

# *Consent: The Brief Light Between Red and Green*

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## **Abstract**

This essay critically examines the limitations of consent as a framework for regulating sexual relationships. Drawing on liberal theory, I posit that consent, as a concept, is historically tethered to property rights, patriarchy, and the criminalization of rape, making it insufficient for addressing the complexities of ethical sexual interactions. I analyse the linguistic and legal uses of consent, particularly in relation to the emerging "enthusiastic consent" model, and highlight how these frameworks fail to fully capture the dynamics of good and ethical sex. While recent efforts have sought to expand consent's role beyond merely distinguishing sexual violence from sex, its continued dominance in legal discourse not only restricts consent's potential to define ethical sexual relationships, but also reinforces problematic concepts like "non-consensual sex," which obscure the distinct harm of rape.

## **§ 0. Introduction**

Consent has for decades been at the helm of sexual ethics. It is the delineator between sexual intercourse and sexual violation, between the permissible and impermissible, the determiner of yes and no. However, consent can also be expressed, represented, and received in an array of forms, finding itself in the grey area of ambiguous interpersonal communication where it can be verbal or nonverbal, implicit or explicit, given then retracted. Consent is not black and white, but it is on paper and in law. This discussion centres around consent as the broker of difference between sex and sexual violence, investigating why consent is inadequate at regulating sexual relationships beyond instances of sexual harm and that's okay. The liberal notion that consent does and should regulate sexual relationships

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imposes a binary contractarian framework onto sex, which is by nature fluid and embodied.

This essay comprises three parts. First, in 'Consent and all that it implies', I begin by establishing the common linguistic conception and use of the term 'consent' arguing that consent is initially normatively positive as a regulatory act but quickly falls apart under scrutiny. I discuss its linguistic implications of active and passive participation, arguing that the word's binary and patriarchal character is fundamental to the concept of consent. Second, in 'Consent marks the difference', I posit consent as the practical and legal boundary between sex and sexual violence. Notably, while consent's locus in rape rather than sex is valuable and sensible, the rape-centred nature of the law's schematisation of consent is an irreconcilable aspect of why 'consent' is a flawed means of regulating ethical sexual relationships rather than unethical ones. Third, in 'Enthusiastic consent, a new paradigm', I discuss the merits and limits of the recently proposed 'enthusiastic consent' model which seeks to broaden the scope of consent and shift away from negative conceptions of consent to positive articulations of consent in sex. I also reflect on why we should not try and remake the contours of consent to correct these flaws but instead employ other models and frameworks to understand what makes good and ethical sex so.

Throughout these arguments, liberal theory underpins my analysis of the shortcomings of consent as the ethical rule of good sex. Ultimately, the answer to why consent fails to effectively regulate good and ethical sex is twofold: it operates best in a legal framework and thus serves to regulate sexual violence better; and it relies on the liberal conception of the self which mischaracterises the reality of most sexual relationships. At the root, much like the brief orange traffic light between red and green, consent was created for the purpose of cautiously telling us to stop not to go.

## § 1. Consent and All That It Implies

Consent, in its most common construction, returns to one of the first things we learn as children: to respect people's boundaries and to ask before hugging or touching someone. Here is where we first learn liberal bodily autonomy and the idea of what is and is not 'yours to touch'. Instilling this approach to interpersonal touch in children from an early age provides a logical direction for adolescents and young adults entering the world of sexual relationships which hosts its own assemblage of rules, norms, and, of course, play. Naturally it follows that the most common conception of consent instantiates two individuals, wherein one asks permission from the other who, ideally, has the option to refuse or accept. One individual yields to another's behest or acquiesces to another's agency. The liberal framework in which consent operates stems from dated – and often gendered – ideas of property and autonomy. Before considering how consent fails we must first understand how it operates.

