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ARTICLE

Caring for Valid Sexual Consent

Eli Benjamin Israel

Department of Philosophy, Temple University, Philadelphia, USA
Email: elibenjamin@temple.edu

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Abstract

When philosophers consider factors compromising autonomy in consent, they often focus solely on the consent-giver's agential capacities, overlooking the impact of the consent-receiver's conduct on the consensual character of the activity. In this paper, I argue that valid consent requires justified trust in the consent-receiver to act only within the scope of consent. I call this the Trust Condition (*TC*), drawing on Katherine Hawley's commitment account of trust. *TC* constitutes a belief that the consent-receiver is capable and willing to act as we expect from them. If such trust is not warranted, I argue, consent lacks the appropriate normative grounds. After establishing *TC*, I explore its application in the sexual arena, asserting that, due to the non-contractual dimensions of sexual activity—such as the dynamic nature of sexual desires and the absence of external factors effectively binding sexual partners to the terms of consent—trust is warranted in sexual consent by means of care. I define care as a special sensitivity and attention toward the partner's will and discuss how this approach leads to safer intimate relationships in practice.

1. Introduction

"Is it wrong to feel violated even though I consented?" asked an anonymous individual on Quora, a popular online Q&A platform. Setting aside whether it is wrong (it seems pretty safe to say it isn't), and even assuming they indeed consented and no action contrary to their will occurred, I believe such feelings are not only possible but also point out a neglected condition for consent.

Not all consensual sex leads to positive experiences, of course, and several factors may come into play when determining how a person feels about the sex they had—such as hormones, their state of mind, their level of emotional and physical connection with their partner, and even if their partner was a good kisser. These factors may lead to negative, unpleasant, frustrating, or regrettable sexual experiences, but not to violating ones. When sex is truly consensual, we would expect that it would not cause a feeling of violation.[1] Yet, the anonymous inquirer is certainly not the only person who ever felt this way.[2] Therefore, we shall ask—are we attending to all things that can compromise a person's agency and the validity of their sexual consent?

Although there are numerous reasons for consenting to sex, including factors such as those mentioned above that make it a positive experience, at the very core of consent

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lies the value of autonomy. Consent derives its normative power from what we autonomously want, and it is justified by how well it reflects and shapes our experiences. If we think about it, it makes a lot of sense: you may meet someone very attractive, who is great in bed, and the settings happen to be perfect for lovemaking, on a full-moon night on a desert island where all you can hear is Lana Del Rey's voice coming out of the heavens for you two lovebirds. You're also lucky enough for them to want you —right then and there—but none of that matters unless *you* freely want to have sex with them and decide to act on that desire. You consent, first and foremost, in virtue of your autonomous will.

For this reason, for the primacy of autonomy, we usually think of autonomy-compromising conditions when we discuss the validity of consent. That is, conditions that, if not met, will result in our consent failing to reflect our desires and decisions. Those include the ability to freely give and revoke consent (as opposed to being forced or coerced into sex); the capacity to understand and reason about what one is consenting to (which excludes children or people with certain cognitive impairments from being able to consent); and the ability to adequately use those capacities, i.e., not being unconscious, asleep, deceived, or impaired due to the use of alcohol or drugs.[3] All these conditions concern the agent's ability to freely make decisions and act in an agential way. When consent is granted without these being met, it's invalid, and any acts deriving from it are *de facto* non-consensual and impermissible (at least to some degree).

2. Exploring a neglected condition for consent

The conditions mentioned above are all inwardly focused. That is, although they concern one's agency, they do so to the extent that one decides agentially, with a focus on their reflection capacities. However, reflection and deliberation don't tell us the whole story. By focusing on these, the autonomous character of what the agent reflects upon—the action itself—is often overlooked.[4] Acting in an agential capacity entails not just deciding on one's own actions but actually producing experiences, actions, events, and traits that conform to the agent's desires and plans (Christman 2011, 9). In interpersonal and joint actions, for which consent is necessary, our ability to produce events that reflect our autonomous decisions is contingent on the attitudes and actions of others, i.e., the consent-receiver(s). Therefore, I suggest that we should also look outward, considering the co-agents involved in the action we are undertaking. We need to assess their attitude toward our consent and how effective our consent would be in shaping and limiting their actions.

Quill Kukla alludes to a similar thought when defining consensual activities as agential and self-determining activities where all agents *understand* that everyone else is acting in this way and that everyone involved can and would stop the activity as soon as it ceases to be so (Kukla 2021, 271). This entails that, for an act to be consensual, each agent, each consent-giver, must consider there to be a mutual commitment to the consensual character of the activity—consent is something we build together. Namely, the consent-giver must *trust* the consent-receiver(s) to act only within the scope of their consent and stop the activity as soon as someone ceases from acting agentially.[5] I believe Kukla provides here a great starting point for us, but they fail to draw the necessary line between that "trust" and one's autonomous stance, which I contend is a necessary step to understand what makes consent valid and appropriately shape our consent practices.

I call this line the *Trust Condition*, or simply *TC*, and argue that it is a necessary condition for justified, and therefore, valid consent:[6]

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> *TC*: A validly consents B to do ϕ to them only if A trusts B to only ϕ with A's consent, and refrain from undertaking any actions beyond ϕ on A without further consent.[7]

After establishing *TC* as a necessary condition for valid consent in general, I focus on the sexual arena and argue that *TC* is met there by virtue of the consent-receiver caring for the consent-giver to a sufficient degree and expressing that care in ways that warrant trust.

My argument goes as follows: I start by explaining the relevant sense of trust we should apply in our discourse of consent, defending the use of Katherine Hawley's account of trust, which sees trust as a belief in the other person's commitment to act in a certain way. Next, I argue that *TC* addresses consent in all relevant arenas, as it normatively grounds consent by tying the consent-receiver's compliance with the agent's will, and conforms with our daily practices of consent. After concluding my argument for *TC*, I apply this idea to sexual consent and argue that sex's non-contractual nature makes it so that, for warranting trust and fulfilling *TC*, the consent-receiver must care for the consent-giver, and provide appropriate evidence of that attitude. Finally, I address a few potential counterarguments, including the concern that my explanation fluctuates unintentionally between two distinct interpretations of trust, is overly paternalistic, and establishes an excessively stringent standard for sexual consent.

3. Trust as a belief in one's commitment

Before we delve fully into the topic, I should explain precisely what I mean by "trust" and why it is the relevant term for our purpose. What Kukla refers to as "understanding" and I consider to be "trust" is an expectation that a person has concerning their co-agent's capacity to act according to the consent they have received. This expectation arises from the co-agent's capacity to act according to the consent they received. Moreover, considering that we are dealing with people who should also be acting agentially, rather than mere objects, our expectation should also encompass their willingness to act in appropriate ways.

