

## **‘CONSENT’ IS A BOUNDING BOX**

ROSHNI

### **ABSTRACT**

‘Consent’ is the dominant approach to sexual ethics. This paper, however, argues that frameworks of consent frame sex and sexual acts in a way that facilitates, rather than suppresses, sexual violence and abuse. Three cases of sexual injustice—‘bad sex’ that women have with men, child sexual abuse, and the sexual exploitation of trans women—are examined and used to reveal three supposedly innocuous features of consent—NEGATIVITY, PROTECTIVITY, and DESIROUSNESS—that in fact not only obscure these injustices but partially cause them. Furthermore, it is argued that these features are central to consent as it is currently understood; consequently, ‘consent’ must either be revised beyond recognition or rejected to make room for something new.

### **01—WE WILL ALWAYS DESERVE BETTER THAN ‘DON’T TOUCH ME UNTIL I SAY SO’**

In *The Last Utopia*, Samuel Moyn describes the history and rise to dominance of the framework of human rights. Human rights, Moyn says, are frequently presented “as a cause both age-old and obvious.”<sup>1</sup> Yet the rise of human rights is both recent and contingent; it could quite easily have gone another way. According to Moyn, the success of human rights has less to do with the framework itself and more to do with “the collapse of other, prior utopias, both state-based and internationalist.”<sup>2</sup> Human rights is the ‘last utopia’ because it is what remains after the implosion, primarily in the 1970s, of all other utopias. But something was lost in this collapse:

Instead of implying colonial liberation and the creation of emancipated nations, human rights most often now meant individual protection against the state... Westerners left the dream of revolution behind—both for themselves and for the third world they had once ruled—and adopted other tactics, envisioning an international law of human rights as the steward of utopian norms, and as the mechanism of their fulfillment.<sup>3</sup>

Moyn’s argument here is that human rights represents a retreat of justice away from positive projects of liberation and to merely “individual protection against the state.” Human rights, in other words, is the politics of “don’t touch me until I say so.”

There is a deep analogy between ‘human rights’ and ‘consent’, which might be crudely described as the *sexual ethics* of “don’t touch me until I say so.” Consent, too, is a ‘last utopia’ insofar as it is what is left after alternative utopias—second-wave feminist critiques of desire, political lesbianism, etc.—collapsed under their own contradictions in the late 20<sup>th</sup> century. And consent, like human rights, has suffered from its hermeneutical dominance. Moyn writes that “though [human rights] were born as an alternative to grand political missions”, they were “forced to take on the grand political mission of providing a global framework for the achievement of freedom,

identity, and prosperity.”<sup>4</sup> Similarly, as sexual ethics have evolved over the past three decades, ‘consent’ remains just as omnipresent as ever, “forced, slowly but surely, to assume the very maximalism [it] triumphed by avoiding.”<sup>5</sup>

A weak framework of consent holds that consent (or consensuality) is a necessary condition for the morality of any sexual act. The strong framework of consent holds that consent (or consensuality) is also a *sufficient* condition: a sexual act is wrong just in case it is not consensual, not consented to, etc. Historically, this latter view, despite its strength, has been the dominant philosophical position.<sup>6</sup> It also enjoys a surprising degree of popular uptake, especially among young people who are less conservative about sex.

In 2014, an image macro titled “The Myth of ‘Consensual’ Sex” started to appear in various corners of the internet.<sup>7</sup> It shows, on one side, a stock image of a heterosexual couple, draped over each other, smiling widely; two crude text bubbles read “I consent.” On the other side is a depiction of Jesus, shrouded and serious, with one final text bubble: “I don’t.” This image was initially created as a critique of Christian sexual conservatism regarding extramarital sex, but over the past decade, it has been remixed endlessly to defend homosexual sex, trans sex, polyamorous sex, etc. The specifics of these iterations are less interesting than their shared argument. For, despite the text bubble’s testimony to the contrary, sexual conservatives rarely frame their objections in terms of consent: is the “immorality of extramarital sex”, according to conservative Christians, that it is unconsensual? “The Myth of ‘Consensual’ Sex”, therefore, implicitly endorses via its rhetorical structure the thesis that ‘consent’ is the only grounds on which one could reasonably object to a sexual act; it adopts, in perhaps the most casual way possible, the strong framework of consent. Furthermore, it demonstrates one of the primary motivations for such an adoption: a robust commitment to anti-conservatism about sex.

Despite the view’s prevalence, it would not be particularly original to offer a critique of the strong framework of consent. Jonathon Ichikawa’s “Consent Theory and Hermeneutical Injustice,” for instance, argues that an overreliance on consent “impede[s] public and individual understanding of important positive and negative kinds of sexual interactions.”<sup>8</sup> Similarly, Quill Kukla’s *Sex Beyond Yes*, has as a “central theme... that this traditional consent framework is limiting and distorting when it comes to understanding good sex and how to enable it.”<sup>9</sup> These papers, and those like them, are necessary and valuable interventions. Yet they are bounded in two ways. First, neither Ichikawa’s paper nor Kukla’s book develops a critique of the concept of consent itself; Ichikawa, for instance, focuses on ‘inference tickets’ involving consent—for example, the inference ticket from “wrong” to “unconsensual.”<sup>10</sup> Second, while both papers are clearly hostile to the strong framework of consent,

nothing in either is antagonistic to the weak framework; their primary preoccupation is on the sexual abuses that consent *misses*, rather than those that consent *causes*.

This paper shares neither of these features. It argues, on the basis of the concept itself, that frameworks of consent—weak or strong—frame sex and sexual acts in a way that facilitates violence and abuse, and therefore ought to either be revised beyond recognition or rejected. This is a much harder thesis to argue, especially given the dominance of the consent framework. For, within the framework, such a rejection appears synonymous to arguing that some cases of permissible sex are unconscious, and this seems to be an unacceptable (and dangerous) conclusion. But this equivalence holds only once the terms of the debate have already been set by ‘consent’; if these terms are rejected, a much wider world of possibilities is opened up to us. This paper, therefore, flits between philosophy, history, and sociology.

In each of the next three sections, I identify a feature of ‘consent’—NEGATIVITY, PROTECTIVITY, and DESIROUSNESS—that contributes to sexual injustice and violence. Each of these features are developed and analyzed by examining a particular sexual injustice: the epidemic of ‘bad sex’ for women with men in o2, child sexual abuse in o3, and the sexual exploitation and marginalization of trans women in o4. I argue, in each case, that ‘consent’ is not only insufficient for the recognition and reparation of these abuses, but is in some way an essential *cause*. However, it is not my ambition in this paper to offer an alternative model, as much as I believe the development of one is imperative. Instead, these three features figure not only as criticisms of ‘consent’ but as necessary conditions on *any* such alternative; they carve up the space of possible sexual ethics and therefore, hopefully, constitute negative progress towards (an) eventual solution(s). I do not know what exactly we deserve, but it *must* be better than “don’t touch me until I say so.”

## **02—‘JUST BECAUSE THE SEX WAS BAD DOESN’T MEAN IT WASN’T CONSENSUAL’**

What is the moral content of consent?<sup>11</sup> Hallie Liberto writes that

Consent involves the waiving of a right or, at the very least, the releasing of another person from a duty that he or she would otherwise have toward you.<sup>12</sup>

Victor Tadros, in “Consent to Sex in an Unjust World”, offers a similar view:

*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.<sup>13</sup>

Finally, Tom Dougherty provides the following explanation:

We have... negative rights against interference: the moral default is that others may not lay hands on, nor damage, our persons or property... We move away from the default by giving other people our morally valid consent, thereby waiving some specific rights.<sup>14</sup>

What all three of these definitions have in common is the sense that consent is ‘negative’ in some fashion: it involves giving something (a right to not be acted against

in a particular way) up. We can specify which rights we are waiving, of course—“Jones might waive her right against Smith engaging in vaginal intercourse with her, but retain her right against Smith engaging in anal intercourse with her”<sup>15</sup>—but consent nonetheless acts purely subtractively on the set of one’s rights or owed obligations; consent can contain conditions, but it cannot create a duty or obligation. We might call this feature of consent NEGATIVITY.

**NEGATIVITY:** Consent to sex involves waiving a right, giving something away. In particular, it does not involve any positive requirements as to the fulfillment of the consenter or to the quality of the treatment that they experience at the hands of the consentee.