Consent both linguistically and practically evokes ownership over one's own body. Joan McGregor articulates the normative significance of consent and its use as a method by which we 'grant others a right to cross our intimate borders'.<sup>2</sup> McGregor's use of the word 'right' here implicitly asserts that without consent or permission we have no 'right' to cross or transgress the 'borders' of another body. Her claim is an uncontroversial one though it illustrates how our most basic conception of consent is grounded in the liberal notion of bodily autonomy associated with property and ownership. Her definition aligns with the conception of consent as a performative speech act.

Consent theory assumes we are all naturally equal in sexual relationships, all of us possessing equal right to give or withhold consent. However, Jonathan Ichikawa and Catherine MacKinnon agree that consent language presupposes an active-passive dichotomy or an 'actor and acted-upon' which has historically been sexed.<sup>3</sup> The role of the acted-upon does not necessitate passivity though it does require that one defers or yields to the other's will or behest – consent is always given to something or someone. 'Talking about whether *S* consents to  $\Phi$  will convey the idea that  $\Phi$  is something done to *S*, rather than something *S* does herself'.<sup>4</sup> Ichikawa locates the problem with consent's implication of deference in an asymmetry of autonomy along the same lines as other feminist scholars such as MacKinnon and Pateman who have identified this asymmetry in gender dynamics.<sup>5</sup> In the performative view, when we consent we reproduce the conditions that create the need for consent and we strengthen the structures that uphold its necessitation. In MacKinnon's view, this would mean that in consenting to sex as the 'acted-upon', one maintains and reinforces the asymmetry of power in their sexual dynamic that led them to consenting. Every time consent is given it illuminates a field of power that is silently distorted.

Carole Pateman puts it succinctly that consent is both the establishing fact and central problem of liberalism as it endeavours to maintain individual equality, yet equality is also a precondition for the practice and validity of consent.<sup>6</sup> These foundational concepts of freedom and equality in consent theory ignore the realities of power and domination in our sexual lives, she argues. While Pateman is specifically talking about the political and sexual status of women in the social

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<sup>2</sup> Joan McGregor, "Why When She Says No She Doesn't Mean Maybe and Doesn't Mean Yes: A Critical Reconstruction of Consent, Sex, and The Law," *Legal Theory* 2, no. 3 (1996), 196.

<sup>3</sup> Jonathan Jenkins Ichikawa, "Presupposition and Consent," *Feminist Philosophy Quarterly* 6, no. 4 (2020), 11; Catharine A. MacKinnon, "Rape Redefined," *Harvard Law & Policy Review* 10, no. 2 (2016), 440.

<sup>4</sup> Ichikawa, "Presupposition and Consent," 12.

<sup>5</sup> I'll note here that feminist critiques of consent theory such as Carole Pateman and Catherine MacKinnon's discuss at length the gendered nature of consent and how women who consent to sexual activity with men are not equal in their consenting. Though I do see this asymmetry of power as one that is traditionally gendered through our perceptions of consent being something that women do more often than men especially in heterosexual relationships, the asymmetry is applicable – in my view – to all sexual dynamics, including queer, BDSM, polyamorous, and other non-traditional sexual relationships.

<sup>6</sup> Carole Pateman, "Women and Consent," *Political Theory* 8, no. 2 (1980), 162.

