

That's What She Said: The Language of Sexual Negotiation*

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I explore how we negotiate sexual encounters with one another in language and consider the pragmatic structure of such negotiations. I defend three theses: (1) Discussions of consent have dominated the philosophical and legal discourse around sexual negotiation, and this has distorted our understanding of sexual agency and ethics. (2) Of central importance to good-quality sexual negotiation are sexual invitations and gift offers, as well as speech designed to set up safe frameworks and exit conditions. (3) Sexual communication that goes well does not just prevent harm; it enables forms of agency, pleasure, and fulfillment that would not otherwise be possible.

Let's talk about sex, baby
Let's talk about you and me
Let's talk about all the good things
And the bad things that may be.¹

I. INTRODUCTION

This article is about how we negotiate sexual encounters with one another in language. We use language to settle whether or not we will have sex, what kind of sex we are going to have, involving which activities, what we like and don't like, what our limits and constraints are, and when we

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1. Salt-n-Pepa, "Let's Talk about Sex," *Blacks' Magic*, Next Plateau Records, 1990.

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want to stop. We use language to flirt and rebuff, to show curiosity and repulsion, and to establish interest and disinterest, not only in particular people but in particular activities. We use language to check in with one another and to keep one another aroused during sexual intimacy. My primary interest is in the pragmatics of the language of sexual negotiation—that is, in the normative function, illocutionary force, felicity conditions, and enabling conventions and rituals of the speech acts that make up this language.²

The language of sexual negotiation, I submit, is both philosophically interesting and ethically important. It is philosophically interesting because it is often especially complex and subtle discourse, both semantically and pragmatically, as I hope to demonstrate. It is ethically important because sexual communication gone wrong can lead to immense trauma and harm, while effective sexual communication can lead to immense pleasure and enhanced agency. Since having good sex and avoiding bad sex are important to almost all people, and since almost all people's core sexual desires involve doing things with other people, sexual communication is critical to human flourishing.

And yet ethicists and philosophers of language have had little to say about the language of sexual negotiation. The only speech acts within sexual negotiations that have received any ongoing philosophical discussion as speech acts are consent and refusal.³ As we will see, this is a limiting and overly narrow focus. Furthermore, philosophical discussions of sexual negotiation have nearly invariably concerned how it can go poorly—how people can be deceived, pressured into sex, held to promises they never should have made, and of course raped.⁴ This article explores how sexual negotiation can enable sexual agency, pleasure, and possibilities, as well as how it can lead to harm.

Positive bodily agency is as much a component of autonomy as is negative freedom from unwanted bodily intrusion. It is widely recognized

2. An anonymous editor worries that the term 'negotiation' presupposes that all parties begin with a firm initial position and then move from there. It doesn't have that connotation for me: I hear it as just meaning a conversation or discussion aimed at reaching agreement. If it does have that connotation for most people, I certainly don't intend to invoke it for my purposes. It is central to my account that sometimes people negotiating sex won't know what they want to do except by way of the discussion.

3. The only exception I know of is Hallie Liberto, "The Problem with Sexual Promises," *Ethics* 127 (2017): 383–414, which is discussed further below.

4. See, e.g., Sarah Conly, "Seduction, Rape, and Coercion," *Ethics* 115 (2004): 96–121; Tom Dougherty, "Sex, Lies, and Consent," *Ethics* 123 (2013): 717–44; Rae Langton, "Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22 (1993): 293–330; Catharine MacKinnon, *Feminism Unmodified: Essays on Life and Law* (Cambridge, MA: Harvard University Press); Onora O'Neill, "Between Consenting Adults," *Philosophy and Public Affairs* 14 (1985): 252–77.

that freedom from nonconsensual sex is a critical component of both autonomy and health. But access to pleasurable sex and the ability to pursue one's sexual desires are also crucial to each. The role of sexual agency in health is recognized by the World Health Organization, according to which "sexual health requires . . . the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence."⁵ Sexual health requires the effective ability to avoid and refuse sex, which protects us from assaults on our bodily integrity, unwanted pregnancy, and disease. But it also requires the ability to explore and pursue our desires and control our sexual narrative, which in turn enables us to take pleasure in our bodies and to pursue activities and relationships that enhance our flourishing. In general, people spend a lot of time—in popular media and in sexual education classrooms, for instance—talking about how sex can go wrong and how misfired discourse can lead to harm. We rarely analyze or discuss how sexual communication can effectively enhance pleasure and agency. We try to teach teenagers and college students about the dangers of sex and the wrongs of rape, but we don't systematically train them to use language to enable pleasure, agency, and sexual possibilities.

Consent, including completely autonomous, unmanipulated consent,⁶ is never going to be sufficient to make sex go well—we can consent to all sorts of lousy sex, including demeaning, boring, alienated, and unpleasantly painful or otherwise harmful sex. Hence, good-quality sexual negotiation requires more than the skillful and appropriate negotiation of consent. It is well established in kink and polyamorous communities that careful and explicit negotiation, not just over whether to have sex but over how to have it and how to exit it, is absolutely indispensable to the possibility of safe, pleasurable, consensual sex and the exploration of desire.⁷ In these communities, negotiating details about boundaries, desires, tastes, and exit conditions is treated as just as essential as negotiating whether sex will happen. For instance, Shanna Kattari writes,

5. "Sexual Health," World Health Organization, accessed July 17, 2017, http://www.who.int/topics/sexual_health/en/.

6. One anonymous editor questioned why I need this clause. I want to allow for at least the conceptual possibility that someone can be somewhat pressured or manipulated into sex, in a way that diminishes the full autonomy of their choice, without this counting as an invalidation of their consent—or, to put it another way, someone can be pressured into sex without actually being raped.

7. Ayesha Kaak, "Conversational Phases in BDSM Pre-scene Negotiations," *Journal of Positive Sexuality* 2 (2016): 47–52; Shanna K. Kattari, "'Getting It': Identity and Sexual Communication for Sexual and Gender Minorities with Physical Disabilities," *Sexuality and Culture* 19 (2015): 882–99; D. J. Williams et al., "From 'SSC' and 'RACK' to the '4Cs': Introducing a New Framework for Negotiating BDSM Participation," *Electronic Journal of Human Sexuality* 17 (2014).

Communication and negotiation is an integral part of the majority of kink/BDSM interactions.⁸ . . . Participants in kink or BDSM activities usually set aside time to communicate before their interactions, and these discussions can cover anything including STD status and safer sex methods that will be used, the type of play/interaction that will take place during the activity, how long the activity will take, any health concerns (including triggers, allergies, disability issues, medication needs), what toys may be used during the time together, as well as any potential safety issues that should be planned for as part of this interaction.⁹

This sort of communication happens in more traditional relationships as well, although it tends to be much more abbreviated and less formal, and it is often skipped altogether. It may be that in alternative sexual communities, more explicit negotiation is the norm because there is no default, presumed understanding of shared conventional norms about what is pleasurable and what isn't, when sex is expected and when it isn't, and so forth. But "vanilla" or "traditional" sexual encounters are still typically initiated, formed, shaped, and ended using language, even if that communication is less explicit and ritualized. Furthermore, relying on implicit background norms and presumed shared understandings is not necessarily a great idea, even within "traditional" sexual encounters.¹⁰ It doesn't seem contentious to point out that our unspoken norms around starting, continuing, and stopping sex don't always work well for everyone involved; leaving things implicit goes badly for many. I suggest that a rich discourse of sexual negotiation is generally good for everyone,¹¹ and not just for kinksters or those forging unconventional relationships.

8. BDSM is the established acronym for bondage, domination (or sometimes discipline), sadism, and masochism. It roughly refers to any consensual sexual practice involving the intentional infliction of pain or discomfort, restriction of motion, or asymmetric power play.

9. Kattari, "Getting It," 887.

10. In her capacity as associate editor for this journal, Sally Haslanger (editorial decision letter) points out that failure to clarify background assumptions can thwart good-quality sexual negotiation because, for instance, we need to share common ground before it can become determinate which questions we are asking one another. Background assumptions fix the focus and contrast of questions, without which their semantics is undecided. "Do you want to x ?" might mean "Do you want to x or to y ?" or "Do you want to x or to not do anything at all?" "Do you like x ?" might mean "Do you like x with me?" or "Do you like x generally?" and so forth. Making background assumptions explicit can help establish common ground, which is a precondition of sharing an understanding of the content of questions (and other speech acts). Haslanger's point is interesting and important. A complete analysis of the language of sexual negotiation would delve into such semantic issues, as well as their ties to social norms and practices, in much more detail than I can here.