The rights-waiving model of consent is not without its detractors. Kukla, for instance, writes that it is “rather bleak to think of this kind of waiving of a right not to be touched as the core of sexual negotiation”<sup>16</sup>, and Manon Garcia advances a collaborative view of consent in *The Joy of Consent*.<sup>17</sup> Yet, despite these objections, consent-as-rights-waiving remains the dominant approach in and beyond philosophy. It does so, I suggest, at least in part because even if it is normatively distasteful, there is something descriptively accurate about it, a feature of consent as it actually operates that is reflected honestly by a concept as bleak as rights-waiving.

NEGATIVITY, as a feature of consent, is *prima facie* ungendered. But this is illusory. Thomas MacAulay Millar, in “Towards a Performance Model of Sex”, writes

We live in a culture where sex is not so much an act as a thing: a substance that can be given, bought, sold, or stolen, that has a value and a supply-and-demand curve. In this “commodity model,” sex is like a ticket; women have it and men try to get it... Women are guardians of the tickets; men apply for access to them. This model pervades casual conversation about sex: Women “give it up,” men “get some.”<sup>18</sup>

‘Sex’ is a commodity that women have and men want. The commodity model therefore reveals an implicit gendered dimension to NEGATIVITY, the consequence of which is that, as Garcia puts it, ‘consent is a woman’s problem’<sup>19</sup>. Women consent to what men take. Or, writes Garcia,

In every campaign against sexual violence, every poster on a dormitory wall, and in most philosophical analysis, it is taken for granted that only women must consent to sex... It is presumed that men always want sex and are always in the position of proposing it, while women receive and vet proposals, accepting some and rejecting others.<sup>20</sup>

Thus NEGATIVITY, as ungendered as it might seem, is positioned within a hierarchy that genders ‘giving it up’, and therefore NEGATIVITY takes on gendered meaning.

‘Regret sex’ refers to the myth, often peddled by defense attorneys, that a major driver of rape accusations is women feeling ‘guilty’ or ‘dirty’ after sex, coming to regret it, and then—for a reason that is always hinted at but never explained—accusing their sexual partner of rape. Keith Sullivan, for instance, gave an interview on Fox News defending alleged rapist Owen Labrie where he stated that “Look, many women have what’s known as ‘regret sex’, they feel dirty afterwards, they feel guilty,

she's a very young girl, she's only just maturing..."<sup>21</sup> Similarly, Musca Law published an advertisement-as-article stating:

It's a scenario I've seen many times. Two adults engage in a consensual sexual encounter. Nothing illegal takes place. Hours or days later, one person changes their mind. They feel regret, shame, anger, or fear of judgment—and suddenly, what happened is no longer just a mistake. It becomes a crime. And you're... facing a life-changing felony charge.<sup>22</sup>

The myth of 'regret sex' and its use as a method to deflect accusations of rape reveals a counterintuitive but crucial fact about the way that sexual consent operates: 'unconsensual sex' is not only distinguished from but actively contrasted with 'bad sex' (where 'bad' here means not only physically unenjoyable, but degrading, dehumanizing, or otherwise alienating). Under the commodity model of sex, *what it is* for a woman to consent to sex is for her to make permissible something bad, dirty, or regrettable. She does this, the story goes, in exchange for something else: romantic companionship, financial security, the social validation of motherhood, etc. Hence NEGATIVITY yields<sup>23</sup> NEGATIVITY\*:

NEGATIVITY\*: Consent to sex involves a woman giving up her right to avoid something bad, dirty, or regrettable, in implicit or explicit exchange for some other aim or resource that she finds independently valuable. It is perfectly natural, in particular, for women's experience of consensual sex to be 'bad': unfulfilling, dehumanizing, etc.

There exists, therefore, a 'hermeneutical slippage' between 'consensual' and 'bad' sex. Of course, it would be ludicrous to argue that a sexual act was consensual just because it was bad—except that, in a sense, that's exactly what Sullivan is doing. Sullivan's first argument is not that the sex was consensual; it's that the sex *might have (just) been bad*. It follows that Sullivan's defense relies on the existence of the aforementioned hermeneutical slippage, and the dual hermeneutical clash it generates between 'bad' and 'unconsensual' sex.<sup>24</sup> This clash allows for the rhetorical strategy of deflating sexual assault to mere 'bad sex', as Sullivan does in his interview, and as "proud feminist"<sup>25</sup> Bari Weiss does in her New York Times op-ed responding to a woman accusing Aziz Ansari of sexual assault:

There is a useful term for what this woman experienced on her night with Mr. Ansari. It's called "bad sex." It sucks.<sup>26</sup>

In the other direction, the hermeneutical clash between 'bad' and 'unconsensual' sex also serves to invisibilize the harms of bad *consensual* sex. As Garcia writes:

when a woman consents to sex with a man, this supposedly means that she gives the man permission for penile penetration of her vagina until he achieves orgasm, at which point sex will end. Consent to sex is, for women, consent to a chain of events fully scripted and oriented toward men's pleasure.<sup>27</sup>

The 'orgasm gap' refers to the difference in the frequency of orgasm during sex between heterosexual men and women. Heterosexual and bisexual women are approximately seven times as likely as heterosexual men, and over twice as likely as lesbian

women, to report that they do not ‘usually or always’ orgasm during sex.<sup>28</sup> Similarly, a study of causal heterosexual sex found that approximately 33% of women, compared to 84% of men, orgasmed in their last such encounter.<sup>29</sup> The orgasm, of course, is not the be-all and end-all of sex, but it *is* an important part of many people’s sexual satisfaction; the orgasm gap, therefore, demonstrates the degree to which women’s pleasure is subordinated within heterosexual sex.

The critique of this subordination, however, is obfuscated by this hermeneutical clash insofar as any criticism of ‘bad sex’ is taken to impinge or undermine efforts to address ‘unconsensual sex’. Rachel Corbett, for instance, published an article in The Daily Telegraph with the title “Sorry ladies, but we can’t start calling bad sex ‘rape’.”<sup>30</sup> In it, she argues that an acknowledgement of the continuity between the subordination of women’s desires within ‘consensual’ sex and the subordination of women’s desires within ‘unconsensual’ sex “is not only dangerous but makes a mockery of... sexual assault.”<sup>31</sup> The problem, of course, is that these two phenomena *are* continuous; they are not fighting for attention but two facets of the same system of sexual oppression. The division serves only to make it more difficult to talk about sexual injustices that do not fall within the purview of consent.

If consent to sex was always already consent to bad sex, then on what grounds can one complain? What else did you expect? This was the deal! NEGATIVITY\* hence directly complicates any attempt to talk about or criticize ‘bad sex’, whether consensual or unconsensual.

### **03—AGENTIAL DEMOTION, CHILD SEXUAL ABUSE, AND CHILDREN-AS-SYNECDOCHE**

Melissa Rees and Jonathon Ichikawa, in ‘Sexual Agency and Sexual Wrongs’, raise concerns regarding an overreliance on consent in certain cases of sexual wrongs. They consider the following scenario:

TEENAGER: Lily, a 15-year-old girl, meets Kyle, a 22-year-old man. The two of them experience mutual attraction and develop a sexual relationship. Lily is enthusiastic about their relationship, including the sexual activity, which she often actively seeks out.<sup>32</sup>

This situation undeniably involves a serious sexual wrong—this is not under debate. *Why* is it wrong, however, is. According to Rees and Ichikawa, the standard account of why this is—as they write, “the default view... within mainstream discourse”—is the ‘consent-theoretic explanation’.<sup>33</sup> Under this view, TEENAGER involves a (serious) wrong because it involves sex without consent; it involves sex without consent because “Lily, a legal child, cannot consent to sex with an adult like Kyle.”<sup>34</sup>

But here arises a puzzle: at least in Rees and Ichikawa’s scenario, Lily *does* take herself to have consented to sex with Kyle. And Lily is far from an edge case. Katie Ellis, for instance, interviewed 15 girls who had been victims of child sexual abuse (CSA) and found that “the girls unanimously rejected being labelled as ‘vulnerable’

and instead felt that they were responsible for the abuse that they had endured.”<sup>35</sup> She found that the children commonly described their relationship with their abuser as “consensual”. Does this mean that what these children experienced was not abuse? No: as Rees and Ichikawa note, “the judgement that one has not been sexually violated” does not necessarily enjoy the status of first-person authority.<sup>36</sup>