contract, her position informs MacKinnon and Ichikawa's asymmetry arguments which can be generalised to any sexual relationship. This assumed asymmetry makes consent unfit for regulating ethical, embodied, and mutually reciprocal sexual relationships as it starts with a baseline inequality that should not be seen in good ethical sex – more on this point in §4. Consent theory has struggled to reconcile this flaw of inequality with sex that is mutual, embodied and reciprocal.<sup>7</sup> MacKinnon argues that in equal sexual interactions 'consent is not needed and does not occur because there is no transgression to be redeemed'.<sup>8</sup> Quill Kukla observes a similar point that contrary to the consent model, requesting sex ergo asking for consent, while it is something we do it is not the way most sexual interactions begin 'at least not when things are going well' – noting that requests throughout sex are more common than requests for sex.<sup>9</sup> This is the difficulty of the consent model, it has a tendency to account more for situations where one is unsure if the other participant actually wants to have sex rather than instances where both parties are mutually interested in sex. Kukla goes on to say that good sexual communication requires more be done with language than 'request, agree to, and refuse sex'.<sup>10</sup> Ichikawa radically argues that consent is not a necessary condition for ethical sex. His point is not that non-consensual sex is okay but rather that there can be good sexual experiences that could not honestly be described as 'consensual' if consent was never sought.<sup>11</sup> Ichikawa's argument echoes at the crux of mine that our common linguistic conception of consent as a request we respond or yield to is wrapped up in ideas about our bodies as something we have ownership over and is incompatible with how we talk about good sex.

Ichikawa, MacKinnon, and Kukla's positions on consent and their assertions that consent requires we respond to a request reveal how our conception of consent works against mutually reciprocal and ethical sexual dynamics. They all emphasise the recent push for consent language to become more inclusive and expansive in an attempt to reconcile the problem of asymmetry – this is where enthusiastic consent fails. For MacKinnon, consent's 'credibility cover' is the assumption that it stands in for desire.<sup>12</sup> While consent is not incompatible with desire and thus can be included and is hopefully present in consenting to sex, the term is seldom used in that context and is not limited to or even seen to include desire in law. The Youth Law Australia website defines consent as a 'free and voluntary agreement' – this wording is also used in most state legislation on the matter – they continue that it is useful to 'think

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<sup>7</sup> Thank you to two of my anonymous reviewers for encouraging me to draw out the following point.

<sup>8</sup> MacKinnon, "Rape Redefined," 476.

<sup>9</sup> Rebecca Kukla, "That's What She Said: The Language of Sexual Negotiation," *Ethics* 129, no. 1 (2018), 80.

<sup>10</sup> Kukla, "That's What She Said," 75.

<sup>11</sup> Ichikawa, "Presupposition and Consent," 11. Ichikawa stresses that good or ethical sex which does not involve consent should not be considered 'non consensual sex' or 'sex without consent' as it linguistically communicates sexual wrongdoing. He maintains that his claim is consistent with a core belief of consent theory that 'non consensual sex is always wrong'. See pp. 13–15 for further discussion.

<sup>12</sup> MacKinnon, "Rape Redefined," 450.

of consent as an enthusiastic yes!'.<sup>13</sup> Here we see the assumption that the equality of all parties is implicit in consent written in law. While the consent.gov.au page states that consent is not 'a transaction or a contract – an exchange where someone "gives" or "receives" consent', the former website citing law suggests the principles of a contract carry over to sexual consent in law in some form – as consent in its original form occurs in the social contract. Beyond that, the language of an 'enthusiastic yes' does not account for desire but instead, answering a request; after all, yes is the answer to a question. The definition embedded in the law reflects our common conceptions of consent as an agreement, something one party says yes to. Thus, a tension arises between those who seek to redefine the terms of consent and how we typically conceive of it and the role consent plays in defining rape.

## § 2. Consent Marks the Difference

Attempts to locate the presence of consent in a sexual interaction – asking 'was there consent?' — lie at the heart of determining whether a sexual encounter was morally *permissible* sex or morally *impermissible* sex. To evaluate if the concept of 'consent' effectively regulates respectful sexual relationships, we must investigate consent's place as the veil between this permissible-impermissible dichotomy that subtends sexual ethics.