11. Detailed discourse of this sort certainly need not be flat-footedly literal or legalistic or formalistic. This will be clear from my discussion in the rest of this article.

In what follows, I offer a pragmatic analysis of several kinds of sexual negotiation discourse. Along the way, I hope that this article will demonstrate the following theses:

1. Discussions of consent have dominated the philosophical and legal discourse, as well as much of the public discourse around sexual negotiation, and this has seriously distorted and limited our understanding. More narrowly, scholarly discussions have focused overwhelmingly on consent to sex or refusal of sex, as a unified act, with virtually no attention to more fine-grained negotiations over what will happen during sex, specific desires and limits, exit conditions, and the like, and this too has had distorting and limiting effects.
2. Analyzing the language of sexual negotiation, using the tools of speech act theory in particular, is both ethically important and philosophically rewarding. Good-quality sexual negotiation that enhances agency is characteristically marked by distinctive kinds of speech acts. Of central importance are sexual *invitations* and *gift offers*, as well as speech designed to set up safe frameworks and exit conditions that enable activities that would otherwise be unsafe or unethical.
3. Rich and complex sexual negotiation is an essential tool of sexual autonomy. Sexual communication that goes well does not just prevent harm; it actively enables forms of agency, pleasure, and fulfillment that would not otherwise be possible. Philosophers have focused on how language can lead to or fail to prevent sexual harm, particularly the harm of rape. But it is also important to understand how language can enhance sexual pleasure and freedom.

II. THE LIMITATIONS OF THE CONSENT MODEL

Consent is a performative speech act, and a rich and complex one at that. Understanding consent is likely to require the full resources of speech act theory. To understand consent, we need to understand its felicity conditions, the rituals that surround its performance, its authority conditions, and so forth.¹² Furthermore, consent does not just enable sex to start; it is

12. There are numerous analyses of the pragmatic subtleties of consent to medical treatment or to participation in research, and widespread acknowledgment of the fact that consent must be revocable, and the criteria for communicating its revocation must be clear, in order for it to be valid. See, e.g., Ruth Faden and Tom Beauchamp, *A History and Theory of Informed Consent* (Oxford: Oxford University Press, 1986); Rebecca Kukla, "Communi-

woven through any sexual encounter, and everyone involved must be able to clearly communicate when they want to withdraw consent in order for it to be valid in the first place. The norms and power relations that enable and undermine performances of consent and refusal will be shaped not just by gender but also by race, class, ability, and other social identities and positions.¹³

But a richer discursive analysis of consent and refusal is not enough to capture the pragmatics of sexual negotiation and its role in sexual agency and sexual ethics. A central point of this article—perhaps the most important point, from my point of view—is that our near-exclusive focus on consent and refusal when we talk about sexual negotiation has had a deeply distorting and damaging impact on our understanding of sexual ethics and communication. Good-quality sexual communication requires that we do much more with language than request, agree to, and refuse sex. Here is a nonexhaustive list of some pitfalls of our collective laser focus on consent:

1. In paradigmatic consent exchanges, one person is actively seeking sex, and the other person is passively agreeing to allow it to happen. Consenting involves letting someone else do something to you; as Joan McGregor puts it, “Consent is normatively significant since it is the method by which we grant others a right to cross our intimate borders.”¹⁴ And in practice, given cultural realities, discussions of consent almost always position a man as the active requester and a woman as the one who agrees to or refuses him doing things to her. There has been a recent move to shift from the “No means no” model of consent, which emphasizes respect for active refusals, to an affirmative consent model, in which active agreement is a requirement for proceeding. But as Michelle Anderson points out, neither model actually escapes the core idea that what ethically legitimizes sex is the acquiescence of one person (implicitly assumed to be a woman) to someone else’s (presumed to be a man’s) requests.¹⁵ Surely we hope for more out of good sexual negotiation than this, and in partic-

nicating Consent,” *Hastings Center Report* 39 (2009): 45–47; and Neil Manson and Onora O’Neill, *Rethinking Informed Consent in Bioethics* (Cambridge: Cambridge University Press, 2007).

13. Kattari, “Getting It.”

14. 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 (1996): 175–208, 196.

15. Michelle Anderson, “Negotiating Sex,” *Southern California Law Review* 41 (2005): 101–40.

ular we hope that it will be a dialogical activity that expresses both partners' positive agency.¹⁶

2. Relatedly, the consent model represents all expressions of desires as requests, for which agreement or refusal is the appropriate possible uptake. But this flattens the communicative terrain. When I initiate a conversation about a possible sexual encounter, I may not be requesting sex. I might be beginning to articulate a fantasy, suggesting a possibility that I think might please the other person, probing to find out how the other person feels about an activity or role, or seeking help in exploring how I feel about it, for instance. Good sexual negotiation often involves active collaborative discussion about what would be fun to do. It also often includes conversations about limits, constraints, and exit conditions. None of this fits nicely into a request-and-consent-or-refuse model of sexual negotiation.
3. Everyone's communication of willing participation is always necessary for ethical sex, but it is not sufficient. We can fully autonomously agree to all sorts of harmful and unethical things, for terrible reasons. For instance, I might agree to do something that I find degrading or unpleasantly painful, perhaps because I would rather have bad sex than no sex at all, or because my partner isn't interested in finding out what would give me pleasure. If we understand positive sexual agency and flourishing as preconditions for autonomy and health, then consent will not be sufficient for ensuring that a sexual encounter is ethical.¹⁷ (At the same time, full-throated enthusiasm is not a precondition for ethical sex. There is nothing inherently unethical about trying something you are not sure you will like, or doing something that isn't especially thrilling to you because it pleases your partner. I will return to this point below.)

To the extent that philosophers of language have concerned themselves with the pragmatics of the language of sexual negotiation, they have

16. In this article I generally use language assuming that sex involves exactly two people. Of course, there are many sexual encounters that involve more than two people, and my comments apply just as well to those.

17. Again, this point is familiar to bioethicists, who have long recognized that consent is a necessary but not a sufficient condition to guarantee the ethical acceptability of medical care or research participation. We care about patients' and participants' welfare, about whether they are being exploited, and about many other ethical considerations other than consent, even while we recognize that consent is virtually always ethically necessary. I doubt that any philosopher, if asked, would assert that consent is sufficient for ethical sex. My point is not that consent has been explicitly taken as ethically sufficient, but rather that all the other ethical pitfalls and complexities get obscured when we focus so much of our conversation on consent.

focused overwhelmingly on consent. Indeed, the only developed and ongoing philosophical conversation in this area is a series of writings that focus more specifically on women's attempts to refuse solicitations of sex from men, and even more specifically, on how women's attempts to refuse sex can fail. Starting with Catharine MacKinnon's *Feminism Unmodified* in 1987 and, most importantly, continuing with Rae Langton's 1993 "Speech Acts and Unspeakable Acts," a growing series of works in feminist philosophy of language have explored the thesis that pornography silences women's refusals, rendering them incapable of performing speech acts with the illocutionary force of saying "no" to men's requests for sex.¹⁸ As Langton puts it, "Sometimes 'no,' when spoken by a woman, does not count as the act of refusal."¹⁹

Langton builds off of Catherine MacKinnon's argument that legally defending the production and dissemination of pornography on free speech grounds was problematic, because pornography itself functioned as a kind of speech act that silenced women's ability to criticize pornographic culture or refuse sex. Thus, MacKinnon framed the fight over the legal status of pornography as, at least in part, a competition between free speech rights (as opposed to a competition between free speech rights and antiobscenity moralism). Langton and other speech act theorists have developed accounts of exactly what sort of silencing might be at stake here. The core argument, broadly speaking, is that pornography functions as a kind of speech that forecloses women's ability to refuse sex, by (1) objectifying them and positioning them as "for sex" and (2) por-

