complex and a simple counterfactual view. For a similar contrast in the context of free will and responsibility, see C Sartorio *Causation and Free Will* (Oxford: OUP, 2016) 7-13.

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<sup>4</sup> For problems about how to do this, see Tadros *Wrongs and Crimes* ch.13.

<sup>5</sup> See Tadros *Wrongs and Crimes* ch.11 and 'Appropriate Normative Powers' (2020) 94 *Proceedings of the Aristotelian Society* 301.

<sup>6</sup> See, especially, the essays in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988). These essays have generated a literature too large to reference here.

<sup>7</sup> See, also, T Dougherty 'Why Does Duress Undermine Consent' *Noûs*, forthcoming, n.18.

<sup>8</sup> Guidance to the police in undercover operations in the England and Wales seems to permit deceptive sexual relations to facilitate those operations in exceptional circumstances. See *R (Monica) v DPP* [2018] EWHC 3508, which concerns facts similar to those in *Undercover*. That case also shows both how restrictive, and how confused, the law is about what makes deception undermine valid consent.

<sup>9</sup> For a defence of the idea that this is what is important in deception cases, see Tadros *Wrongs and Crimes* ch.13.

<sup>10</sup> Contrary to the view defended in Lazenby and Gabriel 'Permissible Secrets'.

<sup>11</sup> For a more expansive view about the significance of deception, see Dougherty 'Sex, Lies and Consent'.

<sup>12</sup> *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard UP, 1989) 174.

<sup>13</sup> See, further, Tadros *Wrongs and Crimes* 237-8.

<sup>14</sup> For a good overview of these challenges to MacKinnon, see K Abrams 'Sex Wars Redux: Agency and Coercion in Feminist Legal Theory' (1995) 95 *Columbia Law Review* 304. The problem is widely recognized. See, for example, C Chambers *Sex, Culture and Justice: The Limits of Choice* (Pennsylvania: Penn State Press, 2008); V Munro 'Shifting Sands? Consent, Context and Vulnerability in Contemporary Sexual Offences Policy in England and Wales' (2017) 26 *Social and Legal Studies* 417.

<sup>15</sup> See, for example, J Pallikkathayil 'The Possibility of Choice: Three Accounts of the Problem With Coercion' (2011) 11 *Philosopher's Imprint* 1, 14. For further criticism of this

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kind of view, see M Gerver 'Consent and Third-Party Coercion' *Ethics* [THIS SYMPOSIUM]

<sup>16</sup> The general idea that responsibility and autonomy should be understood in a relational way is a familiar idea in feminist literature. See, for example, C Mackenzie and N Stoljar *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford: OUP, 2000). It has also played a role in the literature on sexual consent, though there are different ways of understanding the idea. See, for example, N Lacey 'Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law' in *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart, 1998). See, Gerver 'Consent and Third-Party Coercion' for a relational view of consent.

<sup>17</sup> Of course, what counts as objectification, when it is disvaluable, and its effects on sexual autonomy, are contested matters that I cannot address adequately here. For some of the debate, see M Nussbaum 'Objectification' (1995) 24 *Philosophy and Public Affairs* 249; L Green 'Pornographies' (2000) 8 *Journal of Political Philosophy* 27; R Langton 'Projection and Objectification' in B Leiter *The Future for Philosophy* (Oxford: OUP, 2004).

<sup>18</sup> See, for example, K Abrams 'From Autonomy to Agency: Feminist Perspectives on Self-Direction' (1998) 40 *William and Mary Law Review* 805; Chambers *Sex, Culture and Justice: The Limits of Choice*; Munro 'Shifting Sands?'

<sup>19</sup> Tom Dougherty and Mollie Gerver each note that third party coercion need not undermine valid consent. They don't consider whether this depends on intentions. See Gerver 'Consent and Third-Party Coercion' and T Dougherty 'Why Does Duress Undermine Consent' *Noûs*, forthcoming.

<sup>20</sup> I defend the significance of intentions to permissibility in *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: OUP, 2011) ch.7; *Wrongs and Crimes* ch.16; and *To Do, To Die, To Reason Why: Individual Ethics in War* (Oxford: OUP, 2020) ch.6. Well known defences of the view that intentions are irrelevant to permissibility include J J Thomson 'Self-Defense' (1991) 20 *Philosophy and Public Affairs* 283; F M Kamm *Intricate Ethics: Rights, Responsibilities and Permissible Harm* (Oxford: OUP, 2007) ch.5; T M Scanlon *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, Mass.: Harvard UP, 2008).

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<sup>21</sup> See, generally, G Dworkin 'Is More Choice Better than Less?' (1982) 7 *Midwest Studies in Philosophy* 47 and in the context of consent to sex, Tadros *Wrongs and Crimes* ch.12.

<sup>22</sup> See, further, V Tadros *The Ends of Harm* ch.7.

<sup>23</sup> A general view of this kind is considered, but ultimately rejected, in F M Kamm *Ethics for Enemies: Terror, Torture, and War* (Oxford: OUP, 2011).

<sup>24</sup> It may be objected that this view leaves Xena worse off in worlds where Yoshi will not act on that intention, but will act just out of sexual desire. This raises difficult issues that I cannot address here. For a response to a similar objection to the general thesis that intentions are relevant to permissibility, see Tadros *The Ends of Harm* ch.7.