Trust is a multivalent term, and the literature on its nature is very much divided. It is widely accepted, though, that trust is more than mere reliance (McLeod 2021) in the sense that I rely on my laptop not to die while I write this paper, or that I rely on my colleague to turn on the coffee machine because she always arrives early and makes herself a cup. These cases are characterized by a confidence I have in other objects or people, which is something we see in trust as well. However, they lack the vulnerability that trust usually entails, and they fail to address the other person as a willing subject, who is responsible for their actions. This attitude toward our co-agents is what gives trust its characteristic dynamics, such as entitlement or a feeling of being betrayed (or at least let down) from the trustor's side when the trustee fails to act as they were trusted to do (Baier 1986, 235; Holton 1994, 4). For these reasons, most philosophers take trust to be a combination of reliance and some other factor that addresses the trustee's agential capacities (Hawley 2014, 5).

One example of such views about trust can be found in Annette Baier's seminal paper "Trust and antitrust", where she claims that trust is about relying on the trustee to act out of goodwill toward the trustor (1986, 244). By combining reliance with goodwill, Baier's account captures a conception of trust that applies well to our thick

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relationships (such as family, friends, and significant others),[8] and for this reason it might fit well the kind of trust we strive to have with our romantic partners, and maybe sometimes with our sexual partners as well.[9] Nevertheless, when discussing trust in the general context of consent (in all its arenas), I aim for a less-restrictive notion that would accommodate the use of the language of trust also in our thin relationships, as we can arguably do when it applies to strangers or people we don't have access to or a special concern about their motivations (Jones 2004; O'Neill 2002).

Thus, I suggest we adopt Katherine Hawley's commitment account of trust (2014, 2019), which states that trust consists of believing that the trustee is (i) competent and (ii) committed to doing what they are trusted to do (2014, 17). In this way, their commitment is directed toward the action rather than the trustor (2014, 10), and disregards the motives that lead them to act that way (2014, 16). As for the trustee, this account requires them to properly assess their competence and take upon themselves a commitment they can and want to act in accordance with (McLeod 2021), rather than taking a moral stance toward the trustor. Of course, more can be said about Hawley's account, but since we are here to discuss consent and not the nature of trust, I think we are good for now.[10]

4. Trust in consent

Introducing trust as a requirement for valid consent, the trustor and trustee become the consent-giver and the consent-receiver, respectively. This is by virtue of the consent-giver trusting the consent-receiver to act on them in certain ways. By this, they become vulnerable to the consent-receiver, who in turn (if all goes right), would be committed to act in accordance with their partner's consent. This is an asymmetrical relationship, but it may also take a symmetrical form in joint activities, wherein the involved parties assume both an active role (taking action) and a passive role (being acted upon). This dynamic establishes two distinct relations of consent.[11]

Employing this idea of trust serves three key purposes. First, it allows us to validly consent without making any demands on the consent-receiver's motives, which would raise the bar too high, making valid consent extremely rare, rendering many daily practices non-consensual, and making it pretty much impossible to consent in our thin relationships. For example, when we consent to a valet driving our car, a doctor performing a procedure on us, or even when we agree to dance with someone at a party, we are essentially trusting them to do those things as agreed, and, respectively, not to drive away, not to steal our organs, and not to attempt an intimate touch instead of dancing. It is reasonable to say that we don't trust them on the basis of their supposed good motives. Practical considerations on whether to give them our consent don't seem to depend on whether they can be trusted to act according to their moral commitments or out of fear of repercussions. Our trust is reasonably linked to the expectation that they are committed to acting as we expect.

Second, by placing our trust in others instead of simply having confidence that they will respect our consent, we acknowledge them as active agents and view them as willing participants in the shared activity in which we are engaged. Consequently, they bear responsibility for their actions within this context. Merely relying on or having confidence in others would be insufficient, as it would contradict the appropriate responses to violations of consent, such as reactive attitudes like blame, resentment, and feelings of betrayal (Healey 2019, 501).

Third, this notion of trust places the actions of the consent-receiver as a primary consideration in one's decision whether to consent, which is what I aim for with *TC*.

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While we can't fully predict the actions of our co-agents, trust entails a belief in their competence and commitment to act in accordance with consent. In this way, whether they will or would act in accordance with the consent they received is an important consideration to ensure the consent-giver's autonomy in the activity itself. This aspect is unique to *TC*, as other autonomy-compromising conditions presented earlier can only address the agent's decision-making capacities and their ability to communicate those.

Now, trust—as a belief that plays a crucial role in one's consent deliberation—must be justified. By consenting to another person, we make ourselves vulnerable to them—risking them violating our will and autonomy—and so we should have good reasons to grant trust, i.e., to believe they are capable and committed to act in accordance with our consent. It might be useful to make a parallel between consent and the theory of knowledge to clarify this point.[12] The classical account of knowledge states that, for a person to know p, they must hold a belief that p; p must be true, and they need to be justified, or have good enough reasons, for believing that p.[13] This is because, while forming a belief and for that belief to happen to correctly reflect how things really go is nice, it can't be claimed as knowledge if we lack good enough reasons to hold that belief. There are many reasons for this, such as that it is often the case that, in virtue of having a good enough reason(s) that one comes to believe that p (Thomson 1986, 206), and that justification prevents knowledge from being left to chance (de Grefte 2023, 534; McCain 2016, 22–23). However, one very compelling point in my view and especially relevant to our practical discussion, is that knowledge isn't merely descriptive, but it serves as a normative stance that changes the ways we take p into consideration in theoretical and practical reasoning (Hawthorne 2006). Moreover, by claiming knowledge, we potentially create reasons for others to do the same.[14] Therefore, justification is required for knowledge.[15]

Consent works analogously, changing the way people relate to the object of one's consent, or as Heidi Hurd famously said "Consent turns a rape into love-making, a kidnapping into a Sunday drive, a battery into a football tackle, a theft into a gift, and a trespass into a dinner party" (Hurd 2004, 504). Just as knowledge acquires its normative stance by virtue of the knower being justified in holding such and such belief, it is reasonable to say that consent has a normative power by virtue of the consent-giver being justified in giving consent. As said, many factors may serve as reasons for consenting, but its normative power primarily comes from whether one's actions derive from what they autonomously want. Justified trust, and so justified consent, means that those are reasonable, given a trusting relationship between the consent-giver and the consent-receiver; or simply because it is reasonable to trust them to act in accordance with consent in a particular situation.[16] Thus, for appropriately fulfilling *TC*, A must properly (i.e., *justifiably*) trust B to only ϕ with A's consent, and refrain from undertaking any actions beyond ϕ on A without further consent.[17]