18. Rae Langton has written more recent pieces on silencing and consent; see, e.g., Rae Langton, "Disenfranchised Silence," in *Common Minds*, ed. G. Brennan and R. Goodin (Oxford: Oxford University Press, 2007), 199–214; and "Beyond Belief," in *Speech and Harm: Controversies over Free Speech*, ed. I. Maitra and M. K. McGowan (Oxford: Oxford University Press 2012), 72–93. However, her 1993 article remains the touchstone work in this area, and it continues to frame the philosophical literature on silencing, despite various elaborations, critiques, and refinements put forward by her and others. See also Laura Caponetto, "On Silencing, Authority, and the Act of Refusal," *Revista di Estetica* 64 (2017): 35–52; Barrett Emerick, "The Violence of Silencing," in *Pacifism, Politics, and Feminism*, ed. J. Kling (Leiden: Brill, forthcoming); Rae Langton and Jennifer Hornsby, "Free Speech and Illocution," *Legal Theory* 4 (1998): 21–37; Ishani Maitra, "Silencing Speech," *Canadian Journal of Philosophy* 38 (2009): 309–38; Ishani Maitra and Mary Kate McGowan, "On Silencing, Rape, and Responsibility," *Australian Journal of Philosophy* 88 (2010): 167–72; Mary Kate McGowan, "Conversational Exercitives and the Force of Pornography," *Philosophy and Public Affairs* 31 (2003): 155–89; Mary Kate McGowan, "Sincerity Silencing," *Hypatia* 29 (2014): 458–73; Jennifer Saul, "Pornography, Speech Acts, and Context," *Proceedings of the Aristotelian Society* 106 (2006): 227–46; Nellie Wieland, "Linguistic Authority and Convention in a Speech Act Analysis of Pornography," *Australian Journal of Philosophy* 85 (2007): 435–56; and Nicole Wyatt, "Failing to Do Things with Words," *Southwest Philosophy Review* 25 (2009): 135–42, among others.

19. Langton, "Speech Acts and Unspeakable Acts," 321.

traying their attempts to say “no” as parts of erotic scenes. The result is “illocutionary silencing,” as Langton puts it:

If you are powerful, you sometimes have the ability to silence the speech of the powerless. One way might be to stop the powerless from speaking at all. Gag them, threaten them, condemn them to solitary confinement. But there is another, less dramatic but equally effective, way. Let them speak. Let them say whatever they like to whomever they like, but stop that speech from counting as an action. . . . Some kinds of speech acts are unspeakable for women in some contexts; although the appropriate words can be uttered, those utterances fail to count as the actions they were intended to be.²⁰

All these authors presume a default scenario in which men want sex, women want to refuse sex, and refusal is, for one reason or another,²¹ pragmatically difficult: “Consider the utterance ‘no.’ We all know how to do things with this word. We use it, typically, to disagree, to refuse, or to prohibit. In sexual contexts a woman sometimes uses it to refuse sex or to prohibit further sexual advances. However, in sexual contexts something odd happens. Sometimes a woman tries to use the ‘no’ locution to refuse sex, and it does not work.”²²

This series of papers is valuable and important, and it has been a key inspiration for my own work. But given that this is the only ongoing philosophical conversation about the pragmatics of sexual negotiation, we see here a sad and revealing narrowing of our vision: from sexual negotiation in general, to just saying “yes” or “no” to a request for sex, to just attempts to say “no” to sex, to just women’s attempts to say “no” to men, to women’s failures to say “no” effectively. Likewise, most philosophical, legal, and public discussions of sexual communication have presumed that the difficult or interesting problem is how to enable women to refuse or avoid sex with men. For instance, Joan McGregor writes, “Women who want sex can presumably learn to say so, but the women who don’t want sex [on standard legal models of consent] are left without alternatives.”²³ But this is an oddly unjustified presumption, especially given our time-

20. *Ibid.*, 299.

21. For instance, McGowan (“Sincerity Silencing”) argues that porn renders it difficult for women to express sincerity when they say “no,” and separately (“Conversational Exercitives”) that porn serves an exercitive function, establishing background norms against which “no” does not have its apparent meaning. Langton, in a later article (“Beyond Belief”), lists a wide variety of ways in which porn can serve to disable women’s ability to refuse, several of which are illocutionary disablements. Wyatt (“Failing to Do Things with Words”) argues that porn might establish second-order speech norms that turn women’s attempts to refuse into something like performances in a play.

22. Langton, “Speech Acts and Unspeakable Acts,” 300.

23. McGregor, “Why When She Says No,” 205.

honored and canalized tradition of erasing and denigrating women's sexual pleasure. It is not at all obvious that our culture makes it easy for women to learn to communicate their sexual desires effectively. Women's need for positive sexual agency is invisible in this story.

III. DISCURSIVE FRAMES AND NONLITERAL SPEECH

My primary interest is in the pragmatics of the speech involved in sexual negotiation.²⁴ But note that there are also interesting semantic complexities to this speech. Sexual communication is marked by a tension: We need communication to be clear and successful, because miscommunication in the sexual domain can lead to enormous harm. Yet typically, erotic speech is indirect. The language of flirtation, seduction, and engagement, not to mention speech within sex itself, tends to be circuitous, stagy, elliptical, metaphorical, innuendo filled, and connotative. This is part of what makes it sexy. We need techniques for bridging this discursive tension safely. Discussions of consent that simply promote direct, literal speech are of no help here.

I think that it's helpful to think of sexual negotiation and intimacy as often setting up an *alternative discursive frame*, governed by distinctive local internal norms that shape what words and phrases mean, as well as the felicity and force of various speech acts. Inside this frame, we assume that connotative and nonliteral speech is the norm. When we role-play during sex, this nonliterality is maximally explicit. But more generally, we don't expect that phrases like "Oh, tear me open!" will be taken as literal requests. Sexual partners need to share communicative norms for moving in and out of such frames. Importantly, within such frames, 'no', contrary to the popular slogan, does not always mean no. Sometimes 'no' is part of a role-playing or BDSM scene, for instance:

When many people talk about consent, they do it so flippantly and easily that it obscures the complications implicit to the notion. This is especially the case in the vanilla world, where, for example, much of the advocacy surrounding sexual violence prevention regularly proclaims simplistic slogans such as "no means no" and "yes means yes." . . . Much of the eroticism and allure of BDSM hinges on blatantly playing with and often purposefully obscuring consent. Whether that's the explicit specifications of consensual non-consent, or whether it's the use of even the most minimal type of

24. Sexual negotiation, like all communication, proceeds by way of gesture and body language as well as traditional speech, and indeed gesture and body language may give necessary context that help fix the meaning and force of the speech acts. My interest here is in some of the speech acts that may make up part of this communication, but I don't mean to suggest that they are self-standing or all that there is to sexual negotiation.

bondage, or whether it's merely the top telling the bottom what to do—in all of these scenarios, BDSM is clearly blanketed in the trap-pings of non-consent.²⁵

While this dynamic may be more explicit in the kink world, it is often at least implicitly at play in “vanilla” sex as well. We need to be able to tell when we are in this sort of nonliteral frame and when we aren't, because it's exceptionally important that we not misinterpret an attempt to stop or redirect sexual activity. We teach young people that “no” means no,” but the much more difficult truth is that ethical sex requires successful skills at telling when ‘no’ does and doesn't mean no, and this requires communicative tools for shifting frames together. We need shared pragmatic markers and tools that flag for us when a nonliteral speech context has kicked in and when someone wants to get back out of it.²⁶ Being able to shift discursive frames effectively together is a precondition of valid consent.

IV. THE ILLOCUTIONARY FORCE OF INITIATING SEX

In this section I examine speech acts whose function is to initiate sex, or at least to open up a sexual negotiation. Remember, though, that initiations of sex are not the only speech acts that make up good sexual negotiation—we also explore fantasies, talk about our desires, role-play and talk dirty, set limits, exit scenes, and so forth. Discussions of consent tend to focus disproportionately on the initiation of sex. In this section I will stick with this focus on initiation, although we will move on in the next section.

