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## **The Distinct Wrong of Sexual Attacks**

by

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# Abstract

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Sexual violence is morally abhorrent and occurs with appalling frequency. In this thesis, I argue that we are correct to recognise sexual violence as seriously wrongful. Specifically, I argue that sexual attacks perpetrate a wrong that is not present in non-sexual attacks.

This thesis begins by raising a problem for widely held views in sexual ethics. In order to explain why sexual attacks perpetrate a distinct wrong in virtue of being *sexual* attacks, it seems that we are committed to the view that there is something morally special about sexual contact. The worry is that this might presuppose or entail conservative or restrictive approaches to sexual ethics and/or a traditional and misogynist view of women and women's sexuality. I formulate this problem as *the traditionalist's challenge*.

My focus in this thesis is on responding to this challenge, explaining the distinct wrongness of sexual attacks without appeal to a traditional or overly moralised approach to sexual contact. I discuss a range of accounts of the wrongness of sexual attacks. These explain the wrongness of sexual attacks by appeal to the victim's psychological suffering, the assailant's objectification of the victim, the importance of sex to a person's identity, and the victim's rights over their own body. I argue that each of these accounts is not entirely successful, but that they provide resources that are useful for explaining the wrong of sexual attacks.

Finally, I advance my own proposal. I develop an account of what it is for an attack to be sexual, arguing that an attack is sexual when the assailant sexualises the victim, which depends on the expressive significance of the contact imposed. I then argue that the distinct wrongness of sexual attacks can be explained by the expressive meanings attributed to this contact.

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# Introduction

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Rape and many forms of sexual assault are typically recognised as abhorrent moral wrongs. There is a range of other attacks and impositions, such as groping, voyeurism, indecent exposure (flashing), and unwelcome comments (cat-calling), which are generally recognised as having a sexual component. In this thesis, I argue that sexual attacks involve a distinct wrong that is not present in non-sexual attacks. The sexual nature of an attack makes the attack more seriously wrongful, and we have good reason to treat sexual assault differently to common assault.

There are many reasons that I take this project to be important. First, sexual violence is both extremely harmful and tragically frequent. As I discuss in Chapter 2, the psychological impact of sexual assault is often devastating. Even when sexual attacks do not have this impact, they nevertheless constitute serious wrongs. At the same time, these attacks are alarmingly common. The Crime Survey for England and Wales (CSEW) in the year ending March 2017 estimates that 12.1% (approximately 4 million) of adults between the ages of 16 and 59 have been subjected to sexual assault since they were 16 (Office for National Statistics 2018). It also estimates that, in the preceding 12-month period, 0.5% were subjected to rape or assault by penetration and 1.7% to indecent exposure or “unwanted sexual touching” (Office for National Statistics 2018). Women are far more likely to be subjected to sexual assault, with the survey estimating that 20.3% have been attacked since age 16 and 3.1% in the last year alone (Office for National Statistics 2018; Travis 2018). In the British National Survey of Sexual Attitudes and Lifestyles conducted between 2010 and 2012 (Natsal-3), researchers asked participants if anyone had ever made them have sex against their will. 19.4% of women and 4.7% of men reported that someone had attempted to make them have sex against their will, and 9.8% of women 1.4% of men reported that someone had “completed” sex against their will (Macdowall et al. 2013; Spiegelhalter 2015, 283–84).<sup>1</sup> Sexual violence is horrific and occurs with shocking frequency; we have good reason to enhance our understanding.

Second, the criminal law in many jurisdictions is such that non-consensual sexual contact constitutes separate offences to non-sexual contact, and these sexual offences carry higher criminal penalties as a result. Philosophical analysis of sexual offences is necessary to justify and appropriately apply these provisions of criminal justice. In Section 1.2, I show that there is an international trend of higher criminal penalties for sexual assault than for non-sexual assault and suggest that this relies

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<sup>1</sup> We should allow for the possibility that survey participants were unwilling to disclose that they have been sexually assaulted and that the survey therefore underestimates the prevalence of sexual assault.

on the moral claim that sexual attacks involve a distinct wrong. In Section 5.2, I argue that the very notion of what it is for an attack to be sexual is unclear, leading to inconsistencies in the application of criminal law. The application and justification of distinct sexual offences in law relies on an account of what it is for non-consensual contact to be sexual and an argument that these are distinctly wrongful. I engage with these problems as central foci in the thesis and believe that my project therefore has important implications for our criminal legal practices.

Third, while the existing philosophical literature on the wrong of sexual attacks is extensive, sophisticated, and insightful, there is scope for a novel perspective on these issues. The existing literature focuses quite narrowly on the wrongness of rape. As I detail in Section 1.8, I believe that this overlooks a more general phenomenon whereby a much broader class of sexual attacks involve distinct wrongs. Examining the full range of these cases can provide an important insight into the wrongness of rape that is obscured when one focuses on rape and not on other sexual attacks.

Furthermore, accounts of the wrongness of rape typically stipulate a definition of 'rape' or 'sexual assault' without examining what distinguishes these conceptually from non-sexual attacks. That is, there are no sustained attempts in the philosophical literature, to my knowledge, to explain what it is that makes an attack sexual. In Chapter 5, I engage with this question. Unlike many other accounts of the wrongness of sexual attacks, my account proceeds from an analysis of what sexual attacks are.

Philosophical inquiry into these issues is pressing and important. All the same, we should not lose sight of the fact that sexual violence is appallingly frequent and often severely traumatic. Philosophical methodology lends itself to abstraction. It therefore carries a risk that inquiry into the wrongness of sexual violence can become insensitive to the experiences of those who are subjected to these attacks and overlook that these are actual atrocities perpetrated against real victims.<sup>2</sup> Accordingly, I endeavour to draw on real-life cases rather than on more abstract thought experiments where this is possible and appropriate, and to appeal to the experiences and testimony of survivors of sexual violence where writing on this is available. All the same, I worry that my discussion at times becomes abstracted from the horrifying real-world experiences and consequences of systemic sexual violence. I can only ask that the reader be patient and forgiving if this is the case.

The structure of this thesis is as follows. In Chapter 1, I explain and motivate the problem. I first explain in more detail the idea that sexual attacks are distinctly wrongful. I then explain a formulation of this problem offered by David Benatar. Benatar (2002) argues that one can only explain the distinct wrong of sexual attacks

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<sup>2</sup> I use the term 'victim' rather than 'survivor' to accommodate those cases in which the assailant kills the person targeted in a sexual attack.

by appealing to the view that sex is morally permissible only within a committed relationship of romantic love. Benatar's categorisation of approaches to sexual ethics is reflected widely in the philosophical literature, but I argue that his formulation of the underlying problem is nevertheless flawed. I advance my own formulation of the underlying problem, which I call *the traditionalist's challenge*. According to the traditionalist's challenge, one can only explain the distinct wrong of sexual attacks by endorsing the claim that sex is morally special, and this view of sex entails a restrictive sexual ethic. In the remaining chapters, I consider a series of accounts that can be understood as attempts to answer the traditionalist's challenge and explain the distinct wrong of sexual attacks in a way that does not commit one to a restrictive sexual ethic.

In Chapter 2, I consider two accounts of the wrongness of rape, offered by Alan Wertheimer (2003) and John Gardner and Stephen Shute (2007). Wertheimer argues that rape is distinctly wrongful because it causes such severe suffering for the victim, while Gardner and Shute argue that it objectifies or uses the victim in a way that other assaults do not insofar as it subverts the social meaning of consensual sex. I reject these accounts but argue that objections against them offer an insight into the form that an account of the wrong of sexual attacks should take. Wertheimer's account, and Gardner and Shute's objections against it, offer a helpful model for the role that the experiences and suffering of victims of sexual violence should take in an explanation of the wrong of such attacks. Gardner and Shute's account introduces social meaning and objectification, conceptual resources that I go on to utilise in developing my own account.

In Chapter 3, I discuss the view that sex is central to a person's self or identity, and so rape is distinctly wrong because it attacks them in a way that targets something very important to them. This view is advanced in various forms by Jean Hampton (1999), Joan McGregor (1994), Jeffrie Murphy (1994), and Carolyn Shafer and Marilyn Frye (1977). I argue that these accounts cannot succeed because there is no interpretation of what it means for something to be central to a person's self-hood, identity, humanity, and so on, according to which sex is central in this way for each person and attacking someone by targeting something central to who they are is distinctly wrongful. I then discuss David Archard's (2007) development of this view. Archard (2007, 391–92) argues that persons are such that we have an important interest in sexual integrity, in much the same way as we have interests in happiness, knowledge, friendship, and so on. I dispute this argument on the grounds that sexual integrity is disanalogous with these other interests. While I disagree with these accounts, I find that they contribute important resources for understanding the wrong of sexual attacks. These accounts develop a notion of the expressive significance of attacks, according to which the assailant, by imposing non-consensual contact, conveys something about the victim's status, value, or entitlements. They also provide insight into the claim that the assailant treats or uses the victim as an object.

In Chapter 4, I examine the view that sexual attacks are wrong insofar as they violate the victim's self-ownership claims over their own body. I first consider a formulation of this advanced by Donald Dripps (1992, 1993) and Richard Posner (1993), according to which the wrong of sexual attacks is similar in kind to the wrong committed when a person's property rights are violated. I examine objections against this kind of account from Gardner and Shute (2007) and draw on the work of Gerald Cohen (1995) and Jesse Wall (2015) to show how a self-ownership account might overcome these objections. Specifically, I argue that a self-ownership account must treat the wrong of sexual attacks as very different in kind to the wrong perpetrated when a person's property rights over their possessions are violated, ruling out the kind of view advanced by Dripps and Posner. Following Judith Jarvis Thomson (1990, 225–26) and Archard (2008, 29–30), I propose that we view self-ownership as claims or rights over one's own body, where self-ownership has nothing else in common with ownership of property. I then argue that, while self-ownership claims might take a necessary role in explaining the wrongness of sexual attacks, they should not be understood as grounding the distinct wrong of these attacks.

In Chapter 5, I begin to develop my own account. I do not directly address the distinct wrongness of sexual attacks here. Instead, I argue that it is not clear how sexual and non-sexual attacks are to be distinguished conceptually and offer my own account of what it is for an attack to be sexual. After explaining the problem, I reject three accounts of sexual attacks; one that appeals only to popular intuitions, one that categorises an attack as sexual in virtue of the body parts involved, and one that categorises an attack as sexual in virtue of the assailant's motivation. According to my own account, an attack is sexual insofar as the assailant treats the victim as a sex object, or as if they were a tool to be used for sexual gratification. This does not mean that the assailant necessarily perpetrates the attack for sexual gratification or anything like it. Instead, I argue that some forms of contact acquire what Anne Barnhill (2013) calls a "default expressive significance", and convey that the victim is a sexual object regardless of the assailant's intention or motive. When contact with the relevant expressive significance is imposed, the victim is sexualised, and the attack is sexual.

In Chapter 6, I present my account of the wrongness of sexual attacks. Having identified what I take to be the distinguishing feature of sexual attacks in Chapter 5, I aim to show that this is morally significant and grounds the distinct wrong perpetrated in such attacks. I argue, following Hampton (1999), that sexual attacks impose a distinct wrong given the expressive harm inflicted onto the victim. These attacks convey an attitude towards or statement about the victim given social meanings or broad cultural views that are attributed to sexual contact. I propose that there is a widespread, and fairly minimal, view of sexual contact that it occurs for the gratification or pleasure of at least one party. Sexual contact conveys that both parties seek the sexual gratification of at least one of the participants. Sexual

attacks are therefore particularly cruel because the assailant not only violates the victim's self-ownership claims, but also conveys that they are complicit in the attack on themselves. There is a kind of victim-blaming implicit in the contact imposed in sexual attacks.

There are some limitations to my project, and particularly in my own explanation of the distinct wrong of sexual attacks. I offer a framework for grounding a moral distinction between sexual and non-sexual attacks, and I believe that my account goes a long way towards an explanation, even though some of the detail of my account is tentative or yet to be elucidated. Specifically, I leave open some questions about how my account would apply in cases in which the relevant expressive significance is not attributed to sexual contact and about how the expressive significance of acts is morally salient. A full defence of my account would therefore require further research.

# Chapter 1

## Benatar's Dilemma and the Traditionalist's Challenge

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### Section 1.1 – Introduction to Chapter 1

In this chapter, I explain and develop the problem that motivates my project. There is a widely-held view that rape and sexual assault are more seriously wrongful than most acts of non-sexual assault. If we are to explain this, it seems that the sexual nature of these attacks must contribute to their wrongness. However, progressives, liberals, and feminists have rejected traditional beliefs about sexual activity more generally, according to which sex is especially significant, mysterious, and central to women's lives. It is therefore difficult to make sense of the claim that the sexual nature of an assault exacerbates the wrongness of this assault. As we move towards seeing consensual sex as just another enjoyable thing people do together, it is hard to see how it could carry the kind of significance that would make sexual assault morally worse than non-sexual assault.

I examine a challenge to the claim that sexual attacks, *qua sexual* attacks, involve a distinct wrong. Benatar (2002) argues that one can only make sense of this by adopting a view that sex is special, which itself entails a conservative or restrictive sexual ethic for consensual contact. I consider a range of conceptions of sex and their resulting sexual ethical frameworks to show that Benatar presents a compelling problem. However, I argue that his challenge does not fully capture the underlying problem at play, and formulate my own version of this, which I call the *traditionalist's challenge*.

In Section 1.2, I note the view that sexual attacks involve a distinct wrong and set out some conceptual resources that I will draw on throughout the thesis. In Section 1.3, I explain Benatar's dilemma. In Sections 1.4, 1.5, and 1.6, I explain a range of approaches to sexual ethics in order to show the force of the challenge that Benatar advances. In Section 1.7, I argue that Benatar's dilemma is not the best mechanism to capture the relevant underlying problem. I develop my own formulation of this, the traditionalist's challenge, in Section 1.8. I close in Section 1.9 with some comments about the scope of the problem I set out and its links to the existing philosophical literature on rape.

## **Section 1.2 – The Problem and Some Methodological Preliminaries**

In this thesis, I aim to explain why sexual assault is seriously wrongful. Specifically, I hope to show that non-consensual sexual contact is more seriously wrongful insofar as it is sexual and that the sexual nature of an assault aggravates the wrongness of the assault. In this section, I note the widespread intuition that sexual violence constitutes a serious and distinct kind of wrongdoing and set out some conceptual resources that I find helpful in approaching this issue.

There is a widespread belief that rape and many forms of sexual assault are seriously wrong. Indeed, it is not uncommon to hear them described as some of the worst acts that one person can perpetrate against another. In many jurisdictions, a conviction for rape carries a very high penalty, and one that is higher than many other crimes. In the UK, for example, rape carries a maximum penalty of life imprisonment (*Sexual Offences Act 2003* s 1). The legal penalties for non-consensual sexual touching more generally are often significantly higher than for non-sexual battery.<sup>3</sup> This might reflect a broad recognition in these societies that sexual assault involves a distinct wrong that is not present in any or most cases of non-sexual assault. Jed Rubenfeld (2013, 1387) notes that every case of rape could be charged and punished as “assault or battery”, but that most jurisdictions recognise rape and sexual assault as distinct crimes with greater punishments than apply to (other) forms of assault. If this legal framework is to be justified, and assuming that the legal punishment for a crime should be proportionate to the wrongness of the crime (von Hirsch 1992), we require an explanation of what it is that makes sexual assault seriously wrong, and more serious than common assault, all other things being equal.

Many philosophers propose that sexual attacks involve a special wrong. For instance, Judith Jarvis Thomson (1990, 210) suggests that “trespass that takes the form of sexual use of a person is [arguably] the profoundest insult.” Stephen Law (2009, 69) claims that the sexual aspect of rape “usually makes it a more serious form of

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<sup>3</sup> In the UK, non-sexual assault only carries a similar penalty to sexual assault when it causes severe injury to the victim (Sentencing Council 2011, 3, 11, 23; The Crown Prosecution Service n.d.; *Offences Against the Person Act 1861* s 39; *Sexual Offences Act 2003* s 1-3). In Australia, sexual assault that does not meet the conditions for some other crime (such as rape) carries a maximum penalty of between 5 years and 10 years imprisonment, while the maximum penalty for common assault is between 6 months and 5 years imprisonment, each depending on the state (*Crimes Act 1900* (ACT), s. 60, 335; *Crimes Act 1900* (NSW), s. 61, 61KC; *Criminal Code Act 1983* (NT), s. 188; *Criminal Code Act 1899* (QLD), s. 335, 352; *Criminal Law Consolidation Act 1935* (SA), s. 20, 56; *Crimes Act 1956* (VIC), s. 31, 39; *Criminal Code Act Compilation Act 1913* (WA), s. 313, 323). In Canada, sexual assault carries a maximum penalty of 10 years imprisonment while common assault carries a maximum penalty of 6 months (*Criminal Code*, R.S.C. 1985, s. 271, 787).



assault than mere physical, violent assault”; and Jonathan Herring (2005, 516) proposes that “not only should a person not touch you against your will but a particular wrong is done...when that touching is of a sexual nature.” Alan Soble (1996, 134) argues that such attacks are often particularly humiliating exactly because they are sexual and that assailants impose non-consensual *sexual* contact in order to inflict psychological harm.

We might pose the problem as follows. All assaults (sexual and non-sexual) can minimally be described as unjustified non-consensual touching. Assaults vary hugely in severity based on a range of features, including the victim’s physical pain, the victim’s emotional suffering, physical injuries sustained by the victim, the invasiveness of the contact, the assailant’s motive, the assailant’s recklessness or negligence in causing further harm, and so on. One way to understand the relevant intuition here is that the sexual nature of an assault also aggravates its wrongness. That is, an attack is more seriously wrongful, all other things being equal, if it is a sexual attack.

Considering hypothetical cases may motivate this intuition further. The following are cases of sexual assault and corresponding cases of non-sexual assault, which I intend to be similar except for the fact that one involves sexual contact and one does not. The only morally significant difference appears to be the sexual aspect of the sexual assault case. To deny that sexual assault is more seriously wrongful than non-sexual assault commits one to the view that these cases are morally equivalent.

First, in a case of sexual assault, the victim is heavily unconscious. The assailant inserts his penis into her mouth and leaves. The victim never has any knowledge of the attack. She suffers no physical pain or discomfort, or lasting physical damage. In a non-sexual correlate case, the victim is similarly unconscious. The attacker repeatedly inserts his finger into the victim’s mouth.

Second, in the sexual assault case, the assailant grabs and strokes the victim’s clothed penis and testicles. In the non-sexual assault correlate, the assailant punches the victim’s penis and testicles with a clenched fist. This is painful but causes no injury.

I raise these cases to clarify what it means to say that an attack is more seriously wrongful insofar as it is sexual. Strikingly, the attacks in each pair are similar except that one is sexual and one is non-sexual. Therefore, one can only make sense of the claim that the first case is more seriously wrongful than the second by arguing that sexual assault is more seriously wrongful than otherwise similar cases of non-sexual assault. If there is a morally significant distinction between the cases, this must be because the sexual nature of an attack exacerbates its wrongness.

Throughout this thesis, I will refer to cases like these as ‘otherwise similar’ sexual and non-sexual assault. I use this term to stipulate cases for which the only morally significant difference is that one is sexual and the other is non-sexual. Accordingly, if

there is a moral distinction to be made between then, it must be on the basis that one is sexual and this is a morally salient consideration.

Finally, Archard (2007, 380) defines “core” harms of rape as those that are necessarily inflicted in such an attack, and “aggravating” harms as those that may exacerbate the wrongness of a particular attack but are not present in each instance of rape, such as physical injury, emotional suffering (which will not occur if the victim is unconscious and never discovers the attack), pregnancy, the transmission of disease, and so on. I focus on the core harms (or wrongs) of sexual attacks because I hope that my account will explain the serious wrongness of all sexual attacks, even those in which aggravating harm is not present.

### **Section 1.3 – Benatar’s Dilemma**

Benatar offers a compelling formulation of the problem that I have in mind. He proposes that there are two dominant approaches to sexual ethics. Either sexual acts are subject to the same ethical considerations as non-sexual acts, or sexual acts are morally special, and persons should only engage in sexual contact within a loving and committed relationship. The first view allows for a more permissive sexual ethic, perhaps entailing that all or almost all consensual sex is unproblematic. However, Benatar argues that only the latter view accommodates the intuition that sexual assault is seriously wrong in virtue of being *sexual* assault.<sup>4</sup>

Benatar (2002, 192) identifies the ‘casual view’ of sexual ethics, according to which sexual acts are morally indistinct from non-sexual acts. On this view, the sexual status of an act has no bearing on its moral permissibility or value, and sexual acts, in virtue of being sexual, are not subject to any further “moral constraints” (Benatar 2002, 192). Sexual activity is permissible if it is consistent with the moral norms that apply to human interaction generally.

On this view, sex is comparable to the consumption of food. While it is generally wrong to steal food and to force other people to eat, it is unproblematic to eat with a variety of people and with people one does not know (Benatar 2002, 192). The casual view of sex entails that sexual activity is the same, morally speaking. There is nothing wrong with promiscuity or with having sex with people one does not know, if one adheres to general norms about respecting the autonomy of others (by having sex only with consenting partners) and avoiding unnecessary suffering (by being

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<sup>4</sup> Benatar (2002) also applies this dilemma to sexual contact involving an adult and child, arguing that one can only consistently condemn adult-child sex by adopting a sexual ethic that entails conservative restrictions on consensual sexual contact between adults. This is outside of the scope of my project, in which I focus on non-consensual sexual contact imposed on adults, although I expect that my arguments have implications for Benatar’s dilemma as applied to adult-child sex.

responsible with contraception and in preventing the spread of sexually transmitted diseases). When one adheres to these broad moral norms, there is nothing problematic in casual sex, paid sex, group sex, public sex, masturbation, and so on.

Other theorists discuss this view, that a sexual act is morally permissible if it adheres to general moral norms that apply beyond the sexual sphere (Goldman 1977, 280–81; Lee and George 1997, 136–37; Primoratz 1999, 173; Singer 2011, 2). An analogy with driving a car is prominent in the philosophical literature (Benn 1999, 236; Goldman 1977, 280–81; Ruddick 1984, 280; Singer 2011, 2). According to this analogy, driving is not morally special in that there are no moral principles or ethical considerations that apply only to driving. There are certain moral prescriptions that appear to apply only to driving, such as adhering to highway regulations, remaining vigilant of pedestrians, and refraining from tailgating, undertaking, speeding, and so on. However, these are all straightforwardly derived from more general moral norms, usually those of avoiding unnecessary harm to other persons or perhaps considerations of fairness. According to the casual view, sexual ethics should be understood in a similar way. There are moral norms that apply only to sexual contact, but these derive quite straightforwardly from more general norms. Sexual assault is impermissible, for the same reasons that all unnecessary non-consensual physical contact is impermissible; cheating is impermissible given general norms against deception and promise-breaking; safe sex might be morally prescribed given general duties to safeguard the health of ourselves and those around us, as well as to avoid the negative consequences that often pertain to unintended pregnancies. These moral norms are all specific to sexual contact, but clearly emerge as applications of more general norms to the sphere of sexual acts.

Complicating matters, Bernard Williams (2012, 26) suggests that

it is both possible and reasonable to suppose that there is no distinctively sexual morality, in the sense of moral considerations that govern sexual relations and nothing else; while admitting the extremely obvious fact that sexual relationships are profoundly and specially liable to give rise to moral issues, of trust, exploitation, unconcern for the interests of third parties, and so on

Similarly, Sara Ruddick (1984, 280) claims that “As lovers, we must guard against cruelty and betrayal, for we know that sexual experiences provide special opportunities for each.” Williams and Ruddick claim that sexual contact is more likely than many other spheres of human interaction to involve or lead to moral wrongdoing. This does not make sex special in the sense that I discuss here. Williams and Ruddick claim that sexual contact is especially likely to involve violations of some moral norm, but this is consistent with the view that the only moral norms that apply to sex are those that apply more generally. Even if we grant that sex is unusually likely to involve moral wrongdoing, the relevant claim for proponents of the casual view is that this wrongdoing consists in the violation of some general moral norm and not one that applies specifically to sexual contact. We might also say that driving a car is “specially liable to give rise to moral issues” (B.

Williams 2012, 26) insofar as negligence can lead to severe injury or death to oneself and others, so the general moral prescription to avoid harm to others is particularly stringent in this context.

Opposed to this is the significance view. The significance view holds that sexual activity is morally permissible only if it is “an expression of (romantic) love” that reflects “reciprocal love and affection of the parties” (Benatar 2002, 192). On this view, sexual contact is permissible only if it meets two conditions. First, those involved must experience romantic love towards each other. Second, the sexual contact must reflect the romantic love and affection of those involved. This is more restrictive than the casual view and will probably render impermissible all instances of casual sex and paid sex, as well as most cases of group sex, given that it is difficult to conceive of instances of these acts in which all participants are in a relationship of mutual romantic love. We might also think that some sexual acts within loving relationships are impermissible on this view, if they fail to reflect the romantic love they feel for each other. If, for example, certain sadomasochistic acts fail to convey this attitude, then these acts will be impermissible on the significance view even where those involved are in love.

According to Benatar (2002, 196), the casual view cannot accommodate the claim that “rape...is a special kind of wrong.” The casual view holds that the sexual status of an act has no ethical implications. Therefore, it cannot recognise anything especially wrong with these attacks as cases of non-consensual sex. On this view, rape is no worse than a non-sexual attack that involves the same degree of suffering, bodily injury, physical invasiveness, experienced suffering, and psychological trauma.<sup>5</sup> The casual view is inconsistent with the claim that I raised in Section 1.2, that the sexual status of an attack exacerbates its wrongness.

This is reflected on Michel Foucault’s (1988, 200–205) comments on rape. Foucault (1988, 200) begins by endorsing the casual view as it applies to legal regulation and criminal law; no act should be punished just because it is sexual. On this basis, he argues that the criminal law should punish rape only as an act of physical violence, without increasing the penalty on the grounds that the violence is *sexual* (Foucault 1988, 204–5). He proposes that “it may be regarded as an act of violence, possibly more serious, but of the same type, as that of punching someone in the face” (Foucault 1988, 201). To recognise rape as a separate crime and to punish it more severely on this basis presupposes that sexual acts warrant regulation that non-sexual acts do not, and that sexual organs have a significance and warrant

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<sup>5</sup> It might be unfair to include experienced suffering and psychological trauma here. On one view, sexual violence is more seriously wrong than otherwise similar non-sexual violence exactly because it typically involves greater suffering and psychological harm. The claim that sexual assault is not more serious than non-sexual assault if the two inflict comparable suffering obscures the fact that sexual assault (on this view) inflicts greater suffering. I examine the link between the wrongness of sexual attacks and the experienced suffering of victims in Chapter 2.

protection that non-sexual body parts do not (Foucault 1988, 201–2). In Foucault's view, this reflects a moralist authoritarian view of sex as special, romanticised, or deviant, which ought to be rejected. Ann Cahill (2000, 44–45) succinctly explains his view: "why should an assault with a penis be treated any differently in the legal world than an assault with any other body part?" She adopts the legal analogue of the casual view, arguing that sexual contact should not be punished more severely in virtue of being sexual, so that that rape should not be punished except as physical violence or common assault.

Murphy offers a similar observation of the casual view:

I can imagine someone who has perhaps internalized the sixties view that our society has overmoralized sexuality and sexual activity, arguing in this way: Perhaps it is wrong to regard rape as anything more than an assault or an unlawful touching and perhaps the gravity of rape, as with other assaults, should be assessed roughly in terms of the physical injury inflicted. The mere fact that sex, or sexual penetration, is involved would, on this view, be irrelevant as an aggravating factor (Murphy 1994, 214).

Murphy's characterisation of the 'sixties view' is relevantly similar to the casual view; society has over-estimated the moral significance of sexual contact and we should instead view it, morally speaking, as no different to non-sexual contact. That rape is the non-consensual imposition of *sex* can therefore make no moral difference. On this basis, we should treat sexual assault in the same way as non-sexual assault, judging its severity only by appeal to the physical injury inflicted.

The significance view is initially unappealing to many audiences on the basis that it renders casual sex and a host of other consensual sexual acts impermissible. However, Benatar claims that, unlike the casual view, it can accommodate the special and serious wrongness of rape. Benatar (2002, 193) argues that the significance view explains the distinct wrongness of rape on the grounds that such acts "compel a person to engage in an activity that should be an expression of deep affection", treating an important aspect of sexual activity as being totally insignificant, and so "expresses extreme indifference to the deepest aspects of the person whose body is used for the rapist's gratification". On this view, rape is seriously wrong because it imposes contact that is only permissible as an expression of romantic love; as a result, rape wrongs the victim further by conveying that an important aspect of the victim counts for very little.

It is not yet clear why the significance view entails that the indifference expressed by the rapist is *extreme*, nor why it targets the "*deepest* aspects of the person" (Benatar 2002, 193, emphasis mine). Benatar may intend something like the following argument, which I sketch very briefly. In romantic love, an individual feels great affection for one's beloved as a unique individual. Troy Jollimore (2011, 89) argues that "Only the lover...looks closely, carefully, and generously enough to truly recognize the beloved in all her individuality", and Natasha McKeever (2016, 203, 209) adds that lovers "share their lives and identity." Romantic love engages and makes salient central aspects of a person's identity, as one values one's beloved as a

unique individual and seeks intimacy to the extent of sharing a life with them. On the significance view, rape is the imposition of contact that is appropriate only within a relationship in which people are engaged with the most intimate parts of their partner. It therefore might be said to show indifference to the “deepest aspects of the person” (Benatar 2002, 193) because it is the imposition of contact that should be expressive of regard and care for these aspects of a person in a manner that itself disregards something very important of the victim, namely, their stated preferences and autonomy. The indifference is extreme insofar as it pertains to these intimate aspects of the victim.

Benatar may or may not have something like this development of the significance view in mind. This proposal leaves much to be explained, including what it means for something to be a deep or central aspect of a person and how the link between sex and romantic love entails that rape conveys indifference to those aspects of a person that are valued in romantic love. Even with these steps explained, the significance view might lack the resources to explain the serious and distinctive wrongness of rape. I argue in Section 1.8 that this gives us a good reason to reject Benatar’s dilemma in favour of an alternative formulation of the underlying problem. At the very least, however, the significance view holds that the sexual nature of an act is morally significant, allowing for the possibility (if nothing else) that non-consensual contact is more seriously wrong in virtue of being sexual. Benatar shows that the significance view can draw on resources to explain the serious wrongness of rape that the casual view cannot.

Benatar provides a compelling insight. Permissive theories of sexual ethics are likely to be motivated by the underlying claim that sexual contact is morally like other acts and that sexual contact is not subject to additional moral considerations just in virtue of being a sexual act. This entails that sex is morally much like eating, conversation, and embracing; that is, there is no ethical reason to oppose consensual and safe casual sex, promiscuity, non-monogamy, group sex, and so on. The problem is that these views rely on a claim that is inconsistent with the claim that sexual assault is more seriously wrongful than otherwise similar non-sexual assault. In a move that is likely concerning to many feminists and proponents of a permissive or progressive sexual ethic, Benatar claims that we cannot justify the serious and distinctive wrongness of rape without endorsing a restrictive approach to consensual sexual contact. This insight is indicative of a compelling underlying problem even if Benatar’s discussion of the significance view is unsatisfying, or so I shall argue.

## Section 1.4 – Manifestations of the Casual View

In the next two sections, I will outline competing accounts of sexual ethics to illustrate the scope of Benatar's dilemma. In this section, I explain accounts that would be categorised as formulations of the casual view; in the next section, I focus on formulations of the significance view.

Alan Goldman (1977, 267) argues that "our concept of sex will partially determine our moral view of it", a suggestion that is echoed by Soble (2013, 3). It is therefore fitting to begin with accounts of what it is for an act to be sexual in order to understand how philosophers draw on these conceptions of sexual activity to advance a casual view of sexual ethics.