Consent without *TC*, whether due to non-existent or improper trust in B's commitment to respect A's consent, is like labelling true beliefs or merely beliefs, respectively, as knowledge. That is, among other things, the consensual nature of the act would be left to chance because A isn't justified in letting B act on them, even if no violation of A's autonomy actually occurs. This is true not just for one's trust that B will only ϕ with A's consent, but also to the performance of other acts without further consent. Consider a case where I bring in a plumber to sort out a clogged drain, and in addition to taking care of that, she also fixes other things I didn't know about. I might be grateful to her, and her extrapolating my consent might not go directly against my will, but that's just a

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matter of chance. In such a scenario, my consent wouldn't be effective in aligning the plumber's actions on me/my property with my will, and thus, it wouldn't be valid.[18]

Furthermore, the permissibility of acts that would otherwise be impermissible wouldn't have the necessary normative grounds. Addressing the efficacy of consent in shaping the action itself is the way in which consent addresses the consent-giver's agential stand throughout the joint activity, without which consent is hollow. I believe the sense of violation expressed in the Quora question I started this paper with is related to the realization that one's consent was hollow in precisely this manner.[19]

This also functions similarly to how other autonomy-compromising conditions affect the validity of one's consent. For instance, when a person consents while impaired due to the influence of alcohol, their consent is invalid regardless of whether there was an actual violation of their will. The fact that they couldn't properly access or articulate their desires renders their consent invalid, as it fails to address their will. The validity of consent lies in its effectiveness in addressing the consent-giver's autonomy. In this way, *TC* works similarly to other autonomy-compromising conditions. Its uniqueness lies just in the factors relevant to one's autonomy that it attends to. While the ability to give and revoke consent regards the agent's ability to express what they want, and the other conditions address the existence and proper use of their reasoning capacities about what they want, *TC* addresses the enactment of the agent's will in their passive capacity (in the capacity of having someone else acting on them).

Lastly, besides having good reasons to consider *TC* a necessary condition for consent, this condition can also be easily found in our daily practices of consent, preserving autonomy and ensuring we act (although passively) agentially.[20] For example, suppose I sign a lease agreement where I consent to another person making certain uses of my property, let's say, for residential purposes only. I'm able to justifiably make this agreement with a complete stranger because I have good enough reasons to believe that they will act according to what was agreed upon in the contract and not make commercial use of it. This justification doesn't come from a pre-existing trusting relationship, but because the lessee is legally bound by the agreement. If they decide to break the agreement, they would be held responsible by the law and may have to pay high fines and even be evicted. The fact that it would be very imprudent of the lessee to violate my consent allows the fulfillment of *TC* in this case. Had things been otherwise, and I didn't have enough reasons to believe that the agreement would be honored, regardless of my desire to rent my property, I wouldn't be justified to lease it.

Likewise, when I consent to a medical procedure, I often consent to a physician whom I don't know to perform certain procedures on my body. I justifiably do so because I have good enough reasons to believe they will only perform the procedure to which I've consented. The physician is bound by the never-ending consent forms I've signed, and if they subject me to a procedure I didn't agree to, they would be violating not only my autonomy, but also my legal rights and may be subject to medical malpractice litigation, removal from preferred-provider lists, or the loss of hospital privileges (Murray 2012, 563).[21] *TC* can be fulfilled here because of how unreasonable and improbable it would be for the physician to deliberately violate my consent. Here, again, I'd be acting irrationally if I consented to the medical procedure without being justified in believing that no other procedures would be performed without my consent.

In conclusion, *TC* already constitutes an integral part of our practices of consent but is theoretically overlooked, and so in this section, I've made it explicit and demonstrated how it grounds one's passive stance in the agent's autonomy, making consent valid. While highlighting what we naturally do when deciding whether to consent is,

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undoubtedly, philosophically interesting, the true significance of formally establishing *TC* as a condition for valid consent comes from its potential pragmatic outcomes in the sexual arena, where its fulfillment is often more ambiguous and challenging to ascertain.

5. *TC* in sexual consent

Unfortunately (or fortunately, depending on how much of a romantic you are), consenting to sex is more nuanced than the cases of landlord or medical consent. Sexual consent does share some of the contractual character that is characteristic of such cases, in the sense that it implies terms, conditions, and boundaries that should bind those involved.[22] Due to that, it has often been treated as a contract, from Kant's argument that morally permissible sex is an agreement of mutual possession of each other's sexual capacities (Kant 1991, 96 [*MS* 6: 278]),[23] to contemporary sexual consent models in which valid consent requires "clear and unambiguous" affirmation (Little 2005; Schulhofer 2000) and sometimes an enthusiastic "yes" (Friedman and Valenti 2008).[24] Some of these views may be reasonably defended, especially for the purpose of policymaking, in an attempt to prevent violence by establishing stricter boundaries. However, as pointed out by many feminists, such notions fail to grasp the true nature of sex, and so they fail to address many violations that may occur in sexual encounters.

5.1. The non-contractual nature of sex

Alongside its contractual dimension, sex also has clear non-contractual aspects expressed in two main ways.[25] First, it lacks external factors that can effectively bind sexual partners to all terms of consent. Sexual assault laws and penalties could possibly serve this purpose, but there is a lot of gray area in sex that just can't be legally covered, and even the aspects that can be addressed are exceedingly challenging, if not impossible, to enforce due to the private settings where sex usually occurs.[26] Besides, we'd like to think that fear of punishment isn't what prevents people from doing whatever they want with their sexual partners, and people generally prefer not to engage sexually or romantically with someone who respects their likes and dislikes only because otherwise they might go to jail, pay a fine, or have their reputation publicly harmed in the spirit of #MeToo. We deserve better than that.

Second, sex can't be considered fully contractual because of the dynamic character of our sexual desires. Our desires and boundaries in sexual encounters are not always predetermined or clearly established. They can evolve and change during sexual interaction, and at times, one may realize their discomfort with a particular aspect of sexual experience only in real time (or after it's too late).[27] So, if sex would make an agreement, it would be a rather murky one, with dynamic clauses, a blurred binding section, and incredibly high stakes for any breaches.[28]

Attempts to address the non-contractual dimension of sex can be found in negotiative models of sexual consent, such as those defended by Anderson (2005), who argues for direct, verbal, and open-ended negotiation between partners (even under the risk of killing romance), or Kukla (2018), who allows into the demand for negotiation the varied and nuanced ways in which we communicate our wants and needs to our partners continuously throughout sexual activity (sometimes indirect and ambiguous, in a way that conforms with the phenomenology of our sexual communication). These accounts do, in fact, better reflect the nature of sex, allowing for the exploration of its non-contractual and dynamic aspects. Kukla takes this success to imply that "consent" is

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not the main notion on which we should be focus in sexual relationships, and attributes it primarily to contractual views of sex.