Contrary to the consent model, requesting sex, while it is certainly something that we sometimes do, is not really the typical way we enter into sex, at least not when things are going well. (Requests along the way once sex is initiated are more common.) And it is never appropriate to use an imperative to initiate sex or open up a sexual negotiation, that is, I can't ever legitimately order someone to have sex with me.²⁷ My proposal is that typical initiations of sex—particularly of agency-enhancing,

25. Williams et al., “From ‘SSC’ and ‘RACK’ to the ‘4Cs.’”

26. Wyatt (“Failing to Do Things with Words”) argues that this kind of second-order framing, within which sexual speech is not taken literally, contributes to the silencing of women's refusals. Indeed, she is surely right that sometimes women try to actually refuse within these frames, and their words are not taken as refusals. But I also want to emphasize how this kind of nonliteral speech and framing is a standard and often healthy part of the language of seduction and positive, agential sex play.

27. Imperatives may have a place within a nonliteral discursive frame of the sort that I discussed in the previous section. That is, my partner and I might autonomously negotiate entry into a scene in which one person can order the other around, which is fine as long as we can both skillfully and freely negotiate entry into and exit from that discursive frame.

ethical, good sex—are not requests or imperatives, but rather invitations and gift offers, each of which is a distinctive category of speech act with a distinctive normative structure and illocutionary force. I will discuss each in turn.

A. *Invitations*

Invitations are fascinating and complex speech acts.²⁸ They leave the invitee neither obligated nor with a neutral free choice. Derrida writes, “An invitation leaves one free, otherwise it becomes a constraint. It should never imply: You are obliged to come, you have to come, it is necessary. But the invitation must be pressing, not indifferent. It should never imply: You are free not to come and if you don’t come, never mind, it doesn’t matter.”²⁹ An invitation characteristically leaves the invitee at liberty to turn down the invitation without having transgressed. But at the same time, an invitation has to be welcoming. If I say to you, “I’m cooking dinner at my place on Wednesday and I want you to please come, and if you don’t I’ll be hurt,” then I am requesting your presence, not inviting you. But conversely, if I say to you, “I’m cooking dinner at my place on Wednesday and you can show up or not, it’s totally up to you, I don’t care either way,” then this is not really an invitation but perhaps more like an offer, or at best it’s a highly unwelcoming, inept invitation.

Turning down an invitation is not a transgression. If you turn me down, I get to be disappointed, but not aggrieved.³⁰ At the same time, turning down an invitation calls for an expression of regret on the part of the invitee. Because speech acts are rarely if ever purely of one sort, the real story will often be more complicated. If the invitation was also a reasonable request, then I might legitimately be aggrieved by you turning me down. But the invitation *qua* invitation leaves the invitee free to turn it down, with regrets. An interesting pragmatic quirk of invitations is that if they are accepted, gratitude is called for from both the inviter and the invitee. I thank you for coming to my dinner, and you thank me for having you.

Invitations, like all speech acts, are governed by felicity conditions and norms of propriety. It is infelicitous for me to invite you to an event that I am not hosting, or not invited to myself. It is infelicitous for me to

28. For a fuller analysis of the pragmatic structure of invitations and requests, see Mark Lance and Rebecca Kukla, “Leave the Gun; Take the Cannoli! The Pragmatic Topography of Second-Person Calls,” *Ethics* 123 (2003): 456–78.

29. Jacques Derrida, *On the Name* (Palo Alto, CA: Stanford University Press, 1995), 14.

30. Surface grammar never determines illocutionary force. Sometimes what reads like an invitation on the surface is actually a request or an order, and everyone understands that turning it down would be a transgression—an invitation to a long-planned family reunion, perhaps. And sometimes what reads like an invitation is actually a neutral offer, like an invitation to a sale event at a local store.

invite you to vote at my department meeting, because you don't have the standing to vote regardless of my invitation. And a felicitous invitation may still be inappropriate. It is inappropriate for me to invite my undergraduates to a drunken party at my apartment, and this is so even if they can freely say "no" to the invitation (which they may or may not be able to do). It is inappropriate for me to invite you to my wedding if I just met you at a reception for a visiting speaker and chatted with you over cheese for five minutes. The fact that an invitation leaves the recipient free to turn it down is not *carte blanche* to issue any invitation I want.

I submit that most paradigmatically, initiations of sex take the form of invitations, not requests. Invitations open up the possibility of sex, and not just as a neutral possibility; the invitation makes clear that the one issuing it hopes for acceptance from the invitee. They are welcoming without being demanding. Accepting them is not a favor to the one issuing the invitation, as granting a request would be. Although we are generally pleased when people agree to have sex with us, we generally don't want people to agree to sex with us as a favor to us. While a rejection may well be disappointing, the inviter has no license to feel aggrieved if the invitation is turned down (although they can feel aggrieved if it is turned down rudely or insultingly).

Again, the invitation needs to be felicitous and appropriate: I cannot invite you to have sex with someone other than me (which would be both infelicitous and unethical). I cannot invite you to have sex with me if doing so would be an abuse of power, or if for other reasons it would be difficult for you to say "no" to the invitation (which would be both inappropriate and unethical), or at the end of a two-minute chat on the bus about how crowded it gets at rush hour (which would be inappropriate and probably uncomfortable). The mere fact that an invitation can be freely turned down does not give people license to issue infelicitous or inappropriate invitations—which is something that street harassers, for instance, often don't seem to understand.

Especially but not only when we are just getting together with someone for the first time, whether for a casual hookup or at the start of a more serious relationship, invitations are a more common and typically more appropriate way of initiating sex than are requests. Once I am in a relationship with someone, it's not always out of bounds for me to request sex, as a favor. If I am hiring someone to provide sex, then requesting sex is appropriate (though demanding it still isn't). But when I'm trying to establish intimacy with someone as I am getting to know them, an invitation is more typical and likely more conducive to good, flourishing sex. Notice that if I invite you, appropriately, to have sex with me, then consent and refusal are not even the right categories of speech acts when it comes to your uptake. One can't consent to an invitation—one accepts it or turns it down. So the consent model distorts our understanding of

how a great deal of sex is initiated, including, in particular, pleasurable, ethical sex.

One peculiarity of sexual invitations is that, unlike standard invitations, I do not owe you regret if I turn down your invitation. Another more important peculiarity is that I can back out of my acceptance of a sexual invitation at any time, for any reason at all. Accepting an invitation does not create an inviolable commitment, but it usually institutes a norm of participation. Normally, when someone accepts an invitation, they can't then back out of the invitation without reason or normative residue. "I simply don't feel like it any more" is not an acceptable reason to back out of a typical accepted invitation, and while the inviter cannot be aggrieved at a rejected invitation, they can be aggrieved at a cavalier withdrawal of acceptance. Sexual invitations are different. I get to change my mind at any time whatsoever about accepting an invitation for sex, including moments before we begin. The person who invited me may well be disappointed if I back out, but she has not been wronged.

I doubt that sex is unique in this regard, and it would be interesting to work out which sorts of invitations have this special feature. I suspect that invitations to participate in intimate bodily activities follow this pattern. Invitations to donate an organ or gametes, or to gestate a child, are also the sorts of invitations that leave the invitee free to revoke their acceptance at any time and without offering a justification, leaving the inviter disappointed, perhaps, but not aggrieved. Invitations to participate in medical research might be another example. Whatever the governing principle here, it seems clear that in the case of sexual invitations, the standard commitment to see through one's acceptance is waived.

I used to feel confident that sexual invitations were nonstandard in another sense, but now I have conflicting intuitions. As I mentioned, typical invitations—as long as they are appropriate and felicitous—call for an expression (perhaps just token or formal) of gratitude, even when they are turned down. If you invite me to your birthday dinner, I am free not to go, but it is incumbent on me to express both my gratitude for the invitation and my regret for turning it down. However, it feels odd to say that I owe someone gratitude for inviting me to have sex. I get "invited" to have sex every time I walk down a major street in workout clothes, and while I sometimes get called a bitch for not showing gratitude, I don't think I owe gratitude in any sense, no matter how minimal.

But on reflection, I think that this intuition might come from two contingent sources: (1) the fact that so many sexual invitations are inappropriate, and (2) the fact that in our culture showing gratitude for a sexual invitation is often unacceptably risky, especially for women, because it carries with it all sorts of extra meanings and expectations and triggers various problematic social norms. Perhaps a totally appropriate sexual invitation (at the end of a date that seems to have gone well, for instance)

does in fact call for some expression of gratitude, whether or not I am interested in accepting—something along the lines of “that’s sweet of you to offer, but no thanks.” But we live in a world filled with so many inappropriate sexual invitations, and so many men who refuse to take no for an answer if they sense any possible weakness or opening, that we often have good reason to forego showing gratitude, even if it is called for in some sense.