Yet we *do* ordinarily accept first-person authority for “judgments about whether one consents to sexual activity.”<sup>37</sup> It follows that the consent-theoretic explanation relies on disenfranchising children *in particular* from their ability to consent—that is, gerrymandering the borders of agency. As Rees and Ichikawa write,

...on... the consent framework, there is no room for survivors to both (a) articulate the moral impermissibility of the sexual activity they participated in, and (at the same time) (b) take themselves to have been full agents with the capacity to consent.<sup>38</sup>

The denial of (a) is obviously unacceptable, but denying (b)—what Rees and Ichikawa call *agential demotion*—can also constitute a serious harm. Interpersonal agential demotion can cause “*A* to act against *B*’s expressed interests, place restrictions on *B*’s sphere of influence, or undermine *B*’s standing as an agent in the eyes of others”<sup>39</sup>, and *intrapersonal* agential demotion may lead to a victim viewing themselves as fundamentally flawed in their capacity as an autonomous agent. Contrapositively, Ellis’s interviews demonstrate that where ‘consent’ hermeneutically clashes with ‘sexual abuse’, children who understand themselves as having full autonomy (and therefore capable of valid consent) will find themselves occluded in recognizing their abuse:

Campaigns to raise awareness of child abuse have tended to showcase... images of children to evoke sympathy for the ‘innocent’ child in need of protection... Although these images heighten public anger about the injustice of CSA, images of very young and frightened children do little to evoke concern for the older child who appears ‘sexualized’ and claims that sex with her attacker is consensual.<sup>40</sup>

If Ellis’s analysis is correct, then agential demotion not only harms survivors of child sexual abuse—as Rees and Ichikawa identify—but is a partial cause of it. By placing ‘autonomy’ in conflict with ‘sexual abuse’, consent will lead to cases in which children, correctly refusing to give up an appreciation of their own autonomy, find themselves incapable of making sense of—hence taking action to prevent, curtail, or respond to—the abuse they face. Furthermore, because a lack of autonomy is paradigmatically associated with younger children, it hermeneutically marginalizes older victims of sexual abuse and contributes to the excusal of the abuse that they face.

Former Fox News host Megyn Kelly recently defended prolific sexual abuser Jeffrey Epstein, stating “he was into the barely legal type, like, he liked 15-year-old girls... I’m just giving you facts—that he wasn’t into, like, 8-year-olds.”<sup>41</sup> Various media outlets were quick to point out that 15 years old is, far from being ‘barely legal’, below the unrestricted age of consent in every U.S. state. NPR, for example, wrote that:

The age of consent in the United States ranges from 16 to 18 years old, depending on the state. It is not legal for an adult to engage in sexual activity with a girl below 16 years old in any U.S. state.<sup>42</sup>

The fact that Epstein's victims were 15, rather than 8, does not reduce the abhorrence (nor the illegality) of the violence he, and his accomplices, enacted. In suggesting that it does, Kelly is relying on the hermeneutical marginalization of older victims within the concept of 'sexual abuse'. But it is important—*extremely* important—to note that NPR's article is not, strictly speaking, correct.

Child marriage is legal in 34 U.S. states. The first state to ban child marriage without an exception for pregnancy was Delaware, in 2018. And, as of 2022—though the situation has not significantly improved since—"33 states and the District of Columbia explicitly exempt sex between married persons from prosecution under some or all of their statutory rape laws".<sup>43</sup> So it is not correct to say that it is not legal in any U.S. state for an adult to engage in sexual activity with a girl below 16 years old. What is true is that, as far as the law is concerned, a girl below 16 years old cannot consent to sex with an adult. But this impediment is not conclusive: by signing a marriage license, her *parents* can. And the child often has no chance to refuse: most of the time, married children, as minors, do not have the right to initiate a divorce.<sup>44</sup>

At a cursory glance, child marriage laws such as these run counter to the consent framework: they permit, and in some cases encourage, sexual relations in which one does not (indeed, per the framework, *can* not) consent. In another sense, however, the existence and form of child marriage is tightly imbricated with how the concept of 'consent' frames the risks and benefits of sex and sexual acts.

Consent, in particular, is *protective*.

**PROTECTIVITY:** Sex is risky; it is dangerous. It is not only potentially harmful to those who engage in it, but also damages them in their ability to fulfill their social role. Consent is an instrument of protection; by forming a barrier between the individual and others who may seek to violate or harm it, it allows for sex to be made 'safe'.

The protective character of consent is made explicit in various places in the philosophical literature. Renée Jorgensen Bolinger, for instance, argues in 'Moral Risk and Communicating Consent' that part of the work of consent is in 'managing' moral risk.<sup>45</sup> More broadly, however, PROTECTIVITY operates as an implicit presupposition within appeals to consent. This presupposition means that 'consent' is tied up with 'danger', and while "children cannot be trusted to consent for themselves" is self-evidently nefarious, "children must be protected from that which is dangerous" is ordinarily considered just good parenting. Thus, PROTECTIVITY, however innocuous it may appear, must lead to the following:

**PROTECTIVITY\*:** In particular, if the conditions of *A*'s protection are not up to them—for example, if *A* is a child—then, because *A*'s consent does not do the work that consent ought to do, *A* is not capable of consenting, and whoever is responsible for *A*'s protection—at various moments: a parent, a guardian, a teacher, the state, etc.—is.

Here, it is important to be precise. For, while there is much to criticize about the view that what children need is ‘protection’, at the heart of much of why PROTECTIVITY is dangerous is that what must be protected is not children but their ordained social role—what Lee Edelman, in his queer nihilist polemic *No Future*, calls ‘the Child.’ Edelman argues that politics is invariably limited by the terms of *reproductive futurism*, the conservative project of organizing society around the aim of transmitting itself to the future “in the form of its inner Child.”<sup>46</sup> The Child, “immured in an innocence seen as continuously under siege, condenses a fantasy of vulnerability”<sup>47</sup>; reproduction requires protection. But the Child does not stand in as synecdoche for children. Quite the opposite: the latter is hermeneutically slaved to the former.

As put by Bædan:

The Child, of course, has very little to do with real children. Like all people, children are enslaved under the political order of the state and capital, expected to bear the burden of being the innocent beneficiaries of political initiatives.<sup>48</sup>

In *No Future*, Edelman’s primary focus regarding where the demands of the Child and the lived experience of children come apart is in the case of queerness. Queerness is understood as intrinsically threatening to the Child despite the persistence, even under siege, of queer children. This is already highly relevant to the question of child sexual abuse: the figuring of transfemininity as inherently pedophilic, for instance, is inextricable from the disproportionate number of transfeminine youth—including minors—engaged in survival sex work.<sup>49</sup> But a tighter connection may be drawn.

Jamie O’Quinn, in ‘Child Marriage and Sexual Violence in the United States’, writes that that “statutory rape laws construct minors’ capacity to consent as essentially different and less than adults”.<sup>50</sup> More generally, O’Quinn writes,

Understandings of children as distinct from and “less than” adults consequently reinforce children as in need of protection from adults. If... children are innocent, asexual, and incapable of making decisions about their sexual lives, then they require protection from those who are the constructed as their binary opposite.<sup>51</sup>

O’Quinn is correct to link (a) limitations on minors’ capacity to consent, (b) the view that children must be protected “from adults by adults”, and (c) their in-fact vulnerability to sexual abuse.<sup>52</sup> But she puts the cart before the horse. It is not that children are first understood as ‘less than’ and *then* placed in need of protection; rather, to serve their role as the bearers of futurity’s standard, they must be ‘protected’—that is, *preserved*—else may the effigy arrive altered. Agential demotion is merely the natural *post hoc* justification for the oppressive conditions of this ‘protection’, which, as we have seen, is as likely to harm children as it is to shield them.