Goldman proposes a *plain sex* view, that "sexual desire is desire for contact with another person's body and for the pleasure which such conduct produces" and sexual activity is then just that activity that "tends to fulfil such desire for the agent" or is motivated by such desire (Goldman 1977, 268–69).

Goldman (1977, 280) argues that it follows from his account that there is "no morality intrinsic to sex" and that sexual activity is subject to the same norms that apply generally to human behaviour. His account is opposed to the idea that there are any moral norms that apply specifically to sex that cannot be derived straightforwardly from more general norms that govern human behaviour. As a result, "the fact that an act is sexual in itself never renders it wrong or adds to its wrongness" (Goldman 1977, 280). That is, the sexual nature of an act cannot make the act wrong or exacerbate its wrongness.

Goldman does not explain why his account of what a sexual act is entails a casual view of sexual ethics. I take the argument that he has in mind to be as follows. An act is sexual only insofar as it tends to fulfil the desire for contact with another person's body and for the pleasure that results. That an act tends to fulfil this desire is not morally significant. While we often view the fulfilment of desire positively, in this case it is a good "without much positive moral significance" (Goldman 1977, 282). Therefore, the sexual nature of an act cannot be morally significant because the feature in virtue of which an act is sexual itself has "no moral implications" (Goldman 1977, 280). It follows that there is no reason that the sexual status of an act would change the ethical norms that govern such conduct.

Igor Primoratz (1999, 44–46) agrees with much of Goldman's plain sex view, but objects to the suggestion that sexual desire is the desire for contact with another person's body because this entails that masturbation is "deviant" or not sexual at all. Primoratz (1999, 46) instead proposes a *plainer sex* view, whereby "sexual desire" is a "desire for certain bodily pleasures" and sexual activity is just the activity that "tends to fulfil" this desire. The relevant bodily pleasures are those that are

“experienced in the sexual parts of the body”, which he identifies as those body parts that “differentiate the sexes” (Primoratz 1999, 46).

On Primoratz’s view, sexual acts are distinguished from non-sexual acts only on the basis that they tend to provide pleasure in certain parts of the body. He therefore argues that there are no “moral rules and considerations that give expression to the distinctive moral significance of sex and apply only in the sphere of sex” and that “the sexual nature of our conduct makes it neither more nor less wrong” (Primoratz 1999, 173). The presence of a particular kind of pleasure makes no difference to the moral implications of the act in question, and this is all it means for an act to be sexual. As a result, the sexual nature of an act can have no moral implications, and we should not judge sexual acts by appeal to moral norms that we would not consider in judging non-sexual acts. Elsewhere, Primoratz (2001, 202) argues that consent is sufficient for morally permissible sex, and proponents of the view that consensual sex might nevertheless be impermissible appeal to the view that sex has “significance beyond a mere source of a certain kind of pleasure”. Primoratz believes that attempts to ascribe moral norms specifically to sex rely on a conception of sex that imbues it with significance beyond the fact that it consists in a distinct kind of pleasure. This is straightforwardly inconsistent with the plainer sex view, and so Primoratz rejects the claim that sex could be subject to distinct moral considerations. According to Primoratz, his plainer sex conception of what sex is entails the casual view, which in turn entails a permissive sexual ethic.

Jonathan Webber’s critical response to the *plain sex* and *plainer sex* views also offers a formulation of the casual view. While he offers an alternative conception of sexual activity, he agrees with Goldman and Primoratz that sex is subject only to those moral considerations that concern interactions generally. Webber (2009, 247) stipulates a distinctive phenomenal quality that our experiences of something might have and suggests that any act or desire is sexual if it is experienced in this way. While it is difficult to describe this phenomenal quality, he draws on the familiarity that many people have with desires or acts that are experienced in this distinct way, and the intuitive force of the claim that this is what determines that the act or desire is sexual. Giving an example, Webber (2009, 247) argues that “[k]leptophilia is easily distinguished from kleptomania because we understand that the enjoyment of theft can have or lack this quality.” An act of theft is sexual insofar as it is experienced in a way that involves this experiential quality. Webber (2009, 247) says that a desire is sexual just if “its occurrence can involve this quality”, and so sexual desire need not involve a desire for bodily contact with another person or for any kind of felt bodily pleasure. One’s experience of occurrences other than bodily contact can involve this phenomenal quality.

Webber (2009, 248) argues that “[s]ex is not morally special, our sex lives are governed by all the moral principles and concerns that govern our lives generally”. This is because activity is sexual just in virtue of the fact that it involves a certain phenomenal quality. The presence of this quality itself has no moral significance,



and so the sexual status of an act itself makes no moral difference. Actions cannot be subject to distinct moral considerations in virtue of being sexual because the feature that makes an act sexual is not morally salient.

Goldman, Primoratz, and Webber each defend the casual view on the basis of their own conception of what it is for an act to be sexual. Their argument, which is explicit in Webber's writing and implicit in Goldman and Primoratz's, begins by identifying some feature that makes an act sexual, and distinguishes sexual from non-sexual acts. The theorists note that this feature of an act has no moral significance and no moral implications. Therefore, the sexual nature of an act has no moral implications, and we must adopt the casual view.

These accounts illustrate that the casual view has widespread appeal. I believe that they also lend support to Benatar's claims about the implications of the casual view.

Goldman, Primoratz, and Webber each argue that sex is not morally special on the grounds that the feature in virtue of which an act is sexual itself has no moral implications. This is likely to generate a permissive sexual ethic, at least in comparison to traditional views. As long as individuals conform to general moral norms against causing harm to others and imposing contact without their consent, and so on, there is nothing problematic in the sexual contact that occurs. They deny, for example, that sex must be procreative or occur within a loving relationship, because these claims rely on the view that sexual acts are subject to distinct moral norms just insofar as they are sexual.

However, as Benatar argues, the casual view denies that sexual assault is more seriously wrong than otherwise similar non-sexual assault. Proponents of the casual view argue that sexual contact cannot be subject to further moral norms *qua sexual* contact because the feature of an act that makes it sexual has no moral salience. This applies as much to sexual *assault* as it does to consensual sex. Goldman, Primoratz, and Webber each claim that an act is not more or less seriously wrongful in virtue of being sexual because the sexual nature of an act is not morally salient. On this basis, they are committed to the claim that a sexual assault is *not* more seriously wrongful than an otherwise similar non-sexual assault. This is particularly striking in light of Goldman's (1977, 280) claim that the sexual nature of an act "never...adds to its wrongness". This supports Benatar's argument that the casual view cannot accommodate the distinct wrongness of rape.

Goldman (1977, 281) recognises that, given his commitment to the casual view, an explanation of the serious wrongness of sexual violence cannot rely on an appeal to its nature as *sexual* violence. He argues that

A rule against rape can therefore be considered an obvious part of sexual morality which has no bearing on nonsexual contact. But the immorality of rape derives from its being an extreme violation of a person's body, of the right not to be humiliated, and of the general moral prohibition against using other persons against their wills, not from the fact that it is a sexual act (Goldman 1977, 281).

Goldman argues that the serious and distinct wrongness of rape is not a function of it being a *sexual* attack, and his view is therefore consistent with the casual view. He claims that rape is seriously wrong only on the basis of general moral principles. Specifically, Goldman (1977, 281) argues that rape is seriously wrong because it violates the victim's body to an "extreme" degree, humiliates the victim, and uses them without their consent. Initially, this looks promising. It is an explanation of the serious wrongness of rape that does not appeal to the claim that there is something morally special about the sexual nature of the attack.

However, Goldman's explanation of the wrongness of rape is lacking. I argue in Section 2.2 that we cannot make sense of the wrongness of sexual violence by appealing to the suffering of the victim. I will focus presently on Goldman's claims about rape as using a person against their will and as an extreme violation of the victim's body. Goldman (1977, 218) is correct to note that the assailant in rape uses the victim "against their will". Whatever the assailant's motive, they do something to the victim without the victim's consent in pursuit of their own ends. The problem for Goldman is that this does not offer a morally relevant distinction between sexual and non-sexual attacks. We could say of any non-consensual contact, sexual or otherwise, that the assailant uses the victim against the victim's will. Goldman's argument fails to explain why rape is *seriously* wrong, and why we should treat it differently to any other non-consensual physical contact.

Goldman's (1977, 281) claim that rape is seriously wrong because it is an "extreme violation of a person's body" is similarly incomplete. I assume that any intentional and unjustified non-consensual bodily contact constitutes a violation of a person's body in some sense, especially if it is violent or injurious. On Goldman's view, it must be that rape is an *extreme* violation while most non-sexual attacks are not. Goldman does not explain what it is that makes rape an extreme violation, even though he is clearly correct to note that it is. The problem for Goldman is that he risks simply setting the problem back a step. He answers the question of why rape is seriously wrongful by claiming that it consists in the extreme violation of the victim's body. If his account of the wrongness of rape is to succeed, one must explain why rape is an *extreme* violation of the victim's body.

Many of the accounts that I discuss throughout the thesis might be understood as attempts to explain why sexual attacks constitute more extreme violations than otherwise similar non-sexual attacks, so I will only consider one possible interpretation of Goldman's claim here. Goldman might believe that rape is an extreme violation because it targets intimate areas of the victim's body. The violation is extreme because the attack covers even those parts of a person's body that are generally hidden, private, and deliberately made inaccessible. It is usually either penetrative, in which case the assailant invades the inner space of the victim's body, or envelopmentive, in which case the assailant's body surrounds and temporarily consumes a sensitive part of the victim's body. Archard (2008, 28) notes that body "parts...have a different significance to and sensitivity for the person" such that the

“touching of skin and the penetration of an orifice” are significantly different. Goldman’s claim that rape is an extreme violation of the victim’s *body* suggests that he has something like this argument in mind.

However, this interpretation of Goldman’s claim fails. First, we might worry about whether this argument really avoids imbuing sexual contact with moral significance. The argument I have raised relies on the idea that the genitals and anus are particularly intimate areas of a person’s body, and that this is why a violation that targets them is extreme. The problem is that it is hard to explain why the genitals and anus should be understood as intimate or private parts of a person’s body without recognising that they are often the focus of sexual acts. The idea that the genitals and anus/buttocks are intimate areas of the body seems to derive at least some of its appeal from the idea that sexual areas of a person’s body are especially private, which is an implication of the view that sex is morally special and subject to distinct moral norms. If there is nothing morally distinct about sexual activity and sexuality, it is not clear why the body parts typically targeted or employed in rape should be understood as especially intimate and why non-consensual interference with or using these parts constitutes an *extreme* violation.

Second, there are sexual and non-sexual attacks that target the same part of the victim’s body. The suggestion that a sexual attack constitutes an extreme violation and is therefore more seriously wrongful in virtue of the body parts targeted in the attack will therefore not ground the serious wrongness of rape. This is evident in some of the cases I discussed in Section 1.2. Consider the cases of an assailant who inserts their penis into the victim’s mouth and of an assailant who inserts their finger into the victim’s mouth. While the mouth might be considered an intimate body part for non-sexual reasons, it is equally involved in the sexual and non-sexual variations on this case. If the sexual variant is more seriously wrong and the violation more extreme, this cannot be because it targets a more intimate body part of the *victim*.

Primoratz seems to accept as an implication of his account that rape may not constitute a special wrong or a wrong that is significantly distinct from non-sexual assault. He suggests, in a manner not so far removed from Benatar’s discussion, that the view of rape as a special wrong may rely on “a conception of sex that endows sex with a special moral significance”, and that rejecting such a conception might commit one to viewing rape as “on a par with non-sexual battery” (Primoratz 1999, 159). Primoratz is open to the suggestion that the casual view, which he supports, precludes one from consistently viewing rape as a special kind of wrong. When he elaborates on what it means to reject specifically sexual moral norms, he claims that “Rape is not wrong as *sexual* battery, but as sexual *battery*” (Primoratz 1999, 174, emphasis in original). Primoratz is quite explicit here, and his comments lend support to Benatar’s dilemma; the casual view entails that rape is not more seriously wrong than non-sexual assault.

I have surveyed some formulations of the casual view to show the widespread applicability of one horn of Benatar's dilemma. Benatar identifies a popular trend in philosophical writing on sexual ethics. Considering these views lends credence to Benatar's claim that their proponents cannot consistently hold that sexual assault involves a distinctive wrong. If the sexual nature of an act has no moral implications, it is not clear how one could ground the general claim that sexual attacks, qua *sexual* attacks, are more seriously wrongful.

## **Section 1.5 – Manifestations of the Significance View**

Benatar's discussion of the significance view likewise captures an approach to sexual ethics that receives widespread attention in the literature, and accurately represents the implications of these views. I focus on two such accounts, offered by Roger Scruton and Vincent Punzo.

Roger Scruton defends a comparatively restrictive sexual ethic from a perspective of Aristotelian virtue ethics. He argues that erotic love is highly conducive to human flourishing, and that many sexual acts can quickly inculcate dispositions or habits that are inimical to developing an erotic love relationship. As a result, many consensual sexual acts are unethical.

Scruton (2006, 92–93) claims that sexual desire leads "automatically, but not inevitably" to intimacy, which in turn leads to the deep commitment of erotic love, for a few reasons. First, desiring another makes one vulnerable. It involves sexual arousal towards another, which consists in one's body responding to the other person in a manner that is out of one's control (Scruton 2006, 92). Sexual desire makes one vulnerable because one loses control of the responses of one's own body and this is prompted by the presence of the object of one's desire. Scruton (2006, 92) argues that persons can alleviate or guard against this vulnerability by developing a relationship of erotic love with the object of one's sexual desire when this desire is mutual. To be vulnerable around someone with whom one shares a relationship of erotic love is not distressing or threatening in the way that other vulnerabilities are.

Second, Scruton (2006, 31–32, 78) argues that sexual arousal and sexual desire involve "individualising intentionality". That is, they are directed at a particular individual as that individual. He illustrates this with the following case. Suppose that a man is engaged in sexual contact with another person, who he believes to be his lover. He then realises that the person touching him is not his lover, but someone else. "His pleasure (in the normal case) instantly turns to disgust" (Scruton 2006, 21), or so Scruton believes. Scruton (2006, 21) takes this to be evidence for the claim that the object of sexual arousal is a particular individual. Arousal involves

individualising intentionality because the associated pleasures are pleasures in contact with a particular individual, and sexual arousal and desire dissipate if one realises that one is not in fact engaged in an act with the particular individual that one believed. The individualising intentionality of sexual arousal and sexual desire might explain why sexual desire is a suitable precursor to erotic love, although Scruton is less clear on this point. What a person desires here is the unique individual at whom their desire is directed, and sexual desire therefore involves a kind of valuing of another person as a unique individual. We might think that this attitude towards another person is central to a relationship of erotic love (Jollimore 2011, 89; McKeever 2016, 203). Certainly, it would be odd to suggest that one person is in love with another while acknowledging that they would enjoy sexual contact with many other people in just the same way or that they do not value them because they are the particular person that they are.

Scruton's view of sex is that sexual contact is an effective and perhaps necessary mechanism by which intimacy and erotic love develops between two persons. He claims that erotic love is "the fulfilment of [sexual] desire" (Scruton 2006, 93). This does not mean that sexual desire or sexual contact always leads to erotic love, but that sexual desire in some sense aims at erotic love.

On these grounds, Scruton develops his view of sexual morality. He argues from a broadly Aristotelian virtue ethics approach that "human conduct" should aim at "happiness", understood as the "fulfilment of the person" rather than "the satisfaction of impulses" (Scruton 2006, 326–27). A person is virtuous insofar as they are disposed towards or have the habit of acting in a manner that is reasonable when faced with strong and conflicting urges. If a person develops their virtues through habitually acting in line with what is reasonable, then this will alter that person's desires, so that they "learn to want what is reasonable" (Scruton 2006, 329). To flourish as human individuals, we must develop virtues that incline us to want and act in line with what is reasonable, and we achieve this through habitual action.

Scruton (2006, 338) claims that "the capacity for love in general, and for erotic love in particular, is a virtue." He takes it to be a deeply fulfilling commitment that protects one's sense of self and provides a sense of importance in one's projects and goals. It is an important contributor to human flourishing and we therefore have strong (moral) reasons to enhance our capacity to form a relationship of erotic love and to avoid that which could hinder this capacity. Scruton (2006, 344) claims that sexual acts can very quickly become habitual, and so we should stringently avoid those acts that, when repeated, are inimical to the development of erotic love.

Scruton (2006, 339) claims that this justifies "a whole section of traditional sexual morality". Specifically, one should only engage in sexual contact in the context of a relationship of erotic love or perhaps when one is open to a relationship of erotic love with one's sexual partner. In casual sex and promiscuity, one engages in sexual

contact with no intention to develop a relationship of erotic love. One thereby develops a habit of engaging in sexual contact where this does not find its natural fulfilment in erotic love, and so hinders one's capacity to develop erotic love through a sexual relationship with another person (Scruton 2006, 339).

Moreover, casual sexual partners desire each other's bodies insofar as they are capable of providing pleasure. Scruton (2006, 342–43) believes that having sex in which one desires the other person just for their body and resultant pleasures leads people to develop a habit whereby they are more likely to have sex solely to enjoy physical contact with another body and the pleasure that this produces. This is not desire for the individual embodied person, but is instead a desire for their body. It aims primarily at sexual pleasure and sexual relief rather than sexual union with the unique individual. If this becomes a habit, then the agent will no longer experience sexual desire as desire for a person through that person's body, but instead experience simply attraction to the body of their sexual partner. They will no longer experience sexual desire directed at them as desire for *them* through their body, but simply as a positive evaluation of their body. This involves a separation of a person's body and self in the experience of the agent, which, given the importance of valuing another as an embodied human person and being valued this way in turn to erotic love, hinders a person's capacity for erotic love (Scruton 2006, 343).

Scruton (2006, 344–45) also argues that masturbation is unethical. When persons fantasise and masturbate, they take sexual pleasure in fictional events that involve no hardships or obstacles to sexual contact. While love relationships involve disagreement, compromise, vulnerability, and embarrassment, fantasies that persons typically employ when masturbating exclude these difficulties (Scruton 2006, 344–45). Persons who masturbate thereby develop a habit of experiencing sexual gratification without overcoming the challenges that occur in romantic relationships. Scruton (2006, 345) suggests that masturbation thereby makes a person less able to form fulfilling romantic relationships and to enjoy sexual contact in the context of erotic love.

Punzo likewise develops a restrictive sexual ethic from his view of the nature of sexual contact. According to Punzo (1969, 193), sex involves two people "giving their bodies, the most intimate physical expression of themselves", who have thereby "united themselves as intimately and totally as is physically possible". He justifies this by appeal to the observable physical movements of sex. When a man and a woman have sex, he says, "the man...has literally entered her", it is "a total merging and union on a physical level" (Punzo 1969, 193). Sex is distinct from other acts that people engage in together because it is a uniquely intimate physical union of two persons, and therefore involves the union of two selves.

Punzo (1969, 195–96) argues that all premarital sex is morally wrong because it separates or alienates the bodies of the agents from their selves. According to Punzo (1969, 195), sex expresses or conveys a union of two persons and a commitment

between them. When married persons have sex, they engage in a physical union that reflects the union that they have already established between their selves and their lives. In premarital sex, persons do not convey or reflect any actual union or commitment they have made. In this way, premarital sex is “depersonalized” and those involved are reduced in their “most intimate physical being to the status of an object” (Punzo 1969, 196). In premarital sex, persons treat their own sexualities and bodies, and those of their partner, and separate from their respective selves. They treat each other as depersonalised bodies or objects for the purposes of sexual gratification rather than engaging with each other as unified and integrated selves. Punzo offers a strong formulation of the significance view; not only must sex express and take place in a relationship of erotic love, it is only permissible in a relationship in which the partners have made a lifelong commitment to each other.

Scruton and Punzo both advance significance views of sexual ethics. These accounts provide resources to explain the serious wrongness of sexual assault that are not available to the casual view, reinforcing Benatar’s dilemma. Scruton and Punzo say little, if anything, on this issue, but I will attempt to explain how they might address the wrongness of sexual assault.

Scruton argues that sexual desire finds its proper fulfilment in erotic love and that sexual contact should be avoided when those involved are not pursuing a committed romantic relationship. Adopting Scruton’s approach, one could argue that sexual assault is morally distinct from non-sexual assault because the assailant perverts the purpose of sexual contact. Scruton argues that casual sex works against the fulfilment of sexual desire because individuals act on this desire without intending that it will lead to erotic love. In the case of sexual assault, the assailant imposes sexual contact onto the victim in a manner that is utterly inconsistent with a loving relationship or attitude. All non-consensual violent physical contact not only falls short of the conduct that establishes and maintains erotic love but is totally opposed to it. Scruton (2006, 337) says, of the experience of being loved, that “Everything he is and values gains sustenance” from an erotic love relationship. Non-consensual contact has the opposite effect. In any assault, the assailant treats the victim as though they are of no value. Where erotic love enhances a person’s sense of their own value and of the value of their projects and goals, non-consensual physical contact treats them as though they and that which they care about are unworthy of being valued, and often leads the victim to view themselves in this way as well. As non-consensual physical contact, sexual assault violates and diminishes exactly those valuable phenomena that are enhanced in erotic love.<sup>6</sup> Sexual assault involves a distinct wrong because it violates exactly the value in which sexual desire and sexual

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<sup>6</sup> This is consistent with recognising that sexual assault and other forms of abuse occur within committed romantic relationships at high rates. Assuming that my proposal for how Scruton’s account might explain the wrongness of sexual assault is correct, one can argue that committed romantic relationships that involve sexual abuse do not realise the value of erotic love.

contact find their fulfilment. By stipulating that sexual contact contributes to the fulfilment of sexual desire, Scruton's account provides resources to explain the distinctive wrong of sexual violence.

While Punzo does not provide an account of the wrongness of rape, his account may offer a justification for the view that rape is distinctly wrongful. Punzo's argument against premarital sex proceeds from his view that sex engages an intimate part of a person and involves an intimate union between two persons. If one accepts this claim, then there is a morally significant feature that distinguishes sexual and non-sexual contact, and sexual assault from non-sexual assault. First, Punzo claims that premarital sex treats the sexualities and bodies of those involved as objects separate from the self. On this basis, one might claim that sexual assault is especially wrong because it objectifies the victim in a way that non-sexual assault does not. Sex is distinct from other activities because it conveys and reflects a marital union or else treats a person's body as separate from their self where no such union exists. If one accepts this, it is plausible that sexual assault objectifies a victim, by treating their body and sexuality as something that can be separated (and seized) from their self, in a manner that even a non-sexual violent beating does not. Second, Punzo has the resources to explain why sexual assault constitutes an especially invasive form of violence. I argued in Section 1.4 that Goldman fails to explain why sexual assault is more invasive than other forms of non-consensual physical contact, but perhaps Punzo's account offers the resources to explain this. By violently imposing a form of contact that would ordinarily signify an intimate union of two selves, the assailant in a sexual assault imposes highly intimate contact onto the victim, where this is explained not by reference to the physical attributes of the contact, but the way in which, on Punzo's view, sexual contact ordinarily unites two selves. If this is correct, sexual assault is the imposition of forced intimacy that does not occur in non-sexual assault.

Benatar's suggestion that the significance view can accommodate the severe and distinct wrongness of rape is supported by the accounts advanced by Scruton and Punzo. My explanation of these accounts is deliberately brief, but the strength of Benatar's dilemma does not depend on the success of significance views here, only on the claim that significance views can draw on resources to explain the wrongness of rape that casual views cannot.

## **Section 1.6 – Natural Law**

There is a further conception of sex and sexual ethics that warrants mention, (new) natural law theory. In this section, I argue that natural law theory lends weight to Benatar's dilemma; it explains the serious wrongness of sexual violence, but only by grounding a sexual ethic that is more restrictive even than the significance view,



condemning casual sex, masturbation, same-sex sexual contact, oral sex, anal sex, and contracepted penile-vaginal intercourse (Corvino 2005, 516). John Finnis (1997, 121–22) goes as far as to suggest that a person who engages in non-contracepted heterosexual penile-vaginal intercourse with their marital partner nevertheless acts wrongly if they approve of sexual acts by others involving partners of the same-sex or contraception, etc., insofar as this indicates a “conditional willingness” to engage in acts that are opposed by natural law theory. I will focus on this view as it is advanced by Finnis, Patrick Lee, Robert George, and Gerald Bradley. They offer very similar accounts, which I discuss interchangeably.

Natural law theorists stipulate a value or intelligible good that they call ‘marriage’, and argue that sexual acts are impermissible unless they actualise this value (Finnis 1994, 1066, 1997, 393; George and Bradley 1995, 301–2, 314; Lee 2008, 425; Lee and George 1997, 135). Finnis (2008, 389) argues that the purpose of marriage “is twofold: procreation and friendship”. According to natural law theory, marriage is a relationship between two persons who commit to share a life in the “*type of relationship*” capable of conceiving offspring (Lee and George 1997, 143, emphasis in original). In other words, marriage is the good that is realised when two people who are committed to each other and to the ongoing project of creating life and raising a child have sex in a way that is open to the possibility of biological reproduction. An act is non-marital in this sense if it does not take place between partners who have made a lifelong commitment to each other or if it is not the kind of act that can be procreative (Finnis 1994, 1066, 1069; George and Bradley 1995, 305; Lee 2008, 430).

On this view, non-marital acts do not actualise the good of marriage and, by extension, do not actualise any human good (Finnis 1994, 1066, 2008, 393; George and Bradley 1995, 305; Lee 2008, 423–24; Lee and George 1997, 135). Natural law theorists advance two arguments for the claim that non-marital acts are immoral on this basis.

First, they argue that non-marital sex disrespects one’s body and one’s partner and involves a disintegration of the self (Finnis 1994, 1069; George and Bradley 1995, 302, 314, 316–18; Lee 2008, 425; Lee and George 1997, 139–41).<sup>7</sup> Natural law theorists claim that persons engaged in non-marital acts “necessarily treat their bodies and those of their sexual partners (if any) as *means* or *instruments*” (George and Bradley 1995, 302, emphasis in original). When one acts in a way that realises a good or valuable goal, the whole of one’s body and consciously experiencing self are united in pursuing this goal (George and Bradley 1995, 316–17; Lee and George 1997, 140); there is an intelligible good that both one’s body and consciously-experiencing self are oriented towards. When one seeks pleasure in an act that does

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<sup>7</sup> This line of argument is not entirely dissimilar from Punzo’s suggestion that premarital sex involves a separation of a person from their body, although natural law theorists develop this idea differently and endorse a different conception of marital sex.

not realise an intelligible good, one separates these aspects of oneself, treating one's body as a tool so that one's conscious self can experience pleasure. According to natural law, non-marital sex does not realise an intelligible good, and therefore always treats the body as a tool in this manner. On this view, non-marital sex harms the integrity of the person by separating oneself as a bodily organism from oneself as a consciously choosing person (George and Bradley 1995, 314, 316; Lee and George 1997, 139–41). Non-marital sex also shows disrespect towards the body and one's partner's body, and by extension towards oneself and one's partner, by treating human bodies as mere tools that may be utilised for pleasurable sensations (George and Bradley 1995, 314; Lee and George 1997, 139).

Second, natural law theorists argue that non-marital acts deny the value of marriage and the capacity of marital acts to actualise the distinct human good of marriage (Finnis 1994, 1069–70, 1997, 119, 2008, 393). Engaging in non-marital sex conveys that sexual contact is appropriate for purposes that are unrelated to the good of marriage. It thereby constitutes a denial of the unique suitability of sexual contact to actualise a human good, namely marriage (Finnis 1994, 1070). For Finnis (2008, 393), non-marital sex is unethical because it "sets the wills of the choosers...against the good of marriage." By employing a kind of contact that is uniquely suited to actualise the good of marriage for some purpose unrelated to this good, persons who engage in non-marital sex deny the value of the good of marriage as something realised through sexual contact. In turn, Finnis (1994, 1069, 2008, 393, n.16) argues that non-marital sex wrongs those individuals who engage in marital sex with the intention of actualising the good of marriage. He argues that non-marital sex conveys that sexual contact is an appropriate mechanism to experience goods other than marriage, and therefore that sexual contact is not uniquely appropriate or effective as a vehicle to actualise marriage. It therefore constitutes a denial that persons who engage in marital sex engage in an act that can "*really* actualize, express and enable them to experience their marriage" (Finnis 2008, 393 n.16, emphasis in original).

My explanation of the natural law approach to sexual ethics is deliberately brief, and there is much with which I disagree in these accounts. However, my purpose is not to evaluate the merits of the natural law theory approach, but instead to show that this influential philosophical tradition is further evidence of the problem advanced by Benatar, or something like it.

The natural law approach is quite different to the significance view, although they share the implication that a strong romantic commitment is a necessary condition for sexual contact, and that sexual contact should be expressive of such a relationship. Lee and George (1997, 136) describe the significance view as the "liberal view", according to which "sexual acts between people are morally right as long as they in some way express genuine love or affection", where the relationship need not be marital. They reject this view, and distinguish it from natural law, on the grounds that sex that expresses romantic love is often 'non-marital' because it is not

procreative or occurs outside a *lifelong* commitment (Lee and George 1997, 143–44). Strikingly, the significance view treats sexual contact within loving heterosexual relationships and loving homosexual relationships as equally valuable, whereas natural law holds that sexual contact between persons of the same sex is never morally permissible (Soble 2013, 15).

Benatar himself disregards natural law when he constructs his dilemma. He might have natural law in mind when he makes the following claim:

Consider, for instance, the view that a necessary condition of a sexual activity's being morally acceptable is that it carry the possibility of procreation. While this view would be directly relevant to the practice of contraception, it would provide no way of morally judging promiscuity, paedophilia, or rape *per se*. Under some conditions, all of these practices would have procreative possibility (Benatar 2002, 192).

This argument is too quick. Natural law takes procreation to be a necessary condition of morally permissible sexual contact, but it does not follow that rape or cases of adult-child sex in which the child is biologically capable of procreating are permissible. Natural law theorists take the procreative capacity of a kind of sexual act to be a necessary but not sufficient condition of morally permissible sexual contact. On this view, sexual contact must realise the value of marriage, which is also constituted by the good of friendship and lifelong commitment. These goods are inconsistent with rape and adult-child sex. That any view takes procreation to be *necessary* for morally permissible sexual contact does not entail that it cannot provide an insight into the wrongness of sexual violence.

Natural law theorists discuss sexual violence briefly, if at all. However, the following is instructive:

Considered precisely as morally bad sex – rather than as, say, unjust (as rapes and some other morally bad sex acts obviously also are) – wrongful sex acts are more seriously immoral the “more distant” they are from *marital* sexual intercourse (Finnis 1997, 98, emphasis in original).

Finnis (1997, 98) proposes that sexual violence is seriously wrong because it is “unjust”, perhaps in the way that all violent bodily assaults are unjust, but also because it is sexual contact that is not marital.<sup>8</sup> On this view, an instance of sexual

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<sup>8</sup> I have used the definition of ‘marital’ endorsed by natural law theorists for the purposes of explaining their account. They use this term to describe a relationship of lifelong commitment of a kind that is open to procreation, rather than to label the legal and social relationships that are recognised as marriages in any given legal jurisdiction or community. On the more familiar understanding of ‘marital’, ‘marital rape’ refers to rape inflicted by one married partner against another; it is conceptually intelligible and it occurs. When natural law theorists claim that rape is necessarily non-marital, they do not deny that rape occurs in relationships that are legally and/or socially recognised as marriages. Instead, ‘marital’ in their parlance refers to relationships or acts that actualise the dual good of procreation and friendship. Rape is a very serious violation of, and diametrically opposed to, friendship, and is therefore necessarily non-marital in *this* sense.

assault is more seriously wrongful than an otherwise similar non-sexual assault because it involves the additional wrong of being sexual contact that does not actualise the good of marriage (because it is non-consensual, even if it is procreative and occurs within a relationship that is legally and socially recognised as a marriage).