I propose centering invitations rather than requests in our model of the language of sexual initiation. This opens up a whole set of new ethical and pragmatic questions. What are the felicity conditions for a sexual invitation, and who has authority to issue them to whom? Since invitations strike a complex balance between welcoming and leaving the recipient free, what maintains this balance and what throws it off-kilter? An invitation might be degrading by being insufficiently welcoming, for instance. Or it might be coercive by being too pressing. Or it might be both infelicitous and unethical—for instance, if I invite you to have sex with my girlfriend. I don’t enter into this exploration of the norms of invitation here, but it strikes me as fertile territory for ethical and linguistic analysis, as well as territory that gets occluded by a narrow focus on consent.

B. Gift Offers

Sometimes sex is initiated not by a request or an invitation but instead by a gift offer. Unlike a box of chocolates or a bouquet of roses, in the case of sex, we need to separate the act of gifting from the discursive gift offer—you cannot just present someone with sex and hope they are happy about it. While it is unusual to offer sex—or a particular sexual activity or experience—to someone that one is just getting to know, it’s not unusual for longtime partners to offer each other gifts of sex. I might offer to peg my partner,³¹ even though I am not especially in the mood, because I know he loves it and I want to celebrate his having received some important good news. I may offer my partner sex because she is leaving for a trip, as a way of saying goodbye. I might offer to role-play or indulge a fetish that both of us know is their “thing,” not mine. There is nothing inherently problematic about offering to have sex out of generosity rather than direct desire. Not all sex or all parts of sex have to be enthusiastically desired by all parties in order to be ethical and worthwhile.³²

Gift giving is an endlessly pragmatically complex set of practices with wide-ranging social importance. Ever since the publication of Marcel

31. This refers to having anal sex with someone while using a strap-on.

32. This is contrary to the “Yes means yes” movement, which demands undivided enthusiasm on everyone’s part as an ethical precondition of sexual activity. See Jaclyn Friedman and Jessica Valenti, eds., *Yes Means Yes! Visions of Female Sexual Power and a World without Rape* (New York: Seal, 2008), and many subsequent discussions.

Mauss's 1925 *Essay Sur Le Don*,³³ anthropologists and other social scientists have been fascinated by gift giving as a basic form of social communication and community integration.³⁴ Gift giving, Mauss argued, is part of a broad system of social exchange with elaborate, culturally specific norms. Despite cultural variations, the rules around gift giving always involve reciprocity, requirements for proper uptake and response, and norms concerning the refusal and acceptance of gifts. These norms are subtle, complex, and heavily context dependent: as John Sherry explores in his classic article on the anthropology of gift giving, different sorts of gifts and different kinds of uptake and reciprocation are appropriate for business associates, a hospitalized friend, bachelor parties, lovers, weddings, and so forth.³⁵

Gifts are, of essence, freely given and generous: a gift that one is compelled to offer is not actually a gift (although, in practice, we are routinely compelled by various rules of etiquette to give various "gifts"—but these are not really gifts, and insofar as they have that surface presentation, they have to masquerade as freely given). Gifts, by nature, cannot be demanded or even requested. If you ask me, as a favor, to indulge some sexual desire of yours, then my doing so is not a gift but the granting of a favor.³⁶ A gift must be designed to please the recipient. It might not actually succeed in pleasing, but an offer of something that is not expected to please is not in fact a gift. It is also essential to gift giving that the recipient need not accept the gift—although in many circumstances turning down a gift is a rebuff with its own normative significance. Gifts that are accepted essentially call for both gratitude and reciprocation from the receiver.

The essentially reciprocal nature of gift giving is what makes it of such interest to social scientists, because it is what makes the practice of gift giving such an important tool for knitting together communities and negotiating and sustaining social relationships. Part of what is complex about the reciprocity requirement is that it is inherently open-ended. Failing to reciprocate a gift is a norm violation and a kind of breakdown of a relationship, but what counts as proper reciprocation is tricky and under-

33. Marcel Mauss, *Essai Sur le Don* (Paris: L'Année Sociologique, 1925).

34. Pierre Bourdieu, "The Economy of Symbolic Goods," in *Practical Reason: On the Theory of Action* (Palo Alto, CA: Stanford University Press, 1998), 98–126; Claude Lévi-Strauss, *Les Structures Élémentaires de la Parenté*, 2ème édition (Paris: Mouton, 1996); John F. Sherry, "Gift Giving in Anthropological Perspective," *Journal of Consumer Research* 10 (1983): 157–68.

35. Sherry, "Gift Giving in Anthropological Perspective," 160 and elsewhere.

36. Incidentally, this is why when Bonasera asks Don Corleone for a favor on his wedding day, Corleone agrees to do what Bonasera asks, but he insists on doing so as a gift and not as a favor. This changes the pragmatic structure of the exchange and the appropriate uptake, creating the obligation for Bonasera to reciprocate the gift—as Corleone vividly points out (*The Godfather, Part I*).

determined. For instance, reciprocating a gift too quickly or too closely in kind is a norm violation: if you give me a book that you think I would love, it is a norm violation for me to immediately hand you a different book back, and even more of a norm violation for me to give you the same book back at any time. The size, timing, and content of reciprocation must all be keyed subtly and not too directly to the original gift. Partly because gifts must be given generously and not compelled, this logic of reciprocity is tricky—while gifts call for reciprocation, if the reciprocation they call for is too specific, then they are no longer gifts but something more like barter.

As with sexual invitations, the recipient of a sexual gift offer is under no compulsion to accept the offer. In other ways, the norms of invitations and gift offers are different. An invitation makes no essential assumptions about whether the recipient wants to accept it. But a gift offer is designed to be an act of generosity that pleases the recipient (whether or not it succeeds in doing so), and it calls for reciprocation. This is part of why, unlike sexual invitations, sexual gift offers are typically presumptuous and inappropriate in the early stages of getting to know someone, when you don't yet know what would please them and you aren't yet in a position to impose an obligation to reciprocate on them. But generous offers of sexual gifts, designed first and foremost to please one's partner rather than to directly satisfy one's own sexual desires, are a normal part of an ongoing healthy relationship. Such gifts do create an obligation to reciprocate, though not immediately, or exactly in kind, or on any particular schedule. If you routinely indulge my desires out of generosity, it is a norm violation and poor relationship behavior if I never reciprocate.

Typically, if someone offers me an appropriate gift, I need a pretty good reason to turn it down. Turning a gift down is a serious and hurtful snub. This is not true for sexual gift offers, which can be turned down for any reason at all; no one has the standing to feel aggrieved by their rejection. As in the case of backing out of accepted invitations, I suspect that this is because accepting the gift involves intimate bodily activity, and there can never be a normative requirement that anyone compromise their bodily agency by engaging in intimate bodily activities if they don't want to. No one needs to justify their choice not to do so. If I offer to indulge your fetish to make you happy and you turn me down, I might be disappointed or surprised, but I don't get to take you as having wronged me in any way.

Gift offers, like invitations, may be appropriate or inappropriate, felicitous or infelicitous; this is true both inside and outside the sexual domain. Unsolicited dick pics are typically not appropriate gifts, for instance. Sexual gifts offered too early in a relationship are inappropriate. Sexual gifts involving third parties are infelicitous. An authentic, appropriate, and thoughtful sexual gift offer within a relationship calls for an expres-

sion of gratitude (though not necessarily for acceptance), even if the recipient happens to be not in the mood for that particular gift at that time. As in the case of sexual invitations, however, offers of sexual gifts are so often inappropriate, and expressions of gratitude are so frequently misinterpreted, that expressing gratitude is frequently neither necessary nor wise.