While I'm inclined to communicative approaches that focus on negotiation, I disagree that they imply the insufficiency of consent in grasping what is wrong or violating about sex. Instead, I argue that those approaches contribute to consent, by addressing the means to achieve it. Namely, the real aim of negotiating the terms of sexual activity (including one's dos and don'ts, the ways to withdraw consent, etc.) is ensuring that our partners act only within the scope of consent and according to one's agential capacities. In other words, the language of negotiation builds the conditions for the validity of consent by offering important tools for fulfilling *TC*.

We have already established that *TC* requires the partner to commit to act in compliance with one's agential capacity. Given this commitment, it broadly functions as what binds a person to a contract, but without requiring pre-established clauses. The commitment is to the consensual character of the activity itself and not to particular actions, and so it should address one's sexual agency throughout the act, in its gray areas and dynamic nature. Here lies our biggest challenge: the special vulnerability involved in sexual relationships requires the partner to be attentive and sensitive to us in a way that can't be reduced to a commitment to a certain scope of actions. The consent-receiver's commitment must be directed to the consent-giver's agential stand.

5.2. Care warranting trust

I want to address this challenge by thinking about the trust condition within sexual relationships in terms of a general attentiveness, or "care" toward the consent-giver. I define care as a special attention and sensitiveness toward the partner's will and claim that it can justify one's trust in one's partner's effective compliance.[29] This suggestion is inspired by Lamb, Gable, and Ruyter (2021), who argue that ethical sex requires, in addition to consent, *care* for the partner in the sense of a moral obligation to ensure they are acting in an agential way, where "one looks beyond consent to seek to understand the other person's intentions and psychological state, to understand if the sex that is about to occur or is occurring may be harmful in some way to the other" (2021, 274).

This idea of care is in harmony with our common understanding of the term and resonates with other conceptualizations of care found in the literature. For instance, Gheaus (2022) defines care as "a disposition to behave in specific ways: being attentive and sensitive to the needs of others and being willing to assist them." Similarly, Held emphasizes "the compelling moral importance of attending to and fulfilling the needs of specific individuals for whom we assume responsibility" (2007, 10). The sensitivity to one's sexual partner's intentions and psychological states addresses the dynamic character of our will in the sexual arena. By having this sensitivity and exercising it with our sexual partners, we are able not just to relate to their "yes" and to the things explicitly laid out as their desires and boundaries, but to maintain a direct relationship with their will. [30]

Care, in this context, goes beyond mere attentiveness or sensibility during moments of discomfort. It involves a comprehensive assessment of the partner's will, encompassing both positive and negative forms of attention. The negative aspect of care is manifested through a cessation of activity when the consent-receiver perceives signs of unwillingness from the consent-giver, involving a keen awareness and response to those signs and cues. On the other hand, the positive aspect of care involves understanding the partner's sexual desires and needs as they determine their decision to engage in sexual activity.

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TC entails trust in the partner to only ϕ with one's consent, and impermissibility applies to anything that goes beyond ϕ (until further consent, of course). Now, within the sexual context, ϕ doesn't encompass specific sexual acts but refers to the agent's will. Therefore, to know what exactly is being made permissible within the sexual encounter, it is essential to understand the partner's desires and needs, which in the case of sexual practices requires a positive form of attention. The way in which care plays out, in each of these aspects, depends on the relevant considerations by which a person gives consent. In a scenario where two people consent to sex because they desire to have sex with one another, knowing the kind of sex the partner wants dictates the scope of permissible action. For this, one needs to be attentive to signs of willingness that unfold throughout the interaction. This explains the continuity of sexual interactions without the need to stop and ask for further consent before kissing a new part of one's body, trying a new position, or changing speed and pressure. By caring, we attune ourselves to our partners, understanding what they are willing for us to do. Whenever signs of willingness are lacking, we stop or ask for further consent.

However, depending on the nature of the sexual interaction, care may play out differently. For example, a sex worker may give consent to a client with no expectations that the latter would attend to their sexual desires and needs (nor might they want the client to do so). The sex worker gives consent out of non-sexual desires or needs (e.g., financial ones), and those are addressed by explicit, probably verbal, means due to their transactional/contractual character. In such a scenario, the scope of consent is delineated by the sex-worker/client agreement, and the client's care becomes relevant only insofar as it regards the non-contractual aspects of the interaction, i.e., the sex worker's boundaries. Despite pre-established boundaries possibly being laid out at the time of agreement, the sex worker might show signs of unwillingness throughout the sexual interaction to which the client should be sensitive by means of negative care.

Another instance to consider is what Robin West proposes as cases of undesired but consensual and unharmful sex:

> A woman might, on occasion, rather watch television, read, or sleep but agree to sex she doesn't particularly desire, because she loves her partner, because she's accustomed to trade-offs of this sort that benefit both, because she doesn't feel it as a burden, because she knows that her lack of desire may give way to desire, and so on. (West 2009, 238)

In this scenario, the woman is willing to have sex, but her sexual desires and needs are irrelevant to *TC* as sexual desire doesn't determine her will. Positive attention to her nuanced willingness becomes unnecessary, as consent was granted based on non-sexual considerations, and less dynamic ones. Here also, care becomes useful only insofar as it regards her boundaries. For instance, if she agreed to have penetrative sex, anything beyond penetration is impermissible unless further consent is given. Nevertheless, in the event that she shows signs of unwillingness before or during penetration, her partner must exercise care to discern these cues and cease the activity. Considering the case where the woman consents because she knows that her lack of desire may give way to desire, her partner must, at least, potentially exercise positive care to be able to make the transition from undesired to desired sex when/if that happens.

Thus, caring entails an active commitment to recognize and respect the partner's agency, ensuring that consent is effective in identifying and properly responding to the dynamic nature of what is wanted and permissible, and unwanted and so

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impermissible, in sexual activity.[31] Care embodies the consent-giver's competence and commitment to preserving their partner's autonomy throughout their sexual encounter, and evidence of that care serves to warrant the trust necessary for fulfilling *TC*.

Now, there are a few things left to unpack here: (1) what "care" entails in terms of the relationship established between sexual partners; (2) what is required from the consent-receiver; and (3) how, in practice, the consent-giver may assess their partner's care to decide whether to have sex with them.

5.3. A mutual conception of care

Care is often seen as an asymmetrical stance, starting from the moral claims of particular individuals, as highlighted by the parent–child dyad (Held 2007, 10). Applying this conception to sexual relationships, particularly heterosexual ones, is problematic because it perpetuates a patriarchal stance in which one person, typically the woman, is seen as passive and "giving herself" sexually, while the man is perceived as "taking" and therefore expected to assume a responsible and dominant role within the relationship. Instead, I suggest we use "care" as an idea that applies to our thick relationships as such, grounded in the interconnectedness and interdependence that shape our relationships.[32] In this way, care is mutually present, and all parties must have a sensitivity and disposition to their partner's agential capacities.