But what is the alternative to protection, viz., to PROTECTIVITY? Can we give up the idea that sex is intrinsically risky or dangerous to us and our social roles, and the

accompanying understanding of sexual ethics as a campaign of protection, without—and here, to avoid walking in circles, we must guard against inadvertent CAPITALIZATION—endangering children? Or, in a word: if not ‘consent’, what else? Emma Goldman’s ‘The Child and Its Enemies’ is perhaps the first contribution to the movement that is today called ‘child liberation’. In it, Goldman addresses this question:

... what about weak natures, must they not be protected? Yes, but to be able to do that, it will be necessary to realize that education of children is not synonymous with herdlike drilling and training. If education should really mean anything at all, it must insist upon the free growth and development of the innate forces and tendencies of the child. In this way alone can we hope for the free individual and eventually also for a free community, which shall make interference and coercion of human growth impossible.<sup>53</sup>

What Goldman is expressing here, slightly muddled by an admittedly contemporaneous appeal to innate essentials, is in line with O’Quinn’s wariness regarding the framing of child protection as “*from adults by adults*”. Children, Goldman says, must be given the opportunity for “free growth and development”, for it is precisely this development that will, self-fulfillingly, make itself free.

This shift does not prevent us from recognizing the serious moral harms caused by age-inappropriate sex. Rees and Ichikawa, for instance, propose a number of ways to theorize the harms of age-inappropriate sex without relying on agential demotion, including commitments to egalitarianism, to intimacy, and to special duties of care.<sup>54</sup> These conceptual resources, and others like them, are the starting ground for a sexual ethics that does not endanger children either by exposure or by isolation.

#### **04—“CLOSE YOUR EYES / RAISE YOUR HANDS”; TRANSMISOGYNY AND LESBIPHOBIA**

The term *autogynephilia* refers to “a male’s propensity to be erotically aroused by the thought or image of himself as a woman”<sup>55</sup>. The paraphilia was ‘identified’—note my disdain—by the sexologist Ray Blanchard as part of his research into “a taxonomy of gender identity disorders in biological males”<sup>56</sup>. According to Blanchard, autogynephilia is the common feature among ‘non-homosexual transsexuals’—trans women who either fuck women or refuse to fuck men.<sup>57</sup> Blanchard’s typology, therefore, distinguishes straight trans women (‘homosexual transsexuals’) from lesbian, bisexual, and asexual trans women (‘heterosexual, bisexual, and asexual transsexuals’<sup>58</sup>). The former receives the pyrrhic victory of legitimization through being misgendered as an extreme form of gay man; the latter is pathologized as a collection of fetishists whose womanhood arises from the “confounding of desire and envy”<sup>59</sup>.

Most trans women see Blanchard’s typology as a bit of a joke; the running theory is that Blanchard is a chaser<sup>60</sup> upset at the existence of trans women who won’t sleep with him. Nonetheless, the concept of autogynephilia has seen considerable uptake in the three decades since its invention. It was first popularized in 2003 by Michael Bailey’s book *The Man Who Be Queen*, which contains a test for someone

who might want to identify an autogynephile. A potential autogynephile is exonerated if their “ideal partner [is] a straight man”, if they have worked as a “lingerie model or prostitute”, if they ‘pass’ as a “natural-born woman”, and—of course—if they “like to look at pictures of really muscular men with their shirts off”.<sup>6162</sup>

Bailey’s reproduction of Blanchard’s theory is, if crude, at least responsive to the latter’s typology. Since then, however, ‘autogynephilia’ has taken on a new life as a “floating signifier”<sup>63</sup> for transphobic conservatives. As Julia Serano argues, these conservatives equate “autogynephilia” with “trans” with “fetish” with “sex addiction” with “sexual predation” with “child molester”.<sup>64</sup> The term therefore becomes an indispensable part of the phantasm of transfemininity writ large.

We have to look at these autogynophilic [*sic*] men and see them as, I think, the single biggest reason that this movement has succeeded to such an extent. There just are these very powerful men whose entire aim in life is to transgress women’s boundaries and to force everyone else to pretend that they’re women because they get an erotic thrill out of it... There’s these weird predatory guys convincing kids that they should transition because that’s what they get a kick out of.<sup>65</sup>

As this quote from Helen Joyce demonstrates, ‘consent’ figures centrally within this phantasm in two ways. Firstly, trans women are forcing, tricking, or convincing children to transition. They do this because they “get a kick out of [it]”. The belief that someone must be ‘transing the kids’ turns on inverting the agential demotion discussed in o3; if children can’t consent, then whenever they choose something—the “that cisheterosexual society-at-large would not choose for them” is silent—someone must be consenting *for* them. Secondly, if trans women are autogynephiles, and autogynephilia is a fetish, then trans women—just by existing—unconsensually involve the people, especially women, around them in a sexual act. And, actually, that’s the point: trans women’s “entire aim in life is to transgress women’s boundaries.”

The idea that trans women aim to violate women’s consent is much older than ‘autogynephilia’. Its most famous articulation belongs to Janice Raymond, in her 1979 book *The Transsexual Empire*. The book could aptly be described as the Bible of the movement that is today called ‘trans-exclusionary radical feminism’ (an apt analogy, given that Raymond herself is a Catholic and a former nun). In it, Raymond writes:

Rape... is a masculinist violation of bodily integrity. All transsexuals rape women’s bodies by reducing the real female form to an artifact, appropriating this body for themselves.<sup>66</sup>

Raymond’s ire is directed at all trans women, but particularly lesbian trans women:

The transsexually constructed lesbian-feminist violates women’s sexuality and spirit, as well. Rape, although it is usually done by force, can also be accomplished by deception.<sup>67</sup>

What does ‘rape’ mean here? Raymond’s view is that the scope of consent extends beyond the physical body and to the *form* of the body or the mode in which the body expresses itself. The ‘transsexually constructed lesbian-feminist’, therefore, violates women’s consent through her interaction with women’s spiritual bodies.

Even among transmisogynists, Raymond's views are extreme. Yet her preoccupation with 'rape by deception' by trans women is far from unusual. It has been less than a year since the UK's Crown Prosecution Service published new guidance that "clarified the law" regarding "deception as to sex".<sup>68</sup> The guidance states that "there is no expectation for a complainant to confirm the sex of the defendant"; therefore, there is no difference between a "failure to disclose birth sex" and "deliberate deception about birth sex."<sup>69</sup> In other words, cis people can assume that anyone they're having sex with is cis, and if a trans person fails to warn them of their 'abnormality'—or merely if the cis person claims that they not know, and would not have had sex with the trans person if they did—they have violated the other person's consent and are liable for criminal prosecution.

It is worth taking a moment to pause and state the obvious: these laws do not protect the sexually marginalized. Compared to cis people, trans people are more than three times as likely to experience sexual assault in a year<sup>70</sup> and more than four times as likely to experience violent victimization.<sup>71</sup> Trans people—especially trans women—are disproportionately likely to be sex workers, and when interviewed, they attribute the extreme violence they face to "being 'discovered' as... transgender":

No one's going to kill a gay man if he finds a dick between his legs. No one's gonna kill a gay woman if he finds a pussy. But they will definitely put a knife through a tranny's throat if they see breasts and dick.<sup>72</sup>

This violence and the concept of 'gender identity fraud' are continuous insofar as they both turn on the psychosexual fear that an object of one's sexual attraction will be 'revealed' to be trans. This fear is fueled by the language of consent—language which, in the hands of law enforcement—including the Crown Protection Service—is used to invert the real threat of violence against poor trans sex workers into an imagined threat against their wealthier cis male clients. Such criminalization, while relying on a hermeneutical inversion, only deepens the existing patterns of violence: trans inmates are 13 times as likely as cis inmates to be sexually assaulted in prison<sup>73</sup>; over three-quarters of them experience sexual violence at the hands of correctional officers alone.<sup>74</sup> Finally, incarcerated trans women are forced into sexual slavery through the practice of 'V-coding', where trans women are assigned to cells with "aggressive cisgender male inmates" as a form of placation or reward.<sup>75</sup> The practice is so common it has been described as a "central part of a trans woman's sentence".