V. SAFE WORDS AND EXIT CONDITIONS

In the previous section, I looked at the pragmatics of exchanges that are designed to initiate sex. But as I emphasized above, there is much more to sexual negotiation than establishing whether sex will happen. Importantly, there are certain kinds of sexual desires and pleasures that we can only fulfill ethically if we use discursive tools to create a safe and exitable framework within which they can happen.³⁷ In this section, I explore one of the most pragmatically interesting and distinctive of such tools, namely, safe words. The use of safe words is a fascinating type of speech act with multilayered illocutionary force and a complex set of governing conventions. I see no reason why they need to be restricted to the sexual domain, but that is their primary home.

As most readers probably know, people who are negotiating the details of a sexual encounter often establish a safe word, which gives participants a tool for abruptly exiting from a sexual activity. This can be a random distinctive word that is pretty certain not to come up in the course of normal conversation during sex (one friend uses 'kimchi' and another uses 'Helsinki'). Or participants can use a 'yellow' and 'red' system, which adds on another illocutionary option: 'Yellow' is a way of indicating discomfort or wariness and calling on the other person to ease off and be on the lookout for signs that the speaker wants to alter or stop an activity. 'Red' is an activity and scene ender; if someone calls 'red', then everyone not only stops what they are doing but exits the sexual scene altogether. Some people also use 'green' to indicate active, ongoing enjoyment and a desire to continue an activity. Williams et al. helpfully distinguish between what the authors call levels of consent.³⁸ *Surface consent* is the original negotiation of sexual contact. *Scene consent* is negotiating what will happen inside a scene. *Deep consent* involves all participants keeping track of signals along the way of whether a person is comfortable with how a scene is going and wants to stay in it or exit it. As is clear from the rest of this article, I think that the language of consent is being asked to do too much work here, but the distinction they are drawing is important.

37. Technically, 'exitable' is not a word, but I hope its meaning is clear. Other similar terms like 'escapable' and 'terminable' did not have quite the connotations I wanted. A framework or space or activity is exitable if we have the capacity to exit it.

38. Williams et al., "From 'SSC' and 'RACK' to the '4Cs.'"

Safe words are part of what we establish during scene consent, and they are tools that aid with deep consent.

Skilled use of safe words requires participants to be able to move between three levels of speech: the erotic speech within a sexual scene, which is often metaphorical or stagy; the safe words themselves; and the regular mundane discursive space outside of the scene. Safe words should never become the only way that someone can exit a scene or activity—all participants need to remain flexibly responsive to other discursive cues as well. So “oh no, please, I can’t take any more, no!” might well be part of a consensual scene and not an attempt to exit, but “no really, get off me, I need to pee and you are pressing on my bladder” is probably a return to the everyday discursive context, as is “Damn it, it’s already 8:00—I need to leave for work.”³⁹

Part of what is interesting about safe words is that they let someone exit a scene or activity at any time without having to explain themselves or accusing anyone of transgression or any other kind of wrongdoing (although they can also be used when there has been a transgression). Calling ‘red’ does not imply that anyone has messed up or violated consent; it simply ends things. It calls for no apology and requires no apology after its use. Without a safe word system, if I want to abruptly end a scene or activity, I need to say something like “Stop this immediately.” It’s very difficult for such a speech act not to come off as a rebuke; it almost inevitably creates a rift in our interaction that now needs repairing. It is significant that safe words are typically semantically irrelevant words that are not going to otherwise come up in a normal sexual encounter—they are designed to intrude minimally and unambiguously, without calling for interpretation, discussion, or conversational response. It is precisely because we don’t have to use a regular sentence like “Stop it!” that using a safe word avoids complex normative conversational implicatures.

Safe words are powerful discursive tools for enabling sexual agency in at least two senses. Most straightforwardly, they offer a tool for exiting an activity cleanly and clearly, with no real room for miscommunication. The ability to exit an activity without pressure, coercion, or ambiguity is just as important to autonomous participation as is valid consent at the start. This is a well-recognized truth when it comes to things like participation in medical research, but it is less discussed in the sexual domain. But even more interesting to me is the fact that safe words allow people to

39. Some people in the kink community have concerns about the safe word system, because they worry that it gives people an excuse to stop paying attention to normal discursive cues that someone wants to end an activity. I understand the concern but still find safe words a powerful and elegant tool. But it can never be acceptable to use someone’s failure to use a safe word as an excuse for not being attuned to or respecting their attempts to exit a scene.

engage in activities, explore desires, and experience pleasures that would be too risky otherwise. They thus expand the space of opportunities for sexual agency. There are all sorts of things that we might like to do or try that are dangerous or unappealing if we don't have confidence that we can stop them without ambiguity or normative residue. This might include, most obviously, potentially painful or uncomfortable activities, as well as activities in which we are role-playing coercion or domination and submission. But it can also include anything that we would like to explore, even though it potentially pushes the boundaries of our comfort zone.⁴⁰

Safe words have a complex pragmatic structure. The negotiation of safe words is not itself speech that happens inside the sexual discursive frame. Rather, it is a kind of metaspeech that lets participants decide together how to make clear the boundaries of the frame. Negotiating safe words establishes second-order conventions, in Nicole Wyatt's sense,⁴¹ that help determine the first-order conventions governing language within the framed encounter. 'Yellow' functions as not so much an order as a direction of attention, along with a call to shift gears a bit. 'Red' is a specific kind of order: it retracts consent, but it also ends a scene, shifting the participants back into the everyday, literal discursive frame. Having a safe word system in place lets participants establish norms for exiting a nonliteral discursive frame that may include role-playing, metaphor, and experimentation with boundaries.

While (unsurprisingly) the original and paradigmatic home of safe words is the BDSM community, in my view it would be fantastic if the use of safe words became standard practice, and in particular if training on the use of safe words became a completely standard part of sex education for teens. Safe words give people the ability to stop an activity clearly and without an argument or a formulated reason. This is especially important for young people who are just beginning to explore sex, figure out what they enjoy, and learn how to hear and respect one another's limits. Safe words also enable people to explore desires whose fulfillment would otherwise be dangerous or uncomfortable. Normalizing their use would be a major step in empowering and protecting the safety and autonomy of everyone. The safe word system creates scaffolding and a frame within which otherwise impossible desires and activities can be explored. Hav-

40. R. A. Briggs (private correspondence) points out that calling 'red' sometimes serves another important purpose, namely, to flag to bystanders, when there are some, that the speaker wants the scene to end. This lets people know that they need to intrude if it doesn't. When witnessing a negotiated scene, bystanders cannot assume that 'no' means no, and it would be inappropriate to intrude upon witnessing someone saying "no" (without a lot of other contextual information, that is). So the safe word system can help people keep one another safe from sexual assault and rape, in addition to being a piece of scaffolding that enables consensual sex and allows safe experimentation and exploration.

41. Wyatt, "Failing to Do Things with Words."

ing the system on deck creates a space for ongoing consent and active experimentation and sexual collaboration.

VI. SUBMISSION AND CONSENSUAL NONCONSENT

If consent is the main measure of whether a sexual activity is ethical, it might seem quite natural to think that more consent is always better—ideally, one might easily think, participants would actively consent to each part of every sexual encounter. But vast numbers of people—so many people that it cannot even count as a “kink”—enjoy sexual submission. That is, many people at least sometimes want their partner to take charge and control what will happen during sex; they want to put themselves in another’s hands and to allow things to happen that they didn’t expect. Indeed, many people enjoy role-playing nonconsensual activities, where part of the point is to perform having one’s will overwhelmed during sex.

Any account of sexual negotiation that can’t make sense of domination and submission as a normal and potentially ethical part of sex has a reality problem. We need to understand when and how giving over control to a partner can be morally acceptable, and how we can negotiate such encounters properly. In kink communities, explicitly negotiating an encounter in which one person will submit to the control of the other, with clear exit conditions established, is sometimes known as “consensual non-consent” or “meta-consent.”⁴² It does not seem to me that current mainstream discussions of consent can account for ethical domination/submission relationships; often there is an assumption that domination is obviously unethical.