This mutual conception of care allows us to apply it to all kinds of relationships without assuming that one side is submissive to the other. The interdependence between sexual partners means that each person involved takes on active and passive roles simultaneously, acting on and being acted on by their partners. The understanding of our sexual stance as both active and passive is important here, and although it may seem to be quite trivial, the passive stance is often seen as a characteristic of cases of unusual power asymmetry, such as in domination play. As an example of these claims, Kukla requires a trust of the same kind as that I'm proposing here for the ethical performance of consensual nonconsent (CNC) scenarios, in particular, where one turns to the will of another person. Namely, for them, one must trust the partner to have a clear understanding and unequivocal respect for one's limits—including the exit conditions to the act due to their submissive stand in that kind of scenario (Kukla 2018, 90). I contend, however, that this applies to all sexual relationships, as sex always involves turning ourselves over to the partner's will while having them turn themselves over to our will in reciprocity.

In sex, we make ourselves vulnerable, not only due to the potential use of force (which makes women especially vulnerable) but also by the intimate exposure it involves, and so the sexual arena, in general, must be founded on trust. This resembles the Kantian description of sex as a mutual use of sexual capacities, but it maintains a relation to our partners "as ends," caring for them as autonomous agents at all times.

5.4. Dynamics of care and mutual responsibility

The ratio between how active and passive one is in a sexual relationship is variable, depending on social power issues, gender dynamics, the relationship between the partners (e.g., whether it's a one-night stand or a long-term romantic relationship), as well as their particular preferences and the roles they'd like to play in sexual activity. These factors directly impact the level of care required of the consent-receiver, as well as the sort of evidence the consent-giver will need for being justified in giving consent.

Let us now focus on what this entails in terms of the responsibilities of the consent-receiver. The account I'm developing in this paper views consent as a two-way

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street, which means that in order to justifiably (and thus, validly) consent, one must trust the partner's compliance with the consent. However, the partner also has a role and a duty in demonstrating their trustworthiness and warranting trust. This applies to the valet, who must signal that they work in the restaurant and is the one designated to perform the parking service, to the doctor, who must present herself with the appropriate credentials and capabilities for performing medical procedures, and it's no different for our sexual partners. That is, they must show appropriate evidence of their competence and commitment to act in accordance with our consent, demonstrating that they are attentive, respectful, and *careful* about how they act with us sexually. Failing to provide our partners with expressions of care denies them the opportunity to give justifiable consent. Therefore, engaging in sexual activity with someone while knowing that they have not given justified consent is a violation, similar to knowingly engaging in sexual activity with someone who is impaired and unable to appropriately assess the consensual nature of the activity.

Expressions of care encompass all ways in which we demonstrate to potential partners that we care enough to be trusted sexually. These include elements present in the negotiative models, such as open communication, the demonstration of goodwill toward them and other human beings in general, sensitivity to facial and bodily expressions and social codes, avoidance of actions and expressions that demonstrate a lack of regard or disrespectful attitudes toward other people, and so on.[33] This is generally what we bring to the table when we first start chatting with someone on a dating app or on a proper date: we aspire to show ourselves as not only physically attractive, charming, or intellectually challenging, but also as safe to be around.

Thus, when we open the car door for them, share our college experiences, and discuss mutual acquaintances, we are offering them insights into our identity, values, and providing reassurances about our behavior through shared social circles. This would make it unlikely for us to act in a violating way. Everything in our interactions serves as evidence and indications of our character and willingness or commitment to act consensually. In addition, we try to show ourselves as capable of doing so effectively, through our communicative and social skills that are related to the sensitivity required in sex.

As said, expressions of care necessary to warrant trust vary depending on numerous factors, and greater care is expected to be demonstrated when engaging in sexual activity with someone who may be more vulnerable to violations of their will. For example, this expectation is prevalent in heterosexual, cisgender encounters, where there is a perceived potential threat to women. In such a context, the man is required to express care to a greater extent when engaging sexually with a woman than he would if he were engaging with another male, simply because he poses a greater threat to her physically than he does to a male partner.[34] In contrast, it is less likely that a woman will be able to act without a man's consent by virtue of his ability to unilaterally stop the activity. Therefore, heterosexual females don't need to express as much care when engaging with a male, for the latter knows their consent will be likely effective no matter what.[35] Conversely, there may be instances where the need for care is less emphasized on both sides, such as when engaging in sexual activity where parties have equal control over the situation. The specific dynamics and circumstances influence the degree of care expressed in different interactions.

Casual sex similarly demands a certain level of care, though perhaps not as much, given the spontaneous nature of the decision. This spontaneity may lead to taking a calculated risk, thereby lowering the bar for justifying consent.[36] In contrast, when engaging in higher stakes sexual activities, such as kink activities, the bar rises significantly, and more expressions of care are necessary for warranting trust—as we indeed find

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among kink or BDSM practitioners who place a great deal of importance on communication, consent, and a safe environment before engaging sexually with each other (Kattari 2015, 887).

Now, as I have said more than once throughout this paper, we are treating consent as a two-way street. This entails the consent-receiver having a duty to warrant trust and being sincere in their expressions of care, which is the big novelty of my account and prevents violators from waiving responsibility by simply claiming they got a "yes." However, it also makes it imperative for the consent-giver to actively seek justification for the consent they give. Therefore, they should also be responsible (and accountable) if they knowingly consent without justification or simply fail to attend to the relevant evidence. No matter how attractive and charming the person is, they must talk to them first and get a sense of what kind of person they are. Are they respectful and understanding of boundaries, or do they tend to objectify relentlessly and inappropriately touch them? Recognizing signs like these is a duty the consent-giver owns to themselves, in a Kantian sense, that is, in respect of their own autonomy.

The examples I previously raised, regarding the different standards for justifiable consent between genders and different types of relationships, already shed some light on the importance of the consent-giver properly attending to expressions of care. That is, requiring enough evidence for their partner's care is important for the sake of one's own physical safety, as well as for their perception of themselves as agents, by appropriately considering what may compromise their autonomy. Failure to do so for reasons within their responsibility—excluding cases where they were deceived by false expressions of care or unable to attend due to other autonomy-compromising conditions (e.g., being underage or impaired by substances)—constitutes a violation of their duty to themselves, compromising their autonomy regardless of whether sexual activity occurs.

In light of the significance of care in addressing sexual *TC*, it becomes clear that a comprehensive understanding of sexual consent requires us to recognize the shared responsibility of all parties in building justified and valid consent in this arena. With this understanding, we may now address some potential challenges to the notion of care within the context of *TC*.

6. Objections are not roadblocks but stepping stones to clarity

Introducing *TC* as a necessary condition for valid consent does indeed raise the bar for what qualifies as consensual. I believe it doesn't change much in the practices of consent in most arenas, as *TC* has always been present there (implicitly, at least). Therefore, I believe there's no need to defend it further (at least not under the specific conception of trust on which I've based this requirement). However, as said, this condition has been overlooked in the sexual arena, and so its fulfillment by virtue of care potentially changes things in our sexual practices.