Finnis does not elaborate on this argument, but we can sketch how his argument might proceed. Natural law theorists argue that consensual non-marital sex is morally wrong because it aids the disintegration of those involved insofar as they treat their body as an instrument for the satisfaction of the consciously choosing self. A natural law theorist might argue that sexual assault therefore attacks the integrity or integration of the victim. The assailant treats the victim's body as a tool to be used for their own purposes, entirely disregarding the victim's will. This not only shows a great deal of contempt towards the victim, a denial that they are an integrated human person, it also treats the victim's body as totally separate from their consciously experiencing self, insofar as the assailant hijacks the victim's body for their own ends and disregards the victim's conscious experiencing self entirely, often causing them a great deal of suffering. That is, they treat the victim's body as a tool to be co-opted without any concern for the person that belongs in, or is identical to, their body.

Natural law theorists also argue that non-marital sex is wrong because it disregards or disrespects the value of marriage. On a natural law account, this might also provide justification for the claim that sexual assault is distinctly wrong. Sexual assault is non-marital sexual contact, and therefore disrespects the good of marriage in the manner I have discussed. A proponent of natural law theory might argue that sexual assault goes further in this regard. The assailant imposes sexual contact, an act that should actualise the human good of marriage, and uses it to harm the victim. It is not only that the assailant initiates sexual contact that fails to actualise the good of marriage, but there is something especially perverse in their imposition of this form of contact to commit an injustice and often great suffering against the victim. Accordingly, sexual assault attacks the good of marriage in a way that non-sexual assault and consensual non-marital sex do not.

There are a multitude of compelling reasons raised by critics to reject natural law, and there might be good reasons to find these explanations of the distinct wrong of rape lacking even if one endorses natural law. However, my purpose here is not to evaluate natural law theory or the accounts of the wrongness of sexual violence that may or may not follow from its sexual ethic. Instead, I raise the example of natural law theory to show the widespread applicability of Benatar's dilemma, beyond those cases that he himself discusses.

If my suggestions are accurate, natural law provides a mechanism by which to ground a moral distinction between sexual and non-sexual assault. At the very least, it entails that sexual assault is seriously wrong because it is the imposition of an

injustice that is also non-marital sexual contact, whereas non-sexual assault is the imposition of an injustice without this further wrong. Natural law theory can explain the distinct wrongness of sexual violence, but only by appealing to the wrong of non-marital sexual contact, a resource that also entails a very restrictive ethical approach to consensual sexual contact. This illustrates the widespread applicability of Benatar's dilemma and plays a role that is much like that of the significance view in this context. We can explain the distinct wrong of sexual violence, but only by adopting a very restrictive sexual ethic for consensual acts.

## **Section 1.7 – Objections Against Benatar's Formulation**

Benatar's dilemma is a compelling challenge to those of us who believe that sexual violence involves a distinct wrong and endorse a permissive sexual ethic for consensual contact. In this section, however, I argue that Benatar's dilemma represents an imperfect formulation of the underlying problem.

Firstly, Benatar's dilemma overlooks prominent approaches to sexual ethics. He advances a dilemma between the casual view and the significance view. As my discussion of natural law shows, there are sexual ethical approaches which deny that sexual contact is subject only to the general moral norms and deny that expressing romantic love is sufficient for morally permissible sex.

Feminist approaches to consent reveal a similar problem. Lois Pineau (1989, 234–35) argues that persons generally engage in sexual contact, or are presumed to engage in sexual contact, for sexual pleasure and that persons "in intimate situations" have an obligation to advance each other's goals. On these grounds, she argues that we should adopt a model of "communicative sexuality", whereby sexual partners respond to each other's reactions and aim to enhance each other's enjoyment (Pineau 1989, 236–37). While consent is sufficient for much morally permissible contact and trade, it is not sufficient for sexual contact (Pineau 1989, 235). Pineau claims that morally permissible sexual contact requires that both parties communicate openly and aim to provide their partner with sexual pleasure. Martha Chamallas (1988, 836) stipulates an ideal of sexual contact based on "mutuality" rather than consent. On this view, consent is not sufficient for morally permissible sexual contact, it must also be the case that those involved "welcome" the contact, where this "response...is more positive than, for example, an ambiguous decision not to resist" (Chamallas 1988, 836). According to Chamallas (1988, 839), sexual contact is more egalitarian, and therefore less morally tainted, if those involved are motivated by the prospect of emotional intimacy and/or physical pleasure. This is because, unlike other incentives like monetary payment, men and women have an equal capacity for intimacy and pleasure. She rejects as

impermissible sexual contact “in which money, power, prestige, or financial or physical security is traded for sexual pleasure or intimacy”, and suggests that sex workers are likely wronged by clients when they engage in sexual contact for money (Chamallas 1988, 840–42).

Pineau and Chamallas both set out a sexual ethic that does not treat sexual contact as subject only to the same moral norms as non-sexual contact. They argue that sexual contact specifically should be a communicative act in which persons aim to provide each other with sexual pleasure (for Pineau) or should be welcomed by those involved, aiming at intimacy or pleasure (for Chamallas). They do not suggest that non-sexual acts are subject to these norms, and it is not clear that they are straightforwardly derived from more general norms because Pineau and Chamallas appeal to the nature of sexual contact itself. The feminist accounts advanced by Pineau and Chamallas cannot helpfully be understood as manifestations of the casual view. At the same time, they clearly do not fall under Benatar’s description of significance views. They prescribe some restrictions on sexual contact but do not require that sexual contact takes place only within a romantic love relationship.

Natural law and this feminist approach to consent are two conceptions of sexual ethics that do not fit Benatar’s description of the casual view or significance view. This is a problem for Benatar given the way that he frames his challenge. These accounts provide a way to avoid the dilemma that he establishes. Benatar’s framing of the problem leaves open many further possible approaches to sexual ethics, some of which may explain the distinct wrongness of sexual violence without being committed to a restrictive sexual ethic.

Second, Benatar’s dilemma is vulnerable to the objection that significance views do not offer a compelling or suitable explanation of the special wrongness of sexual violence. His challenge is that one can either accept the casual view, adopting a permissive sexual ethic and the view that sexual assault involves no distinct wrong, or the significance view, explaining the distinct wrong of sexual violence and grounding a restrictive sexual ethic. If Benatar is incorrect in claiming that the significance view can explain the special wrongness of sexual violence, then his dilemma appears to be resolved; the appeal of the significance view is diminished, and one can endorse the casual view. In Sections 1.3 and 1.5, I stipulated how significance views might explain the distinct wrongness of sexual violence. It remains an open question whether these accounts succeed in explaining this. If one remains unconvinced by the accounts of the wrongness of sexual violence proposed by proponents of the significance view, then Benatar’s dilemma appears to be overcome.

Thirdly, and more fundamentally, Benatar’s dilemma captures an underlying problem but formulates it imperfectly. We might reconstruct his argument in the following way:

1. Sexual assault is more seriously wrong than non-sexual assault.
2. (1) is true only if there is a special sexual morality.
3. If there is a special sexual morality, then sexual contact is morally permissible only within a committed romantic relationship (the significance view).

Therefore,

4. If one rejects the significance view, one must deny (1) sexual assault is more seriously wrongful than non-sexual assault.

The reason that Benatar's dilemma presents a disconcerting challenge to progressives and feminists lies in his proposal that one cannot consistently maintain a permissive sexual ethic for consensual contact and endorse the claim that sexual violence involves a distinct wrong. Benatar's dilemma therefore relies on claim (3). If (2) is true, then sexual assault is distinctly wrong only if there is a special sexual morality, which is itself not a problem for proponents of a permissive sexual ethic. Benatar's dilemma only presents a challenge if we accept that (3) a rejection of the casual view and endorsement of a special sexual ethic commits one to the significance view. However, Benatar does not defend this inference. Indeed, we have good reasons to question whether rejecting the casual view commits one to accepting the significance view. To explain why this inference is suspect, I will first explain the context of the significance and casual views that Benatar presents as mutually exclusive.

On one hand, we can identify views about the permissibility or impermissibility of different sexual acts. Following numerous theorists, I will group these views as 'permissive' and 'restrictive' insofar as they place fewer or greater constraints on permissible sexual contact (Benn 1999, 236; Malón 2015, 1073; McKay 1997, 286–87).<sup>9</sup> The significance view is one such position; it is a claim about when sexual contact is permissible. It is likely to seem restrictive to many contemporary audiences, but it is more permissive than natural law theory.

Piers Benn (1999, 236–37) and Agustin Malón (2015, 1072–74) distinguish these from views about whether there is a distinct sexual morality. Some theorists claim that sexual contact is subject only to moral norms and principles that apply more generally. Benatar calls this position the 'casual view'. In opposition to this are what

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<sup>9</sup> Some theorists talk in terms of 'liberal' and 'conservative' approaches to sexual ethics (Benn 1999, 236; Lee and George 1997, 136; Malón 2015, 1073). I avoid these terms because they are ambiguous between (a) views about which acts are morally (im)permissible, and (b) views about which acts are properly criminalised or otherwise regulated by the State (Weeks 1985, 54). For example, consider a person who thinks that same-sex sexual contact, masturbation, and sex work are morally impermissible, but that none of these should be criminalised or regulated. It is not clear whether their views would be accurately described as 'liberal' or 'conservative' because this could refer to both their views about particular acts (which are conservative) and their views about the appropriate role of the State in regulating sexual acts (which are liberal).

I will call 'distinctiveness views', according to which sexual contact is subject to moral norms that are not straightforwardly derived from much more general principles and the sexual status of an act is morally significant.

Benn (1999, 236) cautions against conflating permissive views with the casual view, and restrictive views with the distinctiveness view. That is, we should not assume that a permissive sexual ethic requires that there is no special sexual morality or that the rejection of the casual view entails a restrictive sexual ethic. If Benn is correct, then this is a problem for Benatar because it undermines the claim that rejecting the casual view commits one to the significance view (claim (3) in my reconstruction of his argument).

This becomes apparent in examining the relationships between these positions. Firstly, the casual view is necessarily more *restrictive* than some distinctiveness views, even though Benatar sets it up as the basis for a permissive sexual ethic. The casual view places many ethical restrictions on sexual contact insofar as all general moral principles apply as much to sex as they do to other interactions between persons. We can imagine a sexual ethic, characterised by the adage "All's fair in love and war", according to which some general moral principles do not apply to sexual contact as they would apply to non-sexual contact (Benn 1999, 237; Goldman 1977, 280). On this view, for example, dishonesty, manipulation, and a disregard for another's happiness are permitted when they occur during or as a means to sexual contact, where they would not be permitted in other contexts. This view justifies or excuses some acts just because they are sexual. This is a distinctiveness view of sexual ethics; it denies that sexual contact is subject to the same moral norms as other interactions. A rejection of the casual view does not always entail a more restrictive sexual ethic. This is a counter-example to Benatar's claim (3) because it shows that adopting a special sexual morality does not commit one to a restrictive sexual ethic. In this case, rejecting the casual view accommodates a *less* restrictive approach.

Secondly, under certain conditions, the casual view may entail a restrictive sexual ethic. Applying only general moral principles to sexual contact may prohibit many sexual acts. In a society in which resources are scarce, contraceptives are unavailable, and sexually transmitted diseases are prevalent, casual sex, promiscuity, non-monogamy, and even pre-marital sexual contact might be morally impermissible because these acts risk harm to oneself and others (Benn 1999, 236–37; Singer 2011, 5). One could argue for a restrictive sexual ethic under these conditions without appealing to some moral consideration that applies just to sexual acts. In this case, a restrictive sexual ethic can be derived from a general moral principle of avoiding harm to others. Clearly, a restrictive sexual ethic such as the significance view is not synonymous with rejecting the casual view.

Benatar's dilemma is imperfectly formulated. He sets up a disagreement between two positions that are not diametrically opposed or mutually exhaustive. He assumes



that endorsing a special sexual morality (rejecting the casual view) to explain the serious wrong of sexual attacks commits one to a restrictive sexual ethic. It is not clear that this is the case. Indeed, a special sexual morality can entail a more permissive sexual ethic as well as a more restrictive one and the rejection of a special sexual morality can nevertheless ground a restrictive sexual ethic in at least some circumstances.

However, this does not mean that we should dismiss the problem that Benatar raises. His claims are shocking, I think, because they are indicative of an underlying challenge; how can we explain the serious and distinct wrongness of sexual attacks without investing sex with so much moral significance that we are committed to a restrictive sexual ethic for consensual contact? My criticisms of Benatar's dilemma do not answer the underlying challenge. All the same, I do find that Benatar's dilemma obscures this important problem and that it introduces considerations that are not directly relevant. Therefore, I will offer my own formulation of this problem.

## **Section 1.8 – The Traditionalist's Challenge**

To explain the serious and distinct wrongness of sexual violence, it is tempting to argue that the sexual nature of an act is morally significant, and that moral considerations apply to sexual contact that do not apply elsewhere. However, Benatar's dilemma shows that appealing to the moral salience of sex to explain the wrongness sexual assault can have unintended consequences. Traditionally, explanations of the wrongness of sexual assault have relied on conservative views of sex that entail a restrictive sexual ethic and sexist views of women's sexuality and personhood. They take sexual assault to be morally worse than non-sexual assault, at least in some cases, but only on the basis of a deeply problematic conception of women's sexuality. Now that we reject these views, it is not clear how sexual attacks could involve a distinct wrong (Rubinfeld 2013, 1386–92).

Harriet Baber (1987, 136–37) criticises the assumption that "rape is the supreme evil" by arguing that this depends on the view that sexuality is particularly central to women's lives and perceptions of themselves. She notes that "women are traditionally viewed primarily in connection with concerns which center around their sexuality – in terms of their roles as lovers, wives and mothers" (Baber 1987, 136). The aspects of women's lives that revolve around sex and reproduction were considered the most important aspects of a woman's life, and Baber argues that it was on this basis that sexual assault was viewed as very seriously wrongful. There was a widespread belief that sexual assault attacks the victim through something central to her life and her conception of herself. However, this is a view of women that we now reject. As a result, Baber (1987, 137) proposes that rape is a "serious harm", but only to the same extent as "all other crimes of violence". She rejects the

claim that sexual attacks involve a distinct wrong because this relies on a sexist view of women's sexuality and identity.

In a similar vein, Michael Davis (1984, 80) attributes the view that sexual assault is distinctly wrongful to the traditional, misplaced, and sexist assumption of the value of a woman's "chastity". Traditionally, a woman's chastity or 'sexual purity' was considered extremely important (M. Davis 1984, 80). Rape and sexual assault were considered seriously wrongful because they attacked, and were thought to destroy, something very valuable to the victim.

As Davis (1984, 81) notes, "[t]he traditional analysis is at best a dead justification." Progressives and feminists generally hold that 'chastity' and 'sexual purity' are not as important as traditionally believed and that we should reject the view that this is more important for women than for men. A survivor of sexual assault is not damaged and does not lose an important part of themselves. Again, the views of the importance of women's chastity, on which accounts of the wrongness of rape were traditionally based, are incorrect and sexist. From a progressive perspective, the traditional reasons for recognising sexual assault as morally worse than non-sexual assault are sexist, arbitrary, and no longer convincing. As Carolyn Shafer and Marilyn Frye (1977, 333–34) rightly note,

Traditional mutterings about loss of purity, chastity, and honor, and about the diminution of the woman's value as the property of her father, husband, or other male keeper will hardly account for the rage and horror feminists express about [sexual violence].

This view is most striking in comments by Camille Paglia. In response to a question about the seriousness of rape, she argued that "I dislike anything that treats women as if they are special, frail little creatures. We don't need special protection" (Paglia 1993, 64–65). Here, Paglia claims that the view of sexual attacks as distinctly wrongful relies on a patronising and paternalistic view of women as weaker than men. This view makes sense, she claims, against a background assumption that women are less emotionally robust than men and therefore require further protections against physical violence. When we reject these sexist beliefs, however, Paglia believes that the rationale for viewing sexual attacks as distinctly wrongful disappears.

The progressive rejection of the view of sex as morally special and of traditional views about women's chastity or 'sexual purity' therefore raises a compelling problem for accounts of the wrongness of sexual assault. Rejecting these outdated and problematic beliefs removes the traditional justification for the distinct wrongness of sexual attacks. It is not clear why sexual assault is morally worse than non-sexual assault, given the falsity of claims about the importance of chastity and the significance of sexual activity. As more and more people reject these claims (rightly, in my view), the traditional basis for recognising sexual assault as distinctively wrongful no longer applies. To maintain this view, we must explain the

distinctive wrongness of sexual attacks in a way that does not commit us to a restrictive sexual ethic or a sexist view of women's sexuality.

I will formulate this problem as the *traditionalist's challenge*. The problem is how one can explain the distinct wrongness of sexual attacks without appealing to a traditional view of sex that itself generates a restrictive sexual ethic for consensual contact. It can be expressed as follows.

The traditionalist to the progressive:

You no longer consider sex to be significant, or sexual activity to be morally different to other kinds of interaction, and have rejected claims to that effect as outdated, arbitrary, and unduly restrictive. When it is consensual you see sex just as another activity that people enjoy together. How then can you argue that sexual assault is morally worse than non-sexual assault just because it is sexual?

Alternatively:

How can you consistently claim that there is nothing morally special about sex that would generate a restrictive sexual ethic (prohibiting casual sex, promiscuity, masturbation, and so on), while maintaining that there is something special about sex insofar as sexual assault is distinctly wrongful in virtue of being a *sexual* assault?

I hope that this captures the underlying problem that motivates Benatar's dilemma. I have aimed to characterise what is most concerning about the challenge that Benatar advances: one cannot consistently explain what is special about sexual contact such that sexual attacks are distinctively wrongful without recognising the moral significance of sex in a way that prohibits a great deal of consensual sexual contact.

Importantly, the traditionalist's challenge avoids the charges that I levelled against Benatar's dilemma. I do not advance this challenge as a forced choice between two (or more) alternatives. Instead, it simply challenges its audience to explain the distinct and serious wrongness of sexual attacks in a way that does not commit them to a restrictive sexual ethic. Although this challenge becomes particularly salient given the rejection of traditional explanations of the wrongness of sexual violence, my comments here in no way rely on the view that these traditional explanations are themselves at all successful. Indeed, they are based on extremely suspect claims about women and sex and were often deployed inconsistently. For example, traditional approaches to sexual violence often failed to recognise as seriously wrong sexual attacks perpetrated against women of colour, economically marginalised women, women who have previously had sex, women without a male guardian, lesbian and bisexual women, sex workers, men, and so on (Card 1991, 309–10; Peterson 1977, 362–63). Given my formulation of the traditionalist's challenge, the fundamental flaws of the traditional approach to the wrongness of sexual assault do not undermine the problem at hand. The question remains for proponents of a comparatively permissive sexual ethic; how will we justify the claim that sexual attacks involve a distinct wrong in a way that does not commit us to the claim that

sex is special and so subject to widespread moral prohibitions even when the contact is consensual and mutually desired?

## Section 1.9 – The Scope of My Project

I will engage with attempts in the philosophical literature to explain the serious wrongness of rape and consider these as responses to the traditionalist's challenge. The wrongness of rape is central to the problem that I have set out, but my project differs from the approach often adopted in the literature. In this section, I say something about why my approach diverges in these ways.

First, I discuss the broad category of *sexual attacks* rather than *rape*, while theorists in the literature often focus only on rape (Archard 2007; Baber 1987; Gardner and Shute 2007; Murphy 1994; Shafer and Frye 1977). This is simply because it seems to me that the sexual nature of an attack makes a significant moral difference whether the violation under discussion is rape or some other sexual attack. Consider a case in which one person momentarily grabs another person's buttocks, and a case in which one person momentarily grabs another person's arm or shoulder. We might want to say that, intuitively, the first is more seriously wrongful than the second. Arguably, the only feature distinguishing these attacks that might be morally salient is that one is a sexual assault while the other is non-sexual. In these cases, it seems that the sexual nature of an attack is morally salient even when the attack in question does not constitute rape.

The same phenomenon plausibly applies for sexual attacks that do not involve bodily contact. Consider the following two cases.

**Flashing.** Person B is walking down a public street. Person A jumps in front of Person B and exposes his penis.

**Medical Exposure.** Person D is walking down a public street. Person C jumps in front of Person D and exposes a growth on his torso, which Person D finds disgusting.

I believe that these sexual and non-sexual cases are relevantly similar. That is, the only morally salient difference is that Flashing involves a sexual imposition while Medical Exposure does not. I assume that the person who exposes their genitals commits a more serious wrong than the person who exposes an unsightly growth.<sup>10</sup> If this is correct, then this must be more seriously wrongful in virtue of the sexual nature of the former. There are a range of non-consensual sexual impositions that do not involve bodily contact, including invasive or explicit comments, voyeurism,

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<sup>10</sup> It is worth noting that the law in the UK would treat these cases differently, punishing the assailant in Flashing with up to two years imprisonment (Sexual Offences Act 2003 s 66).

and so on. If we accept that many of these cases are more seriously wrongful than their relevantly similar non-sexual counterparts, then they must be wrongful in part because the imposition is sexual.

I focus broadly on sexual attacks because there is a similar phenomenon in these cases as in the case of rape. Whether the focus is on rape, some other form of non-consensual sexual contact, or sexual imposition without bodily contact, sexual violations are intuitively more seriously wrongful than relevantly similar non-sexual impositions. In each of these cases, the sexual nature of the act seems to aggravate its wrongness. The motivation behind accounts of the wrongness of rape is at least implicitly that there is something wrongful in rape that is not present in other violent attacks. These accounts take this as a start point and seek to justify making a moral distinction by arguing that there is something wrong in rape that does not occur in non-sexual attacks. The same motivation is relevant to sexual attacks more generally. These impositions also involve a feature that sets them apart, morally speaking, from otherwise similar non-sexual impositions, specifically that they are cases of *sexual* assault or *sexual* harassment, and so on. If I am correct that theorists investigate the wrongness of rape to discover the feature that distinguishes it morally from non-sexual attacks and that there is some feature that also sets other forms of sexual assault and non-contact sexual impositions apart from relevantly similar non-sexual impositions, then it is reasonable to prefer an account of the wrongness of rape that can also be applied (albeit with some changes) to sexual assault and sexual impositions without bodily contact.

Second, the traditionalist's challenge demands an explanation of the distinct wrong of sexual violence relative to non-sexual assault, whereas theorists discussing the wrongness of rape typically seek to explain why this is seriously wrong without reference to non-sexual contact. My divergence from their strategy here is not substantial. It is implied in the work of theorists seeking to justify the claim that rape is seriously wrong that they are seeking some reason that rape is morally distinct from otherwise similar cases of non-sexual assault. Otherwise, it would suffice for them to discuss the wrongness of non-consensual bodily contact more generally. That they aim to explain the wrongness of rape specifically indicates that they believe that the wrongness of rape is not explained entirely by the imposition of non-consensual bodily contact, and that rape involves distinct wrongs that do not occur in all such non-consensual violations.

In Chapters 2, 3, and 4, I consider accounts of the wrongness of rape and examine how successfully they explain the distinct wrongness of sexual attacks. I argue that they are unsuccessful but that they offer illuminating and instructive resources. I draw on these resources to develop my own account in Chapters 5 and 6.

## Chapter 2

### Suffering and Social Meaning

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#### **Section 2.1 – Introduction to Chapter 2**

In this chapter, I examine two accounts of the wrongness of rape. Although I reject these accounts, I argue that they provide useful resources and that considering their flaws provides an insight into what we want from a response to the traditionalist's challenge.

In Section 2.2, I examine the argument that sexual attacks are seriously wrongful because they cause the victims a great deal of suffering, a proposal that I take to be highly intuitive and popular outside of academic writing. I will examine this view as it is advanced by Wertheimer. I argue that it inappropriately excludes some cases of sexual violence and that it incorrectly models the relationship between the suffering of victims and the wrongness of rape. I consider Gardner and Shute's view that extreme suffering often experienced by victims is in part a response to and recognition of the very serious wrong perpetrated against them. In Section 2.3, I explain Gardner and Shute's account of the wrongness of rape. In Sections 2.4 and 2.5, I argue that Gardner and Shute's reliance on the social meaning of sex reveals a flaw in their account. In Section 2.6, I draw out more explicitly those aspects of these accounts that I find instructive and will draw on moving forward. Although I argue that they rely on claims about the social meaning of consensual sex that are unsustainable, they advance some claims that I will draw on in developing my own account, in particular that the wrongness of rape is explicable in part by appeal to something like the social meaning of such attacks and the objectification of the victim.

#### **Section 2.2 – Wertheimer on Sexual Assault and Suffering**

I begin with Wertheimer's account of the wrongness of rape. Wertheimer captures the most intuitive and initially tempting explanation of the wrongness of sexual violence. Wertheimer (2003, 103) argues that non-consensual sexual contact wrongs the victim insofar as it harms them. He proposes that "rape and non-consensual sexual relations are special harms and they are special harms largely because they are experienced as special harms" (Wertheimer 2003, 103, 109). Sexual attacks are distinctly wrong on this view because they tend to cause greater suffering for the victim. During a sexual attack and for some time afterwards, victims typically

experience a great deal of “distress”, which Wertheimer (2003, 106) takes to be emotional pain and other mental states that one experiences as negative and (deeply) uncomfortable. In the longer term, survivors of sexual assault typically report more extreme psychological problems than victims of most violent attacks (Wertheimer 2003, 104). Wertheimer’s view, then, is that sexual attacks are distinctly wrongful because they typically inflict greater suffering on victims than do non-sexual attacks.

Although Wertheimer’s account captures an aspect of sexual attacks of which we must not lose sight, the suffering of those who are targeted in such attacks, his appeal to victims’ suffering does not furnish a sustainable explanation of the wrongness of sexual attacks. There are some sexual attacks in which the victim experiences no suffering. In these cases, Wertheimer’s account entails that sexual assault is not distinctly wrong. If the victim experiences no suffering as a result of the attack, then the feature of sexual violence that distinguishes it from non-sexual assault, the greater suffering inflicted onto the victim, is not present. Wertheimer’s account cannot explain the distinct wrong of sexual attacks in these cases. His account therefore entails that these sexual attacks are no more seriously wrongful than otherwise similar non-sexual attacks. This might mean that, if they cause no physical injury, they are not seriously wrong at all, as we often judge non-sexual assault that causes no injury or distress as quite minor wrongdoing. These are worrying implications of his account.

Gardner and Shute (2007, 5) and Cecile Fabré (2004, 883) independently present a case of rape in which the victim has no experience of the attack and does not suffer. They suppose that the victim is unconscious at the time of the attack and the assailant inflicts penile-vagina intercourse while wearing a condom. The victim never discovers that they have been raped.<sup>11</sup> Gardner and Shute (2007, 6, emphasis in original) call this the “*pure case*” of rape because it involves only core harms of rape, and so the wrong perpetrated in this case must also occur in all others.

If we want to say that this attack is seriously wrongful, then this is a problem for Wertheimer’s account (Fabré 2004, 883; Husak 2006, 283). On his view, it is not distinctly wrong as a sexual attack because it involves no suffering, which is the feature of sexual attacks that distinguishes them from non-sexual attacks on his view, and must therefore be judged as equivalent to a non-sexual assault that involves no suffering or injury.

To put this another way, consider two cases of assault perpetrated against an unconscious victim, which cause no pain or injury and which the victim never discovers. One is a sexual attack, in which the assailant inserts their penis into the

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<sup>11</sup> It is important that the victim never discovers that they have been assaulted at some later time. Cressida Heyes (2016) offers a compelling explanation of the trauma experienced by persons who are sexually assaulted while they are unconscious and later discover that they have been assaulted.

victim's mouth; the other is a non-sexual attack, in which the assailant inserts their finger into the victim's mouth. These cases are similar except that one is a sexual attack and the other is not. On Wertheimer's view, we must conclude that both are equally wrong and, probably, that they both constitute quite minor wrongs because they cause no suffering or injury. Wertheimer (2003, 156) appears to concede this when he claims that

the wrong of non-consensual sexual relations is a function of experience, and when some of the harms associated with more typical non-consensual sex seem not to apply, non-consensual sex is much less wrong or not wrong at all.

These cases are likely to seem contrived and artificial to the reader; they certainly do not reflect sexual assault as we think it actually occurs. Raising and relying on these cases to examine the wrongness of such attacks might therefore reasonably strike the reader as being in poor taste. Attempting to explain the wrongness of rape, something that is often traumatising and that important institutions all too frequently fail to take seriously, by focusing on such artificial cases poses the risk of insensitivity. It is worth bearing in mind, then, that cases like this are neither as artificial nor as infrequent or peripheral as we might think. Far from being contrived, these cases, like all kinds of sexual violence, are far too common.

It is now widely reported and acknowledged that, until the early 2000s, medical students in the US were instructed to perform vaginal examinations on patients without specific consent to this contact (Barnes 2012; Bibby et al. 1988; Coldicott, Pope, and Roberts 2003; Friesen 2018; Rees and Monrouxe 2011; Schniederjan and Donovan 2005; Ubel, Jepson, and Silver-Isenstadt 2003). Medical students would insert their fingers into the patient's vagina while the patient was under general anaesthetic for the purposes of their own education, to help them become accustomed to performing vaginal examinations. These patients were selected because they were anaesthetised, and usually were not present for any procedure that would require contact with their vagina. The patient would not be notified beforehand, and the practice was justified by a very general consent form signed by the patient prior to the administration of anaesthetic, which made no mention of the medical students performing a vaginal examination for training purposes. Many of the victims of this sexual assault now know that they were subjected to these attacks. However, we can suppose that some patients never discovered that this occurred. These victims suffered something like pure rape, a sexual attack of which they have no experience or knowledge.

In a recent case in Phoenix, Arizona, a female patient who has been comatose for more than a decade at a Hacienda Healthcare clinic gave birth (*Agencies in Phoenix* 2019). The woman must have become pregnant by vaginal penetration to which she could not consent. That is, she must have been sexually assaulted. The patient here did not experience suffering, and yet it would seem callous to suggest that she has not been (seriously) wronged. Certainly, the outcry in response to this case indicates a widespread view that the sexual assault was a serious wrong, and wrong in a



distinct way to non-sexual assault, where this cannot depend on the victim's experienced suffering. These kinds of sexual assault occur, and it is important that accounts of the wrongness of sexual attacks can accommodate them.

The claim that these patients were seriously wronged, and that the wrong perpetrated against them is distinct from that of common assault, is inconsistent with Wertheimer's view that sexual attacks are distinctly wrongful only because they inflict greater suffering on the victim. The victims who did not later discover that they were attacked consciously experienced no suffering, and so Wertheimer's account appears to offer no resources to explain the serious wrongness of these attacks.

However, Wertheimer (2003, 111, emphasis in original) offers a response to this kind of case: "We can say that A's [the assailant's] behavior is wrong because it is *likely* to result in harm to B [the victim] without having to insist that B was harmed in this case", where 'harm' refers narrowly to experienced suffering. Wertheimer argues that the sexual attacks in these cases are distinctly wrong because they involve behaviour that is likely to cause very serious experienced suffering in the victim, even if they in fact do not.

It is unclear how far this helps Wertheimer to accommodate these cases. In some cases, it simply is not likely that the attack will cause the victim to suffer. If the victim is unconscious or comatose for a prolonged period of time, then they are unlikely to discover that the attack took place. Of these cases, we cannot say that it is even likely that the victim would experience suffering, and Wertheimer's account is still unable to explain the distinct wrongness of these cases.