To turn myself over to the will of another person safely and ethically, I need to be able to trust that other person to understand and respect my limits. And crucially, I need to be able to trust them to let me out of the scene and give me back control over my body whenever I want, and there need to be clearly established ways of communicating that I want to exit. There is, as far as I know, no standardized term for the kind of speech that establishes consensual nonconsent and its limits. This is speech that establishes an open-ended but bounded space of permission, with clear conditions for retraction and exiting. For instance, one sex educator suggested that a submissive partner could set out in advance all the toys she was willing to use that night, so that her dominant partner could surprise her but still stay within her limits. Another couple enjoyed playing at having the dominant partner penetrate the submissive partner while she

42. Wikipedia, s.v. “Consent (BDSM),” accessed July 25, 2017, [https://en.wikipedia.org/w/index.php?title=Consent_\(BDSM\)&oldid=739862485](https://en.wikipedia.org/w/index.php?title=Consent_(BDSM)&oldid=739862485); “Rape Fantasies and Consensual Non-consent,” *When Yes is Yes*, accessed July 25, 2017, <https://whenyesisyess.wordpress.com/2012/10/01/rape-fantasies-and-consensual-non-consent/>.

“slept.” They developed a code phrase: the submissive partner would say that she was “taking Tylenol PM and going to bed” in order to invite her partner to this kind of domination play.⁴³ Whatever system is used, the point is that the illocutionary upshot is to allow one partner to autonomously yield open-ended sexual control to someone else, typically within limits and always with exit conditions in place. Crying out something like “no please stop!” is not typically a way of communicating that I want to exit such a scene, because such cries might well be part of the performance of domination, submission, and control that I actively want to continue. Hence, other clear exit conditions (such as safe words or other agreed signs) have to be established.

We see communication with this illocutionary force in some non-sexual domains as well. Consider the ritual of touching gloves to initiate a boxing match. Unlike much sex, boxing matches are not (each participant hopes, at least) asymmetrical exercises in domination and submission. But as in sex involving domination and submission, boxers do not consent to each punch they receive; in touching gloves, they are aware that they will be surprised by what the other does to their body, and perhaps sometimes unhappy about it. It would completely undermine the point of the match if each participant could only punch her opponent when her opponent consented to receiving a punch, or if she could only punch her opponent in a way that her opponent enjoyed being punched. At the same time, in touching gloves, both boxers agree to abide by the rules and limits of the sport. (This is explicit; the referee asks each boxer to affirm that they agree to this.) And, importantly, both boxers know that if they want to exit the match early, there are clear and ritualized ways in which they can “throw in the towel” and stop the proceedings; this is especially crucial since expressing pain or frustration are not such exit signs, as they might normally be in a different frame. It is only because such exit rules are in place that participation in the match can count as autonomous and consensual. By negotiating this kind of open space of retractable, consensual nonconsent, the boxers can express their agency in a way that would otherwise be ethically precluded; this negotiation makes the activity of boxing possible.

Establishing consensual nonconsent is closely related to signing a liability release, in which we agree not to hold someone or some corporation responsible for accidental harm. Liability releases become relevant in situations—such as in a boxing match or in sex involving domination and submission—in which we know going into the activity that we cannot predict or count on enjoying everything that will happen to us.

43. Of course, one should never actually penetrate someone who is really asleep, nor use sleep drugs in sex play.

But when we touch gloves, or do the sexual equivalent of touching gloves, we are enacting something stronger than a mere commitment to not hold someone responsible for harm. Liability releases generally indicate willingness to accept risk instrumentally, in order to accomplish some other end, but when we touch gloves or do the sexual equivalent, putting my body at the mercy of someone else whose actions I can't fully predict or control is the goal, rather than a necessary side effect; it is essential to the experience I seek.

VII. CONSENT, COLLABORATION, AND THE VARIETIES OF SEXUAL HARM

Sexual activity is only ethical if everyone involved has communicated successfully that they want to engage in it and is doing so autonomously and willingly. If this broad point is all we mean by saying that all sex must be consensual, then consent is a necessary condition for the ethical acceptability of any sexual activity. But this seems to me to be an unfortunate way of describing the principle, since 'consent' is the name of a speech act with a specific pragmatic shape. If I make clear that I would like to accept an invitation or a gift, then I have communicated my autonomous desire to participate; it strains the pragmatics of language to call this 'consent'. At least for the purposes of philosophical analysis, it seems to me worth using the term 'consent' more narrowly and giving a more fine-grained analysis of the ethics of sexual discourse.

How might we conceive of this ethical standard—sexual activity is only ethical if everyone has communicated that they want to engage in it—other than via a consent model? Michelle Anderson proposes a “negotiation model” of legal consent, which is friendlier to my discussion here. She defends

a new model of rape law reform. . . . The law should eliminate the requirement of non-consent. In its place, the law should recognize the centrality of negotiation, in which a person would be required to consult with his or her partner before sexual penetration occurs. Negotiation would not require a verbal contract for penetration. Instead, it would require only what conscientious and humane partners already have: a communicative exchange, before penetration occurs, about whether they want to engage in sexual intercourse. Specifically, the law should define “rape” as engaging in an act of sexual penetration with another person when the actor fails to negotiate the penetration with the partner before it occurs.⁴⁴

44. Anderson, “Negotiating Sex,” 107. Anderson's model is too focused on penetration for my taste. This may possibly be appropriate if our main concern is defining rape; it is surely too narrow if we want to give criteria for ethical sexual engagement. But it is easy enough to adapt her model for our purposes.

This negotiation model does not presume that the basic, paradigmatic form of sexual negotiation is one in which one partner agrees to or refuses a request for something to be done to them. It allows for a broader palate of types of discourse and requires active participation from all parties in deciding not just whether to have sex but what to do: “[The negotiation model] seeks to maximize the opportunity for sexual partners to share intentions, desires, and boundaries. Negotiation manifests itself as mutual consultation and the expression of preferences. It ideally involves a discussion of the partners’ tastes and an agreement to engage in mutually desired behaviors. . . . Unlike the traditional notion of consent, negotiation assumes reciprocal responsibilities between partners and equal authority to direct the sexual interaction, whatever the partners’ genders and sexual orientation.”⁴⁵

Anderson points out that on the consent model, rape requires either ignoring someone’s refusal (the “No Model”) or failing to obtain their positive consent (the “Yes Model”). But, she argues, people who don’t want to participate may not be able or willing to communicate their refusal. Meanwhile, “at its core, the Yes Model relies on a man’s ability to infer actual willingness from a woman’s body language. Yet study after study indicates that men consistently misinterpret women’s nonverbal behavior. They impute erotic innuendo and sexual intent where there is none. Any theory that relies on a man’s ability to intuit a woman’s actual willingness allows him to construct consent out of stereotype and hopeful imagination.”⁴⁶ The negotiation model, in contrast, requires a dialogical conversation rather than passive assent or dissent. This conversation may well involve requests, consents, and refusals, but it may also include invitations and acceptances or other kinds of pragmatic exchanges. While better and more dialogical conversations about consent are often sorely needed, clarifying consent is not enough for ethical sexual negotiation. I am agnostic as to whether this is a workable or promising legal suggestion; my interest is in what count as necessary conditions for ethical sex, rather than in what the legal measure of rape should be. That said, Anderson’s model seems to me to be easily and helpfully transferred out of its original legal context and into the ethical domain.

Thomas Millar’s article “The Performance Model of Sex” also offers an alternative to the consent model. He writes, “[Sex should require] not the absence of ‘no,’ but affirmative participation. Who picks up a guitar and jams with a bassist who just stands there? Who dances with a partner who is just standing and staring? In the absence of affirmative participation, there is no collaboration. . . . The negotiation is the creative process of building something from a set of available elements. Musicians have

45. *Ibid.*, 123.

46. *Ibid.*, 106.

to choose, explicitly or implicitly, what they are going to play: genre, song, key, and interpretation.”⁴⁷ For Millar, good, ethical sex is not a matter of one person agreeing to let another “have” something, but rather a collaborative activity requiring ongoing communication and engagement. Millar’s model complement’s Anderson’s nicely, but it also extends it: while Anderson is still overwhelmingly concerned with the discourse around initiating sex, Millar’s performance model covers the entire sexual event. He emphasizes the value of ongoing collaborative communication and mutual uptake throughout—communication that is distorted by being forced into a consent model: “This process involves communication of likes and dislikes and preferences, not a series of proposals that meet with acceptance and rejection.”⁴⁸

If we focus our discussions of sexual negotiation on consent and refusal, then the only sexual harm or ethical misfire we have the tools to discuss is rape, where rape is understood as sex without consent. But if we think that rape is the only way that sex can go wrong, then this both dilutes the serious harm of actual rape and sets a dangerously high bar for what we are willing to call out as ethically problematic sex. Despite the prevalence of “rape culture,” actual rape is culturally marked as one of the very worst and most stigmatized crimes that anyone can commit. Hence, the bar that we set for actually determining that something counts as rape is understandably high, because we are reluctant to put anyone in such a reviled category unless we absolutely have to. (Indeed, this is why the extreme vilification of rapists is actually part of rape culture, rather than a pushback against it.) Conversely, when rape is the only kind of sexual harm we can imagine, calling someone out for not respecting the norms of sexual communication can only be heard as a rape charge, which is not conducive to repairing relationships.