I admit that the necessity of care is more difficult to swallow, so I would like to devote this section to some objections that will also serve us in clarifying how my account functions in practice. The objections I will discuss are as follows: (1) that care is incompatible with Hawley's commitment account of trust; (2) that it places an overly paternalistic demand on sexual consent and jeopardizes sexual agency; and (3) that it sets the bar too high for valid consent, potentially labelling casual sex as nonconsensual, or merely faulty sexual interactions as rape.

The first objection holds that care, defined as paying special attention and being sensitive to the partner's will, is tied to a will-based conception of trust, such as the one

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defended by Baier, which contrasts with Hawley's commitment account. If this is true, then not only do I have a problem of coherence in my view, demanding different things for different instances of consent, but it may also seem like I'm packing too much into the notion of valid sexual consent, to the point of going beyond permissible sex to good or ideal sex. To refresh your memory, Baier defines trust as reliance based on the trustee's goodwill toward the trustor. This demands a commitment to the person rather than the action, in addition to providing explicit moral content to the trustee's motivations. This is indeed quite similar to what we achieved by introducing care into sexual consent. That is, in response to sex's non-contractual nature, care consists of being sensitive to our partner's will in a way that can't be reduced to particular actions, and it is difficult to conceive it in non-moral terms. However, we should note that these similarities are merely in content.

Hawley's commitment account is less demanding in that it allows trust to take different forms, including morally motivated ones, such as Baier's. The commitment behind *TC* is to act in consensual ways, and it isn't particularly directed toward the trustor. However, acting consensually entails acting in accordance with their will, and contingently, being sensitive to them. Such assessment of one's will is often possible only under moral or emotional motivations towards the partner (or to people in general), but those are only contingent. For the sake of the argument, we may consider the following case. Suppose Tony completely disregards the will of his sexual partners but is highly concerned about the negative outcomes of violating their will during a sexual encounter. To avoid missing any changes or hidden cues of his partner's will during sex, he asks for the help of his friend Karin. Karin is a caring individual, attentive and sensitive to people in the way required for *TC*, and so she observes Tony's sexual interactions (with the permission of his partners), and whenever she senses any relevant changes in Tony's partner's will, she electrocutes Tony, prompting him to stop and check in with his partner. This case isn't ideal in many ways, but it succeeds in preventing Tony from violating his partner's will, even though he has no regard or care for them. The capacity for care in this case is outsourced, and therefore no goodwill could be attributed to Tony. However, his commitment to effectively maintaining the consensual nature of the activity exists, and so his partner's trust can be justified.

The second objection, inspired by Anita Silvers (1995) on the difference between justice and care in disability ethics, claims that by grounding consent between partners on care, we create an asymmetrical relationship that raises concerns of paternalism (1995, 40–41). When the consent-receiver takes an active role in acting upon their partner, they determine how sensitive they should be toward them. As a result, the consent-giver assumes a subordinate role that persists as long as they remain in that state. This is a valid concern, but we can address it, as Silvers herself suggested, by ensuring that care takes place "within a frame of sharing or collectivizing or equalizing practice which corrects its fundamental asymmetry" (1995, 41).

In my account, I highlighted that care in a sexual context embodies a state of interdependence and is therefore symmetrical. When I refer to one sexual partner as the "consent-receiver" and the other as the "consent-giver," I am making an artificial distinction. Although this distinction is important for differentiating between different instances of consent within the same activity and treating each one appropriately, we must note that all participants should assume both positions. In truly consensual sex, they both give and receive consent, and they both care and are cared for. This applies to all sexual interactions, even those that may seem to involve significant differences in power dynamics between partners. A prime example of this can be found in BDSM "D/

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s" dynamics, where one partner (the Dom) assumes a dominant role, while the other partner (the sub) submits themselves and, supposedly waives control over their interaction. Although the partner taking on the role of the "Dom" assumes a dominant position, the "sub" also possesses control over the "Dom," on a psychological level that goes beyond the explicit restraints that bind them. Not only does the use of discursive tools, such as safe words, allow the "sub" to ultimately control the activity by halting their partner's actions whenever they desire, but the responsibility Doms assume in these relationships turns them submissive to their partner's will in a profound sense that equalizes the practices of care (Moore 2023). This is true for these very extreme dynamics, and also for more mainstream sexual interactions. Consensual sex requires such a symmetry, and thus, it can accommodate practices of care without falling into paternalism.

The final objection pertains to the valid concern that my account may be overly demanding. One could argue that by mandating sufficient evidence of trustworthiness to validate consent and, at the same time, expecting individuals to furnish their partners with comparable evidence of their capacity and willingness to act consensually, we are placing an excessive burden that can detract from the spontaneity and enjoyment we highly value in sexual interactions. This concern is especially relevant for those of us, like myself, who advocate for a liberal and sex-positive approach, and expect plausible account of sexual consent to endorse casual sex and even alternative sexual practices, such as CNC mentioned above or anonymous sex. Additionally, it may be argued that such an approach risks categorizing merely "problematic" sexual encounters as outright rape, which could be seen as not only too harsh but also incorrect.

While I can imagine a reading of my account that implies that consent can only be reached in a long and convoluted interaction, I believe that with some important clarifications we may smooth things over and bring them closer to what we see as justifiable and safe, but still flowing, spontaneous, and natural ways of consenting to sex. The requirement of justifiable consent embodied in *TC* implies that there's a bar for valid consent and that one should not let others do sexual things to them without attending to it, nor sexually act on others without warranting them the possibility of doing so. However, it does not specify where to set this bar, and I explicitly state that it varies based on the dynamics we have with our partners and different pragmatic considerations, as well as our confidence in our ability to enforce consent.

Following Kukla (2021), consent is not only possible under perfect conditions; it exists in degrees, much like autonomy. Therefore, we can rationally assess and set the level of evidence we require to trust our partner's ability to act within our boundaries, as well as the appropriate level of evidence we need to provide in return. When deciding to have sex with someone we just met at a bar, one may rationally decide to gather less evidence for the sake of spontaneity, but must still approach the interaction in a way that can justify that the partner can be trusted to make the one-night-stand they are about to have consensual. This is exactly what people do when they try to grasp the kind of person that their potential partners are, whether they are appealing or "creepy," or simply by asking for information about them, such as their names, what they do for a living, etc.