Consent was not always the defining feature of sexual misconduct. Susan Brownmiller posits that 'rape entered the law through the back door... as a property crime of man against man'.<sup>14</sup> Just as setting alight to another person's house damages the property; early conceptions of rape saw a crime which diminished a woman's value. Historically, the push to carve consent into law and sexual regulation began once women were legally deemed to have sexual autonomy. The notion of rape as an offence against the owner of sexual property continues to influence legal and common understandings of rape, however, in line with the previous example, the owner is now cast as the woman. From a liberal standpoint, the source of harm in sexual assault is in the violation of autonomy and bodily integrity, commonly conceived as the absence of consent.<sup>15</sup> Recalling that consent assumes equality between actors and is defined in Australian law as a 'free and voluntary agreement', with autonomy comes agency, the free ability to provide or withhold consent to action. Where violation of autonomy is conceived as the absence of consent there is a question to answer: is true consent possible where beings do not have equal autonomy and agency? I will shortly return to this question.

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<sup>13</sup> "What Is Consent?," Youth Law Australia, accessed March 6, 2025, <https://yla.org.au/act/topics/health-love-and-sex/consent/>.

<sup>14</sup> Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975), 85.

<sup>15</sup> Ellie Anderson, "A Phenomenological Approach to Sexual Consent," *Feminist Philosophy Quarterly* 8, no. 2 (2022), 2.

Richard Posner controversially argues that ‘all that distinguishes [rape] from ordinary sexual intercourse is lack of consent’.<sup>16</sup> Similarly, Heidi M. Hurd describes consent as a ‘moral magic’ which transforms otherwise unacceptable actions acceptable.<sup>17</sup> In other words, consent transforms rape into sex. This assertion has two main implications which I will discuss in detail: first, that rape becomes the point from which sex becomes intelligible; and second, this account renders the body property of the mind which has roots in a problematic history.

Susan Brison argues that conflating rape with non-consensual sex distils a large socio-political problem of gendered harm into a problem of choice, thus constituting an epistemic injustice for victims of non-consensual sexual encounters.<sup>18</sup> For Brison, to question ‘was there consent?’ when assessing whether a sexual encounter was morally permissible or impermissible – typically where a victim has alleged sexual violence – deliberately hides the harm of having one’s will be subjugated by another. Further, however, asking ‘was there consent?’ implies that will was even a force at play and that the victim may have been able to change the situation rather than reckoning with the ubiquitous norm of gendered harm. This misrepresentative ethical framework hermeneutically marginalises rape victims in preventing them from making sense of a unique experience and recognising it for the violent act it is. This framework creates a stifling portrait of rape that obscures the experience of rape so much so that a victim’s self-interpretation of a sexually violent encounter is distorted to the point of non-recognition – followed often by shame for dissenting to this narrative. This conflation of responsibility for the harm of rape produces an epistemic injustice by deflating the testimonial credibility of rape victims who have to work against a perceived obligation to vocalise consent as an interlocutor equal to their rapist.<sup>19</sup> This false discursive equality sits squarely within the liberal paradigm and places violated autonomy and free will at the fore rather than acknowledging a uniquely social and historical harm. Along similar lines, Amia Srinivasan states ‘when we see consent as the sole constraint on ethically OK sex, we are pushed towards a naturalisation of sexual preference in which the rape fantasy becomes a primordial rather than a political fact’.<sup>20</sup>

Consent is deeply grounded in the liberal conception of the self as *homo economicus*, defined by Diana T. Meyers as the ‘free and rational chooser and actor whose desires are ranked in a coherent order and whose aim is to maximise desire satisfaction’.<sup>21</sup> This image of the self presumes a free agent who holds self-interest at the core of his decision-making process and is unconstrained by factors lying outside his own interests. However, *homo economicus* depends on masculinist myths of independence that deny our mutual dependence on and co-embodiment with one another. In assuming perfect rationalism, *homo economicus* also overlooks the gendered power

<sup>16</sup> Richard Posner, *Sex and Reason* (Cambridge, MA: Harvard University Press, 1992), 388.

<sup>17</sup> Heidi M. Hurd, “The Moral Magic of Consent,” *Legal Theory* 2, no. 2 (1996), 123.

<sup>18</sup> Susan J. Brison, “What’s Consent Got to Do with It?,” *Social Philosophy Today*, 2021.