Around the same time that the Crown Prosecution Service's "deception as to sex" guidance was coming out, I was taking the class 'Sex and Love' at Oxford with Jeremy Fix. Fix began the class with a series of papers on consent under conditions of deception, including "Sex, Lies, and Consent" and "Deception and Consent" by Dougherty,<sup>76</sup><sup>77</sup> "Consent and Deception" by Jubb,<sup>78</sup> and "Not What I Agreed To" by Tilton and Ichikawa.<sup>79</sup> 'Gender fraud' is mentioned only in the last of these, and it

plays a small part in the authors' argument. But, admist deceitful marriages and removed condoms, it was this example that the class found salacious enough to seize on. Each week, even when trans women were not the subject of discussion, we became a problem case for whatever view was under consideration. The space occupied by transfemininity in the libidinal imagination of the class grew as to become a point of fixation. The fact that trans women are disproportionately the victims of rape, rather than the other way around, was rarely, if ever, mentioned. Nor was the topic's connection to the 'trans panic' defense that has acquitted hundreds, if not thousands, of perpetrators of transfemicide. After a few weeks of discussion, Fix asked us to close our eyes and to raise our hand if we thought post-operative trans women were committing rape if they failed to disclose the fact that they were trans. I peeked, of course—can you blame me?—and saw that more than half of the room raised their hands. Fix then told us to put our hands down, and I opened my eyes to a room of people who could not fathom the violence my sisters face but were happy, from their seats at the heart of the British academic empire, to call them rapists.

I am telling this story because of the brutal irony in this story happening, of all places, at Oxford. The psychopornographic phantasm of transfemininity, where trans women are hypersexualized and then subjected to retaliatory violence for this imposed sexuality—what Jules Gill-Peterson calls the “global trans panic”—is not a naturally emergent phenomenon; in fact it was not even spontaneous.<sup>80</sup> The global trans panic comes from many places, and persists for many reasons, but no institution is more responsible for its creation than the colonial British Empire. In *A Short History of Trans Misogyny*, Gill-Peterson describes the genocide carried out by the British Empire in northwestern India against the indigenous hijras. Hijras, who are assigned male at birth but usually live as girls from a young age, were not nor are today collapsable to the label ‘trans woman’, but Gill-Peterson argues that the British Empire ‘transfeminized’ them insofar as it cast them, as part of its genocide, as transfeminine. Gill-Peterson describes an inciting court case in which the colonial government “sexualized hijra gender transgression by calling it prostitution, making it concrete in an era when a central British alibi for empire was ending the global sex trade.”<sup>81</sup> The government “soon adopted an official policy to ‘reduce’ the number of hijras through measures that would ‘gradually lead to their extinction’”<sup>82</sup>; part of this policy involved inflaming panics around sexual immorality and psychosexual fears. Gill-Peterson argues that these efforts, aimed at consolidating colonial power and replicated across the globe, are in part why the global trans panic exists today.

So: in the case of trans women, ‘consent’ is not protecting the most sexually vulnerable. In fact, by providing the pretext—through autogynephilia, rape by deception, and so on—for their pathologization, retaliation, and criminalization, the concept plays an essential role in trans women’s sexual marginalization: ‘consent’ is

indispensable in the production of the transfeminine sexual underclass. It is tempting, as always, to suggest that this role is not a necessary one—that the problem is not ‘consent’ but the way that consent is applied, or the choice of a particularly suspect formulation of consent. Indeed, few philosophers would endorse Raymond’s theory of “mythical” violations, and Tilton and Ichikawa’s paper in fact defends trans women against the argument that failure to disclose their transness violates consent. More recently, in “Epistemic Domination and ‘Gender Identity Fraud’ Prosecutions”, Lanau has argued that ‘deceiver and pretender’ stereotypes of trans people cause cases of ‘gender identity fraud’ to be subject to epistemic domination, and that trans people are placed in a ‘legal double-bind’, caught between the threat of state violence on one side and informal violence on the other.<sup>83</sup>

Lanau’s argument is interesting, and, I think, sorely needed. But it quite conspicuously does not cut to the heart of the issue on consent. This, I think, is telling. In conjunction with my story, it reveals a feature of consent that is essential to its role in the sexual abuse of trans women. Consent, in particular, is DESIROUS:

**DESIROUS:** Consent is often understood to be mediated by—or even exhausted by<sup>84</sup>—communication. However, even under these views, the grounding purpose of consent is to reflect outwards the extant *desire* of a consenter *A*, viz., to permit *B* to do to *A* something that *A* wants but which *B* cannot do without permission.

The problem with DESIROUS is that, as the global trans panic demonstrates, what we desire is not the sort of neutral fact that we can take at face value. On the contrary, it reflects what Deleuze and Guattari call the ‘sociohistorical field’ of our unconscious libidinal investments.<sup>85</sup> DESIROUS provides a means for this sociohistorical field to reassert itself materially from the space of the unconscious to which it has been sublimated. It launders the violences of this field as ‘individual preference’ and casts challenges to these individual preferences—necessary for the dissolution of libidinal injustices—as ‘violations of consent’.

‘Consent’ implicitly demands an unreflective relationship with desire where a dialectical relationship—negotiation between, in Deleuze and Guattari’s terms, the fascist desires that we have, and the revolutionary desires that we *ought* to—is absolutely necessary. Consent, in simple terms, ends the critique of desire; it establishes a right, grounded by bodily autonomy, to our extant inclinations.

**DESIROUS\*:** Desire is an individual phenomenon and an inalienable right. Any serious critique of desire either violates consent or is continuous with its violation. Consent is fully respected only when unjust, violent, or ‘bad’ desires are validated as a matter of ‘personal preference’.

When trans women suggest that cis people ought to interrogate their disgust with non-hegemonic bodies, we are accused of trying to ‘force people to have sex with us.’ This is the power of consent’s laundering of desire: the critique of violence recast as violent itself.

Not all of those who believe in the existence of autogynephilia are cis. Of course, the primary advocates of Blanchard's typology are, but he has found his adherents among trans women, too, who will use "AGP" as an insult or self-identify as "HSTS" or "true transsexuals". Autogynephilia, therefore, figures not only as a tool of transmisogynistic pathologization but as a weapon of *compulsory transheterosexuality*. But this raises an apparent paradox: if, as far as hegemonic ideals of gender are concerned, trans women are merely 'deluded men', how could any sort of compulsory heterosexuality pressure a 'man' into sex with men? The answer, of course, is that 'deluded man' does not capture the contours of transmisogynistic oppression: the expectation of us, as with all women, is to assume our place in the sexual underclass.

Compulsory transheterosexuality exists, from autogynephilia to Raymond's especial ire at the existence of 'Sapphos by Surgery' to decades of trans women denied healthcare because they did not feign an attraction to men. It is invisible from the cis frame, but deeply familiar to lesbian trans women, and often complicit in the abuse that they face at the hands of men. Yet 'consent' has nothing—cannot have anything—to say on the matter; the societal suppression of sapphic desire is laundering as an individual failing. 'Consent' is more likely, in fact, to position the victims of compulsory transheterosexuality as perpetrators themselves, whether of 'rape by deception' or 'gender identity fraud.' The point is this: if the violence of the global trans panic demonstrates the danger posed by the affirmation of fascistic desires, the invisible issue of autogynephilia and internalized translesbiphobia reveal the abuses that arise from the inverse—that is, from the suppression of revolutionary desire. Therefore, whatever framework(s) of sexual ethics that [dis]place consent must be as committed to the affirmation of these desires as to the critique of fascistic desire.

#### **05—BOUNDED INSIDE, BOUNDED OUTSIDE; CONSENT IS A PRESSURE RELIEF VALVE**

There are two lingering questions that remain to be addressed.

**COMMON:** What is the overarching connection between NEGATIVE, PROTECTIVE, and DESIROUS? Why did these features come about, and what role do they play?

**REVISION:** Can 'consent' be revised? What would it look like to develop and apply a model of consent that is neither NEGATIVE NOR PROTECTIVE NOR DESIROUS?

These questions are closely related in the sense that understanding why consent operates in the way that we have come to understand it to be is central to understanding if it can be revised, and conversely, visions of consent without these features can illuminate their synchronic role. They are also crucial to understanding where we must go from here, from diagnosis to treatment.