The philosophical literature on sexual communication, to the extent it exists, focuses almost entirely on the threat of rape and thereby obscures a variety of ethically important distinctions. As Sarah Conly nicely puts it, “There is a cultural tradition which has divided sexual intercourse into either morally unacceptable rape or morally acceptable nonrape. The truth is that there are many finer distinctions which we need to recognize and to which we need to develop a sensitivity. We do this in other areas, where we recognize actions of deceit, hurtfulness, and damage which are not the worst of transgressions and yet which are not morally neutral.”⁴⁹ Sometimes we autonomously agree to participate in a sexual activity for

47. Thomas M. Millar, “Towards a Performance Model of Sex,” in *Yes Means Yes! Visions of Female Sexual Power and a World without Rape*, ed. Jaclyn Friedman and Jessica Valenti (New York: Seal, 2008), 28–42, 38.

48. *Ibid.*, 39.

49. Conly, “Seduction, Rape, and Coercion,” 120.

ethically problematic reasons. Sometimes we agree to do things that degrade us or harm us. Furthermore, sometimes a sexual negotiation itself violates ethical norms, but not by violating consent: an invitation may be unwelcoming, inappropriate, or too pressing; a gift offer may be insulting; we might agree to participate in an activity that puts someone in danger without clarifying how they can exit the situation; and so forth.

Anderson and Millar stress the need for ongoing complex, collaborative communication, but they have little to say about the shape such communication should take. We need more fine-grained tools for talking about the ways in which people can do harm by negotiating sex badly, as well as the ways in which they can enable and expand sexual agency by negotiating it well.

VIII. ENABLING SEXUAL AGENCY

In earlier sections, we saw how speech acts with the right pragmatic structure can create safe, exitable frameworks within which we can pursue sexual desires and indulge in sexual activities that would be otherwise unsafe, unpleasurable, or compromising of our autonomy. Thus, pragmatically well-formed sexual negotiations can enable positive sexual agency. Sexual agency involves more than the ability to avoid sexual encounters and engagements when one doesn't want to participate. It also properly involves the ability to pursue one's desires and to take pleasure in ways that express one's fantasies. And as we have seen, we often enable sexual activities and explorations precisely by establishing the right sorts of limits, constraints, and exit conditions with one another.

Hallie Liberto argues that many sexual promises to do or refrain from sexual activities are inappropriate—they are “overextensive,” as she puts it—and that, if made, those to whom they are made should release the promisor from obligation.⁵⁰ Liberto acknowledges that there can be appropriate promises with sexual content—such as, for instance, a couple's promise to one another to communicate frequently about their sexual preferences. But, she argues, there cannot be appropriate positive or negative sexual promises—that is, promises to do some sexual activity or to refrain from sex with someone: “The content of certain promises generates an obligation for a promisee—an obligation to refuse the promisor. I call these promises ‘overextensive’ promises. I make a case that positive sexual promises are overextensive . . . [and] I argue that if positive sexual promises are overextensive, then so are negative sexual promises.”⁵¹

I agree with Liberto that positive sexual promises—promises to do something with someone—are uniformly overextensive and inappropri-

50. Liberto, “Problem with Sexual Promises,” 385 and throughout.

51. *Ibid.*, 385.

ate, and that people who make them should always be released from them. Much as we can back out of a sexual invitation or refuse a sexual gift offer without aggrieving anyone or transgressing any social norm, we ought not to be bound by our own promises to engage in any kind of sexual activity. But Liberto also argues, much more contentiously, that we also ought not to make or be held to negative sexual promises—promises to refrain from doing things. Such promises—most familiarly monogamy promises—are routinely viewed as valid and appropriate, and sometimes even morally laudable. Liberto boldly claims that it is not morally permissible to accept even these negative promises. Monogamy promises are the one example of negative sexual promises that she explores. On the basis of her argument that monogamy promises are overextensive, she concludes that negative sexual promises are overextensive.

But surely not all promises to refrain from particular sexual acts are overextensive. We have seen that commitments not to do various things are actually crucial tools in enabling positive sexual agency. Before I can trust you to blindfold me, or before I can submit to you in a domination or humiliation scene, I may need you to promise not to tickle me, or not to call me by a slur that I find triggering, for instance. I need you to promise to refrain from doing whatever you are doing if I use my safe word, or otherwise flag that I need to exit the scene. I might agree to have a three-way with you only if you promise not to penetrate the other person. It seems to me that these are serious promises that I can and should hold you to; the fact that keeping them might compromise your own bodily pleasure or sexual agency is morally irrelevant. Even more strongly, I argued that establishing such limits, constraints, and stopping points actually increases the space of sexual possibilities and enhances sexual agency for everyone concerned.

I don't need to settle here whether Liberto is right about monogamy promises in particular. But it is interesting to me that she is content to take them as standing in for negative sexual promises in general. Our disagreement is rooted in her focus on the ethics of initiating sex, in contrast to my focus on negotiations and communicative interactions throughout sexual encounters. Liberto implicitly assumes that all negative sexual promises are promises to refrain from sex altogether, rather than just to refrain from particular sexual activities. If she considered the latter, she might well agree with me that such promises need not be overextensive. I see this as part of the general tendency in philosophical and mainstream public discussions to focus only on negotiations over whether sex will or won't happen, and not on finer-grained negotiations concerning how sex should go and when it should stop. If we focus only on negotiating the binary question of whether sex will or won't happen, negative promises appear to be mere limitations on what we can do, and arguably they are unjust or inappropriate. But if we look at more fine-grained sexual nego-

tiations, negative promises become important tools for creating ethical and agency-enhancing possibilities.

IX. CONCLUSION

A positive conception of sexual agency needs to be much more multidimensional than most of our mainstream discussions recognize. When we talk about sexual agency, our conversations generally focus on one of two areas. The first is access to contraception, abortion, and sexual health care and education. The second is consent—or, more specifically, as I discussed at the beginning, women's ability to successfully refuse consent to men. Both of these are, indeed, deeply important topics when it comes to sexual agency, especially since both are under serious legal and cultural threat right now. I have argued that, more generally, sexual agency requires the ability to engage in clear, pragmatically complex, fine-grained sexual negotiations in language—negotiations that go well beyond consenting to and refusing requests for sex.

But full and healthy sexual agency—understood to include the ability to control one's sexual narrative, explore one's sexual desires, and enjoy sexual pleasure—requires much more than I have discussed. Good communicative norms and practices are necessary but not sufficient for sexual agency. Enabling sexual agency includes, for instance, the following:

1. Social recognition of everyone's sexual pleasure and self-expression as valuable. This includes valuing the sexual agency of disabled people, older people, people of unusual sizes and shapes, and others whose bodies have traditionally been treated as desexualized.
2. Fighting all forms of body shaming. When we mark some bodies as disgusting or abject, we make it harder for people with those bodies to find sexual partners (including partners who might well be interested in them were it not for the social stigmas and taboos in place). At least as powerfully, people who internalize the idea that their bodies are disgusting are typically going to have a harder time taking pleasure in those bodies.
3. Legally and socially protecting and recognizing all configurations of consensual sexual and romantic relationships. It is harder to build and flourish in a stable relationship when it must be hidden, or when it does not receive the same kind of social support and uptake as other relationships. A stable and secure relationship is a precondition for many (although certainly not all) kinds of sexual pleasure and intimacy.

I hope to have opened the door to building a richer and more satisfying ethics of sexual agency, but there is much work to be done.