Alternatively, we might interpret Wertheimer's claims more broadly, as suggesting that the sexual attack involves the kind of non-consensual contact that, if the victim were conscious of the attack, would cause severe experienced suffering. Perhaps Wertheimer means to claim that sexual attacks are distinctly wrong for this reason. On this interpretation, Wertheimer's account can accommodate the cases that I have raised. However, the account on this interpretation requires more by way of justification. Certainly, we can say that *if* the victim was conscious at the time of the attack, then the attack would likely cause them very severe suffering. However, it is not clear how this can explain the wrongness of such attacks when the victim is not conscious. It is unclear how the fact that this behaviour *would* cause severe suffering *if* the victim were conscious grounds the distinct wrongness of the attack, given that the victim is not conscious and never discovers the attack. In making this move, Wertheimer also downplays the most intuitively compelling features of his account. His account accommodates the highly intuitive claim that sexual attacks are distinctly wrongful because they inflict a great deal of suffering on victims. His caveat here, that sexual attacks are wrongful given the modal claim that they would cause extreme suffering under certain (different) conditions, dilutes his compelling

suggestion that these attacks are distinctly wrongful because they in fact cause the victim to suffer.

There is a further problem with Wertheimer's appeal to the suffering experienced by the victims of sexual attacks. Wertheimer argues that sexual attacks are distinctly wrong because they cause greater suffering to the victim. However, we have good reason to endorse the reverse, that victims of sexual violence experience such serious suffering in part because they are wronged.

The problem with explaining the distinct wrong of rape solely by reference to the experienced psychological suffering of the victim is that it leaves open the question of whether this suffering is reasonable. Gardner and Shute (2007, 6–7) argue that "If nothing was wrong with being raped apart from the fact that one reacted badly afterwards, then one had no reason to react badly afterwards." This formulation of the problem is not quite right. Minimally, the victim's response to the attack would be reasonable; they would be reacting to the wrong perpetrated against them by the assailant's imposition of non-consensual bodily contact. Gardner and Shute's point here, however, is that we cannot explain the *distinct* wrong of sexual attacks by appeal to the victim's suffering, because this would not provide a means by which to say that the victim of a sexual attack reasonably experiences the attack as more serious and traumatising than they would experience a common assault. According to Gardner and Shute, we want to say that the extensive suffering of victims of sexual attacks is a proportionate and reasonable response to a serious wrong perpetrated against them. If we argue that sexual attacks constitute distinct and serious wrongs just in virtue of the victim's experience, then we cannot make this claim without circularity.

Paglia also illustrates the problem at play here. Her comments are shockingly callous and dismissive, but I find that this gives us all the more reason to prefer an account that rules her view out, and one way to do this is to develop an account of the wrongness of sexual attacks that does not ground this solely in the victim's suffering.

Rape is an assault. If it is a totally devastating psychological experienced for a woman, then she doesn't have a proper attitude toward sex. It's this whole stupid feminist thing about how we are basically nurturing, benevolent people, and sex is a wonderful thing between two equals. With that kind of attitude, then of course rape is going to be a violation of your entire life (Paglia 1993, 64–65).

Paglia suggests that severe experienced suffering in response to a sexual attack is unreasonable and based on a mistaken conception of sex. Accordingly, she thinks that the very serious traumatic suffering of victims does not provide a good reason to view sexual attacks as distinctly wrongful. Gardner and Shute (2007, 7–8) and Jed Rubenfeld (2013, 1429) raise a similar possibility without endorsing it. They suggest that the severe suffering experienced by victims of sexual attacks might be in part a function of the kind of traditional and sexist views of sex and of women that I discussed in Section 1.8. That is, some persons might be particularly affected by sexual attacks because they endorse or are influenced by the false claim that women

are damaged or rendered inferior by sex. The worry here is that the suffering is a consequence of an irrational attitude or false beliefs about sexual contact, and that this kind of suffering is an inadequate basis to explain the wrongness of the act that provokes it.

If, however, we can explain the wrongness of these attacks by appeal to something other than the victim's experiences, then we can show that this suffering is in fact a reasonable response to a wrong perpetrated against them. By rejecting Wertheimer's account and appealing to something other than experienced suffering to explain the distinct wrongness of sexual violence, we can take the force out of Paglia's claims. With an account of this structure, we can argue that Paglia is incorrect to claim the suffering inflicted by sexual violence results from an irrational or inaccurate conception of sex held by the victim; instead the victim's suffering is explained by the wrong perpetrated against them and their accurate recognition of this.

This raises a problem for Wertheimer's account. It is not sufficient to observe that sexual attacks typically inflict great suffering onto the victim and to argue that they are more seriously wrongful on this basis. In order to show that sexual attacks are more wrongful on this basis, we must show that the suffering of victims is reasonable, a proportionate response to a serious wrong perpetrated against them (Gardner and Shute 2007, 6). This requires an explanation of the distinct wrong of sexual attacks that does not itself appeal to experienced suffering.

An analogy might help to illustrate this argument. We can imagine a person who is extremely traumatised when another person touches the back of their hand. We would sympathise with this person, and likely believe that they deserve support. We would also strongly condemn anyone who touched their hand with the awareness that this would cause them extreme trauma. However, we would, I think, view this person's reaction as in some sense irrational or unwarranted. Any help we offer them would likely include attempting to have them adopt a less drastic response to having their hand touched. The case of sexual assault is very different. We intuitively view the traumatic response of the survivor of sexual assault as reasonable in a way that the response to the hand-on-hand contact is not. The survivor of sexual assault suffers severe psychological trauma in response to a despicable wrong that is inflicted upon them. Their reaction makes sense as a response to the seriously wrongful attack.

While we would be justified in trying to (gently) persuade the person in the first case that they have no reason to so fear having their hand touched and to change their reaction, a similar response would be insulting and counter-productive in the case of the survivor of sexual assault. In this case, the survivor of sexual assault has been seriously wronged and reacts in a manner that is both appropriate and proportionate. Paglia's comments entail that we should view both persons in the same way. On her view, the person who suffers significantly upon having their hand

touched and the person who suffers significantly upon being sexually assaulted are wronged equally, and the wrong is fairly minor. She would suggest that both operate under a delusion (about the nature of having their hand touched and the nature of sex, respectively), and that their suffering is therefore does not ground the serious wrongness of the relevant assault.

Appealing to the often extreme emotional and psychological trauma caused by sexual assault does not therefore enable Wertheimer's account to ground a morally significant distinction between sexual and non-sexual assault. It seems that we have good reason to understand the particular wrongness of sexual assault as explicable independently of the trauma caused, although this trauma is a significant aggravating factor, and to understand the trauma as a reasonable and proportionate reaction to the seriously wrongful violation that befalls the victim.

We therefore have two reasons to prefer an explanation that, unlike Wertheimer's account, explains the distinct wrongness of sexual violence in terms of something other than (only) the victim's suffering. First, it is not clear that Wertheimer's account can succeed on its own terms. Second, we have strong independent reasons to argue that the trauma suffered by victims of sexual violence is not a function of weakness or a faulty conception of sex (Gardner and Shute 2007, 6–8; Rubenfeld 2013, 1429), but instead a proportionate and reasonable response to being seriously wronged. Justifying this claim requires appealing to something other than the victim's experienced suffering in an account of the wrongness of sexual violence.

This leaves open the question of what role victim's experiences play in explaining the wrongness of sexual attacks. Many victims of sexual violence suffer egregiously during sexual attacks and are often traumatised long after. We should be extremely suspicious, therefore, of the suggestion that these experiences play only a minor role in explaining the distinct wrongness of sexual violence. J.H. Bogart (1995, 168) and Rubenfeld (2013, 1428) note, correctly in my view, that we should avoid excessive abstraction and aim for a view that is sensitive to the experiences of victims of sexual attacks.

I therefore endorse two claims that initially appear to be in tension. The first is that the distinct wrongness of sexual attacks cannot be explained entirely by appeal to the victims' experiences. The second is that an account of the wrongness of sexual attacks should be sensitive to and reflect the experiences of survivors of such attacks. I believe that we can reconcile these claims. Gardner and Shute (2007, 7) argue that the experiences of victims "to be rational, must be epiphenomenal, in the sense that they cannot constitute, but must shadow, the basic, or essential, wrongness of rape", and Archard (2007, 380) argues that the "hurtfulness [of a sexual attack] is evidence of, it is not constitutive of, its essential wrongness." While Wertheimer claims that sexual attacks are distinctly wrong because they cause greater suffering, Gardner and Shute and Archard argue the reverse, that victims of sexual attacks experience greater suffering because sexual attacks perpetrate a

distinct wrong against them. On this model, the importance of these experiences is recognised, but these experiences do not themselves ground the distinct wrongness of sexual attacks. The testimony of survivors provides an insight into the wrong perpetrated against them, although it does not fully explain the distinct wrong of sexual attacks.

### **Section 2.3 – Gardner and Shute on the Social Meaning of Rape**

In this section, I examine an account advanced by Gardner and Shute. On this view, the wrongness of rape is a function of the social meanings and cultural perceptions of consensual sex. I argue that this account is unsuccessful, but that Gardner and Shute provide useful resources for a more successful explanation of the wrongness of sexual violence. Their focus is on penetrative sex and penetrative sexual assault, so I shall adopt their narrower focus for the purposes of evaluating their account (Gardner 2018, 49; Gardner and Shute 2007, 21). I propose, however, that the more promising features of their account can be applied to all sexual attacks.

Gardner and Shute (2007, 16, 19) argue that rape is seriously wrong because the rapist treats the victim as a tool by imposing contact for the rapist's own ends with no regard for the victim's autonomy, interests, or suffering. They describe this as "objectification" and, in Kantian terms, as the rapist treating the victim "*merely* as a means" (Gardner and Shute 2007, 16-17, emphasis in original). On this view, rape is wrong because it imposes contact without the victim's consent. Gardner and Shute (2007, 16) say that this "is a denial of their personhood. It is literally dehumanizing." Rape denies the victim's personhood in this sense because it is generally understood that persons interests and (withholding of) consent should be respected, whereas rape disregards and violates these. Specifically, rape wrongs the victim because it violates their right to sexual autonomy, which they characterise as the right to decide the sexual acts in which they engage (Gardner and Shute 2007, 20).

This feature of their account does not establish that rape is distinctly wrong. It identifies that the wrong of rape consists in non-consensual contact and the objectification of the victim, but it does not yet establish that the objectification in rape is more severe than the treatment of the victim as an object that might occur in many forms of non-sexual assault. They explain the distinct wrongness of rape by arguing that there is a certain social meaning that attaches to consensual sex, and rape subverts this. In subverting the social meaning of consensual sex, rape constitutes an extreme objectification or use of the victim (Gardner and Shute 2007, 21–22).

Gardner and Shute do not explain the notion of 'social meaning' here, but they imply that it refers to the popular views of and attitudes towards (in this case) sex within a

particular culture. They suggest that the social meanings that surround consensual penetrative sex are that it is the paradigm case of "subject-subject" relations (Gardner and Shute 2007, 22). These social meanings are such that sex involves a "union" or "complete and literal intertwining of two selves", in which the two partners engage as equal subjects in an act that is entirely unlike one in which one person treats the other as an object. In a later work, Gardner (2018, 49–51, 54–56) elaborates on the social meaning of sex, here referring to it as "a familiar picture of good sex." He suggests that, according to this picture, sex is "a perfect and blissful union, a mutual integration of two embodied beings acting together as one", a "collaboration" between partners in which two persons recognise and respond to each other's intentions, desires, and pleasures (Gardner 2018, 49, 51, 54). The persistent themes here are that the social meaning of sex is that sex involves a union of two persons, rather than just contact between two bodies, and that it is a collaborative pursuit between equals, who recognise each other's goals and interests and seek to realise these to provide fulfilment to each other. This social meaning is reminiscent of the conception of sex that underpins some significance views, and especially Punzo's claims about sex as the union of two selves that I discussed in Section 1.5. However, Gardner and Shute claim that this is widely recognised as a feature of sex but not that sex must be confined to committed romantic love relationships as a result.

They note that this may be "over-romanticised", either in the sense that sex is largely not actually like this or that persons would not consciously accept that this is an accurate description of how sex is or even how sex should be (Gardner 2018, 49; Gardner and Shute 2007, 22). However, this is not a problem for their argument about the distinct wrongness of rape. Gardner and Shute (2007, 22, 24 n.28) argue that this conception has sufficient purchase or influence that this is the social meaning of sex, regardless of whether it is an accurate description of the sex that persons are actually having.

Gardner and Shute argue that rape constitutes a "subversion" of the social meaning of sex (Gardner and Shute 2007, 22). That is, the negative social meaning attributed to rape in some way mirrors or corresponds to the positive social meaning attributed to consensual sex. Just as Gardner and Shute (2007, 22) say that our culture perceives consensual sex as "a perfection of subject-subject relations", its subversion in rape then embodies "a paradigm of subject-object relations" or a case of "sheer use" of one person by another. Consensual sex is considered to be the epitome of a bodily and personal union of two people, and this meaning is subverted by the rapist and used against the victim (Gardner and Shute 2007, 23–24). As a result, rape constitutes a unique and aggravated case of using another person. While such use is always wrong, the social meaning ascribed to consensual sex, which is subverted in rape, establishes rape as an especially egregious and unadulterated form of "sheer use" (Gardner and Shute 2007, 22–23). It is this feature of rape that sets it apart from non-sexual violence. Rape is distinctly wrong because it constitutes an extreme

use of the victim as if they were an object. Rape constitutes an extreme use of the victim because the rapist subverts the social meaning of consensual sex as the paradigm of a collaborative union of two subjects, imposing the paradigm case of using another person as an object. Rape wrongs the victim in a manner that non-sexual assault does not because it subverts the special and positive social meaning of consensual sex to treat the victim as an object in an especially degrading and dehumanising manner.

Gardner and Shute's account has its advantages. In light of my discussion in Section 2.2, this account appropriately accommodates the suffering of victims of sexual violence. It recognises rape as seriously and distinctly wrongful even when the victim has no experience of the attack. In these cases, the assailant still subverts the social meaning of consensual sex to inflict an attack that objectifies the victim in a way that dehumanises them to the extreme. The victim is not aware that they are treated in this way in these cases, but the assailant nevertheless perpetrates an attack that constitutes a distinctly vicious affront to the victim's dignity and personhood. Gardner and Shute's account recognises as seriously and distinctly wrong those cases of rape in which the victim does not experience the attack, unlike Wertheimer's account.

At the same time, Gardner and Shute are sensitive to the importance of survivors' experiences and testimony in the context of this work. They acknowledge that rape is typically "accompanied by violence, terror, humiliation, etc." (Gardner and Shute 2007, 16). Although it is important that an account can accommodate those cases in which the victim has no experience of the attack, they recognise that it is more common for victims of sexual violence to suffer, sometimes very severely. In line with their proposals that I outlined in Section 2.2, they argue that this suffering, feeling "terrified or humiliated" is a "justified" response to the wrong perpetrated against them (Gardner and Shute 2007, 16). On Gardner and Shute's view, victims of rape have this experience because the assailant objectifies them, dehumanises them, and denies their personhood. They thereby avoid the problems that Wertheimer's view encounters in explaining the wrong of rape by appeal to the suffering of victims, while recognising the role and importance of these experiences in such an account.

Gardner and Shute note a further advantage of their account; given that they focus on the *social* meaning of consensual sex to ground the wrongness of rape, they do not rely on the contingent attitudes of particular individuals. Even if a person's own conception of sex and its value differs significantly from the social meaning of sex, a sexual assault perpetrated against this person would nevertheless seriously wrong them, because it would draw on and subvert this social meaning (Gardner and Shute 2007, 22–23). Someone might reject and even mock the idea of sex as an awe-inspiring and collaborative union of two equals as being outdated, unrealistic, or undesirable. They might sincerely believe that sex is like other recreational activities that two or more persons might enjoy together, as per the casual view. Gardner and

Shute's (2007, 22–23) account entails that this person would nevertheless be seriously wronged if they were subjected to a sexual attack, and that the victim is just as likely to find rape terrifying and humiliating, as they would if they considered sex to be something special and sacrosanct.

Gardner and Shute's account has a promising scope; rape is distinctly wrong even if the victim does not view sexual contact as at all special. It also means that their account goes some way towards resolving the traditionalist's challenge. Rape is distinctly wrong even when the victim does not subscribe to a conception of sex that leads them to confine sexual contact to committed relationships.

## **Section 2.4 – The Social Meaning of Consensual Sex**

However, Gardner and Shute's conception of the social meaning of consensual sex presents a problem for their account. Even adopting Gardner and Shute's quite narrow focus on penetrative sexual assault, they do not accurately represent the social meaning with which consensual sex is invested. I will argue that their description of the social meaning of penile-vaginal intercourse is incorrect, and that they do not accurately characterise the social meaning of other forms of penetrative sexual contact. I then argue that, more generally, their account depends too heavily on social meanings of consensual sexual acts that are prone to change over time. On this basis, I raise the problem that Gardner and Shute's account may not entirely avoid the traditionalist's challenge; the wrongness of rape on their account relies on a conception of sex that might generate a restrictive sexual ethic.

First, we have reason to doubt Gardner and Shute's conception of the social meaning of consensual penile-vaginal intercourse. In the modern West, the social meanings of consensual vaginal intercourse often differ significantly from those proposed by Gardner and Shute. Far from being an intimate and perfect union of two selves, even consensual sex is sometimes viewed as violent or harmful (particularly for any women involved), as an act in which one party takes an active role and performs some act on the other party, rather than a properly joint or collaborative union. I believe that these insights are confirmed in familiar cultural tropes about sex. The view of sex as a 'conquest', especially for young men, certainly reflects the idea of one party taking the active role, and of sex being violent, without involving much connection to the other person.

Robert Baker identifies a social conception of sex by considering the language often used to describe penetrative sexual intercourse. If A and B have sex, Baker (2009, 226–27) notes that this might be recounted as: 'A fucked B', 'A screwed B', 'A banged B' alongside more wholesome descriptions like 'A slept with B' or 'A and B slept together' and 'A and B had sex'. Although these more wholesome descriptions



are available, Baker argues that the prominence of the first set of terms is indicative of a dominant conception of sexual contact. He argues that these terms suggest that one person harms the other, and that this reflects a conception of sex according to which one person harms the other when they engage in sexual contact (R. B. Baker 2009, 228–30). In other contexts, to ‘screw’ someone or ‘fuck someone over’ can mean physically harming them or manipulating them in a way that leaves them worse off. This reflects, Baker argues, a conception of sex in which one person harms another. He believes that a view of sex persists according to which sexual contact enhances a man’s status while degrading a woman’s status (R. B. Baker 2009, 230). More generally, Baker notes that we often talk about sex as something that one person does to another. Although some terms (‘sleeping together’, ‘having sex’) portray a joint action, many of the terms used to describe sex imply that one person does something (‘fucks’, ‘screws’, ‘bangs’) to the other. Again, Baker argues that this reflects a dominant conception of sex as something that one person does to another.

If he is correct, then this raises an interesting problem for Gardner and Shute’s account. They suggest that the social meaning of sex is one of collaboration, in which two subjects engage with each other *as subjects* rather than as objects. Baker proposes that the social meaning of sex is instead that sex is something that one person (typically a man or person who penetrates their partner) does to another (typically a woman or a person who is penetrated). This is quite the reverse of the social meaning that Gardner and Shute observe, of sex as a collaborative effort between two subjects.

It is an open question whether Baker’s inference from the language sometimes used to describe sex to his claims about the social meaning of sex is viable. Michelle Dempsey and Jonathan Herring explain this inference and offer further justification for the claim that Gardner and Shute inaccurately characterise the social meaning of sex. They endorse Simon Blackburn’s credibility principle as a means to determine the social meaning of an act within a cultural context. The credibility principle holds that a group is “committed to a belief” if there is no credible explanation of the group’s actions that does not appeal to their endorsement of this belief (Blackburn 2001, 483–484, quoted in; Dempsey and Herring 2007, 484). That is, Blackburn (2001, 483–85) argues that a group has a belief if there is no sensible way to make sense of what the group does or says if it does not hold this belief. Blackburn (2001, 485) argues that this could also be understood in terms of “public meaning”, and Dempsey and Herring (2007, 484) use the credibility principle to identify the social meaning of acts and practices. For them, an act or practice has a social meaning if the only way to credibly explain the act or practice is that persons within a cultural context endorse or are influenced by a certain proposition or attitude.

Suppose that someone claims that the social meaning of sex is that it is the expression of a lifelong commitment between two persons. They would have to defend this claim by identifying certain practices that can only be credibly explained

if persons endorse or are influenced by this attitude towards or conception of sex. They might argue, for example, that stigma attaching to premarital sex, the marginalisation of unwed mothers, and the legal disenfranchisement of children born out of wedlock only make sense against a background set of beliefs and/or attitudes according to which sex is an expression of lifelong commitment that is only appropriate within marriage. Their argument would be compelling when applied to a traditional society in which these practices persist, if no credible explanation that appeals to a different set of beliefs or attitudes about sex is available.

On this basis, Dempsey and Herring argue that sex has a negative social meaning in many societies, including all those of developed western countries, because there are certain practices that can only be credibly explained by appeal to a set of negative attitudes and beliefs about sex. Specifically, they argue that the social meaning of sex is that sex devalues and disrespects women because

Our society could not use, depict, and describe penile sexual penetration of women's vaginas and anuses the way it does if the social meaning of such conduct were not at least in part a way of devaluing women *qua* women and disrespecting women's humanity (Dempsey and Herring 2007, 485).

We know that consensual sex has this negative and sexist social meaning because the only credible way to explain popular descriptions and portrayals of sex is by appealing to beliefs and attitudes according to which penetrative sex is degrading, demeaning, and insulting to women who engage in it. Dempsey and Herring (2007, 486) draw on Baker's discussion of the language applied to sex to justify this claim. They note Baker's view that the language of sex indicates that one person is harmed or manipulated in sex. They argue that the prominent use of this language cannot be credibly explained except by appeal to background beliefs or attitudes according to which sex harms one of the partners. We can only make sense of the phenomenon whereby persons talk about sex as one person 'fucking' or 'screwing' another if we recognise that many persons endorse or are influenced by the claim that consensual penetrative sex harms at least one of the partners. They propose that we can say something similar of "literature, film, advertising, television, pornography...internet depictions of sexual penetration [and] spam email" (Dempsey and Herring 2007, 485–86). Like Baker, Dempsey and Herring (2007, 485–86) argue that much of the language often used to describe sex only makes sense if we think of sex as something that one person does not another. It is untenable, they argue, to maintain that we would say that 'A fucks B' if we did not think of sex as something that one person does to another. The structure of these sentences implies that an agent acts upon an object. They claim that the portrayals of sex in these media can only be credibly explained if we appeal also the belief that sex disrespects the person being penetrated. Accordingly, they propose that the social meaning of sex is that one person does something to another, one person harms another, and women are degraded in sex in a way that men are not.

Baker and Dempsey and Herring hold that the social meaning of sex is negative; it is one of sex as harmful, objectifying, and sexist. However, one might think that the social meaning of sex is more positive than these proposals, without attributing to sex as much value as Gardner and Shute's conception of its social meaning. An alternative possibility is that the social meaning of consensual sexual acts is that they are enjoyable recreational activities that people might do together because they desire to and expect that doing so will be very pleasurable. Accordingly, sex is recognised as enjoyable, but not so different to other recreational interactions. Something like this view is advanced by Hampton. She proposes that persons can attribute meaning to sex in many different ways on the basis of their upbringing, cultural influences, individual personality, and so on (Hampton 1999, 145). A person might come to view sex as "enjoyable, easy, natural, unremarkable, something one pursues for the pleasure of it" (Hampton 1999, 145). If enough people within a society or subculture came to internalise something like this view of sex, and especially if this affected their approach to sexual contact and the language that they use to describe it, then this would come to be the social meaning of sex with that cultural context. On this view, the main expectation of sex, and the main reason that people engage in it, is that it is fun. In some cultures, or among certain age groups or social groups within our society, this is plausibly already the extent of the social meanings attributed to sex.

These social meanings are at odds with Gardner and Shute's account of the social meanings of sex. Gardner and Shute (2007, 22) claim that the social meaning of consensual sex is that it is a collaborative union of two selves and two subjects. It is important for their account of the wrongness of rape that the social meaning of consensual sex is both profoundly positive and holds that sex is a collaboration between equal subjects. In the absence of these social meanings, the subversion of the social meanings of sex in rape cannot explain the distinct wrongness of non-consensual sex, because their claim that rape involves an *extreme* use or objectification of the victim would no longer hold. If any of the alternative social meanings that I have proposed more accurately represent those that are attributed to sex, then Gardner and Shute's account cannot succeed.

It is plausible, however that sex in our society and in others carries a multiplicity of social meanings, some of which are in tension with each other. A proponent of Gardner and Shute's account may reasonably respond that it is consistent to argue that Gardner and Shute's conception of the social meaning of consensual sex is accurate, and the social meanings that Baker and Dempsey and Herring attribute to sex are also accurate. If this is the case, then Gardner and Shute are correct to recognise the social meaning of sex as the collaboration of two subjects and the subversion of this in rape as an extreme form of objectification, regardless of what other social meanings also attach to sex.

There are two reasons to be cautious of this response, although I do not take them to be conclusive. First, while social meaning is complicated, not least when it comes

to sex, and it is possible that different social meanings might be in tension with each other, some of the social meanings that I have surveyed are directly inconsistent. It is difficult to see how these could be maintained simultaneously. Gardner and Shute claim that the social meaning of sex is that it is something that two persons do together, while Baker and Dempsey and Herring argue that this social meaning is that sex is something that one person does to another. These are inconsistent to the point that it is difficult to understand how both could hold.

Secondly, even if multiple inconsistent social meanings are attributed to sex, it is not clear which social meaning is deployed and subverted in rape. Even if sex carries these social meanings, it is necessary that, if Gardner and Shute's account is to succeed, a particular social meaning of sex is subverted and used against the victim of the attack. If sex does have these multiple, inconsistent social meanings, then it is unclear why the social meaning that is subverted and deployed against the victim is that of consensual sex as a collaborative act between subjects rather than something that one person does to another. If Gardner and Shute's account is to succeed, and there are indeed multiple and contradictory social meanings that apply to consensual sex, then they must explain how the social meaning that they attribute to consensual sex, rather than any other, is the one that is subverted in rape.

These comments are not conclusive against Gardner and Shute. It is possible that there are multiple social meanings attributed to sex and that the social meaning that Gardner and Shute endorse is the one that is subverted in rape, such that sexual violence is distinctly wrong as an extreme objectification of the victim. However, this does show that their account is more complex than it first appears and will require some further explanation. I will argue in Section 2.5 that this is indicative of a more fundamental problem in Gardner and Shute's account.

My focus so far has been on the social meanings of penile-vaginal intercourse and the implications of this for Gardner and Shute's account. Although Gardner and Shute's description of the social meaning of consensual sex might apply in at least some contexts to penile-vaginal intercourse, it seems that Gardner and Shute would struggle to explain the distinct wrongness of rape that takes the form of non-consensual anal penetration, simply because the same social meanings do not appear to be ascribed to consensual anal sex.<sup>12</sup>

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<sup>12</sup> I have followed Gardner and Shute in focusing only on the social meanings of consensual *penetrative* sex. I expect that Gardner and Shute's account would also struggle to accommodate the particular wrongness of other kinds of rape and sexual assault, such as non-consensual non-penetrative oral and manual sex, and other non-consensual sexual touching. A full response to the traditionalist's challenge would require an explanation of the distinct wrongness of non-penetrative sexual attacks. I will not address this here, but I do draw on resources developed by Gardner and Shute in my own account in Chapters 5 and 6.

Far from being universally highly valued as an intimate interaction between two people or 'selves', anal sex continues to be somewhat taboo, and is not romanticised in the way that vaginal sex is, although attitudes are changing (Lindberg, Jones, and Santelli 2008, 231). Plausibly, the social meanings of anal sex continue to be influenced by systemic homophobia. The social meanings often attributed to it may differ substantially from those that Gardner and Shute say are often attached to consensual vaginal intercourse. Anal sex is often characterised as deviant, and anything to do with the anus, especially sexual acts, is often thought of as unhygienic. The social meaning attributed by our culture to anal sex is currently ambiguous and contested.

As a result, Gardner and Shute's account of the wrongness of rape is unable to explain the distinct wrongness of non-consensual anal intercourse. On their account, rape is distinctly wrong because it subverts the strikingly positive social meanings that our culture attaches to consensual vaginal intercourse. Given the disagreement over the social meaning that our culture attributes to consensual anal intercourse, the subversion of this does not have the same implication for non-consensual anal intercourse. Gardner and Shute (2007, 22–23) may not therefore be able to offer a reason as to why non-consensual anal penetration is more wrongful than any otherwise similar non-sexual assault.

## **Section 2.5 – The Instability of Social Meanings**

I have raised doubts about Gardner and Shute's conception of the social meaning of sex by suggesting that other social meanings, sometimes in tension with those that they propose, are at least as likely to apply to sex. Of course, it is difficult if not impossible to identify exactly those social meanings that apply to sex in any culture. I should not rule out entirely the possibility that Gardner and Shute accurately describe the social meaning that attaches to sex in those societies that they have in mind. However, my objections against their view indicate a stronger rebuttal. Even if Gardner and Shute correctly identify the social meaning of consensual sex, their account is still flawed.

Suppose, then, that Gardner and Shute accurately represent the social meaning of consensual sex, and rape is distinctly wrongful because it subverts this social meaning and constitutes an extreme objectification of the victim. The problem remains that the wrongness of rape is contingent on a very specific social meaning of sex, which is subject to change. Note that Gardner and Shute's account relies on the social meaning of sex as something more than just a collaboration or just something that persons do to provide each other with enjoyment. It is important for their account that rape is seriously wrong because it objectifies the victim in a way

that other non-consensual contact does not. In order to justify their claim that the subversion of the social meaning of sex in rape has this effect, Gardner and Shute are committed to the claim that the social meaning of consensual sex is the reverse, that sex is an act that most purely treats one's partner as a subject.

Hence, Gardner and Shute's account relies on their claim that the social meaning of sex is very profoundly positive and holds that sexual partners treat each other as subjects in a way that does not occur in other consensual contact. The social meaning that they attribute to sex is not only very positive, but also remarkably specific. This presents a problem for their account because it follows that, if the social meaning of consensual sex were to change over time and deviate from that which Gardner and Shute identify, their account would provide no basis for the distinct wrongness of rape. The scope of their account is therefore worryingly narrow. If our society changed so that the social meanings of sex are associated with harm and doing something to someone else, as Baker and Dempsey and Herring suggest, or as a fun but largely unremarkable recreational activity, as Hampton considers, it seems that we would still want to say that rape is seriously and distinctly wrong. Gardner and Shute do not allow for this. If the social meaning of consensual sex deviates too far from the specific vision described by Gardner and Shute, then their account provides no justification for the claim that there is anything especially wrong in rape.

This account also faces an interesting problem when we consider it in relation to the traditionalist's challenge. At first glance, Gardner and Shute's account appears to overcome this problem. Gardner and Shute explain the distinct wrongness of rape without appealing to traditional beliefs about sex and women or a restrictive sexual ethic. On their account, the wrongness of rape relies on the social meaning of sex being a certain way (a collaborative union of equal subjects), and not on the claims that sex is actually like this or that sex should be like this, or on any individual's view of sex.

However, Gardner and Shute's account may be vulnerable to an objection that is similar to the traditionalist's challenge operating at the level of widespread cultural views. On their account, the wrongness of rape relies on it being the case that there is a particular social meaning attributed to consensual sex. In light of this, there are two ways in which Gardner and Shute's account might link the wrongness of rape to a restrictive sexual ethic, upholding the central problem raised by the traditionalist's challenge.