Why do universities have mandatory sexual misconduct training? The natural view is that they want to reduce sexual misconduct on campus, either because of

their moral commitments, or because it hampers education, or—if one is slightly more cynical—because a sexual harassment scandal is bad for a college’s marketing efforts. The problem with this, however, is that sexual misconduct trainings don’t work. To be sure, there is evidence that training has a weak but positive impact on students’ knowledge about sexual harassment.<sup>86</sup> However, there is also evidence that training “strengthen[s] unequal gender beliefs among men and women most committed to traditional gender interaction norms”<sup>87</sup> and “entrench[e]s male-advantaged gender beliefs”<sup>88</sup>. Most damningly, Htun et al. found that “participating in training is associated with a large and highly statistically significant drop in the share of women who affirm that, if they were sexually assaulted by another student, they would be ‘very likely’ or ‘somewhat likely’ to report the experience.”<sup>89</sup>

So, again: why do universities have mandatory sexual misconduct training? Joanna L. Grossman, in “The Culture of Compliance”, offers an alternative to the natural view.<sup>90</sup> Her suggestion is that the fact that “cookie-cutter sexual harassment policies and procedures do not seem to have any reliably negative effect on the incidence of harassment” is not a flaw of these policies, because their goal is not to reduce harassment.<sup>91</sup> Instead, the primary purpose of these programs is instead to reduce liability—not by reducing harassment but by “paying lip service to the regime.”<sup>92</sup>

Justice Kennedy declared in *Burlington Industries, Inc. v. Ellerth* that the very purpose of Title VII is “to encourage the creation of antiharassment policies and effective grievance mechanisms,” signaling a victory for a misguided culture of compliance, one in which liability is measured not by whether employers successfully prevent harassment, but instead by whether they comply with judicially created prophylactic rules.<sup>93</sup>

The result of this misguided policy is, as Grossman writes, that

Employers who play a significant role in maintaining a work environment that is either hostile or hospitable to sexual harassment are rewarded for paying lip service to the regime by enacting standard issue policies and procedures, regardless of whether those efforts actually reduce harassment or compensate victims. Thus, the triumph of form over substance in sexual harassment law occurs.<sup>94</sup>

Consent, under my view, is like sexual harassment training: it is a triumph of form over substance. The ‘success’ of consent is not in achieving sexual justice but reducing social liability for sexual *injustice*. But, of course, the easiest way to reduce social liability for sexual injustice is not to address or eliminate it; it is to hermeneutically occlude it. Consent’s role, therefore, is similar to that of human rights: it is counterrevolutionary. It is the minimal solution to soothing the gendered contradictions within sex, a relief valve for the increasing pressure exerted by feminist critique.

This is what NEGATIVITY, PROTECTIVITY, and DESIROUSNESS have in common: the reduction of social liability. NEGATIVITY prevents the creation of new obligations; PROTECTIVITY locates the blame in the victim’s lack of autonomy; and DESIROUSNESS pardons social forces for their role in the materialization of libidinal violence. The

success of these features—and consent more broadly—at this task is why the concept has come to exist and persist in the face of other utopias' collapse.

Perhaps the least interesting way to interpret REVISION is as a question about the particular word that ought to frame a replacement sexual ethics, i.e., as equivalent to “should we use a different word than consent?” This question is not philosophical or even strategic: it is a tactical matter. I have my own opinion; this is not the place to deliver it. Slightly more interesting is understanding REVISION as the question of how we ought to treat ‘consent’ while it remains, however imperfect, the dominant social and legal framework for good sex. But this, too, is not my focus.

Instead, REVISION as I understand it asks if there is an acceptable sexual ethic that is meaningfully continuous with the modern formulation of ‘consent.’ But if consent represents, as I have argued, a counterrevolutionary sexual ethics; if it perpetuates a view of sex as a gendered commodity; if it is imbricated with the disempowerment of the most sexually vulnerable; if it launders libidinal violences and curtails the critique of desire; if it is merely a pressure relief valve for the gendered contradictions present within sex under cisheterosexism, then the answer, I think, is obvious: ‘consent’ is a bounding box. Consent is not the last utopia; in fact it is neither the ‘last’ nor a ‘utopia.’ But this, I must hope, is not a bad thing. Rather, it is an opportunity for revolutionary intervention.

**NOTES**

<sup>1</sup> Moyn, *The Last Utopia*, 6.

<sup>2</sup> Ibid, 8.

<sup>3</sup> Ibid, 4.

<sup>4</sup> Ibid, 9.

<sup>5</sup> Ibid.

<sup>6</sup> Halwani, “Sex and Sexuality.”

<sup>7</sup> LiterallyAustin and Jill, “The Myth of ‘Consensual’ Sex”.

<sup>8</sup> Ichikawa, “Consent Theory as Hermeneutical Injustice”, 1344.

<sup>9</sup> Kukla, *Sex Beyond Yes*, 16.

<sup>10</sup> Ibid, 1352.

<sup>11</sup> I owe a great debt of research to Kukla’s *Sex Beyond Yes* here, where I found the following three—and many other—sources that were key to my argument.

<sup>12</sup> Liberto, “Intention and Sexual Consent,” S127.

<sup>13</sup> Tadros, “Consent to Sex in an Unjust World,” 293.

<sup>14</sup> Dougherty, “Sex, Lies, and Consent,” 723.

<sup>15</sup> Liberto, “Intention and Sexual Consent,” S128.

<sup>16</sup> Kukla, *Sex Beyond Yes*, 20.

<sup>17</sup> Garcia, *The Joy of Consent*, 203.

<sup>18</sup> Millar, “Toward a Performance Model of Sex”, 30.

<sup>19</sup> Garcia, *The Joy of Consent*, 117.

<sup>20</sup> Ibid, 118.

<sup>21</sup> Marcotte, “Fox News Guest Says That the Owen Labrie Case May Be a Matter of ‘Regret Sex.’”

<sup>22</sup> Musca Law, “Regret Is One of the Most Common Reasons for False Rape Ccusions.”

<sup>23</sup> It is important to note that ‘yields’ here should not be interpreted diachronically but synchronically; it refers, rather than to the historical development of one idea from another, how one is grounded in or justified by another. ‘Yields’ is structural, not temporal.

<sup>24</sup> See Falbo, 2022 for a discussion of *hermeneutical clashes*.

<sup>25</sup> Weiss, “Aziz Ansari Is Guilty. Of Not Being a Mind Reader.”

<sup>26</sup> Ibid.

<sup>27</sup> Garcia, *The Joy of Consent*, 172.

<sup>28</sup> Frederick et al., “Differences in Orgasm Frequency Among Gay, Lesbian, Bisexual, and Heterosexual Men and Women in a U.S. National Sample,” 273.

<sup>29</sup> Piemonte et al., “Orgasm, Gender, and Responses to Heterosexual Casual Sex,” 5.

<sup>30</sup> Corbett, “Sorry Ladies, but We Can’t Start Calling Bad Sex ‘Rape.’”

<sup>31</sup> Ibid.

<sup>32</sup> Rees and Ichikawa, “Sexual Agency and Sexual Wrongs”, 3.

<sup>33</sup> Ibid, 5.

<sup>34</sup> Ibid, 4.

<sup>35</sup> Ellis, “Blame and Culpability in Children’s Narratives of Child Sexual Abuse”, 405.

<sup>36</sup> Rees and Ichikawa, “Sexual Agency and Sexual Wrongs”, 7.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid, 9.

<sup>39</sup> Ibid.

<sup>40</sup> Ellis, “Blame and Culpability in Children’s Narratives of Child Sexual Abuse”, 406.

<sup>41</sup> Buck and Edwards, “What Does 15 Look Like?”

<sup>42</sup> Ibid.

<sup>43</sup> Van Roost et al., “Child Marriage or Statutory Rape?”, S74.

<sup>44</sup> Hudson, “How Is Child Marriage Still Legal in the U.S.?”

<sup>45</sup> Bolinger, “Moral Risk and Communicating Consent”, 180.

<sup>46</sup> Edelman, *No Future*, 11.

<sup>47</sup> Ibid, 41.

<sup>48</sup> Anonymous, *Bædan: A Journal of Queer Nihilism*, 20.

<sup>49</sup> Wilson et al., "Transgender Female Youth and Sex Work", 906.

<sup>50</sup> O'Quinn, "Child Marriage and Sexual Violence in the United States", 194.

<sup>51</sup> Ibid, 197-198.

<sup>52</sup> Ibid, 198.

<sup>53</sup> Goldman, "The Child and Its Enemies".

<sup>54</sup> Rees and Ichikawa, "Sexual Agency and Sexual Wrongs", 20.

<sup>55</sup> Blanchard, "Early History of the Concept of Autogynephilia", 439.

<sup>56</sup> Ibid.

<sup>57</sup> Note that, for Blanchard, 'transsexual' means 'male-to-female transsexual'—that is, trans women. Of course, trans men also exist, but Blanchard appears to be significantly less interested in discussing them. This in itself is an expression of transmisogynistic hypervisibility.