<sup>19</sup> Thank you to Jaden Ogwayo for fruitful discussion on this section.

<sup>20</sup> Amia Srinivasan, *The Right to Sex* (London: Bloomsbury Publishing, 2021), 84.

<sup>21</sup> Diana T. Meyers, *Feminists Rethink the Self* (London: Routledge, Taylor & Francis Group, 1997), 2.

dynamics which have historically robbed women of their agency thus critically rupturing the equalist narrative consent-forward theorists posit. According to Judith Butler, the boundaries of the self and the body are porous.<sup>22</sup> Life is not sustained nor driven by self-preservation, but by a condition of interdependence, Butler argues, the body's boundary is 'a negotiation in which I am bound to you in my separateness'.<sup>23</sup> Negotiation and interrelationality are at the heart of good and ethical sex, encouraging equilibrium. Their account of the body as a site of relation to others – though it regards our political relationships rather than our sexual ones – counteracts the masculinist notion of independence set forth in liberalism. Succinctly, 'the boundary of who I am is the boundary of the body, but the boundary of the body never fully belongs to me'.<sup>24</sup>

The notion of the 'individual' works in tandem with the private/public distinction that operates at the heart of liberalism. Sex positive feminists have used the public private distinction to put forward the argument that sex has no normative quality – it is not ethical or unethical, it is merely wanted or unwanted.<sup>25</sup> In fashioning consent as the sole moral boundary of sex and moving away from moralising about sexual desires, sexual ethics must then rest on the individual right to privacy. As Srinivasan puts it, 'feminism finds itself not only questioning the liberal distinction between the public and private, but also insisting on it'.<sup>26</sup> Though this distinction was crucial in the fight for gay liberation and pro-sex feminism, the assertion that we just have to trust that if the two parties consented in the privacy of their own (symbolic) bedroom then the sex did not transgress any ethical boundaries is a compromise.<sup>27</sup> That sex is consensual makes it all above board harks back to using rape as the reference point for sexual ethics and an inevitability rather than a political fact.

The characterisation of the rational actor always prioritising self-interest inherent in liberalism and to an extent, consent theory, subdues patterns of patriarchy and sexual domination. To the same extent that 'if a wife's subjection to her husband has a "natural" foundation, she cannot also be seen as a "naturally" free and equal individual,' if a woman's consent to a man is rooted in the natural presumption that it is she who gives consent and a man who requests consent, she cannot also be seen as naturally equal in sex.<sup>28</sup> Though Pateman's analysis is highly gendered and somewhat dated, it speaks to the actor-acted upon framework that consent theorists have been unable to reconcile. That no consentor can be truly equal to the consentee transcends gender dynamics because it is built into consent's very function as the delineator between sex and rape. Thus, we cannot 'salvage consent theory by altering the contours of... "consent"' as the difficulty with expanding our definition

<sup>22</sup> Judith Butler, *Frames of War: When Is Life Grievable?* (London: Verso, 2009), 54.

<sup>23</sup> Butler, *Frames of War*, 44.

<sup>24</sup> Butler, *Frames of War*, 54.

<sup>25</sup> Srinivasan, *The Right to Sex*, 82.

<sup>26</sup> Srinivasan, *The Right to Sex*, 83.

<sup>27</sup> Though outside the scope of this discussion, on the right to privacy and how consent operates as a defining and mandatory feature of BDSM, see R. Bauer, *Queer BDSM Intimacies: Critical Consent and Pushing Boundaries* (London: Palgrave Macmillan UK, 2014).

<sup>28</sup> Pateman, "Women and Consent," 152.

lies in its legal use as a distinguishing fact between sex and rape.<sup>29</sup> Further, the legalistic and liberal overtones of consent do not accommodate the intercorporeal character of sex.