First, we might expect that cultures in which this is the social meaning of sex to prohibit, stigmatise, or otherwise criticise a range of consensual sexual acts,

including casual sex and nonmonogamy. I have already noted that the social meaning Gardner and Shute attribute to consensual sex, the union of two subjects or selves, is quite reminiscent of Punzo's argument against premarital sex that I raised in Section 1.4. More generally, persons who endorse the social meaning of consensual sex as explained by Gardner and Shute may be suspicious of casual sex insofar as this is not an interaction in which persons are particularly united as selves or subjects. Persons can have sex for pleasure knowing very little about each other and taking very little interest in the personal history or goals of their sexual partner beyond the limited scope of the sexual interaction itself. Indeed, casual sexual partners can do this while being entirely attentive to each other's consent, desires, and responses. If this is correct, then Gardner and Shute's account is vulnerable to something like the traditionalist's challenge because they explain the wrongness of rape only by attributing to sex a social meaning that is likely to lead persons who subscribe to this to adopt a restrictive sexual ethic. According to this criticism of Gardner and Shute's account, rape will only be distinctively wrong in a society in which many persons subscribe to a conception of sex that leads them to view casual sex as morally problematic.

Second, and, I think, more plausibly, Gardner and Shute's account might entail that the wrongness of rape would be undermined if persons were to internalise and act on a permissive sexual ethic with sufficient frequency. Suppose that a significant proportion of individuals come to view sexual contact simply as a recreational activity that brings joy and pleasure. Acting on this, they proceed to have sex with lovers, friends, and strangers, sensitive only to the consent of their partners and the enjoyment of those involved. According to a somewhat permissive sexual ethic, they do nothing wrong and there may be a great deal of value in their sexual conduct. If this approach to sex becomes sufficiently widespread, the social meaning that Gardner and Shute attribute to consensual sex would likely cease to pertain. If enough people act as though sex is just a source of pleasure and enjoyment, the social meaning of sex as a profound union of two subjects will be difficult to maintain. Perhaps, on Gardner and Shute's view, the wrongness of rape relies on it being the case that a sufficient proportion of persons within a cultural context abstain from engaging in sexual contact that would be permitted on a non-restrictive sexual ethic.

Plausibly, social meanings are not fragile and will not be changed by the actions of a few persons or a conscious decision to invest acts and practices with a different value. Indeed, Gardner and Shute (2007, 22–24) claim that this social meaning of consensual sex persists even if fairly few people consciously endorse the view of sex as a union of two selves as an accurate reflection of sexual contact or even an ideal that we should pursue. All the same, a widespread change in the ways in which

persons approach and engage in sexual contact is likely, over time, to change the social meaning attributed to sex. Something like the traditionalist's challenge emerges here. Rape is only distinctly wrong in a cultural context if enough people within the cultural context adhere to a somewhat restrictive sexual ethic, so that the social meaning of consensual sex as a union of two subjects can be maintained.

If successful, Gardner and Shute's account does overcome the traditionalist's challenge. However, I have suggested that it is vulnerable to a similar problem. They explain the wrongness of rape by appeal to a social meaning of sex as a profound and collaborative union of two subjects. If this social meaning is attributed to sex within a given cultural context, then persons within this cultural context are perhaps likely to morally condemn casual sex, endorsing a restrictive sexual ethic. If enough persons engage in casual sex with sufficient frequency, then the social meaning of sex will likely come to diverge from that which is presented by Gardner and Shute. If my observations here are plausible, then Gardner and Shute's account is vulnerable to something like the traditionalist's challenge; the wrongness of sexual attacks remains linked to a restrictive sexual ethic.

By and large, my objections against Gardner and Shute have focused on the social meaning that they attribute to consensual sex. I have not addressed their strategy of arguing that consensual sex is special in virtue of its social meaning and that rape is distinctly wrong because it subverts this. I believe that this approach is quite promising. In Chapters 5 and 6, I draw on the notion of expressive significance, which I take to be related to social meaning, to determine what it is that makes an attack sexual and why sexual attacks are distinctly wrong. I also suggest that the wrongness of sexual attacks depends in part on the expressive significance of consensual sexual contact. I am therefore broadly sympathetic to Gardner and Shute's strategy, and disagree with their account primarily because I find their characterisation of the social meaning of consensual sex to be an untenable basis for the wrongness of rape. Aside from this, their explanation of what social meaning is, how it attaches to sex, and how it can be subverted in non-consensual sex is quite unclear. A successful account that utilises a similar strategy must explain these social and moral phenomena. I am also interested in Gardner and Shute's claim that rape is wrong because the assailant objectifies or uses the victim in a way that is more extreme or dehumanising than other forms of non-consensual contact. This idea arises in other accounts in the philosophical literature, some of which I explore in Chapter 3 (McGregor 1994, 235; Shafer and Frye 1977, 341, 345). I propose a similar claim in developing my own account of what a sexual attack is in Chapter 5 and why sexual attacks are distinctly wrongful in Chapter 6.



## **Section 2.6 – The Significance of Suffering and Social Meaning**

In this chapter, I have rejected two accounts of the wrongness of rape. While considering these accounts, I have attempted to draw out insights about how an account of the wrongness of sexual attacks should be sensitive to and accommodate the experiences of victims and about the role that social meaning should play. I will briefly summarise these insights here.

First, I rejected Wertheimer's account, according to which sexual attacks are distinctly wrongful because they cause a great deal of suffering, and typically cause more suffering than otherwise similar non-sexual assaults. This account is highly intuitive and reflects an aspect of sexual violence, the suffering and trauma of those subjected to it, about which we should care very deeply. I argued that it does not succeed because it excludes those sexual attacks of which the victim has no experience and leaves open the question of whether the victim's psychological response is reasonable and proportionate, when we have very good reason to prefer an account according to which their reaction is reasonable and proportionate.

These objections show that the wrongness of sexual attacks cannot be explained entirely by appeal to the suffering endured by victims of these violations. Instead, I adopt a model proposed by Gardner and Shute, according to which the suffering of victims of sexual violence should be understood as a response to an independent wrong perpetrated against them. That is, the reason that many victims of sexual attacks experience such suffering and subsequent psychological trauma is in part as a reasonable and proportionate reaction to the serious wrong committed in the sexual attack against them. The victim's suffering tracks the serious and distinct wrong of the sexual attack.

The claim that the distinct wrongness of sexual attacks is not solely a function of the experienced suffering of those subjected to it does not minimise the role of these experiences in developing an account of the nature and wrongness of sexual attacks. If Gardner and Shute's claim that the suffering of victims is a response to the wrong inflicted on them is correct, and I believe that it is, then we should expect that a viable account of the wrongness of rape reflects these experiences to some extent. At least, it counts against an account of the distinct wrongness of sexual attacks if its characterisation of this wrongness is in tension with the testimony of survivors of sexual violence about the attacks they have endured. I will therefore endeavour to draw on some of this testimony when I develop my account of what makes an attack sexual and lay out the basis for my account of the wrongness of these attacks in Chapter 5.

In the next two chapters, I discuss two accounts of the wrongness of rape. Following my discussion here, we can understand these as attempts to show that the psychological suffering and subsequent trauma experienced by survivors of

sexual violence represent a reasonable and proportionate response to the serious wrong perpetrated against them. In Chapter 3, I consider the argument that rape is seriously wrong because it attacks something central to the victim's identity. Drawing on Gardner and Shute's model, proponents of these accounts could argue that the psychological suffering of victims of sexual violence is a response to this attack on something central to who they are. In Chapter 4, I discuss the view that sexual violence is seriously wrong because it violates the victim's self-ownership claims. We might interpret these accounts as claiming that the psychological suffering of victims is in part a response to the assailant's egregious violation of their rights and control over their own body. In appealing to aspects of sexual violence beyond the experienced suffering of victims, each of these accounts meets Gardner and Shute's challenge that we should explain the wrong of rape in a way that shows the experiences of victims to be reasonable, rather than appealing to these experiences to explain the wrong of rape.

Second, I rejected Gardner and Shute's account, according to which sexual attacks are distinctly wrongful because they constitute an extreme use or objectification of the victim insofar as the assailant subverts the social meaning of consensual sex. I find this account lacking because it relies on there being an idealised social meaning of consensual sex that does not apply in our society and that, if it does apply, is insufficiently stable to ground the distinct wrongness of sexual attacks.

However, my criticisms of their account are not focused on their strategy more broadly, which is to argue that sex is special because it carries a unique social meaning and that sexual violence is distinctly wrongful because the assailant subverts the social meaning of consensual sex in these attacks. I will draw on these ideas in developing my own view. I have also said very little about their claim that rape objectifies the victim to an extreme degree. I believe that this proposal is also promising; in later chapters I will note that other theorists endorse this view and draw on it when I develop my own account.

# Chapter 3

## Sex and the Self

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### Section 3.1 – Introduction to Chapter 3

In a report on sexual health, the World Health Organisation (WHO) offers the following (non-official) definition of 'sexuality':

Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships (World Health Organisation 2006, 5).

There is some aspect of living a human life that encompasses a person's sexual desires, the sexual behaviour in which they engage, and so on. According to the WHO (2006, 5), this is "a central aspect of being human", although it is not yet clear what this means. Perhaps this offers an insight into the wrongness of sexual attacks; sexual contact (or abstaining from sexual contact) is an important part of each person's life, and the non-consensual imposition of this is therefore very seriously wrong.

This argument features prevalently in the philosophical and legal-theoretical literature. For instance, Ruth Seifert (1994, 56) claims that "Because personal identity is so tightly intertwined with sexual identity, the personal self is also touched to the quick when the sexual form of violence is applied." Scott Anderson (2016, 63) considers the argument that non-consensual sex is particularly harmful because "sexuality is at the very core of our being". Michael Davis raises (and rejects) the "Personal integrity analysis" of rape, according to which "Sex lies close to the centre of the self" such that sexual attacks "are particularly serious because they are particularly serious violations of the self" (M. Davis 1984, 77). The claim that rape is seriously wrongful because it attacks something central to the victim has garnered significant attention.

I will examine this strategy as it is developed by Shafer and Frye (1977), McGregor (1994), and Hampton (1999). Archard (2007, 388–91) draws on each of these accounts to develop this idea further. These accounts adopt the same general strategy. They argue that some interests are more important to a person insofar as these are in some way more central to a person's self or identity, such that a person suffers a greater harm if these interests are set back. McGregor (1994, 233–34) and Shafer and Frye (1977, 336–37) discuss this in terms of a person's domain. A person's domain includes everything over which they have rights, specifically the right to exclude others by withholding their consent, and something is more central

to a person's domain insofar as it is more important to a person's identity (McGregor 1994, 233–34, 242; Shafer and Frye 1977, 377–78). This is explained in different ways by different accounts. Sexual assault is seriously wrong because it attacks the victim in a way that targets something central to their domain.

If successful, these accounts offer an effective resolution to the traditionalist's challenge. If proponents of these accounts can establish that sexual contact is particularly important to a person in the relevant sense, such that non-consensual sexual contact constitutes a particularly serious harm to the victim or a particularly condemnable denigration of the victim's status, then they have offered good reason to believe that sexual assault is seriously wrongful and that it wrongs the victim in a way that non-sexual assault does not. Sexual attacks, like any assault, are wrong because they violate the victim's claim to exclusive control of their own body (which is part of their domain). Such attacks are distinctly wrong because sex is a central component of the domain. Proponents of this account are not obviously committed to any claims about the moral value or impermissibility of various consensual sexual acts and, if successful, therefore offer a promising response to the traditionalist's challenge.

However, I argue that these accounts are unsuccessful. Any version of this account must explain what it means for something to be central to a person's domain such that (1) sex is central to each person's domain and (2) there is a distinct wrong in an attack that targets something central to a person's domain. The first condition is necessary to explain the wrongness of sexual attacks in every case; the second condition is necessary to explain why sexual attacks perpetrate a wrong not present in non-sexual attacks. No interpretation of these accounts fulfils both conditions. We are left either with an account according to which sex is not central to every person's domain or an account according to which something can be central to a person's domain but an attack targeting this is not thereby seriously wrong.

Nevertheless, these accounts offer promising insights into the wrongness of sexual violence. In particular, proponents of these accounts discuss the expressive significance of sexual attacks, a phenomenon that I will draw on in my own account. I am also interested in their proposals that individuals have domains over which they have *prima facie* claims to exclusive control and that the serious wrongness of sexual violence is explicable in part by the assailant's use of the victim in service of the assailant's goals.

In Sections 3.2 and 3.3, I set out the accounts developed by McGregor, Shafer and Frye, and Hampton. In Sections 3.4 and 3.5, I argue that these accounts cannot provide an explanation of what it means for sex to be central to a person's identity which makes it true that both (a) sex is central to each person's identity, and (b) sexual violence is seriously wrongful because sex is central to the victim's identity. In Section 3.6, I explain Archard's account, which draws on resources from the other accounts but develops these to offer a novel approach. In Section 3.7, I object to

Archard's account and argue that it must overcome some difficulties if it is to succeed. In Section 3.8, I identify the conceptual resources and argumentative strategies in these accounts that I believe warrant further consideration.

### **Section 3.2 – Rape as an Attack on the Centre of a Person's Domain**

McGregor (1994, 233, emphasis in original) claims that each person has a "domain" that their "consent *ranges over*." For each person, there is a sphere of activity over which they have prima facie rights of control. One exerts control by the granting or withholding of consent to actions that encroach on this domain. If one person encroaches onto another's person's domain without their consent, then they perpetrate a (prima facie) wrong against this person. For McGregor, an individual has a domain in virtue of being a person.

She argues that some aspects of a person are more central to their domain than others and that an attack on something central to a person's domain constitutes a more serious wrong. On this view, some impositions target something close to the centre of a person's domain, attacking "one's personal integrity, identity, and dignity,...who one *really is*" (McGregor 1994, 234, emphasis in original). A minor theft does not seriously wrong the victim because "One's personal space, one's dignity, and one's identity have not been affected at all with such trivial thefts", so the theft attacks something on the outskirts of the victim's domain (McGregor 1994, 234-235, emphasis in original). Burglary from one's home constitutes a more serious wrong because it violates "one's personal space, one's privacy, and one's sense of security in one's home" by intruding into a space that we usually only reveal and grant access to select others and in which "we would normally let down our guard" (McGregor 1994, 235). Most serious offences involve non-consensual bodily contact. A person's body is the physical manifestation of the person themselves, so an attack on a person's body is a direct attack on the person themselves. Here, McGregor offers a view of what it is that makes something central to a person's domain. She posits that these more central aspects can be identified by their importance to the person (their identity) the status of a person (their dignity), or their body (their personal integrity). Hence, very serious attacks, those that interfere with something central to a person's domain, are those that interfere with something very important to a person, denigrate their status as a human person, or impose onto their body.

McGregor argues that we have good reason to view sex as central to a person's domain. It is closely linked to "our gender and sexual expression", which are in turn linked to our "personal identity", sexual contact is generally considered "personal, private, [and] intimate". It is overwhelmingly performed privately and assumed to occur between people who have a "close and caring relationship"), and "most

individuals believe that they are most vulnerable and exposed in sexual interactions” (McGregor 1994, 235). On this view, sexual contact is central to a person’s domain, which is to say that sex is an important part of a person’s identity. It is closely linked to other aspects of ourselves that we generally take to be important to who we are, it often makes individuals feel vulnerable and exposed as if they are revealing an intimate part of themselves, and people tend to engage in sexual contact with few persons relative to other forms of bodily contact.

Given the centrality of sex to a person’s domain, McGregor (1994, 235) argues that it is particularly important that a person has control over the sexual contact in which they are involved. Rape is seriously wrong because it violates the victim’s “sexual autonomy”, to which we attach “special importance” (McGregor 1994, 236).

McGregor also argues that sexual assault “makes the victim a mere object, an instrument of her attacker’s gratification” (McGregor 1994, 235). McGregor comments briefly on this aspect of the wrongness of rape, but I take her proposal to be that the assailant uses the victim for their own ends against the victim’s interests or without taking into account that the victim has a domain from which they are excluded. McGregor suggests that this is one aspect of sexual violence that makes it more seriously wrongful than non-sexual violence. Sexual assault not only intrudes on something central to the victim’s domain but also does so in a manner that compels the victim to serve the assailant’s ends.

Shafer and Frye (1977, 336–39) also argue that each person has a “domain” over which they have a prima facie right to exclude others, adding that “A person’s domain is the physical, emotional, psychological, and intellectual space it lives in.” They also propose that a non-consensual imposition is more seriously wrongful insofar as it intrudes on something more central to a person’s domain.

However, they recognise aspects of the domain as central on a different basis to McGregor. They argue that the centre of a person’s domain is occupied by those properties (“person-properties”) that are necessary for personhood, including “intelligence, self-awareness, linguistic ability, emotional sensibility, moral sense, and the ability to choose and make decisions” (Shafer and Frye 1977, 336–37). The body is also central to a person’s domain because a person’s body *is* the person, or at least their physical manifestation (Shafer and Frye 1977, 337). Anything that is necessary for the pursuit of their interests, such as “biological life and health” or affects their intelligence or “sense of identity” is “very near to the centre of the domain” (Shafer and Frye 1977, 337). Moreover, a person’s domain includes anything that affects them for an extended period or causes them “discomfort or distress”, and “the activities, the tools, and materials, and the physical spaces used” to fulfil their goals (Shafer and Frye 1977, 337). A person’s domain, then, includes anything that assists in living a flourishing life, and the centre of the domain is occupied by those entities or properties that constitute the individual as a person or are necessary for a human life.

Shafer and Frye argue that non-consensual intrusion into another person's domain is wrong because it constitutes a failure or refusal to recognise the domain over which the victim is entitled to exercise control in virtue of their personhood (Shafer and Frye 1977, 338). An imposition is more seriously wrongful insofar as it attacks something more central to a person's domain because this more directly attacks "the creature's personhood itself" (Shafer and Frye 1977, 340). This is because such an imposition violates a person's right to control even those aspects of themselves that are constitutive of personhood. Any sustained, injurious, or particularly painful physical assault is seriously wrong for this reason.

Shafer and Frye (1977, 345) argue that rape is seriously wrong for two reasons. First, rape targets something that is "centrally...involved in [the victim's] personal identity" and is therefore central to their domain. It is seriously wrongful because it constitutes an attack on the victim's body and on something close to a person-property, their health (Shafer and Frye 1977, 341, 345). Secondly, they argue that rape not only injures a person, but is also "the use of a person in pursuit of ends not its own and/or contrary to its own" (Shafer and Frye 1977, 341, 345). The rapist co-opts the victim's body to advance their own goals in a way that disregards and opposes the victim's interests. This is similar to McGregor's (1994, 235) claim that the assailant "makes the victim a mere object".

### **Section 3.3 – Hampton on Moral Injury**

Hampton does not draw on the notion of a domain but appeals to the claim that sex is central to a person's identity to explain the serious wrongness of sexual violence. She argues that "our humanity is deeply engaged in the sexual experience. Sexuality and humanity are deeply entangled" and that "Our sexuality is deeply important to each of us and in certain ways central to our sense of self" (Hampton 1999, 147, 151) Elaborating, she claims that:

one's humanity is perhaps never more engaged than in the sexual act. But it is not only present in the experience; more important, it is "at stake," in the sense that each partner puts him/herself in a position where the behavior of the other can confirm it or threaten it, celebrate it or abuse it (Hampton 1999, 147).

Hampton claims that sex is an important part of a person's sense of self and closely connected to their humanity. Like McGregor, she claims that sex is closely linked to a person's identity or conception of themselves. Hampton builds on this claim to explain the wrongness of rape. She argues that each individual has value in virtue of being "rational and autonomous", although I take her view to be applicable on any conception of the value of persons (Hampton 1999, 123). If something has value, then certain ways of treating it are inappropriate. If a person said that an object has value and proceeded to destroy the object without justification, one would assume

that they were disingenuous in their claim that the object has value. Accordingly, Hampton (1999, 128, emphasis in original) claims that "*value generates certain entitlements*"; when a person or object has value, they are entitled to be treated and not treated in certain ways.

According to Hampton (1999, 128–32, 135, 143) one person can therefore represent another person or object as lacking the value that it in fact has. When a person acts towards another person or an object in a manner that is inappropriate given the value of the person or object, they represent the person or object as lacking this value, a process that she calls "diminishment" (Hampton 1999, 128, 131). The "expressive content" of their action is that the person or object lacks this value (Hampton 1999, 135). This is because treating a person or object in a certain way conveys the message that it is appropriate to treat them in this way. Where the treatment would be inappropriate towards an entity with particular value, the treatment can only be appropriate if the target of the action lacks value. When a person treats another in a manner that would be inappropriate towards an entity that has value, they thereby deny their value (Hampton 1999, 128).

For example, the perpetrator of a common assault diminishes their victim. The value that persons have entails that it is inappropriate to (unnecessarily) touch them without their consent; a person's value generates the entitlement that they not be touched unnecessarily without their consent. Treating them in this way implies that doing so is appropriate, and therefore that they do not have the kind of value that would render this treatment inappropriate. Common assault thereby represents the victim as lacking value that they in fact have and conveys the message that they are less valuable than they in fact are. By denying the entitlement generated by the person's value, the action denies the person's value. Blackburn's (2001, 483–85) credibility principle as developed by Dempsey and Herring (2007, 484), which I discussed in Section 2.4, is relevant here. If a person's value entails that they should not be treated in a certain way, then the only credible explanation for a person treating them this way is that this person does not believe that they possess this value. Hence, their act conveys that the other person does not possess this value.

Hampton thereby develops Shafer and Frye's (1977, 338, 340) claim that the denial of a person's right to control something central to their domain "is ipso facto to deny that there is a person there at all." In both cases, the claim is that one can deny that another individual has value by acting in such a way that is inappropriate given their personhood. On Hampton's view, certain acts diminish a person's value by conveying the message that they do not have the value that they in fact possess. Hampton (1999, 123) calls an act that diminishes a person's value a "moral injury". A moral injury is damage to the realization or "acknowledgment" of the victim's value by an action that represents the victim less valuable than they in fact are (Hampton 1999, 132).



Hampton (1999, 128–29) argues that this diminishment is not a function of the victim’s perception of the act. A person is diminished when these entitlements are disregarded even when they are unaware of the wrong perpetrated against them or do not recognise that the imposition against them violates an entitlement (Hampton 1999, 126–27).<sup>13</sup> Hampton (1999, 129) claims that the denigration of a person’s value “is something that we “read off of” the effects of immoral behavior.” Her claim that the relevant feature is the *effects* of immoral behaviour is somewhat confusing here, as she is primarily focused on the expressive content conveyed by the act itself rather than its consequences. All the same, Hampton captures the idea that the diminishment or disregard of the victim’s status can be recognised as present in the assailant’s conduct, even if this is not perceived by the victim.

The wrong that Hampton has in mind here bears some similarity to the notion of expressive harm developed by Elizabeth Anderson and Richard Pildes. They propose that “A person suffers expressive harm when she is treated according to principles that express negative or inappropriate attitudes towards her” (E. S. Anderson and Pildes 2000, 1527). Applying this to Hampton’s account, we might say that unnecessary non-consensual contact constitutes an expressive harm for the victim. The victim is treated as though they do not have the entitlements that persons ordinarily possess. Therefore, they are treated as if they are not a full and equal person and the assailant’s attack conveys this about the victim. None of this relies on the victim recognising the assailant’s attitude towards them or the assailant intending to express any particular attitude (E. S. Anderson and Pildes 2000, 1508). A moral injury can be understood as an expressive harm, whose expressive content is that the victim is less valuable, or has less status as a person, than they in fact do.

This provides a strategy by which to explain how the centrality of sex to a person’s identity, humanity, or domain explains the serious wrongness of rape. Consider again Hampton’s (1999, 147) claim that “one’s humanity is...“at stake”” in a sexual act and can thereby be threatened and abused. She also argues that:

To express subordination of another through the sexual act will...likely be wounding to that person in a profound way – not only psychologically but objectively, given the way in which the act will be powerfully expressive of the idea of inferiority (Hampton 1999, 151).

On Hampton’s view, persons have the capacity to denigrate the humanity of another individual by violating the entitlements that they have in virtue of their value as a person. Given the view that sex is closely linked to humanity, the violation of a person’s entitlements in non-consensual sexual contact constitutes a severe diminishment of the victim’s humanity (Hampton 1999, 150). It represents them as lacking value to the extent that they lack entitlements even over something that is central to who they are and closely connected to their humanity.

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<sup>13</sup> Diminishment is nevertheless affected by certain social conventions within a given society insofar as the value that persons have entitles them to a certain kind of respect, and different gestures and utterances convey disrespect in different cultures (Hampton 1999, 125, 130, 135).

Like McGregor and Shafer and Frye, Hampton also claims that a perpetrator of rape not only attacks the victim in a manner that targets an important aspect of their humanity, but also uses them for the assailant's own ends (Hampton 1999, 135). She incorporates this into her account of moral injury, arguing that the assailant represents the victim as an object to be used by others against the victim's own interests and preferences, conveying the message that the victim exists as a tool to serve the ends of others (Hampton 1999, 135; Archard 2007, 389). The expressive content of rape, then, is not only that the victim is inferior to the assailant, but that they may appropriately be used by the assailant for their own ends.

### **Section 3.4 – Valuing Sex Subjectively**

The claim that sex is central to a person's domain is a vital component of these accounts because it grounds the moral distinction between sexual and non-sexual attacks. Sexual attacks are distinctively wrong because they target something central to a person's domain, sex, while non-sexual attacks do not. For these accounts to succeed, they must explain what it is for something to be central to a person's domain or identity and this explanation must be consistent with the claim that sex is central in this way for every individual. This is difficult to make sense of, however. There are a few viable interpretations of the claim that sex is important to a person's identity or self and central to a person's domain, but I find that all of these either (a) fail to establish that sex is central to each person's domain, or (b) fail to establish that something being central to a person's domain is morally significant.

One possibility is that something is central to a person's domain if they consider it to be an important part of who they are. McGregor (1994, 234) takes this view, arguing that "These assignments depend on what people in fact care about and how they define their personhood." While Hampton (1999, 151, emphasis mine) rejects the view that moral injury depends on the victim's view of themselves, she defends the claim that rape attacks something central to the victim in part by arguing that "Our sexuality is deeply *important to each of us* and in certain ways *central to our sense of self.*" These phrases indicate that the importance of sex is explained in part by a person's attitudes towards it and towards themselves.

Murphy advances a similar view. He argues that the particular wrongness of sexual assault could be explained by the view "that a person's sexuality is sacred, mysterious, precious, and even fearful because it is deeply tied...to love and to the essence of self and the meaningfulness of one's life" (Murphy 1994, 214). A person will often consider who they are attracted to, the sexual acts that they enjoy, and the sexual acts that they engage in to constitute an important part of their life and an important aspect of who they are. Murphy (1994, 214–15) argues that sexual assault is distinctly wrongful because it attacks someone in virtue of something

especially significant to them and something that they take to be especially central to their life and sense of self.

An analogy may help to clarify the harm that McGregor and Murphy have in mind. Consider a person who is manipulated, blackmailed, or tortured into betraying their friends or their political cause. A guerrilla fighter struggles to overthrow a regime, is captured by agents of the regime and is compelled by their captors to reveal information about their comrades' location or plans. Certainly, this act is wrong because it is an act of manipulation, or blackmail, or torture, and insofar as it advances any unjust aims that the regime might have. However, this alone does not capture the entirety of the harm inflicted on the guerrilla fighter. There is something tragic about the fact that the person here is compelled to act against their relationships and political views. To explain the extent of the wrong perpetrated against the guerrilla fighter, we must attend to the way in which the attack on the fighter targets aspects of themselves that they consider to be very important.

McGregor and Murphy advance a view according to which sex is an important part of each person's identity in the sense that each person values sexual contact or considers the sexual contact in which they engage (and do not engage) to be an important part of themselves and their life. Sexual assault attacks a person by targeting an important part of their identity and denies them control of an aspect of their life that they take to be important. McGregor and Murphy make sense of an otherwise mysterious claim, that sex is central to a person's identity, by explaining this in terms of the person's values and the importance they invest in determining the sexual contact in which they engage.

However, this view fails. First, there might be a person for whom sexual contact is genuinely a trifling matter. Baber (1987, 130) argues that "For the standard person...sexuality is a peripheral matter on which relatively little hangs". Whether this is true of the 'standard person' is less important than the likelihood that at least *some* persons invest minimal importance in sexual contact. Suppose that an individual finds sex fairly enjoyable, although less entertaining than watching television or practicing a musical instrument. They accept sexual propositions when they are offered by someone who they find attractive but do not find sex sufficiently enjoyable or important to seek out sexual encounters pro-actively. Even given a very broad conception of what it is for sex to be central to a person's identity or sense of self, sex would not be central for this person. In this case, the account in question would struggle to explain why sexual violence is seriously wrongful. The feature of sexual assault that makes it distinctively wrongful on this account, the importance of sex to a person's identity, does not pertain in this case.

This interpretation of the account, that sex is central to a person's domain insofar as they view it as an important part of their identity, fails to accommodate all sexual attacks. Moreover, this person's indifference towards consensual sexual contact should not be a mitigating factor regarding sexual violence perpetrated against them

and we would not expect them to be less traumatised by sexual violence than a person who views sexual contact as an important component of their life.

Murphy (1994, 216) himself believes that this might be true of sex workers. He claims that "it initially seems implausible to believe that a prostitute conceives of her sexuality in just the way that...would justify regarding rape as more serious than any other assault." Instead, he suggests that she is likely to view her sexuality and sexual capacities as a "commodity" that provides a useful means to an income when traded relatively indiscriminately with people that she may or may not know (Murphy 1994, 216). Murphy believes that because sex workers, in his view, treat sex as something to be traded for money quite indiscriminately, they likely do not view their sexuality and the sexual contact in which they engage as important aspects of themselves. He recognises that, given his account, this would render sexual violence perpetrated against a sex worker less seriously wrong than a sexual attack against someone with a different conception of sex and equally as serious as an otherwise similar non-sexual assault.

Clearly, this is a horrifying implication of his view. While he considers a range of reasons to nevertheless *punish* sexual attacks against a sex worker as severely as sexual attacks against other persons, he does not deal with the appalling implication of his account that a sexual attack against a sex worker is less seriously wrongful (Murphy 1994, 216–18). This is a striking and insurmountable problem for this formulation of the view that sexual violence is distinctly wrong because persons consider sex to be an important part of their identity. This account cannot accommodate sexual attacks against individuals who view sex not as a reflection of an intimate part of their self but as something to be traded (for material gain or pleasure) somewhat indiscriminately. If sex workers (as Murphy suggests) and promiscuous persons are more likely to adopt this conception of sex, then this account seems doubly irredeemable. It fails to accommodate all sexual attacks, and particularly those that are perpetrated against persons who, historically, have not found justice, support, or empathy when they are victimised by sexual assault.

This account entails that certain cases of sexual assault are more wrongful than others on an irrelevant basis. It entails that some sexual assaults are no worse than otherwise similar non-sexual attacks if the victim lacks a conception of sex as an important part of their life or identity. While there are many factors that might exacerbate the wrongness of sexual violence in any particular case, it is simply not clear that a person's attitude to (consensual) sex is one of them or even that a person's view of consensual sex as central to their identity would necessarily make the attack more traumatic.

The underlying problem is that this account explains the wrongness of sexual attacks by appeal to the victim's view of consensual sexual contact, when it is not at all clear why these should be linked. Criticising Murphy's view specifically, Archard (2007, 382–87) argues that we should reject the view that the wrongness of rape is a

function of the value of consensual sexual contact. Murphy subscribes to this view insofar as he claims that rape is seriously wrongful only insofar as the victim values consensual sex as an important part of their identity and their life, such that rape attacks them by targeting something important to them (Archard 2007, 386). Archard (2007, 383, 386) responds that rape is fundamentally different to consensual sex, to the extent that referring to the former as 'sex' is often misleading. Therefore, it is not clear why the importance (or lack thereof) of consensual sex to a person should have any bearing on the wrong perpetrated against them, or the suffering that they may endure, should they be subjected to sexual violence. Sex is so unlike sexual assault, on Archard's (2007, 386) view, that it is fruitless to attempt to explain the distinct wrongness of sexual attacks by appealing to the value of consensual sex.