<sup>58</sup> Blanchard, "Early History of the Concept of Autogynephilia", 443.

<sup>59</sup> Ibid, 440.

<sup>60</sup> A chaser is someone, usually a cisgender man, who is primarily and fetishistically attracted to trans women.

<sup>61</sup> Bailey, *The Man Who Would Be Queen*, 193.

<sup>62</sup> This reads like a joke, but—to the best of my knowledge—it isn't. Unfortunately, I can't ask Bailey; we're not on speaking terms after I called him a "rancid pedophile" for harassing a 17-year-old trans girl for 'not admitting to her autogynephilia' in an article about a mathematical discovery she'd made.

<sup>63</sup> Serano, "The White Lotus, TERFs, and 'Autogynephilia' as a Floating Signifier".

<sup>64</sup> Ibid.

<sup>65</sup> Joyce, "Helen Joyce Returns: Why Sex Matters in Life and Law".

<sup>66</sup> Raymond, *The Transsexual Empire*, 104.

<sup>67</sup> Ibid.

<sup>68</sup> The Crown Prosecution Service, "Prosecutors Publish Updated 'Deception as to Sex' Guidance".

<sup>69</sup> Ibid.

<sup>70</sup> Coulter et al., "Prevalence of Past-Year Sexual Assault Victimization among Undergraduate Students", 729.

<sup>71</sup> Flores et al., "Gender Identity Disparities in Criminal Victimization", 726.

<sup>72</sup> Nemoto et al., "Social Context of HIV Risk Behaviours among Male-to-Female Transgenders of Colour", 729.

<sup>73</sup> Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, 2.

<sup>74</sup> Sylvia Rivera Law Project et al., *It's Still War In Here*, 27.

<sup>75</sup> Kulak, "Locked Away in SEG 'For Their Own Protection'", 314.

<sup>76</sup> Dougherty, "Sex, Lies, and Consent".

<sup>77</sup> Dougherty, "Deception and Consent".

<sup>78</sup> Jubb, "Consent and Deception".

<sup>79</sup> Tilton and Ichikawa, "Not What I Agreed To".

<sup>80</sup> Gill-Peterson, *A Short History of Trans Misogyny*, 41.

<sup>81</sup> Ibid, 56.

<sup>82</sup> Ibid, 57.

<sup>83</sup> Lunau, "Epistemic Domination and 'Gender Identity Fraud' Prosecutions", 8.

<sup>84</sup> See, for instance, 'Moral Risk and Communicating Consent' by Bolinger.

<sup>85</sup> Deleuze and Guattari, *Anti-Oedipus*, 183.

<sup>86</sup> Htun et al., "Effects of Mandatory Sexual Misconduct Training on University Campuses,"

1.

---

<sup>87</sup> Tinkler, “How Do Sexual Harassment Policies Shape Gender Beliefs?,” 1269.

<sup>88</sup> Tinkler et al., “Can Legal Interventions Change Beliefs?,” 480.

<sup>89</sup> Htun et al., “Effects of Mandatory Sexual Misconduct Training on University Campuses,” 1.

<sup>90</sup> Grossman, “The Culture of Compliance: The Final Triumph of Form over Substance in Sexual Harassment Law.”

<sup>91</sup> Ibid, 3.

<sup>92</sup> Ibid, 4.

<sup>93</sup> Ibid, 3.

<sup>94</sup> Ibid, 4-5.

## REFERENCES

- Anonymous. *Bædan: A Journal of Queer Nihilism*. 2012.
- Bailey, Michael. *The Man Who Would Be Queen: The Science of Gender-Bending and Transsexualism*. Joseph Henry Press, 2003. <https://doi.org/10.17226/10530>.
- Barrett, Michèle, and Mary McIntosh. *The Anti-Social Family*. Second edition. Radical Thinkers. Verso, 2015.
- Blanchard, Ray. “Early History of the Concept of Autogynephilia.” *Archives of Sexual Behavior* 34, no. 4 (2005): 439–46. <https://doi.org/10.1007/s10508-005-4343-8>.
- Bolinger, Renée Jorgensen. “Moral Risk and Communicating Consent.” *Philosophy & Public Affairs* 47, no. 2 (2019): 179–207. <https://doi.org/10.1111/papa.12144>.
- Buck, Ivy, and Alina Edwards. “What Does 15 Look like? Teens and Former Child Actors Weigh in Online after Megyn Kelly Comments.” *Culture. NPR*, November 18, 2025. <https://www.npr.org/2025/11/18/nx-s1-5612509/what-does-15-look-like-teens-and-former-child-actors-weigh-in-online-after-megyn-kelly-comments>.
- Corbett, Rachel. “Sorry Ladies, but We Can’t Start Calling Bad Sex ‘Rape.’” *The Telegraph*, October 29, 2015. <https://www.dailymail.co.uk/reviews/sorry-ladies-but-we-can-t-start-calling-bad-sex-rape/news-story/>.
- Coulter, Robert W.S., Christina Mair, Elizabeth Miller, John R. Blosnich, Derrick D. Matthews, and Heather L. McCauley. “Prevalence of Past-Year Sexual Assault Victimization among Undergraduate Students: Exploring Differences by and Intersections of Gender Identity, Sexual Identity, and Race/Ethnicity.” *Prevention Science : The Official Journal of the Society for Prevention Research* 18, no. 6 (2017): 726–36. <https://doi.org/10.1007/s11121-017-0762-8>.
- Deleuze, Gilles, and Félix Guattari. *Anti-Oedipus: Capitalism and Schizophrenia: Translated from the French by Robert Hurley, Mark Seem, and Helen R. Lane*. Viking Press, 1977.
- Dougherty, Tom. “Sex, Lies, and Consent.” *Ethics* 123, no. 4 (2013): 717–44. <https://doi.org/10.1086/670249>.
- Edelman, Lee. *No Future: Queer Theory and the Death Drive*. Edited by Michèle Aina Barale, Jonathan Goldberg, Michael Moon, and Eve Kosofsky Sedgwick. Duke University Press, 2020. <https://doi.org/10.1515/9780822385981>.
- Ellis, Katie. “Blame and Culpability in Children’s Narratives of Child Sexual Abuse.” *Child Abuse Review* 28, no. 6 (2019): 405–17. <https://doi.org/10.1002/car.2590>.
- Falbo, Arianna. “Hermeneutical Injustice: Distortion and Conceptual Aptness.” *Hypatia* 37, no. 2 (2022): 343–63. <https://doi.org/10.1017/hyp.2022.4>.
- Flores, Andrew R., Ilan H. Meyer, Lynn Langton, and Jody L. Herman. “Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017–2018.” *American Journal of Public Health* 111, no. 4 (2021): 726–29. <https://doi.org/10.2105/AJPH.2020.306099>.
- Frederick, David A., H. Kate St. John, Justin R. Garcia, and Elisabeth A. Lloyd. “Differences in Orgasm Frequency Among Gay, Lesbian, Bisexual, and Heterosexual Men and