In settings where communication may be limited and so is the possibility of assessing another's levels of care, alternative ways to justify trust may be available. For instance, consider cases of anonymous sex, as they may play out in play parties or bathhouses. Although the consent-giver can't say much about the kind of person that their sexual partner is, much could be said about the settings and communities within which

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they are meeting to warrant care from other sources and justify trust. These communities, precisely to ensure safety, have guidelines, expectations, and rules of conduct tailored to address the limited communication and personal assessment found in more mainstream sexual settings (*GQ* 2023).[37] Furthermore, members within these communities may exhibit unique forms of care and attentiveness, attuned to their distinctive experiences and particularities.[38] These may manifest in looking out not only for their own partners but also for other individuals in those venues. Additionally, these venues frequently employ "consent monitors" who observe and may exercise care, intervening if they perceive consent violations or signs of unwillingness that might be missed by the relevant consent-receiver (similar to the scenario of outsourced care I've drawn in the first objection). Thus, in a variety of ways, my account shows that spontaneity is possible without hastiness, promoting rational decision-making rather than recklessness in sexual encounters.

Finally, regarding the concern that my account risks categorizing merely "problematic" sexual encounters as outright rape: Following the rationale that consent comes in degrees, deviations from consent should be viewed similarly. Therefore, not every sexual act lacking sufficient justification should be classified as rape, and the absence of adequate care for one's partners does not automatically make someone a rapist. The nuanced nature of consent implies varying degrees of faultiness. This perspective shapes our understanding of different types of consent violations, with rape representing the most severe form involving explicit actions contrary to one's will. It is crucial to recognize that other violations should be assessed proportionally based on the extent to which consent was unjustified and, consequently, invalidated.

7. Looking ahead

Although we have discussed in this paper the specific aspects we should consider when establishing not only valid consent but also safer intimate relationships, I still have concerns about the subjective interpretation of care and its susceptibility to manipulation and outward deception. There is still work to be done in exploring how the idea of consent as a two-way street, rooted in trust and care, can be effectively implemented and advocated for in the public sphere.

This should not diminish the significance of the ethical discussion developed in this paper. Discussions on consent often aim for legal determination due to the general understanding that obtaining valid consent is not a challenging task, nor is respecting someone else's consent. Yet, as illustrated in the example I introduced at the beginning of this paper, what we perceive as consensual, for both parties may not truly be so due to a lack of attention or awareness to *TC* and what it entails. It is crucial to highlight the flaws in our current practices and allow for individuals to implement them in their relationships.

Nevertheless, the legal discourse plays a crucial role in enforcing the requirements of *TC* in cases of negligence in giving consent, as well as addressing the absence of appropriate care from the consent-receiver. It is far too common for defendants in cases of sexual violations to attempt to evade responsibility by simply claiming they received consent, but in a legal framework that considers *TC* and my understanding of care, the burden of proof shifts back to the defendant to demonstrate that they exercised appropriate care toward the alleged victim. Given the unfortunate prevalence of such cases, the framework I provide here should ultimately contribute to legal progress and the development of policies aimed at combating sexual violations.

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Notes

1 This does not, however, rule out the possibility that someone may feel violated after a sexual encounter as a result of external factors. Individuals who have experienced rape or other forms of violation, for example, may still feel violated even after engaging in consensual sex. Furthermore, there are socio-historical and existentialist explanations for this, as pointed out by Alcoff (2018), who argues that feelings of violation can occur when a vulnerable developing sexual subjectivity collides with social judgments/expectations about sex. In such cases, the feeling of violation is triggered rather than caused by the consensual sex.

2 To back this up empirically, we may look not just at testimonies of people we know, as what led me initially to write this paper, but also to recent studies that indicate that such feelings, commonly including feelings of violation, are not uncommon among men and women. For example, a study from 2015 indicated that 46% of female university students reported to have experienced PCD (postcoital dysphoria, or "post-sex blues") symptoms, characterized by feelings of sadness, agitation, aggression, and violation after consensual sex—even if the sexual activity was loving, satisfying, or enjoyable (Baxter 2015; Schweitzer et al. 2015). Past studies have speculated that those feelings result from hormonal shifts women experience after sex, but this doesn't hold water given that men also experience PCD, although at a slightly lower rate of 41% (Schweitzer et al. 2015). Many professionals now see the etiology of PCD as multifactorial, with psychological and affective factors having a great role in these experiences. Considering the latter factors, PCD seems to have a common etiology with non-consensual sex, as when one doesn't give consent, or their consent was invalid.

3 Those conditions are widely agreed upon, but a useful overview of them can be found in Mason (2021, 182).

4 My intuitions here are similar to those expressed by Suzy Killmister (2013), and in the same way it suggests that we should take into account externalist conditions in evaluating autonomy. However, while she attributes the dissonance between one's autonomous decision-making and their actions to false beliefs the agent has about the relevant action, I argue it is enough for the agent to be unjustified in deciding to act in a certain way for there to be a detachment between the action they perform and their autonomous stance.

5 This idea is inspired by Strawson who suggested that we should think about the relationships we have with other people and the importance of *their attitudes and intentions toward us* in shaping a variety of reactive attitudes in ourselves (2008, 6–7). While Strawson wrote this in the context of resentment and gratitude, the same idea can be applied to trust, requiring "an attitude or motivation expressing (or evincing due regard for others in the normative context at issue" (Carse 2010, 15).

6 Although one of my aims in this paper is to propose a novel condition for consent—and thus, I am discussing what consent consists of—my argument supposedly flies quite under the radar of the debate between attitudinal and performative accounts of consent. In a nutshell, attitudinal accounts of consent take consent to be a mental state, a subjective and internal position of one's will to make it permissible for another person to act on them in certain ways. In this account, consent is also separate from its expressions, behaviors, or any other forms of conveyance (Alexander 2014; Dressler 1998; Hurd 1996; Husak 2006; Renzo 2022). Performative accounts, on the other hand, find the conveyance of consent to be a necessary feature of it, without which consent simply does not exist (Archard 1997; Dougherty 2015; Healey 2015; Manson 2016; McGregor 2005; Raz 1988). While this dispute lies in whether conveying consent is part of what constitutes consent itself, my argument for *TC* applies to the preliminary stage in which one decides whether one wants to make effective the desires that lead to granting consent. That is, I provide a normative account of the mental state which both models agree on, and claim we need a more robust version of it, one that not only takes into account the agent's desires but also practical considerations such as the compliance of the consent-receiver(s). Nonetheless, it is important to note that if I'm correct about the importance of justifying trust for the validity of consent, then communication becomes crucial for actualizing consent. The consent-receiver has to demonstrate their commitment to act only within the scope of consent for the consent-giver to possibly fulfill *TC* and appropriately form consent's mental state. In this way, my argument is congruent with performative accounts, and I hope it can serve to convince

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proponents of the attitudinal account of the necessity of communication—not merely as something that is added to the mental state they target, but necessary to its very formation.

7 This condition not only addresses the permission to ϕ but in its second part it emphasizes that consent is particular to a certain act and group of acts and cannot be extrapolated to further actions upon the consent-giver. The idea is that consent is for B to ϕ (a specific action) and not simply for B to do things to A.