The view that rape is wrong because individuals subjectively view sex as an important part of who they are, which is explicitly endorsed by Murphy, is unsuccessful. Its scope is too narrow, failing to explain the serious wrong perpetrated in sexual attacks against persons who do not view sex as an important part of their life or identity. In doing so, it makes the wrongness of sexual violence depend on something irrelevant; consensual sex and sexual violence are so fundamentally different that it is difficult to understand how the value of the former could ground the wrongness of the latter.

Second, many things will count as central to a person's domain on this account, and so it cannot justify the claim that sexual violence constitutes a distinct wrong. Davis (1984, 78) argues that "Sex is not the only attribute close to the center of the self. The rest of our physical integrity lies there too, as may some of our property". He notes that a person's control over their own body is also central to the self. This is certainly true on this interpretation of the account, as a person's body plays a vital and unique role in their life and their goals. On this basis, appeals to the centrality of sex to the self cannot justify the claim that the sexual attacks are distinctly wrongful. All non-consensual bodily contact targets something central to a person's sense of self (their body). This account provides no reason to recognise sexual assault as seriously wrongful qua sexual assault, because it does not identify any morally significant difference between sexual and non-sexual assault.

An account according to which sex is central to a person because they consider it to be an important part of themselves and their life is therefore unsuccessful. It does not justify the claim that sexual violence is always seriously wrong or that it involves a wrong that does not occur in non-sexual violence.

## Section 3.5 – Sex and Personhood

There is an alternative interpretation of the account available. Perhaps sex is central to a person's domain because it is directly related to those capacities that are constitutive of personhood. It is central to a person's identity insofar as it is one of those capacities that makes them a person or has a considerable impact on those capacities. This is advanced by Shafer and Frye (1977, 337), who argue that the centre of the domain houses "the...person-properties themselves and their physical locus, the body." Archard (2007, 391–92 emphasis mine) perhaps expresses a similar view when he claims that "sex is central to our identity *as human beings*". While Ann Cahill subscribes to a very different account of the wrongness of rape, the following comments reflect a similar idea:

persons are fundamentally, not peripherally, embodied. Sexuality is therefore not to be understood as a possession of an essentially intellectual, disembodied being, but rather as an ineluctable element of being, *a facet of personhood no less relevant than one's capacity for rational thought* (Cahill 2001, 182-183, emphasis mine).

This interpretation is also unsuccessful. It cannot ground a moral distinction between sexual assault and other physical attacks and it is not clear why an attack on something central to a person's identity in this sense would exacerbate the wrongness of the attack.

Firstly, on this interpretation, the account fails to ground any morally significant difference between sexual and non-sexual physical assault. On this view, sexual assault attacks something central to a person insofar as it attacks their body, which is taken to be identical to them. Of course, any non-consensual physical contact will also constitute an attack on the person's body. Shafer and Frye do not explain why a sexual attack on a person's body constitutes a more severe attack on the person themselves than a non-sexual attack on their body. This interpretation of the account does not explain why sexual integrity is more important than, or even distinct from, bodily integrity more generally, and so cannot ground the claim that the wrong of sexual assault is distinct from that of non-sexual assault.

Secondly, even if sexual assault attacks some property that is distinctively constitutive of an individual's personhood, this alone does not explain why the attack is seriously wrongful. Shafer and Frye (1977, 337) argue that "Anything which exerts an influence on the person-properties themselves – which, for example, bends a person's will or dulls its intelligence or affects its own sense of its identity – also comes very close to the center of the domain." They make a compelling case here. An attack that reduces a person's intelligence, a minimal degree of which is necessary for personhood, is profoundly serious. An attack that causes long-term or severe damage to a person's body is also egregiously wrong.

However, it is not obvious that the reason that these attacks are seriously wrong is that they attack the victim by targeting some capacity that is necessary for personhood. Some attacks that target the victim's person-properties or body do not constitute serious wrongs. For instance, both Shafer and Frye (1977, 336) and McGregor (1994, 234) argue that a necessary condition of personhood is the capacity to identify goals and pursue them, at least to a limited extent. Any non-consensual interference that hinders a person's goals, or a person's ability to pursue them, thereby attacks something central to a person's domain insofar as the capacity to pursue goals is constitutive of personhood. Many interferences in a person's pursuit of their goals will be quite minor, especially if the interference is less invasive and the goal less important. Shafer and Frye (1977, 336) and McGregor (1994, 234) also recognise the capacity to communicate as a person-property. Suppose that one person temporarily follows another around a public space, playing a loud instrument whenever their target tries to speak, so that they cannot be heard.<sup>14</sup> This is an imposition on the person that targets their capacity to communicate. An imposition can target a person's capacity to set and pursue goals or communicate without being at all seriously wrong.

This reveals a problem for this interpretation of the account. Taking this conception of what it is for an aspect of a person to be central, it is not clear that an attack is seriously wrongful just on the grounds that it targets something central to a person's identity. Where an attack insults, disregards, or even temporarily disables some capacity of a person that is a necessary condition for their personhood but does not diminish this capacity for an extended time, this is not sufficient to render the attack seriously wrong.

The account in question claims that rape is wrong because it attacks the victim by targeting something central to their self. I have considered two interpretations of what it is for something to be central to a person and argued that the account is unsuccessful however we interpret its central claim.

### **Section 3.6 – Archard on the Wrongness of Rape**

Archard's account draws on those that I have discussed thus far and develops some of the claims further. Archard (2007, 387–90) endorses what he calls the "spatial model" of interests, which he describes as follows:

On the spatial model...interests should be thought of as occupying a defined but metaphorical space constitutive of the person or self. Interests are more or less important to the identity of

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<sup>14</sup> This was famously employed as a means of protest by suffragette Mary Maloney, who agitated for suffrage during the 1908 Dundee by-election by ringing a bell every time Winston Churchill tried to speak (IrishCentral Staff 2018; MacGabhann 2018).

the person, to our sense and understanding of ourselves. The more important our interests are, the closer they are to the centre or core of the space that, metaphorically, defines the self (Archard 2007, 388).

According to this model, interests can be more or less significant to an individual's identity, conception of themselves, or personhood. We can represent this with a spatial metaphor, according to which those interests that are particularly significant are at the centre of this space, and those that are less significant are on the periphery.<sup>15</sup>

Archard (2007, 388–90) draws on arguments by McGregor and Shafer and Frye to advance the claim that some aspects of persons, including sex, are more central to their identity and selfhood, and so sex and sexuality are central to the metaphorical space that delineates the self in the spatial model of interests. Archard (2007, 389) also endorses Hampton's account of moral injury, agreeing that a person is wronged when an assailant represents them through their action as being of less worth than they in fact are. He argues that a moral injury is greater insofar as the aspect of a person that is attacked is important to the victim's identity, so that the attack violates an interest that is central in the spatial model of interests. In these cases, the assailant "can be taken to say to his victim "You do not count, or count for very little, even in respect of that which matters very much to you"" (Archard 2007, 389–90).

Given the importance of sex in the spatial model of interests, a perpetrator of rape inflicts an especially serious attack onto the victim. The assailant represents the victim as an object to be used, and disregards their interests and wellbeing, in relation to something central to who they are as an individual. The moral injury that they inflict is therefore particularly egregious. Archard (2007, 379, 390–93) claims that persons therefore have a particularly important (central) interest in "sexual bodily integrity", which is set back or violated whenever a person is subjected to non-consensual sex.

While he does not use such terminology, the notion of *expressive harm* is instructive here. When an assailant attacks something central to a person's identity, as occurs in sexual assault, they convey through their action that the victim lacks value and worth even to the extent that the victim's interest in controlling this aspect of their life and body does not give them reason to refrain from the attack. For Archard, the moral injury inflicted on the victim is exacerbated by the message that the assailant communicates about the victim's worth.

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<sup>15</sup> Archard (2007, 388–90) does not commit himself to understanding a person's rights and claims in terms of a personal domain, a sphere over which one has claims of exclusive control. He discusses his view of the claims that persons have over their own bodies elsewhere (Archard 2008). His spatial model instead illustrates the importance of interests relative to each other.



Archard (2007, 390) notes that the success of his view relies on the recognition of sex as central to each person's identity. He claims that the status of sexual integrity as a central interest should not rely on a person conceiving of their sexual preferences and the sexual contact in which they engage as central parts of themselves. If it did, then this account would not accommodate the serious wrongness of sexual attacks against persons who do not view sex as deeply important to who they are.

Archard (2007, 391) argues that sexual integrity is an important and distinct interest because each person "is a sexed being", which means that "our sexuality, our sexual nature, is central to our identity, to who each of us is", where this does not rely on a person viewing sex as related to their identity, nor on them enjoying, valuing, or engaging in sexual contact. Equally, Archard argues that an individual is a sexed being even if they do not think of themselves in this way. We can imagine a person who does not believe that they have any specifically sexual interests at all. This individual would claim that sexual assault would wrong them in the very same way as non-sexual assault that is similarly invasive, physically painful, and medically injurious. They would recognise such an attack as a violation of their autonomy and *bodily* integrity but would not view the sexual nature of the attack as an aggravating factor (Archard 2007, 392). That is, they would endorse the casual view (that sexual contact is not subject to distinct moral considerations) and the implications that Benatar attributes to it (that sexual assault is therefore no more seriously wrongful than non-sexual assault). Archard claims that this person would nevertheless have a central interest in sexual integrity, and that they would be mistaken to argue that they are not seriously wronged if they were sexually assaulted. Human persons are sexed beings, such that sexual integrity is a central interest to each of us, even if one denies that this is the case, and sexual violence is always seriously harmful. Archard (2007, 392) refers to this as an "objectivist view of human interests".

Archard does not offer a comprehensive defence of this objectivist view but does develop a compelling motivation for it. He argues that "there is a range of putatively fundamental human interests – sexual integrity, health, happiness, knowledge, friendship, self-fulfilment, and so on" (Archard 2007, 392). We can imagine a society in which the inhabitants do not consider each of these to be a particularly important aspect of their lives or their identity, and therefore dismiss the suggestion that they are (seriously) harmed when these interests are set back. However, Archard (2007, 392) argues that, in such a society, there would have "been a serious loss of humanity and something [would have] caused the destruction or an erosion of the necessary conditions of human flourishing." Archard argues that, although it is unclear why sexual integrity is objectively important, we can recognise it as analogous to these other interests. He proposes that sexual integrity is similar to these other interests, which are plausibly objectively fundamental. These other interests are fundamental regardless of an individual's view of them, so we have good reason to think that the same is true of sexual integrity.

### Section 3.7 – Sexual Integrity as an Objective Interest

While Archard's proposal here is compelling, there is a structural difference between sexual integrity and the other interests that Archard raises as objectively fundamental, raising a problem for his argument. His strategy therefore does not ground a distinct interest in sexual integrity.

Archard does not explicitly define 'sexual integrity', although I take it to be just the interest in avoiding non-consensual sexual contact or in having control over the sexual contact in which one is involved. On this view, a person's interest in sexual integrity is violated only when they are subjected to non-consensual sexual contact. This is reflected in Archard's comments on sexual integrity. He claims that "a woman's interest in her sexual integrity is set back when she undergoes sex to which she does not consent" (Archard 2007, 379) and that persons can "greatly value their integrity as sexual beings, even whilst they do not value the exercise of their sexuality" (Archard 2007, 391).

The interests that Archard lists aside from sexual integrity are interests in realising certain values that are constitutive of a fulfilling life. For example, friendship is something that makes a life valuable. All things being equal, a life is more fulfilling insofar as it involves more friendship. In these cases, we can identify the harm that occurs when the relevant interest is set back; a setback to a person's interest in health makes the person *less healthy*, a setback in a person's interest in knowledge make them *less knowledgeable*, a setback in a person's interest in friendship makes them *less connected* or *less included*. If sufficient, such loss leads to negative and unpleasant states of being, respectively, unhealthy, ignorant, and lonely/isolated. There is a value that is constitutive of a fulfilling life, we have an interest in realising this value, and so we are harmed by any action or event that hinders the realisation of this value and thereby sets back the relevant interest.

In contrast, the harm inherent in a violation of sexual integrity does not consist in the denial, reduction, or removal of some good, but in the non-consensual sexual contact itself. Sexual integrity consists not the realisation of some value that can be increased or reduced, but in *control* over a certain aspect of one's life and specifically in the ability to avoid certain forms of contact. The structural difference, then, is that sexual integrity concerns control over something, the contact in which one is engaged, and the other interests concern the realisation of some value that is taken to be constitutive of a fulfilling life. The value of sexual integrity consists entirely in the absence of some harmful and wrongful imposition, specifically non-consensual sexual contact. While one aspect of friendship and happiness is that they signify the absence of loneliness/isolation and sadness respectively, their value does not consist in the absence of these negative states or experiences. Friendship, happiness, and the other goods that Archard lists are valuable independently of the absence of their corresponding negative states.

This yields practical differences in the circumstances under which the respective interests are set back and advanced. Sexual integrity cannot be directly<sup>16</sup> advanced by some act that occurs without the consent of the person concerned. Non-consensual sexual contact necessarily violates a person's interest in sexual integrity. The other interests *can* be advanced by a non-consensual act. For example, a person's health can be advanced by non-consensual interference, even when the act imposed is morally impermissible. Suppose that person B has a terminal illness and person A anaesthetises and operates on B without their consent. The operation is a success and person A is fully healed. Call this case 'Surgery'. All things considered, A has wronged B by imposing very invasive contact on them without their consent. However, there is no doubt that the patient's interest in health is advanced. The interest in health does not depend necessarily on the person having control over a certain aspect of their life but is instead advanced or infringed given the extent to which they access and realise the good of health.

Similarly, consider a case in which two people are forced to socially interact with each other and become friends as a result. In a 2017 social experiment in Singapore, self-confessed "loner" 83-year-old Bill Teoh was paired up with 14-year-old Kieryon Maldini (Ng 2017). Prior to the study, Teoh avoided social contact wherever possible and was reluctant to connect with another person. Over time, their relationship developed and they became close (Ng 2017). Similar relationships are imagined in popular culture. In Jeff Baron's play *Visiting Mr. Green*, Ross Gardiner almost runs over elderly widower Mr. Green and is sentenced to community service of assisting Green in his home (Simon 1998). They are initially frustrated by the arrangement but develop a close friendship. The 2016 film *Hunt for the Wilderpeople* sees Hec and his recently adopted son Ricky develop a close relationship after initially being at odds, following the death of Hec's wife (Waititi, Crump, and Kahi 2016). In each case, an older man is paired with a boy or young man through not-fully-voluntary means, and the two develop a close friendship after initial mutual distrust, disdain, or disinterest. Those involved have little or no *control* over the circumstances in which their friendship develops, but this does not diminish the friendship that results. The interest in friendship does not necessarily require that one have control over the development of friendships.

The recognition of sexual integrity as an objectively fundamental good therefore requires a different justificatory strategy to the recognition of the other goods that he raises. While Archard does not provide an argument for recognising these as objectively fundamental, the justificatory strategy is more obvious and straightforward in the case of the other interests than it would be in the case of

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<sup>16</sup> There are ways in which a person's interest in sexual integrity could be advanced *indirectly* by some action to which they do not consent. For example, any government or institutional policy, community initiative, or criminal law reform that reduces the frequency of sexual assault might advance this interest.

sexual integrity. The claim that our interests in health, friendship, happiness, knowledge, and so on, are objectively fundamental relies only on the claim that these phenomena are objectively good,<sup>17</sup> that is, they enhance a person's life regardless of whether the person views them as such or finds their realisation fulfilling. This is not an insignificant feat; the claim that something can be good for a person in this sense is highly controversial. However, if one can establish that these phenomena are objectively good, then it follows quite straightforwardly that a person has objective interests in them; *if* health, knowledge, and so on are objective goods, *then* a person has interests in realising these regardless of what they think of the matter.

The same justificatory strategy is not available in the case of sexual integrity because there is no good that could ground an objective interest in sexual integrity. This interest concerns control of some sphere of a person's life rather than the maximisation or realisation of some value. Archard's strategy is to show the appeal of an objective interest in sexual integrity by showing that it is analogous to other interests that we generally think of as objectively conducive to a fulfilling human life. However, the justification for these interests cannot apply to sexual integrity, raising a problem for this strategy. Therefore, Archard presents a somewhat diverse bundle of interests, and the intuitive appeal of objective interests in the goods he lists is insufficient to ground an objective interest in sexual integrity.

This objection might be too quick, however. While the interests that Archard lists concern the value of the corresponding goods themselves, we might say that each person has objective interests in control over certain aspects of their lives, which are structurally similar to the interest in sexual integrity.

For example, one might think that individuals have an objective interest in control over their occupation, the acts that they perform for a substantial portion of their life to secure the material prerequisites for survival and (at least) minimal comfort. That is, a person's life goes better if they have greater control over the work that they do, who they work for, and their working conditions. This does not depend entirely on the impact that this control has on satisfaction in one's occupation and one's life in general; while we would expect someone with greater choice over (and within) what they do for a living to enjoy this more, we might think that a person's life goes better insofar as they have a choice of their occupation and control over their working conditions independently of the impact that this has on their subjective enjoyment of their work. We might therefore posit an objective interest in 'occupational integrity' or 'occupational autonomy' that is structurally similar to

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<sup>17</sup> This does not require that the interests or concomitant goods are objectively valuable in a *meta*-ethical sense, but only that they are valuable (in some sense) regardless of whether the person who realises or experiences them recognises them as valuable. This claim is consistent with moral anti-realism.

sexual integrity insofar as it concerns *control* over a certain sphere of one's life and not the maximisation of some good per se.

There are many ways in which one might argue in favour of such an interest. One might appeal to the importance of having 'authorship' of one's life, directing one's life by one's own meaningful choices, or to the claim that there is something unjust or exploitative in having one's labour directed by another person for their own benefit. The claim that persons have an objective interest in 'occupational autonomy' relies only on the claim that persons' lives go better, all things being equal, if they have more control over their work, even if this would not increase their subjective fulfilment.

If we can make sense of an objective interest in something like occupational autonomy, then an objective interest in sexual integrity is more plausible. That is, adopting Archard's strategy of comparing sexual integrity to other putatively fundamental objective interests seems more promising.

However, applying Archard's strategy with reference to this kind of interest is not sufficient to ground an interest in sexual integrity. If it is appealing to recognise occupational integrity as an objective good, this is likely to be because work typically dominates a person's life. Many individuals spend most of their waking hours for much of their life engaged in some productive labour to support themselves and their families, whether in the form of subsistence agriculture, gainful employment, or domestic labour. A person's occupation is a central feature of their life because they are likely to spend a considerable proportion of their life engaged in it. Even if a person views their work as an unfortunate and tedious necessity and it does not seriously impact their sense of self, it is likely to be an important part of their identity simply because it occupies so much of their time and energy.

Occupational integrity is important because a person's work is central to their identity; if there are other interests that specifically concern a person's control over a certain aspect of their life, these are likely to be grounded in the centrality of that aspect of the person's life to their identity. Control of some aspect of a person's life is important to a person (objectively) because this part of their life is central to who they are. If we are to argue that a person objectively has an important interest in control over some aspect of their life, we must first establish that this aspect of their life is important to who they are. A justification of sexual integrity by appeal to other interests in control of a particular sphere of one's life does not escape the demand for an explanation of why sex is central to a person's life or identity. While it is true that there are plausibly objective interests in control over particular spheres of one's life, this is because these aspects of one's life are important to who one is. If one has a distinct and important objective interest in control over the sexual part of one's life, this relies on it being the case that sex is central to one's identity. I have argued that this has yet to be justified.

If we are to make sense of the serious and distinct wrongness of sexual violence, it is insufficient to posit intuitively fundamental human interests and to argue that sexual integrity, an interest in avoiding non-consensual sexual contact, is similar. The interests that Archard himself raises are structurally dissimilar to sexual integrity, concerning the realisation of some good rather than control over some aspect of one's life. While we can imagine certain other interests that concern control over some aspect of one's life, such as an interest in control over one's occupation, these rely on the claim that the aspect of one's life in question is central to one's identity or a very important part of one's life. This strategy does not avoid the question of what it is for something to be a central interest nor how sexual integrity could be included here.

Nevertheless, Archard's claims about the expressive significance of non-consensual contact, offer a profound insight. Recall his proposal that the assailant "can be taken to say to his victim 'You do not count, or count for very little, even in respect of that which matters very much to you'" (Archard 2007, 389–90). There are two claims here. First, that sexual assault communicates the attitude or view that the victim does not matter and that their interests and entitlements need not be recognised or respected. Second, sexual assault communicates that the victim does not matter *even regarding a very significant aspect of who they are or something very important to them*.

The first claim can be justified by appeal to the notion of a personal domain over which each individual has claims to exclusive access and control. I examine the view that persons have claims over their own body in Chapter 4. This first claim also relies on the view that non-consensual contact can have expressive or communicative significance and can convey certain attitudes or views, which I examine further in Chapters 5 and 6. Following Hampton, one may argue that persons have claims over their body in virtue of being a person, and that unnecessary bodily contact constitutes an expressive harm insofar as it conveys that the victim is not worthy of these claims.

However, if my objections succeed, then Archard's account does not justify the second claim, that the assailant conveys the message through the attack that the victim does not matter *even with regard to something very important to them*. If we cannot make sense of sex being central to each person's identity, then it is not clear that sexual assault could convey the message that the victim lacks worth even to the point that their interests and entitlements do not matter *regarding something that matters greatly to them*. Archard's account distinguishes sexual assault from common assault on the grounds that sexual attacks target something very important to the victim. In order to explain the wrongness of rape and answer the traditionalist's challenge, Archard (2007, 389–90) requires an account of what it means to say that sexual assault attacks that "which matters very much" to the victim that applies to every individual.

## **Section 3.8 – Promising Contributions and Remaining Challenges**

In what remains, I draw out those features of these accounts that warrant further consideration because I believe that they offer an insight into the wrongness of sexual violence, and identify the ways in which these conceptual tools must be further refined and developed. Initially, it is worth noting a general objection against the accounts that I have discussed, and which reveals a great deal about the route that we should take in explaining the wrongness of sexual violence.

The core claim in these accounts is that the wrongness of sexual assault is grounded in the centrality of sex to each person's identity or sense of self. The problem is that it is difficult to ascertain what it is for something to be central to a person in a way that is both morally significant and applies to every individual. While these accounts each specify the relevant relationship between individual persons and sex as being one in which sex is *central* to a person's identity, sense of self, or domain, my discussion thus far suggests that it is difficult to identify *any* relationship to sex that everyone has and that could ground the claim that a sexual attack is seriously and distinctly wrongful. The attitudes that persons have to consensual sex are so varied that there will be no attitude to sex that each person shares or, if we can specify some claim about sex that is true for each person (for example, it involves their body), then this will be too trivial or general to distinguish sexual violence from (minor) non-sexual wrongs.

This offers a compelling reason to abandon the attempt to explain the wrongness of sexual violence in terms of how individuals conceive of and engage in sex. Attitudes towards sexual contact generally are too diverse to ground an account of the wrongness of sexual violence that applies with sufficient generality. I submit that the problem with these accounts, then, is not only that they posit that sex is central to a person's identity, but more generally that the argument depends on the victim of sexual violence having *any* particular relationship to or view of sex.

While the general strategy of these accounts is unsuccessful, they introduce ideas that we should seriously consider as components of an explanation of the wrongness of sexual violence.

First, Hampton's notion of expressive significance, as developed by Archard, is promising. By appealing to this notion, one can argue that sexual violence disregards or attacks the victim's moral status where this is not dependent on the assailant's motive or the victim's experience and interpretation of the attack. If sexual attacks can be shown to convey a distinctive expressive significance, then this notion can also assist in explaining the distinct wrong of sexual violence. Hampton's comments introduce the idea that sexual violence is distinctively wrong (in part) on the basis of the expressive significance of the non-consensual contact. Non-consensual sexual

contact conveys that the victim is inferior, lacks the entitlements that proceed from their humanity, and that their interests do not matter. Perhaps part of what is so terrifying about rape, and the reason that many survivors report having experienced an imminent fear of being murdered during such attacks (Martin, Warfield, and Braen 1983, 502; Schnee 1986, 187), is that they are confronted by an assailant who refuses to recognise their rights as a person, denies that their interests are at all important, and manifests this in their action towards the victim. Hampton argues that sexual violence conveys that the victim is worthless, an object, or appropriately subordinated to the assailant. If we can make sense of how assault can convey these attitudes, it seems that Hampton has elucidated an aspect of sexual violence that explains why we find it so despicable and explains, at least in part, the serious wrong perpetrated against the victim.

Nevertheless, this could be clarified and explained further. I have argued that Hampton does not fully explain the origin of the expressive significance of sexual attacks. The concept of expressive significance as introduced by Hampton would benefit from further development, in particular with a focus on the manner in which expressive significance attaches to particular acts, how an attack can convey a significance independently of the assailant's motives or attitudes, and the distinctive expressive significance carried and conveyed by non-consensual *sexual* contact. I have argued that there is no compelling interpretation of the claim that sex is central to a person's identity. If I am correct, Hampton's view also requires an account of the distinct expressive significance of *sexual* violence. As Archard (2007, 190) explains, Hampton argues sexual violence constitutes a more serious wrong than other non-consensual bodily contact because sex plays an important role "in our understanding of ourselves." If sex does not play such a role, then we need a different explanation of how the expressive harm perpetrated in sexual attacks is distinct from that which is inflicted in non-sexual attacks.

Second, McGregor and Shafer and Frye develop the notion of a domain, a (metaphorical) space over which a person has the right to exclude others such that one perpetrates a wrong against them by intruding into their domain without their consent. I argued that these accounts go wrong in arguing that something can be more or less central to a person's domain and that sexual violence is seriously wrongful because it targets something central to the victim's domain. However, the notion of a domain itself helps to explain an aspect of the wrongness of sexual violence, the assailant's imposition of non-consensual physical contact, because all non-consensual contact intrudes into a person's domain without their consent. While I endeavour to offer an account that distinguishes sexual from non-sexual attacks, sexual assault is itself a form of non-consensual physical contact. Sexual assault is wrong in the way that non-sexual assault is wrong, even though it involves a further wrong in virtue of being a sexual attack. I consider the extent to which the idea of claims that persons have over themselves, in the form of self-ownership, can assist in developing an account of the wrongness of sexual violence in Chapter 4.



Third, proponents of these accounts argue that rape is seriously wrong in part because the assailant *uses* the victim for some endeavour that is contrary to the victim's interests and preferences, rather than 'merely' harming or hurting them. Indeed, this feature of the account is often presented as independent of claims about the centrality of sex to the self and introduced without substantive argument. McGregor (1994, 235, emphasis mine) argues that "All unconsented-to border crossings show disrespect for the victim, but some more than others...Rape not only denies the ability to control a central part of one's domain, but also in doing so *makes the victim a mere object, an instrument of her attacker's gratification.*" Similarly, Shafer and Frye (1977, 345) conclude that rape "is bad in the way assault in general is, but its wickedness is compounded by the fact that it is a use of a person, not just the injury of a person, and a use of a person in pursuit of ends not its own and/or contrary to its own." Although this is less explicit in Hampton's account, she proposes that "rape...expresses the idea that women are even lower than chattel – mere "objects" who are there whenever the male feels the need to do so", that the victim "is used as though she is an object", and that it "confirms that women are "for" men: to be used, dominated, treated as objects" (Hampton 1999, 135). The proposal here is that sexual violence is seriously wrong in part because the assailant uses the victim as a means to some goal against the victim's will. The assailant hijacks or co-opts the victim's body for their own purposes. This idea arises in the accounts of McGregor, Shafer and Frye, and Hampton, yet in each case their comments on this aspect of the account are very brief, and it seems independent of what they say about the centrality of sex to a person's domain and the expressive content of sexual attacks. This argument is similar to Gardner and Shute's claim, which I discussed in Section 2.3, that rape is seriously wrongful because constitutes an extreme objectification of the victim.

A similar phenomenon might occur in non-sexual cases. Archard considers the case of a researcher who inserts a swab into an unconscious, non-consenting person's mouth. He argues that "a wrong is done in inserting the swab in a person's mouth without her consent. *A further, and distinct, wrong would be done in using the swab to obtain and make use of the DNA information from the swab*" (Archard 2008, 19-20, emphasis mine). Perhaps this constitutes a distinct wrong because, by using the patient's DNA, the researcher uses them in a project to which they have not consented, rather than 'merely' touching them without their consent. Archard echoes a popular intuition here. While we might feel wronged if a group gathers or retains personal information without our consent, there is perhaps a further wrong perpetrated if this group uses this data to target advertising at us, sells it on, or uses it in academic research. The group's retention of personal information without one's consent infringes on one's privacy, but their *use* of this data involves us in a project to which we have not agreed. Of course, neither of these cases involves sexual violence. This suggests that sexual attacks cannot be distinctly wrong only in virtue of the use of the victim for some goal without their consent. However, it offers one feature that distinguishes sexual assault from many cases of non-sexual assault.

I have not examined this feature of these accounts, and it is raised very briefly in the literature that I have discussed. However, it offers a promising facet for a successful account of the wrongness of sexual violence, one that I will develop as part of my own account in Chapters 5 and 6.

# Chapter 4

## Sexual Violence as a Violation of Self-Ownership

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### Section 4.1 – Introduction to Chapter 4

At a 1975 meeting of the House of Delegates of the American Bar Association, Connie Borkenhagen offered a now-familiar analogy between sexual assault and theft to reveal systematic problems in the legal, institutional, and social responses to the former.<sup>18</sup>

"Mr. Smith, you were held up at gunpoint on the corner of First and Main?"

"Yes."

"Did you struggle with the robber?"

"No."

"Why not?"

"He was armed."

"Then you made a conscious decision to comply with his demands rather than resist?"

"Yes."

"Did you scream? Cry out?"

"No. I was afraid."

"I see. Have you ever been held up before?"

"No."

"Have you ever given money away?"

"Yes, of course."

"And you did so willingly?"

"What are you getting at?"

"Well let's put it like this, Mr. Smith. You've given money away in the past. In fact, you have quite a reputation for philanthropy. How can we be sure that you weren't contriving to have your money taken from you by force?"

"Listen, if I wanted..."

"Never mind. What time did this holdup take place, Mr. Smith?"

"About 11:00 P.M."

"You were out on the street at 11:00 P.M.? Doing what?"

"Just walking."

"Just walking? You know that it's dangerous being out on the street that late at night.

Weren't you aware that you could have been held up?"

"I hadn't thought about it."

"What were you wearing at the time, Mr. Smith?"

"Let's see ... a suit. Yes, a suit."

"An expensive suit?"

"Well-yes. I'm a successful lawyer, you know."

"In other words, Mr. Smith, you were walking around the streets late at night in a suit that practically advertised the fact that you might be a good target for some easy money, isn't

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<sup>18</sup> Borkenhagen's analogy has been discussed on online blogs (Filipovic 2007) and similar analogies have been developed apparently independently of Borkenhagen's work (Bahadur 2015; Hinde 2016; Jender 2011; Shaw 2014).

that so? I mean, if we didn't know better, Mr. Smith, we might even think that you were asking for this to, happen, mightn't we?" (*American Bar Association* 1975, 464–65).

This interaction is absurd. According to Borkenhagen, it reflects the experiences of survivors of sexual assault who report what has happened to them; they are disbelieved or blamed for the assault on the basis of being alone, their attire, their prior sexual history, how much they struggled against the assailant, and so on. It reveals a difference in how the relevant institutions respond to reports of sexual attacks and reports of property crimes. There is often a presumption that the victim consented to or welcomed the attack in cases of sexual assault that is not present in theft (Wald 1997, 478–79). Moreover, allegations of sexual violence are often dismissed when there is no evidence of force or when the survivor and assailant have engaged in consensual sexual contact prior to the attack, while property crimes are not dismissed on this basis (Wald 1997, 481). Wald (1997, 467, 502) argues that we should treat sexual violence as the violation of something comparable to a property right. She believes that this will better protect victims of sexual attacks and offer a compelling account of the wrong perpetrated against them.