- Women in a U.S. National Sample.” *Archives of Sexual Behavior* 47, no. 1 (2018): 273–88. <https://doi.org/10.1007/s10508-017-0939-z>.
- Garcia, Manon. *The Joy of Consent: A Philosophy of Good Sex*. The Belknap Press of Harvard University Press, 2023.
- Gill-Peterson, Jules. *A Short History of Trans Misogyny*. Verso, 2025.
- Goldman, Emma. “The Child and Its Enemies.” *Mother Earth*, 1906.
- Grossman, Joanna L. “The Culture of Compliance: The Final Triumph of Form over Substance in Sexual Harassment Law.” *Harvard Women’s Law Journal* 26 (2003). <https://ssrn.com/abstract=2865996>.
- Halwani, Raja. “Sex and Sexuality.” In *The Stanford Encyclopedia of Philosophy*, Summer 2023, edited by Edward N. Zalta and Uri Nodelman. Metaphysics Research Lab, Stanford University, 2023. <https://plato.stanford.edu/archives/sum2023/entries/sex-sexuality/>.
- Haslanger, Sally. “Gender and Social Construction.” In *Applied Ethics*, 6th ed., edited by Larry May and Jill B. Delston. Routledge, 2017. <https://doi.org/10.4324/9781315097176-44>.
- Htun, Mala, Francesca R. Jensenius, Melanie Sayuri Dominguez, Justine Tinkler, and Carlos Contreras. “Effects of Mandatory Sexual Misconduct Training on University Campuses.” *Socius: Sociological Research for a Dynamic World* 8 (January 2022): 23780231221124574. <https://doi.org/10.1177/23780231221124574>.
- Hudson, Valerie. “How Is Child Marriage Still Legal in the U.S.?” *The Atlantic*, November 6, 2023. <https://www.theatlantic.com/ideas/archive/2023/11/us-national-child-marriage-state-regulation/675909/>.
- Ichikawa, Jonathan. “Consent Theory as Hermeneutical Injustice.” *The Philosophical Quarterly* 75, no. 4 (2025): 1344–65. <https://doi.org/10.1093/pq/pqaf033>.
- Jenkins, Katharine. “Amelioration and Inclusion: Gender Identity and the Concept of Woman.” *Ethics* 126, no. 2 (2016): 394–421. <https://doi.org/10.1086/683535>.
- Jenness, Valerie, Cheryl Maxson, Kristy Matsuda, and Jennifer Sumner. *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*. Center for Evidence-Based Corrections, 2007.
- Joyce, Helen. “Helen Joyce Returns: Why Sex Matters in Life and Law.” January 8, 2024. Podcast. <https://share.transistor.fm/s/2cfc8153>.
- Jubb, Robert. “Consent and Deception.” *Journal of Ethics and Social Philosophy* 12, no. 2 (2017): 223–29. <https://doi.org/10.26556/jesp.v12i2.192>.
- Kukla, Quill R. *Sex Beyond Yes: Pleasure and Agency for Everyone*. 1st ed. A Norton Short Series, v. o. W. W. Norton & Company, Incorporated, 2025.
- Kulak, Ash. “Locked Away in SEG ‘For Their Own Protection’: How Congress Gave Federal Corrections the Discretion to House Transgender (Trans) Inmates in Gender-Inappropriate Facilities and Solitary Confinement.” *Indiana Journal of Law and Social Equality* 6, no. 2 (2018). <https://www.repository.law.indiana.edu/ijlse/vol6/iss2/6>.
- Lammasniemi, Laura. “Capacity to Consent to Sex: A Historical Perspective.” *Oxford Journal of Legal Studies* 44, no. 4 (2024): 979–1001. <https://doi.org/10.1093/ojls/gqae029>.

- Liberto, Hallie. "Intention and Sexual Consent." *Philosophical Explorations* 20, no. sup2 (2017): 127–41. <https://doi.org/10.1080/13869795.2017.1356359>.
- LiterallyAustin, and Jill. "The Myth of 'Consensual' Sex." Know Your Meme, July 11, 2016. <https://knowyourmeme.com/memes/the-myth-of-consensual-sex>.
- Lunau, Resa-Philip. "Epistemic Domination and 'Gender Identity Fraud' Prosecutions." *Social Epistemology*, June 19, 2024, 1–14. <https://doi.org/10.1080/02691728.2024.2362674>.
- Marcotte, Amanda. "Fox News Guest Says That the Owen Labrie Case May Be a Matter of 'Regret Sex.'" *Slate*, August 19, 2015. <https://slate.com/human-interest/2015/08/false-rape-accusations-fox-news-guest-keith-sullivan-uses-nasty-term-regret-sex.html>.
- Millar, Thomas MacAulay. "Toward a Performance Model of Sex" in Friedman, Jaclyn, and Jessica Valenti, eds. *Yes Means Yes! Visions of Female Sexual Power & a World without Rape*. Seal Press, 2008.
- Miller, Claire Cain. "Sexual Harassment Training Doesn't Work. But Some Things Do." *The New York Times*, December 11, 2017. <https://www.nytimes.com/2017/12/11/upshot/sexual-harassment-workplace-prevention-effective.html>.
- Moyn, Samuel. *The Last Utopia: Human Rights in History*. Belknap Press of Harvard University Press, 2010.
- Musca Law. "Regret Is One of the Most Common Reasons for False Rape Ccusions." Accessed December 21, 2025. <https://www.muscalaw.com/blog/regret-one-most-common-reasons-false-rape-ccusions>.
- Nemoto, T., D. Operario, J. Keatley, and D. Villegas. "Social Context of HIV Risk Behaviours among Male-to-Female Transgenders of Colour." *AIDS Care* 16, no. 6 (2004): 724–35. <https://doi.org/10.1080/09540120413331269567>.
- O'Quinn, Jamie. "Child Marriage and Sexual Violence in the United States." In *Sociological Studies of Children and Youth*. Emerald Publishing Limited, 2019. <https://doi.org/10.1108/S1537-466120190000025011>.
- Piemonte, Jennifer L., Terri D. Conley, and Staci Gusakova. "Orgasm, Gender, and Responses to Heterosexual Casual Sex." *Personality and Individual Differences* 151 (December 2019): 109487. <https://doi.org/10.1016/j.paid.2019.06.030>.
- Raymond, Janice G. *The Transsexual Empire: The Making of the She-Male*. 2nd ed. Athene Series 39. Teachers College Press, 1994.
- Rees, Melissa, and Jonathan Ichikawa. "Sexual Agency and Sexual Wrongs: A Dilemma for Consent Theory." *Philosophers' Imprint* 24, no. 1 (2024). <https://doi.org/10.3998/phimp.2530>.
- Serano, Julia. "The White Lotus, TERFs, and 'Autogynephilia' as a Floating Signifier." *Medium*, April 5, 2025. <https://juliasherano.medium.com/the-white-lotus-terfs-and-autogynephilia-as-a-floating-signifier-5399e0934285>.
- Starmans, Christina, and Ori Friedman. "Why Children Believe They Are Owned." *Open Mind* 7 (August 2023): 534–49. [https://doi.org/10.1162/opmi\\_a\\_00090](https://doi.org/10.1162/opmi_a_00090).

- Sylvia Rivera Law Project, Prisoner Advisory Committee, and TakeRoot Justice. *It's Still War In Here*. 2021. <https://srlp.org/wp-content/uploads/2025/01/Its-Still-War-In-Here-1-2.pdf>.
- Tadros, Victor. "Consent to Sex in an Unjust World." *Ethics* 131, no. 2 (2021): 293–318. <https://doi.org/10.1086/711210>.
- The Crown Prosecution Service. "Prosecutors Publish Updated 'Deception as to Sex' Guidance." December 13, 2024. <https://www.cps.gov.uk/cps/news/prosecutors-publish-updated-deception-sex-guidance>.
- Tilton, Emily C. R., and Jonathan Jenkins Ichikawa. "Not What I Agreed To: Content and Consent." *Ethics* 132, no. 1 (2021): 127–54. <https://doi.org/10.1086/715283>.
- Tinkler, Justine E. "How Do Sexual Harassment Policies Shape Gender Beliefs? An Exploration of the Moderating Effects of Norm Adherence and Gender." *Social Science Research* 42, no. 5 (2013): 1269–83. <https://doi.org/10.1016/j.ssresearch.2013.05.002>.
- Tinkler, Justine Eatenson, Yan E. Li, and Stefanie Mollborn. "Can Legal Interventions Change Beliefs? The Effect of Exposure to Sexual Harassment Policy on Men's Gender Beliefs." *Social Psychology Quarterly* 70, no. 4 (2007): 480–94. <https://doi.org/10.1177/019027250707000413>.
- Van Roost, Kaya, Miranda Horn, and Alissa Koski. "Child Marriage or Statutory Rape? A Comparison of Law and Practice Across the United States." *Journal of Adolescent Health* 70, no. 3 (2022): S72–77. <https://doi.org/10.1016/j.jadohealth.2021.10.023>.
- Weiss, Bari. "Aziz Ansari Is Guilty. Of Not Being a Mind Reader." *The New York Times*, January 15, 2018. [www.nytimes.com/2018/01/15/opinion/aziz-ansari-babe-sexual-harassment](http://www.nytimes.com/2018/01/15/opinion/aziz-ansari-babe-sexual-harassment).
- Wilson, Erin C., Robert Garofalo, Robert D. Harris, et al. "Transgender Female Youth and Sex Work: HIV Risk and a Comparison of Life Factors Related to Engagement in Sex Work." *AIDS and Behavior* 13, no. 5 (2009): 902–13. <https://doi.org/10.1007/s10461-008-9508-8>.