These perspectives reveal further problems with the legalistic and liberal undertones of consent; it more successfully protects perpetrators than victims because this token of consent that was received or claimed to be so by the perpetrator is then the tool with which they may deny any wrongdoing.<sup>30</sup> Thus, the dominant conception of consent and its ideological vestiges of equality under liberal patriarchy favour instances where consent was evident over morally murkier situations where consent was ambiguous or even situations where consent was absent because the experience did not involve such a request.

### § 3. Enthusiastic Consent, a New Paradigm?

Given the consent model's inefficacy as an ethical measure of sex, by what other means might we conceive of safeguarding ethical standards in sexual relationships? Michelle Anderson proposes a 'negotiation model' of legal consent. She advocates for eliminating the legal requirement of non-consent in criminal legislation prohibiting rape in favour of recognising the centrality of negotiation and open discussion in the duration of sexual interactions' communicative exchange(s). Anderson's ideal definition of rape is 'engaging in an act of sexual penetration with another person when the actor fails to negotiate the penetration with the partner before it occurs'.<sup>31</sup> While Anderson's model is a positive step away from the contractual and patriarchal basis of consent, as with most legal discussion surrounding consent, it focuses on the difference between rape and sex which is coloured by the presence or non-presence of consent. Further, Anderson's definition of rape might be enhanced by replacing 'before' with 'before and while' to recognise the ongoing nature of negotiated consent that she espouses.

Anderson's negotiation model is just one instance of many attempts to reconfigure the contours of consent or reimagine consent's utility and role in regulating sexual relationships. Another pertinent conception of consent is the 'enthusiastic consent' model, colloquially known as 'yes means yes'. Jonathan Ichikawa describes the mission of the enthusiastic consent model as treating consent as a 'label for whatever it is we think makes sex morally permissible'.<sup>32</sup> This obviates the circularity of the 'no means no' model which, while respecting active refusal of another's consent as a violation of autonomy, fails to provide positive conditions of consent in itself beyond any absence of non-consent. This circularity obliges enthusiastic consent – the active expression of agreement to or interest in an activity – as an ethical precondition of sex. Per a 'no means no' focus on non-consent, silence could be erroneously

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<sup>29</sup> Ichikawa, "Presupposition and Consent," 17.

<sup>30</sup> Linda Martín Alcoff, *Rape and Resistance* (Newark, UK: Polity Press, 2018), 138.

<sup>31</sup> Michelle J. Anderson, "Negotiating Sex," *Southern California Law Review* 78, no. 6 (2005): 1407.

<sup>32</sup> Ichikawa, "Presupposition and Consent," 17.



conceived of as consent – given a lack of active expression against a sexual act – but shifting to a positive ‘yes means yes’ conception of consent seeks to ensure that both parties’ articulated agreement is present before and during consensual sexual relations. However, neither model escapes nor reconciles the core fault of ‘consensual’ sexual ethics and each inadvertently perpetuates the problematic framing that sex is ethically legitimised by the acquiescence of one person to someone else’s requests. Put best by Anderson, ‘when things heat up, the Yes Model melts into the No Model, in which silence constitutes consent’.<sup>33</sup> Srinivasan’s critique of sex positivism can apply to enthusiastic consent. Just as sex positivism refuses to engage with why we desire what we do so too does the enthusiastic consent model refuse to engage with why we consent and how it enforces problematic ideals of property and patriarchy.