Numerous theorists attempt to explain the wrongness of rape and other forms of sexual violence by appealing to *self-ownership*. They claim that sexual violence wrongs the victim because it violates the claims or rights that they have over their own body. The term 'self-ownership' captures the analogy with property that we own, where ownership consists in rights to prevent others from using the property and to choose how we use it ourselves. A person's body belongs to that person, and sexual assault violates a person's rights over their body. In this chapter, I examine these self-ownership accounts of the wrongness of sexual attacks and consider the role that a person's claims over their own body will take in my own account.

Initially, the suggestion that we should consider the wrongness of sexual attacks by considering the wrongness of property crimes might seem to trivialise the former. Sexual violence is often horrific and downplayed, so comparisons to property crimes such as theft, robbery, and perhaps even mugging might be inappropriate (West 1993, 1448). I hope to show throughout the chapter that there are versions of the self-ownership account that do not have this implication. Indeed, some theorists argue that ownership claims over oneself are very different to ownership of one's property.

It is worth noting from the outset that comparisons between sexual attacks and property crimes in this form were developed by feminist theorists who recognised that treating sexual assault like a violation of property rights in law would grant greater protection to victims of sexual assault than they have currently, as Borkenhagen's analogy reveals. In many jurisdictions, deception (or fraud) and coercion (in the form of threats or blackmail) are criminal offences when a person utilises them to obtain another person's money or other property, but not when a person engages in these behaviours to secure sexual contact with another person

(Estrich 1986, 1088, 1093, 1107, 1119–20, 1127; Falk 1998, 76, 88, 148; Herring 2005, 511; Rubinfeld 2013, 1372–78, 1395, 1398, 1413; Wald 1997, 478–79, 481; West 1996, 240, 242).

Patricia Falk (1998, 71) discusses the case of *United States v. Condolon* 1979, in which the defendant fraudulently posed as offering opportunities to women to find them “acting and modelling jobs”, propositioned many of the women who contacted him, and had sex with those that agreed. If he had used this fraudulent venture to convince the women to pay him a fee, he would have been straightforwardly guilty of fraud or theft. The law did not recognise deception as undermining consent to sex in the way that it undermines consent to other interactions, however, and the defendant was only convicted for using a telephone to misrepresent his business venture (Falk 1998, 71).

Coercion is often recognised as undermining consent in law, but not in cases of consent to sexual contact. That is, the very same coercive conduct can undermine consent to transfer money but not consent to sexual contact in law. Falk (1998, 80) raises the case of *State v. Thompson* 1990, in which a high-school principal told a student that he would prevent her from graduating unless she agreed to sexual contact with him. The principal was not found guilty of any criminal offence. If the principal had demanded money instead of sexual contact, he could likely have been convicted of extortion or blackmail (Estrich 1986, 1120).

Some feminists therefore argue that treating sexual violence more like property crimes will offer greater protection and justice to victims of sexual violence, because a person’s claims over their property often receive greater recognition than their claims against non-consensual sexual contact (Wald 1997, 466–67, 481–82, 487, 502). At least, it accommodates cases in which a person is deceived or coerced to engage in sexual contact as serious moral wrongs and crimes worthy of legal punishment (Estrich 1986, 1093, 1120, 1127; Falk 1998, 44–45, 76, 88, 147–48). That is, victims of sexual violence would be more justly served if they were recognised as the *owners* of their body and sexuality. My focus is not on the conditions under which consent to sexual contact is undermined, but on the wrongness of such contact when it occurs without consent. All the same, it is worth noting that the view of sexual violence as an attack on a person’s ownership of their body and their sexuality has had a fair amount of support from feminist theorists and activists, who endorsed this approach at least in part because they believe that it better provides protection and justice to victims.

In the previous chapter, I discussed a range of accounts according to which rape is distinctly wrongful because it attacks the victim by targeting something central to their identity. McGregor and Shafer and Frye discuss this in terms of a domain, over which each person has the right to exclude others by withholding consent. While I rejected these accounts and took issue with the claim that something can be more or less central to a person’s domain, the proposal that sexual violence is seriously

wrong because it violates the claims that a person has over their domain, which includes their body, demands further consideration. In this chapter, I examine this proposal under a different guise, that of self-ownership claims.

In Section 4.2, I outline the general strategy shared by self-ownership accounts of the wrongness of sexual assault. In Section 4.3, I consider accounts proposed by Donald Dripps and Richard Posner, according to which sexual violence is analogous to theft of an object or service. In Section 4.4, I examine John Gardner and Stephen Shute's objections against self-ownership accounts of the wrongness of rape more generally. I draw on responses from Jesse Wall and other theorists to suggest that these objections raise problems for some, but not all, self-ownership accounts. In Section 4.5, I build on the responses to Gardner and Shute's objections in Section 4.4 and detail the kind of view that proponents of self-ownership commit themselves to in offering these responses. I argue that the kind of account offered by Dripps and Posner fall short here. In Sections 4.6 and 4.7, I consider two ways in which we might make sense of the role of self-ownership should take in an account of the wrongness of sexual attacks. I argue that we should not view sexual attacks as violating the victim's self-ownership claims in a distinct way to non-sexual attacks, and propose instead that sexual attacks violate the victim's self-ownership claims but that this does not itself ground the moral distinction between sexual and non-sexual attacks. In Section 4.8, I summarise my findings on the nature of self-ownership and the role that it should take in understanding the wrongness of sexual attacks.

## **Section 4.2 – Self-Ownership Accounts of Sexual Violence**

Self-ownership accounts are diverse and varied, and my aim in this section is to elucidate those claims that are shared by all of these accounts. Ownership is constituted by the claims (a) to use that which one owns as one wishes so long as this does not illegitimately interfere with like claims on the part of other persons, and (b) that others do not use, damage, or otherwise interact with that which one owns (G. A. Cohen 1995, 68; Thomson 1990, 225; Vallentyne, Steiner, and Otsuka 2005, 203–4).<sup>19</sup>

*Self-ownership* holds that each individual owns themselves (Dripps 1992, 1786, 1805 n.75; Gardner and Shute 2007, 9; Penner 1997, 121; Thomson 1990, 225; Vallentyne, Steiner, and Otsuka 2005, 202). Each person's body *belongs* to them, and acting upon, using, or touching an adult without their agreement or justification wrongs them. Consequently, self-ownership entails that "one ought to be left free to do whatever one chooses so long as non-consenting other persons are not thereby

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<sup>19</sup> Vallentyne, Steiner, and Otsuka (2005, 203–4) add that it also includes rights to protect these claims and to exact compensation should they be violated.

harmed" (Arneson 1991, 36). Just as ownership generally means that one has a right not be coerced to use what one owns to help others, self-ownership entails that a person themselves should not be coerced to assist others (Arneson 1991, 36; G. A. Cohen 1995, 227–28; Vallentyne, Steiner, and Otsuka 2005, 206). Just as ownership generally bestows the right to prevent others from accessing that which one owns, self-ownership grants a right against non-consensual physical contact by others (Wall 2015, 788).

Proponents of self-ownership all propose that persons have claims to use their body as they wish without infringing the rights of others and to exclude others from access to one's body, although they disagree on how stringent these claims are. Some theorists take a strong view of self-ownership claims. Gerald Cohen (1995, 117, 215–16) argues that it is inconsistent to hold that a person owns some entity and that they may permissibly be compelled to use it in a certain way or allow others to use it. For example, he suggests that taxing a person for any purpose is inconsistent with the view that that person owns the money that they earn (G. A. Cohen 1995, 120). Analogously, he argues that self-ownership entails very strong claims, specifically that a person should never be compelled to use their body in service of someone else (G. A. Cohen 1995, 68, 117, 120).<sup>20</sup> Richard Arneson agrees, arguing that "Owning himself, each person is free to do with his body whatever he chooses so long as he does not cause or threaten any harm to non-consenting others. No-one is obligated to place herself at the service of others in the slightest degree." Robert Nozick (2013, 172) claims that compelling a person to provide a service to another is to give the beneficiary of the service a property right in the compelled agent. On this view, such compulsion is inconsistent with the claim that a person owns themselves.

In contrast, some theorists argue that self-ownership is consistent with weaker claims over oneself. Archard (2008, 29–30) argues that a person has ownership over some entity if that person "possesses some but not necessarily all" of the relevant claims and that "there may be reasonable restrictions on the ownership of some classes of things". As such, Archard argues that self-ownership is consistent with there being certain limits on what a person may do with themselves. For example, self-ownership is consistent with denying a person the right to sell themselves (Archard 2008, 30).

A weaker view of ownership generally does not necessarily entail a weaker view of self-ownership, however. Peter Vallentyne, Hillel Steiner, and Michael Otsuka (2005, 204) argue that ownership is consistent with restrictions on what a person can do with their property. However, they argue for the normative claim that persons have full ownership over themselves, where full ownership is "the *logically* strongest set of

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<sup>20</sup> Cohen (1995, 209–10) himself believes that the "thesis of self-ownership" is false; that is, individuals do not have (full) ownership rights over themselves.

ownership rights over a thing that a person can have compatibly with others having such rights over everything else" (Vallentyne, Steiner, and Otsuka 2005, 204, emphasis in original). While Vallentyne, Steiner, and Otsuka make the conceptual point that ownership is compatible with fairly weak claims over one's property, they endorse the normative point that self-ownership involves very strong claims over one's body.

I will not state a preference for any conception of self-ownership here. It is sufficient for my purposes to note that, according to self-ownership, a person has claims that others do not prevent them from using their body as they wish or act upon their body without their consent.

Self-ownership accounts differ in how they explain the wrongness of sexual violence, but there is a general strategy common to all accounts. Sexual assault is wrong because it is a form of trespass, an intrusion that violates the victim's self-ownership right that others do not touch their body without their consent (Archard 2007, 28–30; Thomson 1990, 205, 210). Self-ownership grants the right to "exclusive control over the body" and non-consensual sexual contact violates this right by touching or using the victim's body without their permission (Wall 2015, 791).

All accounts of this form share an advantage insofar as they recognise that persons have claims over their own body. Stephen Schulhofer (1998, x), followed by Alan Wertheimer (2003, 31), and Donald Dripps (1992, 1785–86) distinguish between positive and negative sexual autonomy.<sup>21</sup> 'Positive sexual autonomy' refers to "the freedom to have sex with whomever one wishes" (Dripps 1992, 1785) or, more narrowly, to "engage in sexual relations with other willing partners" (Wertheimer 2003, 31). A person's negative sexual autonomy is realised insofar as they can avoid non-consensual (and perhaps also unwanted consensual) sexual contact. As Dripps understands positive sexual autonomy, it is set back whenever someone wants to engage in sexual contact but is unable to. We have good reason to recognise the distinction between negative and positive sexual autonomy and to privilege the former over the latter. Schulhofer (1998, 15) argues that "freedom from unwanted sex [negative sexual autonomy] and freedom to seek mutually desired sex [positive sexual autonomy] sometimes seem to be in tension." When persons exercise their right to negative sexual autonomy by effectively refusing to have sex with another person, they might thereby set back this person's positive sexual autonomy. Schulhofer (1998, x–xi, 11–16) argues that the law in the USA (although this is also true of elsewhere) has protected positive sexual autonomy at the expense of negative sexual autonomy insofar as it has generally failed to properly criminalise non-consensual sexual contact, allowing many perpetrators to impose sexual contact without fear of legal retribution. Clearly, we should privilege negative over positive sexual autonomy; it would be highly condemnable to insist that a person must

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<sup>21</sup> Schulhofer does not use this terminology, but the distinction is implicit in his writing.



engage in sexual contact against their will to satisfy another person's desires (and positive sexual autonomy).

To capture the importance of this distinction, we must say that each person has stringent claims over their own body and over access to their own sexual capacities. A person's body and sexual capacities are not akin to publicly-owned resources that might be distributed with a view to balancing the fulfilment of one person's positive sexual autonomy with the protection of another person's negative sexual autonomy (Srinivasan 2018). Instead, negative sexual autonomy must be privileged. The notion that each person has a domain over which they have claims to exclusive control grounds this distinction and its moral significance. Negative sexual autonomy is important because set-backs to this violate rights that a person has over their body; positive sexual autonomy is an interest that does not generate rights because its fulfilment necessarily requires access to another person's body, over which the other person has self-ownership claims.

This distinction has present-day significance. Amia Srinivasan (2018) discusses the case of Elliot Rodger, who in 2014 murdered 4 people and wounded 14, claiming beforehand to be motivated by the refusal of the girls and women around him to have sex with him. Self-described involuntary celibate men ("incels") blamed women for Rodger's actions in online forums, arguing that he would not have perpetrated the rampage if a woman had agreed to have sex with him (Srinivasan 2018). Srinivasan (2018) argues that Rodger and his supporters believed that they "have a right to sex, a right that is being violated by those who refuse to have sex with them." They believe that their interest in sexual fulfilment, in positive sexual autonomy, overrides women's interest in their own negative sexual autonomy. At the very least, they view these interests as conflicting concerns that might be balanced against each other, such that one person's positive autonomy can justify the violation of another person's negative sexual autonomy. The proper response is to deny their equivocation of negative and positive sexual autonomy, to affirm that a person's rights over their own body, and particularly over sexual contact with their own body, can never permissibly be infringed to satisfy another person's desire.

It is important that an account of the wrongness of sexual violence accommodates these concerns, that it explains the stringent claims that a person has over their own body and recognises that the desires of others do not establish any obligation (even *prima facie*) for one to engage in sexual contact. Self-ownership grounds claims that persons have over their own body, and so explains the important distinction between negative and positive sexual autonomy and the ways in which these operate.

### Section 4.3 – Sexual Violence as a Property Rights Violation

Dripps (1992, 1797) argues that each person has an “interest in exclusive control of one’s body for sexual purposes” and that sexual assault violates the victim’s rights in this regard. He calls this view the “commodity theory” of rape (Dripps 1992, 1786, 1789, 1993, 1461). A central and distinctive claim in Dripps’s (1992, 1786) commodity theory is that “sexual cooperation is a service much like any other”. He stipulates a service, commodity, or “asset” that persons possess and may provide to others (Dripps 1992, 1801, 1993, 1469). This service consists in access to one’s body for the purposes of sexual gratification (Dripps 1992, 1786, 1789, 1797, 1805–7).<sup>22</sup>

Dripps (1992, 1786, 1993, 1469) then argues that each person has a right to exclude others from making use of this service, such that they are wronged if someone imposes sexual contact onto them without their agreement. Individuals have rights over their own body and the right against having physical contact imposed onto them (Dripps 1992, 1786, 1789, 1993, 1469).

Dripps (1992, 1789, 1797–1800, 1807–8) argues that non-consensual<sup>23</sup> sexual contact is wrongful, and should be criminally punished, because the assailant expropriates the service of sexual access from the victim. The victim’s ownership of her own body entails that she has a right to “exclusive control over [her] body for sexual purposes”, so this non-consensual expropriation violates her right over her own body (Dripps 1992, 1797). Similarly, Richard Posner (1993, 108–9) argues that “Rape parallels theft in being coerced taking” and wrongs the victim because the assailant takes something without their consent that they “should be required to “bargain” for”.<sup>24</sup>

To illustrate the wrong perpetrated in all cases of non-consensual sexual contact, Dripps posits a case similar to Gardner and Shute’s (2007) example of ‘pure rape’.

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<sup>22</sup> Dripps does not clearly state what makes contact sexual. He identifies sexual violence with “using another person’s body *for sexual gratification*” (Dripps 1992, 1797, emphasis mine), and also claims that ““sexual act” means any act of coitus, fellatio, cunnilingus, buggery, or any insertion of an object into the vagina or anus” (Dripps 1992, 1807) It is not clear whether Dripps thinks that violence is sexual in virtue of the assailant’s motivation or in virtue of its physical form. This is not a problem for this account in particular; it reflects the problem I raise in Chapter 5, that accounts of the wrongness of sexual violence do not make explicit what it is for violence to be sexual.

<sup>23</sup> Dripps (1992, 1786–87 n.27, 1800, 1805–1806) avoids characterising sexual violence as *non-consensual* sexual contact, preferring instead to define it as the use of illegitimate means to impose sexual contact onto another person. However, as Bogart (1996, 258–64) points out, it is difficult to explain what makes such means illegitimate without appealing to non-consent.

<sup>24</sup> Dripps (1992, 1786 n.26) notes that Posner’s view is similar to his own.

He imagines that Clyde finds Dawn unconscious in a bedroom. Clyde applies a condom to his penis and penetrates her vagina. Dawn suffers no physical injuries and is unaware that the attack occurred (Dripps 1992, 1789). Noting that the wrongness of the attack cannot be a function of any experienced suffering or physical injury on Dawn's part, he argues that his commodity theory is well placed to explain the wrongness of this sexual attack (Dripps 1992, 1789, 1801, 1805).

Dripps (1992, 1789) argues that "Clyde acts wrongly because he expropriates Dawn's body, a benefit that he may obtain only by persuading Dawn that sexual cooperation is to her advantage." His view is that Dawn possesses some commodity or "valuable asset" that Clyde wishes to access (Dripps 1992, 1801). For Dripps, Clyde wrongs Dawn because he illegitimately takes this sexual commodity from her. Her property rights over her own body entail that she has a right to deny others access to this commodity, which Clyde violates. Dripps (1992, 1797–99, 1807) argues that all non-consensual sexual contact wrongs the victim because it involves this expropriation of some service, although we should recognise the separate crime of "Sexually Motivated Assault" where this involves (further) violence.

The commodity theory of rape, advanced by Dripps and Posner, holds that sexual access (or "sexual cooperation") is a service and commodity. The 'service' of sexual access involves bodily contact, and people have property rights over their own body, so this commodity is owned by each person. Accordingly, everyone has a property right to prevent other people from engaging in sexual contact with them. Sexual attacks violate this right.

#### **Section 4.4 – Gardner and Shute Against Self-Ownership Accounts**

In this section, I will examine Gardner and Shute's rejection of self-ownership accounts. While they offer compelling reasons against treating sexual violence in a similar way to theft, I will argue that their objections do not apply to every version of the self-ownership account. In my view, they present three main objections against self-ownership accounts: that it is conceptually confused to claim that a person owns themselves; that ownership is contingent; and that self-ownership accounts risk treating persons as objects. Each of these relates to an overarching objection that Gardner and Shute level against the self-ownership account. They claim that "the first and major flaw in all self-ownership doctrines" is that "one cannot analogize what happens to oneself to what happens to what one owns" (Gardner and Shute 2007, 13). That is, self-ownership accounts are flawed because they mistakenly explain the wrong of attacks on a person by analogy with the wrongs done to a person by attacks on their property.

First, Gardner and Shute (2007, 12–14) argue that there is an important conceptual distinction between oneself and that which one owns. The problem, they claim, is that the notion of self-ownership treats the self as something that one owns alongside one's possessions or "an addition to what one owns" and is therefore somehow separate from the person (Gardner and Shute 2007, 13–14). However, the self cannot be a person's property or possession; the self is the person that *owns*. This objection against self-ownership charges that the notion is conceptually awkward; the body cannot be separated from the self, but this is implied by treating it as a possession of the self.

However, Gerald Cohen argues that self-ownership does not treat the person qua owner as separate from themselves. He claims that ownership just consists in the rights to use this entity as one wishes and to exclude others from accessing it (G. A. Cohen 1995, 210–11). Given that a person can have these rights in relation to themselves, and this does not rely on any distinction between the person qua owner and the entity that is owned, self-ownership does not require that a person is separate from themselves. Self-ownership operates as a "reflexive relation" (G. A. Cohen 1995, 210–11). Wall (2015, 788–89) argues, similarly, that ownership here refers just to "full and exclusive rights of control", so the claim that a person owns themselves does not entail that there is some "additional item of property" that we must identify as the owned entity in this relation, but only that a person has certain rights over themselves. Cohen and Wall respond to the objection advanced by Gardner and Shute by endorsing what might be called a deflationary conception of ownership and, consequently, self-ownership. They show that self-ownership is conceptually coherent by reducing ownership to the rights to use that which one owns and to exclude others from access to that which one owns.

The second problem Gardner and Shute (2007, 13–14) raise is that self-ownership accounts "render one's relationship to oneself contingent". On their view, property rights are recognised in particular social and political contexts because granting a person rights of exclusive use over certain objects is the best way to ensure that these objects are used efficiently (Gardner and Shute 2007, 9–14). Property rights are contingent both in the sense that a person might have their property rights over an object limited if their use of it is inefficient (as in the cases of rent control and "restrictions on inheritance") and the continuation of a system of property rights *per se* depends on this being more efficient than the alternatives (Gardner and Shute 2007, 10).

Gardner and Shute's justification of property rights is strikingly consequentialist and relies on an observation of how different societies tend to recognise an individual's ownership of possessions without asking whether this arrangement is just. Their view is therefore vulnerable to a non-consequentialist justification of property rights. For example, a person might be thought to acquire property rights over an object by labouring on it, as on the Lockean view of original acquisition of property (Locke 1980, 19–21; Wenar 1998, 807–8).

Nevertheless, on any justification of property, property rights over particular objects are contingent. Any individual might easily have not owned the object in question. Suppose that an adult acquires most of their possessions by buying them or receiving them as a gift. For each of these possessions, they might never have come to own them, either because they could have acquired a different object of the same type or abstained from acquiring an object of that type at all. Equally, one can give one's possessions away and so cease to have ownership rights over them. As Wall (2015, 790) notes, "A dimension of the contingency of the ownership relationship is that a subsequent owner is able to stand in the same position with regards to the owned thing as the original owner." It is a characteristic of individuals' ownership of possessions that they can give the possession to a different person, and that the later owner will have the same ownership relation to the possession in question (Penner 1997, 111–14; Wenar 1998, 800–801).

It is therefore unclear that persons can properly be said to have ownership claims over themselves. Unlike one's property, one cannot transfer one's self or one's body such that the subsequent owner has the same relationship to these as one's self. A person's body will always be *their* body, and it would be dangerous to take the view that a person can transfer their self-ownership claims to grant another person this kind of legitimate power over their body. It is therefore unclear that the claims that a person has over their body are best understood as a kind of ownership.

For this reason, discussing a person's claims over their body as ownership may misrepresent the harm inflicted when these claims are violated. Property is fungible in the sense that it can usually be traded without negatively impacting the owner if they are compensated with something of comparable value. This is clearly not the case for the claims that we have over our bodies, our "bodily integrity" (Radin 1987, 1880). A person's relationship to their body is not transferrable in the way that a person's relationship to other property is transferable, and if a person did transfer their claims over their own body to another person, this would be incomparable to transferring property to the other person.

Wall (2015, 789–90) responds to this objection by arguing that self-ownership and property rights over external objects are "ultimately different". He follows James Penner (1997, 111–12) in distinguishing property from other entities over which we have exclusive control. Penner (1997, 111) suggests that the term 'property' properly refers to those things that only contingently belong to an owner and are "separable" from the individual who currently owns them. A person's body, on this view, is not property because it is not "separable from [them] in any straightforward way" (Penner 1997, 111–12). On Penner's view, only those entities that can be straightforwardly separated from the owner constitute property. Wall (2015, 789) argues that "we ought to resist conflating notions of ownership with notions of property" without denying that these are closely related. While it is certainly true that an owner's *property rights* over their possessions are contingent, there is no reason that this must apply in cases of *self-ownership*. The similarity that these

share, both involving exclusive control over the owned entity, does not entail that both must involve contingent relationships.

Thirdly, Gardner and Shute (2007, 14–15) suggest that conceptualising the wrong of rape in terms of self-ownership dehumanises the victim. On Gardner and Shute's (2007, 15) view, an essential aspect of the wrong of rape is that "a rapist objectifies his victim by treating her as a mere repository of use-value". 'Use-value' here refers to the value that something has given how useful it is in pursuit of goals. Rape is severely wrong in part because the rapist treats the victim as if the victim's value consists just in the use that they can serve the rapist's purposes. Gardner and Shute (2007, 15) claim that self-ownership accounts also objectify the victim by treating the wrong of sexual violence as an attack on a person's property, insofar as these accounts treat their body as their property. They argue that property and our ownership of property is valuable insofar as we can make use of our property, and so self-ownership accounts treat the victim of sexual violence and their body as objects that are valuable only insofar as they can be used. Instead, they urge that we should conceptualise sexual violence as an attack that disrespects and violates a person's "non-use value", that is, the value that a *person* has independently of how useful they are to themselves or others (Gardner and Shute 2007, 14–15; Wall 2015, 790). This not only avoids what they view as a pernicious objectification of victims of sexual violence, but better explains the wrongness of sexual attacks and accommodates the claim that these are very different to attacks on a person's property. Gardner and Shute believe this is inconsistent with a self-ownership account, which, by treating a person's body as property, overlooks the value that a person has independently of their capacity to pursue their own projects or assist in those of others.

Wall (2015, 790) responds that self-ownership is not justified by the "the use-value of the body", but instead serves "as a means of protecting the non-use-value of each person." The self-ownership account offers a means by which to condemn the very objectification of the victim with which Gardner and Shute are concerned, and to recognise the non-use-value of persons that they worry is obscured. A person's non-use-value generates claims against non-consensual contact even when a person uses these claims in a way that is detrimental to themselves, (that is, these claims prohibit non-consensual paternalistic interference) (Arneson 1991, 36–37). This is because these claims are not grounded in use-value, the effectiveness with which a person uses their body or their claims over it. Self-ownership claims therefore reflect the non-use-value of persons; they are entitlements that are grounded in the worth of the person who holds them and cannot be explained by the use that the person makes of their body or of their claims over their own body. According to Wall (2015, 791–92), the self-ownership view ensures that each person's non-use value is recognised and respected by maintaining that we have a right of exclusive control over our own bodies, which renders non-consensual contact impermissible. By establishing and justifying rights against non-consensual contact, these accounts

protect the claims that are generated by their non-use value, specifically in the form of exclusive control over their own body. Wall (2015, 791) notes that Gardner and Shute (2007, 16) themselves argue that rape denies the “ultimate value of people” by removing control from the victim over the sexual contact in which she is involved. Protecting the self-ownership claims of each person recognises, and does not obscure, their non-use-value.

I find this response to be unsatisfying, because it does not resolve the problem that Gardner and Shute have raised and because Wall has the resources to offer a broader critique of their objection against the self-ownership account.

Wall is correct to note that the self-ownership account goes some way to protecting people from the dehumanisation of sexual violence, but this does not deal with Gardner and Shute’s main concern. Their objection is that self-ownership can only ground a right to exclusive control of one’s body by first recognising that a person’s body is a kind of property, and property is only valuable insofar as it is useful for pursuing goals. Therefore, Gardner and Shute object that any appeal to ownership relies on an inappropriate view of persons, according to which a person’s body is an item of property, and will thereby derive its value from the use that the person makes of it. Gardner and Shute can consistently hold, given Wall’s response, that self-ownership protects the entitlements that are generated by a person’s non-use-value by condemning non-consensual contact and that this strategy nevertheless relies on the problematic view of persons as property, whose worth lies in what they can achieve.

In my view, Wall’s response to the other objections raised by Gardner and Shute offers a more promising way to deal with this objection. In response to the preceding two objections, Wall notes that self-ownership does not entail that a person’s relationship to their self or body is at all like a person’s relationship to their property. Ownership only requires that one has the rights to control these entities and to exclude others. Gardner and Shute’s third objection rests on the claim that self-ownership treats the body, and therefore the self, as a kind of property, and subsequently that it must treat these as being valuable primarily in virtue of their use-value. However, it is simply not the case that self-ownership accounts are committed to the view that a person’s relationship to their body is at all similar to their relation to their property, beyond the very general feature that both involve some of the same claims. As such, the self-ownership account can avoid treating persons or their bodies as objects by taking a minimal view of the similarities between self-ownership and ownership of property.

## Section 4.5 – Delimiting an Adequate Self-Ownership Account

In this section, I examine what we can learn from the responses to Gardner and Shute's objections against the self-ownership view. I believe that the responses I have considered succeed against Gardner and Shute's objections, but thereby place restrictions on a viable self-ownership account of the wrongness of sexual attacks.

Wall (2015, 788, emphasis in original) argues that "The problem with Shute and Gardner's critique is that no one...relies on a full-blown analogy with *property* rights to explain the rights or interests that we have in our body." This is not quite right; Dripps and Posner propose that self-ownership is very similar to property ownership (Dripps 1992, 1786, 1789; Posner 1993, 108–9; Wald 1997, 462–63), while Vallentyne, Steiner, and Otsuka (2005, 202, emphasis in original) claim that "Agents are *full self-owners* just in case they own themselves in the same way that they can fully own inanimate objects." However, Wall does provide an insight into the form that an account of self-ownership must take if it is to avoid the objections put forward by Gardner and Shute. A viable self-ownership account must avoid drawing significant analogies between self-ownership and property ownership, or between sexual violence and violations of property rights. I propose two more specific conditions for a self-ownership account of the wrongness of sexual violence, which follow from this.

Firstly, the meaning of 'ownership' in the context of 'self-ownership' is just that the owner has claims that others not touch their body without their consent or compel them to act in any particular way. If A owns themselves, this just means that A has a claim against each other person that they do not prevent her from using her body as she wishes (except when her actions wrongfully harm others) and that they do not touch her body without her consent. The use of the term 'ownership' does not entail any similarity between self-ownership and property ownership beyond these claims. Many theorists adopt this view (Archard 2008, 29–30; Arneson 1991, 36–37; G. A. Cohen 1995, 210–11; Thomson 1990, 225–26) and Thomson's phrasing is particularly apt:

ownership really is no more than a cluster of claims, privileges, and powers; and if the cluster of rights that a person X has in respect of his or her body is sufficiently like the clusters of rights people have in respect of their houses, type-writers, and shoes, then there is no objection in theory to saying that X does own his or her body (Thomson 1990, 225).

Defining 'ownership' in this way neutralises the concerns that self-ownership is conceptually suspect and that the rights over one's body are contingent. If self-ownership is reducible to claims against other people that they refrain from interfering with one's body, there is no implication that the body is separate to the self, nor any reason to believe that these claims are contingent.



Secondly, we should also be wary of drawing too strong an analogy between the *justifications* of self-ownership and of property ownership. A self-ownership account should not attempt to make sense of the wrongness of sexual violence by appeal to the wrong committed in attacks on a person via their property, such as theft and vandalism. This is particularly pertinent given Gardner and Shute's criticism that the self-ownership account risks objectifying or otherwise dehumanising victims of sexual violence. I suggested that self-ownership accounts should therefore avoid explaining the wrongness of sexual violence by drawing on insights about the wrongness of violations of property rights. Although the self-ownership account can survive their objection, this places a non-trivial restriction on self-ownership accounts; they should not seek to explain the wrong of sexual violence by reference to the wrongs done when a person's property rights are violated.

The claim that a person owns themselves or their body means only that they have certain claims over their body. The similarities between self-ownership and property ownership must end here. This makes explicit a commitment that many proponents of self-ownership presuppose.

While many theorists endorse something like these conditions, they rule out Dripps and Posner's accounts. Dripps and Posner hold that sexual assault is wrong because the assailant literally steals or expropriates an asset of service that properly belongs to the victim. On their view, a person owns their body in much the same way as they own property, and sexual assault is wrong for similar reasons to property crimes. This is exemplified when Dripps (1992, 1789), discussing the case of sexual assault that causes no trauma or injury, claims (shockingly) that "If Clyde had stolen Dawn's purse while she slept, instead of her body, the violation of her rights would be similar but less severe." Dripps and Posner fall afoul of the two conditions that I have stipulated. They treat self-ownership not only as a person's claims over their own body, but as something very similar, if not identical, to the ownership persons have of property. They explain the wrongness of violations of self-ownership, particularly in the form of non-consensual sexual contact, as similar to the wrong perpetrated when a person's claims over their property are violated.

## **Section 4.6 – Sexual Violence as Unique Violation of Self-Ownership**

Having responded to Gardner and Shute's objections, Wall claims that:

Therefore, the principle of reflexive self-ownership is able to explain the wrongfulness of non-consensual sexual penetration. Sexual offences infringe rights to exclusive control over the body (Wall 2015, 791).