8 Here, I adopt some useful terminology introduced by Avishai Margalit (2004, 2017), who distinguishes between thick relationships, the kind we have with family, friends, and lovers; and thin relationships we have with people who we don't know. I believe it's clear that we can use the language of trust for both. However, as we will shortly see, we require different things for trusting each of them.

9 Baier's account is worth mentioning here for a couple of reasons, besides her paper being a landmark in the philosophical literature on trust. First, to show how moralistic accounts of trust are not able to accommodate consent in all its different arenas. Second, because the fulfillment of *TC* in sexual relationships later on will share a lot of the content we see in Baier's account. But that content will be imposed by the particular conditions found in sexual activities and not by the nature of trust and consent.

10 While I'm inclined to endorse the commitment account of trust, in this paper, I'm not concerned with the nature of trust *per se*. Therefore, I will use the term "trust" to refer to what the commitment account entails without taking a stance on whether it is indeed trust or some other property.

11 This dynamic is especially important given our focus on sexual relationships, where mutuality is fundamental.

12 This parallel in inspired by Thomson (1986, 206).

13 The classical account of knowledge goes back 2,000 years, all the way to Plato. It would not only be difficult but wasteful to try and trace it back to particular philosophers. However, to make things easier, useful and recent overviews of what it entails can be found in Ichikawa and Steup (2018, sec. 1) and McCain (2016).

14 As it emerges from some views on assurance, such as Moran (2005).

15 This point is not completely undisputed, but it is widely accepted by most contemporary epistemologists that justification (of some sort) is necessary. At least, among other things. This is good enough for the purposes of our analogy.

16 Joseph Raz defines justified trust as when "trust is reasonable given either that there is a trusting relationship between the people concerned, or that trusting the person concerned is reasonable in the circumstances given" (2001, 129).

17 I don't explicitly include justifiability as part of the original formulation of *TC* as it is a requirement for the proper formation of trust itself; without it, granting trust would simply be inappropriate. For a more detailed account on the epistemology of trust, see Baker (1987); Webb (1992); and Wanderer and Townsend (2013).

18 Thanks to an anonymous reviewer for this case and pointing out that our satisfaction with an action beyond what we consented to might come across as consensual, giving me an opportunity to address this possible concern.

19 There are some interesting ways this could play out: This could be due to providing too much benefit of the doubt to the consent-receiver, the consent-giver misunderstanding their own wants, or the consent-giver providing consent without appropriate trust.

20 By "passive" here I mean that, in the capacity of being consent-giver, one's being acted on, and thus, while they are engaged in a (joint) action, they are momentarily holding a passive stand.

21 I bracket here exceptions to the requirement for informed consent in medical consent, such as when the patient is incapacitated or life-threatening emergencies with inadequate time to obtain consent (Shah et al. 2023).

22 Sex may become centrally contractual in transactional sexual activity, where an explicit exchange of goods or services is agreed upon, involving more than the decision to have sex for the sake of sex.

23 Kant does not talk about sexual consent *per se*, as he considers sex to be morally depraved by nature and consenting to it is consent to be treated as a means. However, his view is relevant here for being highly influential by making morally permissible sex depend on the contract of marriage.

24 For a detailed explanation of the affirmative model, see Mason (2021, 190–91).

25 I thank Elinor Mason for making these non-contractual dimensions salient to me in her talk "Consent and Consensuality" (The Hebrew University of Jerusalem's Center for Moral and Political Philosophy Annual Conference, Jerusalem, June 21–24, 2021).

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26 HuffPost's Emma Gray (2018) refers to this "gray area" as encompassing all "sex that feels violating even when it's not criminal." An excellent overview of the recent feminist history around this terminology and its philosophical implications can be found in Woodard (2022).
27 Similar aspects of sex's nature were described in objections to virtual contracts for sexual consent as a response to #MeToo: "people change their minds. Perhaps because one partner initiates sexual practices listed above. Or because something hurts too much. Or in the end, you're not aroused enough. Or you fall asleep. Or things are too weird, and out of a sudden, you feel uncomfortable." (Q 2018).
28 Tom Dougherty defines high-stakes consent as the kind required to prevent a serious moral wrong, asserting that sexual consent serves as its paradigm category (2015, 227).
29 This idea of care resonates with some recent accounts of consent, such as Anderson (2022) and Garcia (2023). However, I believe that I provide a clearer account of how this attitude interacts with consent (instead of defining it) and how it helps us ground consent in the consent-giver's autonomy.
30 Here lies the difference between my account and affirmative or enthusiastic models of consent, as my account doesn't require unambiguous, direct endorsement of sexual activity through an explicit "yes." The ability to care for another's will extends beyond verbal communication, facilitating a more organic and spontaneous form of sexual communication that, in turn, better regards for the partner's autonomy.
31 While I endorse this idea of care and believe it is useful for us in finding a way to address the non-contractual nature of sex, as suggested by Lamb et al. (2021), I argue it isn't something external to consent that plays a role in making sex morally permissible, but the very thing that justifies consent and makes it valid in the first place.
32 The emphasis on interdependence and mutuality is based on Hamington (2004, 4).
33 Kukla lists some of these as tools for scaffolding consent and making it possible (2021, 286–88), which supports my claim that *TC* is the true condition that underpins those models, and care represents a more holistic approach that includes all tools that can assist us in establishing trust in our sexual partners.
34 I provide an example here that centers on the risks associated with disparities in physical force within heterosexual, cisgender sexual relationships. Nonetheless, this is not to downplay the significance of other factors that may contribute to an increased risk of sexual violation in those relationships, such as the gender-based power imbalances mentioned above; as well as in their LGBTQ counterparts, involving issues like stigmatization, barriers to help-seeking, and disclosure experiences, among others. A comprehensive evaluation of the levels of care required to justify trust must take all these factors into account.
35 I'm referring to the average difference in physical strength between males and females, rather than the fact that male's participation in sex often involves a penetrative aspect, which can contribute to their relatively lower vulnerability to certain forms of sexual assault.
36 This claim may be disputed, as I argue that one's desires can move the threshold for sufficient evidence for justified consent. I stand by this, as taking a conscious and calculated risk, even if it may result in the violation of autonomy, is sometimes necessary to exercise our agency. While I believe this doesn't make our decisions any less rational, I won't be able to go further into this argument within the scope of this paper.
37 These norms may be specific to the venue or relate to the alternative communities that cultivate such encounters.
38 For instance, Mohr's observations within the gay community highlight heightened attentiveness in sexual experiences owing to shared conventions and experiences, resulting in their venues, such as bathhouses, being extremely "peaceful, quiet and non-violent spaces" (Mohr 1994, 199–200).

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Eli Benjamin Israel is a PhD candidate in the department of philosophy at Temple University working on ethics, moral psychology, and Kant. He is currently working on questions of autonomy, trust and consent, with a special interest on how those play out within sexual contexts.

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