Consent discourse tends to position speech as separate from nonverbal behaviours, privileging the former over the latter.<sup>34</sup> This demarcation undermines the idea that one can express affirmation or a ‘yes’ through nonverbal behaviour. The requirement of enthusiasm and by extension, explicit consent, ‘distorts our understanding of how a great deal of sex is initiated’.<sup>35</sup> For instance, enthusiasm might be absent for a few reasons, including desiring closeness, trying something new or trying for a baby. We can cautiously or ambivalently consent to something that ends up being phenomenal sex just as you can enthusiastically consent to what ends up being mediocre or just bad sex – ultimately, outside of sexual violence consent has little bearing on the outcome. Take the example of two teenagers trying oral sex for the first time, they might be cautious to try something new and express consent in such a way that reflects this issue but, nonetheless, are still consenting to the act. In the case of having sex because one desires closeness with their partner through sexual intimacy, though this may seem problematic, it is not the lack of enthusiasm in my view that makes this encounter dubious. Few would argue that these are examples of intuitively unethical sex simply due to absence of enthusiasm, however, proponents of the enthusiastic consent model posit that ‘changing the thinking from sex when someone says no is wrong, to sex when someone doesn’t openly and enthusiastically want it is wrong’ ergo would classify these encounters as unethical or morally dubious.<sup>36</sup>

I have so far argued that consent is a flawed means of regulating ethical sexual relationships and should not be subject to changing conceptions, leaving now the question of how we should regulate these relationships if not with consent? Recalling consent’s reliance on the conception of sexual actors as *homo economicus*, the self-possessed rational decision-maker, Ellie Anderson calls for a phenomenological approach to consent as ‘feeling-with’. A brief examination of her definition entails both partners experiencing a ‘doubled sensation of being both a

<sup>33</sup> Anderson, “Negotiating Sex,” 1405.

<sup>34</sup> Anderson, “A Phenomenological Approach to Sexual Consent,” 18.

<sup>35</sup> Kukla, “That’s What She Said,” 83–4.

<sup>36</sup> Jaclyn Friedman and Jessica Valenti, eds., *Yes Means Yes! Visions of Female Sexual Power & a World without Rape* (Berkeley, CA: Seal Press, 2008), 11.

desiring subject and an object of the other's desire'.<sup>37</sup> Though she defies Ichikawa's argument – which I have above reiterated – against redefining consent, her focus on embodied communication and negotiation which blurs the line between self and other makes better sense of how we conceive of and measure sex compared to the attitudinal approach which sees consent as the mind as granting access to the body. This is what sexual politics and to an extent, sexual ethics, ought to do. She accounts for the factors that characterise the enjoyment of sex regardless of the presence or non-presence of consent such as communication, desire, pace, pleasure, among others. This seems incoherent with my argument that we ought not redefine consent, however, I would argue her redefinition exceeds consent. In considering objections to her argument Anderson states that on Ichikawa's view, her 'attempt to redefine consent phenomenologically as a thick, embodied dynamic of feeling-with would not be helpful, because it is not what ordinary people mean by consent most of the time'.<sup>38</sup> While I take her point and agree that people do not commonly describe consent as she has due to a legal-forward conception, as Ichikawa argues 'consent is supposed to explain moral features of sex, not merely redescribe them'.<sup>39</sup> Her account describes the moral features of sex, it does not explain them, hence its transcendence of consent.

#### § 4. Conclusion

Consent sustains legal means of 'regulating' sexual relationships; however, its utility mostly ends there. When discussions of ethical sex are framed by consent and refusal, rape arises as the only sexual harm we have the tools to discuss. By extension, rape then comes to be understood merely as sex without consent rather than a unique violation in its own right. Following, if rape is the only presumed way that sex can go wrong, this dilutes the serious harm of rape while setting a dangerously high threshold for what is considered unethical sex. Currently, consent acts as the veil between sex and rape, but is a concept better placed in the latter's discourse than in discourse surrounding what makes sex ethical or good. As a concept, consent is too bound up in patriarchy and property to effectively describe the conditions that create respectful sexual relationships in contemporary sex done for the sake of pleasure. Consent is just one tool in our linguistic toolbox that allows us to understand ethical sex; for many, it is not the one they reach for first.

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<sup>37</sup> Anderson, "A Phenomenological Approach to Sexual Consent," 17.

<sup>38</sup> Anderson, "A Phenomenological Approach to Sexual Consent," 20.

<sup>39</sup> Ichikawa, "Presupposition and Consent," 24. Emphasis original.

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