Wall overstates his case here. His responses to Gardner and Shute show only that the notion of self-ownership is not obviously flawed. The discussion so far does not explain the wrongness of non-consensual sexual contact. A full account requires an explanation of how self-ownership shows that sexual attacks involve a wrong that non-sexual attacks do not.

In the next two sections, I examine how self-ownership claims might aid an explanation of the distinct wrongness of sexual attacks. There are two ways in which a proponent of the self-ownership account can justify a moral distinction between sexual and non-sexual violations of self-ownership claims:

1. Sexual attacks violate the victim's self-ownership claims in a different way to non-sexual attacks. Sexual attacks are distinctly wrongful because they violate the victim's self-ownership claims in a way that non-sexual attacks generally do not.
2. The moral distinction between sexual and non-sexual attacks is independent of, although reliant on, the violation of self-ownership claims. The wrong of sexual attacks can only be explained by recognising that these violate claims that persons have over their own body, although it is grounded in something other than self-ownership claims.

I argue that (1) fails, but that (2) offers a promising model of the role that self-ownership will play in a viable account of the distinct wrongness of sexual attacks.

Proponents of (1) require an account of why sexual attacks violate the victim's self-ownership claims in a distinctive way. In my view, any such explanation will appeal to something about the sexual nature of the attack that is not directly concerned with the violation of the victim's self-ownership claims. Therefore, (1) collapses into (2). According to (1), there must be some morally salient feature of sexual attacks such that they violate self-ownership claims in a different way to non-sexual attacks. However, accounts that do not appeal to self-ownership could also draw on this morally salient feature of sexual attacks. If something about the sexual status of an attack grounds the claim that sexual violence violates the victim's self-ownership claims in a distinct way, then it is this feature that grounds a moral distinction between sexual and non-sexual assault rather than the way in which the victim's self-ownership claims are violated. Appeals to self-ownership would not then explain the wrongness of sexual violence.

The claim (1) that sexual attacks are distinctly wrongful because they violate the victim's self-ownership claims in a different manner to many non-sexual attacks finds support in the philosophical literature. One view is that sexual violence violates a person's self-ownership claims insofar as the assailant takes control of the victim. I call this the 'appropriation account'. In some instances, Dripps (1992, 1786, 1789, 1797–98) argues that sexual violence violates the self-ownership claims of the

victim, not by taking property from them or compelling them to act, but by illegitimately appropriating their *body*. A similar idea is briefly considered by Laurie Calhoun, who argues that:

Rape is a crime of invasion in which an aggressor appropriates another human being as his personal possession and acts completely without regard to the fact that she is an intelligent, sentient human being with rights to self-determination and to live in peace and security (Calhoun 1997, 109).

Calhoun's description of rape draws parallels with enslavement, where this is understood as the ownership of one person by another. Calhoun (1997, 109) argues that the assailant "appropriates" the victim, bringing them into their "possession" (Berkich 2009, 390–91). On this view, sexual violence violates the victim's self-ownership rights by seizing or co-opting their body. It occurs when one person asserts a claim over another's person's body without their consent.

Expanding on Calhoun's brief explanation of this idea, Don Berkich (2009, 390) argues that the notion of appropriating a person serves to make the distinction between "*constraining* a person's action in some way or other and *capturing* the person entirely", where the appropriation of the person involves the latter. When one person appropriates another, they take control of them and act as though they have a general right to use the victim as they wish. Importantly, the appropriation of a person does not necessarily require physical contact, and one person can appropriate another from a distance. If one person coerced another through threats in a way that controlled the victim's life for a sustained period of time, they would thereby appropriate the victim without touching them.

On Calhoun (1997, 109) and Berkich's account, sexual attacks violate the victim's self-ownership claims not only by denying the victim's right to determine what happens to their body, but insofar as the assailant treats the victim as a "personal possession", as if the assailant has extensive claims over the victim's body to decide what happens to them. Berkich (2009, 391) argues that sexual attacks therefore have more in common with historical institutions of enslavement (and present-day trafficking) than with common assault. These forms of enslavement are typically characterised by the master's total domination and control (Bradley 1994, 16–19, 24–30, 100–101, 132; Klein 1998, 2, 6, 13–15; Turley 2000, 104–9, 113, 133).

Rubinfeld's account of rape as a violation of self-possession reflects a similar idea. Rubinfeld (2013, 1425) discusses 'self-possession' as "possession of one's own body." While he does not use the terminology of self-ownership, this is closely related to the claims that a person has over their own body. He argues that a person's self-possession is not necessarily compromised in cases of assault, even those that cause injury, but requires that the assailant "actually takes over your body – exercising such complete and invasive physical control over it that your body is in an elemental sense no longer your own" (Rubinfeld 2013, 1426). Self-possession is most obviously violated in enslavement, in which the master fully

controls the enslaved person's body and compels them to act at the master's discretion, and in torture, in which pain and fear destroys the victim's control over their own body (Rubenfeld 2013, 1426–27). In these cases, Rubenfeld (2013, 1427) believes that the victim's self-possession is violated because they are literally made the "possession" of the assailant.

Rubenfeld argues that rape is wrong in a way that common assault is not because in most cases<sup>25</sup> it violates the victim's self-possession. On this view, rape is therefore morally akin to enslavement and torture. He argues that rape violates the victim's self-possession because the assailant makes the victim's body their own possession, that is, the assailant appropriates the victim's body. Rubenfeld (2013, 1426) argues that rape appropriates the victim's body because the assailant "uses the victim's body for sex" and, especially when this is "violent" or "penetrative", takes over and possesses the victim's body. The victim is compelled to act in service of the assailant's goals, their body is trapped or manipulated, and they often suffer extreme pain and fear (Rubenfeld 2013, 1427, 1430). According to Rubenfeld (2013, 1430), rape is "a special kind of harm" that is more akin to enslavement and torture than other forms of assault because the victim's self-possession is violated; the assailant appropriates and takes control of the victim's body.

Calhoun, Berkich, and Rubenfeld offer similar accounts of the distinct wrong of rape. They argue that rape is unlike most other forms of assault because the assailant takes control of, appropriates, or possesses the victim's body. Although none of them invoke the language of self-ownership, they describe the ways in which sexual attacks violate a person's claims over their own body and specifically those claims against non-consensual contact by others. These theorists argue that sexual attacks are distinctly wrong because they violate the victim's self-ownership claims in a different manner to otherwise similar non-sexual attacks. As in (1) above, the wrongness of sexual violence consists in the way in which the assailant violates the victim's self-ownership claims.

However, there are two problems with this account, and I believe that they generalise to other attempts to explain the distinct wrongness of sexual attacks solely by appeal to the way in which they violate the victim's self-ownership claims.

First, appeals to self-ownership cannot distinguish between sexual attacks and relevantly similar non-sexual attacks that also involve the appropriation of the victim. Calhoun, Berkich, and Rubenfeld argue that rape is like the very serious violations of enslavement and torture; if successful, they show that rape is very seriously wrongful. However, there are less serious wrongs that also meet their condition of appropriation of the victim's body or a violation of their self-possession. For

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<sup>25</sup> Rubenfeld (2013, 1432) argues that deceiving someone into engaging in sexual contact does not undermine their self-possession, so he does not believe that his argument applies to cases in which deception undermines a person's consent to sexual contact.

example, suppose that an assailant physically moves a victim using threats or physical force. Also consider an assailant who sedates the victim without their consent and draws a blood sample from them for research. Each of these cases plausibly involves the appropriation of the victim. The kidnapper compels the victim to move their whole person and the researcher renders the victim unconscious; both affect the victim's whole body. Both assailants attack the victims in ways that seize or *appropriate* the entirety of their bodies. There is also an important sense in which they treat the victim as a "personal possession" (Calhoun 1997, 109) in each case, because both assailants use the victim to further their own interests or projects, with no regard for the victims' interests or claims.

Appealing to the claim that sexual attacks involve an appropriation of the victim cannot therefore justify the claims that, for example, kidnapping someone by force is morally worse if, while forcing the victim to move to another location, the kidnapper gropes or squeezes the victim's genitals rather than forcefully pushing their arms and back. It cannot substantiate the suggestion that an assailant who rapes an unconscious victim, but causes no physical injury, acts in a more condemnable manner than the person who sedates a person and draws a blood sample. Each of these cases involves the appropriation of the victim, so the claim that sexual attacks are morally distinct from relevantly similar non-sexual attacks because they alone involve such an appropriation cannot succeed.

The theorists in question might respond that the cases that I have discussed do not properly involve the appropriation of the victim's body as they understand this phenomenon. They could clarify or develop their conceptions of appropriation and self-possession to distinguish between rape and the cases that I have raised. However, they would still encounter a second problem for their accounts. This problem is that it is not clear why rape and sexual assault necessarily appropriates the victim's body when non-sexual assault does not. They do not fully explain what it is about sexual attacks that makes it the case that these attacks appropriate the victim's body. Furthermore, if one explains this by appealing to some feature of sexual attacks, it is likely to be the case that this feature of sexual attacks grounds their distinct wrongness, and we need not appeal to self-ownership to explain this.

For instance, it is not clear why, on Rubenfeld's account, sexual assault violates the victim's self-possession in a way that non-sexual assault generally does not. He offers a range of ways in which rape in particular violates the victim's self-possession, claiming that the assailant takes over the victim's body, compels them to serve the assailant's ends, and makes the victim's body literally the assailant's possession (Rubenfeld 2013, 1426–27). Rubenfeld does not explain why this is true of rape and not of common assault. For his account to succeed, there must be something about *sexual* attacks such that they violate the victim's self-possession while non-sexual attacks do not. Whatever explanation one provides for this, one might plausibly appeal to this explanation for the distinct wrongness of sexual attacks and bypass the appeal to self-ownership entirely.

Berkich's development of Calhoun's account raises this problem more explicitly. Berkich (2009, 391–92) notes, as I have, that certain non-sexual attacks appropriate the victim, and that an account that determines the wrongness of sexual violence by appeal to the assailant's appropriation of the victim must explain why this appropriation is more like the atrocity of enslavement than it is like these more trivial violations. To distinguish sexual from non-sexual attacks and recognise the moral severity of sexual violations, the appropriation model relies on the claim that sexual attacks appropriate the victim's body in a way that most non-sexual attacks do not.

Berkich examines Archard's (2007, 389–90) claim that "our interests in our sexual bodily integrity and in our sexual self-determination are at the heart of our being. Sex and sexuality are central to who we are." Berkich (2009, 393) suggests that Archard's view offers a means to justify the claim that sexual violence appropriates the victim in a distinct manner to other violence because "sexual assault...constitutes, on Archard's view, a far greater appropriation of [the victim]" than non-sexual assault "insofar as sexuality is central to personhood itself." Archard claims that sexuality and sexual integrity are central to personhood and Berkich argues that this view helps to make sense of the claim that sexual violence constitutes a more extreme appropriation of the victim themselves than non-sexual violence because it seizes something that is central to who they are.

However, insofar as self-ownership accounts rely on some further, independent argument or feature to distinguish between sexual and non-sexual violence, then *this argument or feature*, rather than self-ownership, explains the wrongness of sexual violence. If sexual violence is distinctly wrongful because it attacks something more central to personhood, then it is the attack on something central to personhood that grounds the wrongness of sexual violence, as I considered in Chapter 3. This provides the requisite resources to explain the distinct wrongness of sexual attacks, and one does not need to appeal to the further claim that sexual attacks are more seriously wrongful because they violate the victim's self-ownership claims in a distinct way or appropriate the victim's body. One might consistently argue that sexual violence is wrong because it attacks something central to personhood with no discussion of self-ownership. It is not clear what the notion of self-ownership adds to such an account.

I have rejected (1), the claim that sexual attacks involve a distinct wrong because the victim's self-ownership claims are violated in a way that does not occur in non-sexual attacks. I reject this view of the role of self-ownership because it relies on some prior explanation of the moral distinctiveness of sexual attacks to explain why these attacks violate the victim's self-ownership claims in a way that non-sexual attacks do not. Plausibly, this explanation can ground the distinct wrongness of sexual violence without appeal to self-ownership at all.

## **Section 4.7 – Self-Ownership as Necessary to the Wrong of Sexual Attacks**

I have suggested that self-ownership is not central to an explanation of the distinct wrongness of sexual attacks. However, the claim (2) that part of the wrongness of sexual attacks is explained by the violation of the victim's self-ownership claims, even though this is not what distinguishes them from non-sexual attacks, is nevertheless appealing. If this is correct, then the proper response to my argument that self-ownership accounts cannot explain the distinct wrongness of sexual violence is to supplement these accounts with such an explanation rather than abandoning them.

To motivate this strategy, I offer an analogy with property ownership. Suppose that a spouse owns a wedding ring to which they ascribe significant sentimental value (Radin 1982, 959; Wald 1997, 476). If another person stole the wedding ring, this would plausibly be more seriously wrongful than if they had instead stolen the wedding ring from a jeweller who had it in their possession solely to sell for a profit (Gardner and Shute 2007, 11; Radin 1982, 959–60). However, sentimental value alone does not ground claims over an object in the absence of independently grounded property rights. If an object has sentimental value for a person who does not own the object, they will in most cases not have claims over the object. Suppose that the spouse invests significant sentimental value in the wedding ring from her now-deceased husband, and it transpires that her husband stole the ring from the jeweller. The sentimental value of the ring to the woman does not entail property ownership. If the spouse could acquire claims over the ring in virtue of its sentimental value, this requires that the jeweller must have lost his property rights over the ring because it is held in possession by someone who values it. If the jeweller properly owned the ring in the first instance, there is a tension with the view that he could have lost the rights that he has over it in the course of these events.

This is not to say that the sentimental value that the woman invests in the wedding ring has no normative consequences. It certainly gives the jeweller a good reason to allow the woman to keep the ring and perhaps even places certain constraints on his use of it; one might say that the woman has an enforceable claim that the jeweller does not frivolously dispose of the ring, for example. However, this is entirely consistent with the jeweller owning the ring and the woman having no property rights over it. The jeweller has a good reason to dispose of *his property* in a certain way, namely by transferring it to the woman, and none of this reduces his claims to exclusive control of the ring.

We can therefore consistently endorse two claims here. It is more seriously wrongful to violate a person's property rights when the property in question is of sentimental value to the owner. At the same time, it does not violate a person's claims to use an

object in which they have invested sentimental value if they do not have independent claims (property rights) over the object. The sentimental value of property exacerbates the wrong done in violations of property rights over the object, but no wrong is done to a person who lacks property rights over the object, even if it is of significant sentimental value to them. In this case, the spouse's ownership claims over the ring are necessary to explain the wrong perpetrated if the ring is stolen, but an appeal to these claims cannot explain the moral difference between stealing the wedding ring and stealing something about which she does not care.

Consider another case, which also concerns property theft. Two strangers are stranded in a blizzard. Person A owns a coat that she brought with her, and is on the ground between herself and Person B. There is only one coat, and the person who does not wear it will die. It would be very charitable of A to give B her coat and thus sacrifice her life, but she is probably not obliged to do so. In contrast, we might think that if B was to seize the coat without A's consent, this would be tantamount to murder. They steal from A something that A requires to survive. The wrong perpetrated against A in this case can only be explained by appeal to A's ownership of the coat. B's taking possession of the coat only constitutes murder or killing A because they cause A to die by removing from her something that is necessary for her survival. Although B's violation of A's ownership claims over the coat are necessary to explain the wrong B commits, it would be misleading to describe the act as theft or as a denial of A's ownership. We must appeal to A's ownership claims to explain the wrong that B perpetrates but describing this case only as a violation of self-ownership obscures the fact that B *kills* A, and does not merely steal from her.

In both of these cases, the violation of the victim's ownership claims is necessary to explain the wrong perpetrated. At the same time, the wrong perpetrated is not best described as theft or any other violation of the victim's ownership rights. In the first case, the thief deprives the victim of something deeply meaningful to them. In the second case, the thief kills the victim.

Developing this as an analogy to self-ownership and sexual assault offers a strategy for a proponent of the self-ownership account to accommodate, but not explain, the distinct wrongness of sexual violence.<sup>26</sup> Sexual violence is seriously wrongful

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<sup>26</sup> Interestingly, theorists discussing sentimental value sometimes use similar language to theorists discussing sexual violence. Archard (2007, 389–90) argues that "Sex and sexuality are central to who we are" and McGregor (1994, 235) argues that "Much of our personal identity is tied to our gender and sexual expression and hence to our sexual self-determination" to explain the distinct wrongness of rape. In her discussion of sentimental value, Radin (1982, 959, emphasis mine) proposes that "an object is *closely related to one's personhood* if its loss causes pain that cannot be relieved by the object's replacement". Gardner and Shute (2007, 11) claim that theft of property with sentimental value is a violation of the person themselves insofar as it removes something that ("metaphorically") is "a part of their extended selves".



because there is something morally significant about the sexual nature of sexual attacks. At the same time, we can only make sense of the wrong perpetrated against the victim in sexual violence by first acknowledging that they have claims over their body (Wald 1997, 468–69).

The problem remains that self-ownership itself cannot explain the distinct and severe wrongness of sexual violence, just as an appeal to property rights cannot explain the severity of stealing the wedding ring or the wrongful killing when a person steals something necessary for another person's survival. By way of summary, I find Archard's claims on the subject illuminating. Archard (2008, 27, 30) considers Thomson's (1990, 205) view that sexual violence is a "Bodily trespass", where 'trespass' refers to "a claim infringing intrusion or invasion".

Where this approach goes badly wrong is in failing to capture the significance for the victim of further and essential features of rape. These have to do with where the other steps, how the step is made, and what the other is doing in taking this particular step too far. Bodily trespass as such, even a concept of which allows for aggravated trespass, cannot, I suspect, represent all that is wrong with rape (Archard 2008, 30).

Archard claims that viewing sexual violence as a bodily trespass, the violation of a self-ownership claim over one's body, cannot adequately explain its wrongness. While he does not deny that sexual assault is indeed a violation of such claims, he argues that we must recognise some further feature of sexual violence to explain this. I believe that this is correct. Without an account of the wrongness of sexual violence that goes beyond appeals to self-ownership, we cannot distinguish morally between relevantly similar sexual and non-sexual attacks or explain the moral severity of sexual attacks. Tellingly, while Archard recognises sexual violence as a violation of self-ownership here, his earlier account of the wrongness of rape makes no reference to self-ownership (Archard 2007). In Archard's view, it seems, one can consistently recognise that sexual violence does involve the violation of a self-ownership claim, while also recognising that this does very little to explain the wrongness of such attacks. Self-ownership offers a necessary but woefully insufficient account of the wrongness of sexual violence.

## **Section 4.8 – The Role of Self-Ownership in the Wrongness of Sexual Attacks**

I have examined self-ownership accounts of the wrongness of sexual violence and objections against them in the hope of clarifying how we should understand self-ownership in this context and the role that self-ownership takes in the wrongness of sexual attacks.

Given the objections against more substantive conceptions, I will understand self-ownership as claims or rights that a person has over their own body. Specifically,

these are claims to do with one's body what one chooses, as long as this does not infringe another person's claims, and claims to exclusive access over one's body and against non-consensual contact with other people. This is quite a minimal or deflationary conception of self-ownership. It entails that a wide range of impositions constitute violations of self-ownership and includes all unjustified non-consensual physical touching. If an act violates a person's self-ownership claims, then this is a component of the wrong perpetrated against them. However, in most cases this will be strikingly deficient; most acts that violate a person's self-ownership claims are also wrong for other reasons, such as the pain, injury, fear, and trauma that they inflict.

Therefore, the violation of the victim's self-ownership claims does not explain the wrongness of sexual attacks, nor does it give any reason to believe that sexual attacks involve a wrong that is not present in non-sexual attacks. I have also argued that we should not endorse the view that sexual attacks are distinctly wrongful because they violate the victim's self-ownership claims in a way that non-sexual attacks do not. Instead, I adopt the following view of self-ownership claims. Sexual attacks violate the victim's self-ownership claim to determine who has contact with their body. This is a necessary component of the wrongness of sexual attacks. All the same, this does not ground the serious wrongness of sexual attacks or the moral distinction between sexual and non-sexual attacks. In Chapter 6, I draw on self-ownership claims in this way to explain the wrongness of sexual attacks.

In the previous few chapters, I have considered a range of accounts of the wrongness of sexual violence. I have argued that each of these fails to explain and justify the serious and distinct wrongness of such impositions. In the remaining two chapters, I will propose my own account.

# Chapter 5

## What Makes an Attack Sexual?

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### Section 5.1 – Introduction to Chapter 5

In previous chapters, I have examined some accounts of the wrongness of sexual attacks and considered the role that different conceptual resources, such as objectification and self-ownership, might take in a successful account. I have argued that the accounts and conceptual resources that I have considered are not sufficient to explain the wrongness of sexual attacks. In the next two chapters, I develop my own account. I will begin by adopting a novel approach to the issue. I begin in this chapter by trying to ascertain what it means for an attack to be sexual. Where philosophers and others discuss rape as 'non-consensual sex' or 'non-consensual sexual intercourse', it is not clear what it is for non-consensual contact to be 'sex' or what it is for non-consensual intercourse to be 'sexual'. More broadly, there have been few attempts to explain what constitutes a *sexual* assault or *sexual* violence.

My concern in this thesis is to determine the distinct wrong of sexual attacks. That is, I aim to explain how the sexual nature of non-consensual contact exacerbates the wrongness of these attacks or entails that these attacks involve a wrong that is not present in non-sexual attacks. A promising strategy, then, is to first determine what it is for non-consensual contact to be sexual. The distinct wrongness of sexual attacks must be explained by appeal to whatever it is that distinguishes sexual from non-sexual attacks conceptually. In this chapter, I investigate exactly what it is that makes an attack sexual, and what distinguishes sexual from non-sexual attacks.

The terms 'rape' and 'sexual assault' suggest that some attacks are sexual in nature<sup>27</sup> and that their sexual nature is an important aspect of their wrongness. However, I will argue that there is currently no viable account of what it is for an attack to be sexual. In trying to capture the sexual nature of these acts, philosophers have considered the physical contact imposed, the involvement of sexual body parts, and the presence of sexual desire. I argue that there are counter-

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<sup>27</sup> Many feminists argue that rape is not sexual and should be understood just as an act of violence (Cahill 2001, 19–22; Muehlenhard, Danoff-Burg, and Powch 1998). The claim that rape is not sexual can be interpreted in different ways and my project is consistent with many interpretations of this claim. When I suggest that certain attacks are sexual, I mean only that cases of rape and sexual assault share a feature that distinguishes them from other acts of violence, and that we can speak meaningfully of 'non-consensual sex' and 'non-consensual sexual contact'. I do not take a position against many of the claims made by advocates of the view that rape is not sex (Gardner and Shute 2007: 23–4; Stellings 1993: 193).

examples to each of these. I then propose an alternative account according to which non-consensual physical contact is sexual insofar as it involves the sexualisation of the victim, where this consists in the treatment of the victim as a sexual object. An attack sexualises the victim in the relevant sense insofar as the contact imposed has a particular expressive significance, and this does not rely on the assailant having a particular motive.

The argument proceeds as follows. In Section 4.2, I argue that it is not clear what it is for an attack to be sexual and that an account of this is important. In Section 4.3, I reject the view that an attack is sexual whenever individuals intuitively recognise it as such. In Sections 4.4 and 4.5, I reject accounts according to which an attack is sexual if it involves sexual body parts or a sexual motive. In Sections 4.6 and 4.7, I set out my own account, informed in part by comments from survivors of sexual violence. In Section 4.8, I respond to objections. In Section 4.9, I offer concluding remarks and foreshadow my account of the wrongness of sexual attacks.

## **Section 5.2 – The Challenge and its Implications**

Philosophers generally define ‘rape’ as non-consensual or coercive *sex* (S. A. Anderson 2016; Archard 2007, 374; Bogart 1991, 117–18, 1995, 162–64; Burgess-Jackson 1999, 93; Cahill 2001, 11; MacKinnon 1989a, 322, 2017, 290; Wertheimer 2003, 28–36; West 1996, 243–44).<sup>28</sup> There is extensive discussion of consent and of how we should define ‘sex’ generally, but few attempts to explain what ‘sex’ means in the context of non-consensual contact. Without an account of what ‘sex’ and ‘sexual’ mean, however, we cannot determine the kind of act that must be imposed without consent to constitute rape or sexual assault.

Consider an example from UK law. The *Sexual Offences Act 2003* s 1(3) defines ‘sexual assault’ as follows:

1. A person (A) commits an offence if –
  - a. he intentionally touches another person (B),
  - b. the touching is sexual,
  - c. B does not consent to the touching, and
  - d. A does not reasonably believe that B consents.

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<sup>28</sup> A similar trend is evident in empirical research (Muehlenhard et al. 1992).

Sexual assault is defined here as non-consensual *sexual* touching.<sup>29</sup> To ascertain which attacks constitute sexual assault, we must first know what it is for non-consensual touching to be sexual. The statute claims that touching is sexual if “a reasonable person” would consider it to be sexual “because of its nature” or, where this is unclear, due to “the purpose of any person” involved (Temkin and Ashworth 2004, 331-332; *Sexual Offences Act 2003* s 78). However, this does not explain what the nature of the contact or the assailant’s purposes would have to be like to make the touching sexual, and therefore provides little assistance in answering these questions (Ashworth and Horder 2013, 344–45; Simester et al. 2013, 470; *R. v Anthony* 2005).

Furthermore, judgements about when non-consensual touching constitutes sexual assault<sup>30</sup> are inconsistent, as evidenced by judgements in UK legal cases. In *R. v Court* 1988, the appellant struck a girl on the buttocks, and said that this was because he had a “buttock fetish”. Lords Keith, Fraser, Griffiths, and Ackner argued that the assault was indecent in part because it was motivated by his desire for sexual gratification. They suggested that it would have been less clear that the assault was indecent if the appellant had not disclosed his “buttock fetish” as a motive. Dissenting, Lord Goff argued that only the physical form of the contact determines whether the assault is indecent, and that the assailant’s motive is irrelevant. In tension with the majority judgement in *Court*, judges in *R. v Taaffe* 2016 found the appellant guilty of sexual assault for grabbing or pinching the buttocks of several women *in the absence of any sexual motive*.

In *R. v Criston* 2016, the Attorney General appealed against a prior conviction, claiming that it was too lenient. The offender was originally convicted for grabbing the victim’s penis and testicles and putting his finger in the victim’s anus while accompanied by five onlookers. The judge in the original case “regarded the incident as akin to playground bullying and *did not apply the sentencing guidelines for sexual offences*” (*Criston* 2016, emphasis mine). The appeal was upheld; while the judge in the original case believed that the assault was not sexual, the judges presiding over the appeal disagreed.

Judges have also disagreed over whether removing a person’s shoes can constitute a sexual imposition if it is sexually motivated. Judges in *R. v George* 1956, *Court* (1988, 154), and *R. v Price* (2003, 145, 147) held that this is never sexual. In contrast, Lord Wolff has claimed that removing a person’s shoes without their consent could constitute a wrongful sexual imposition, and whether this act is sexual in any particular instance would have to be determined by a jury (*Anthony*).

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<sup>29</sup> See also the *Equalities Act 2010* s 26(2), according to which “unwanted conduct of a sexual nature” constitutes workplace harassment.

<sup>30</sup> The term “indecent assault” was previously employed in UK law, and the two are sufficiently similar for my discussion to apply to both (G. Williams 1983, 231).

Furthermore, judges have disagreed over whether a kiss can constitute indecent (sexual) assault (G. Williams 1983, 232).

These cases demonstrate significant disagreement over whether certain acts should be recognised as sexual assault. This disagreement stems at least in part from the lack of a clear understanding of what it is for an attack to be sexual.

### **Section 5.3 – A Common-Sense Solution?**

There is a temptingly simple but ultimately unsuccessful way to overcome this problem. Lord Goff has argued that “jurors and magistrates are perfectly capable of recognising indecency when they are faced by it” (*Court* 1988, 162). He may have in mind something like the following view. Certain acts, such as penile-vaginal and penile-anal intercourse, are intuitively sexual, and we do not need an account of what it is that makes them sexual. When these are imposed without consent, the attack that occurs is sexual (or ‘indecent’). Dempsey and Herring (2007, 470–71) interpret the law in this way, arguing that it defines sexual offences as the non-consensual imposition of certain “physiological action types.” Call this the ‘common-sense view’.

However, this view is inadequate. As I have already illustrated, it is simply not clear that people can intuitively recognise whether non-consensual touching is sexual or not. The cases I have discussed demonstrate disagreement over whether certain acts constitute sexual attacks. The common-sense view cannot effectively assist us in determining whether a certain instance of non-consensual touching is a sexual attack because there is sometimes no settled agreement about whether the contact imposed is intuitively sexual or not.

This view is also *ad hoc*, it is not clear *why* these acts should be recognised as sexual attacks. For example, any common-sense account would recognise non-consensual penile-vaginal intercourse, but not punching a person’s stomach, as a sexual attack. There must be a reason that one constitutes a sexual attack and the other does not, even if it is obvious that this is the case. However, the common-sense view offers no explanation as to what it means to call these attacks sexual; it assumes that individuals will be able to discern whether an attack is sexual by appeal to intuition.

This arbitrariness entails a third problem. Without an explanatory basis of what makes an attack sexual, the common-sense view offers no means to adjudicate disagreement about which instances of non-consensual touching are indeed sexual. Consider the case of a person who strokes another person’s lower leg without their consent. Person A believes that intentionally stroking a person’s lower leg without their consent constitutes a sexual attack. Person B disagrees, arguing that this is not

the sort of contact that can count as a sexual. A and B both subscribe to the common-sense view by asserting that this act is either obviously sexual or obviously non-sexual. The common-sense view provides no resources that could assist us in determining whether A or B has the correct notion of a sexual attack. It takes the sexual nature of an attack to be immediately apparent, holding that contact is sexual or not sexual as a matter of brute fact. Any attempt to explain *why* a certain mode of non-consensual contact is sexual or not sexual and offer a reason to side with A or B on this issue would be a move away from the common-sense view and towards a more substantive account.

The common-sense view fails because it lacks an explanation of what it is for these acts to be sexual. It appeals only to intuitions about cases without explaining what it means to call an attack 'sexual'. Of course, any attempt to provide such an explanation should be responsive to intuitions about certain cases; part of what we seek from such an account is that it is not committed to (too many) counter-intuitive claims about whether certain attacks are sexual. The problem with the common-sense view is that it does not go beyond these intuitions to explain *why* a certain case involves or does not involve a sexual attack, and so cannot offer guidance in cases of disagreement.

In the next two sections, I consider two accounts that seek to offer such an explanation, one treating attacks as sexual in virtue of involving a sexual body part and one treating attacks as sexual in virtue of the assailant's mental states.

## Section 5.4 – The Body Parts Account

One strategy is to label certain body parts 'sexual' and understand sexual attacks as non-consensual contact involving a sexual body part. Take Wertheimer's suggestion:

[R]ape is violence that is *sexual* in the straightforward sense that it targets the victim's sexual organs or, as in some cases, the perpetrator uses the victim's body in ways that involve *his*<sup>31</sup> sexual organs, as in oral or anal rape (Wertheimer 2003, 91, emphasis in original).

On Wertheimer's view, an attack is sexual if and only if it involves a sexual body part of at least one party. This account captures aspects of the view advanced by Lord Goff (*Court*) and the judges in *Taaffe* insofar as the sexual nature of non-consensual touching is determined entirely by the physical form of the contact involved and the assailant's motive is irrelevant. It also avoids the arbitrariness of the common-sense view. Rather than just asserting that certain forms of physical contact are sexual, it

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<sup>31</sup> This wording (wrongly) implies that only men can commit rape. I take the spirit of Wertheimer's account to be that an attack is sexual if and only if it involves contact with a sexual body part of the assailant and/or victim.

seeks to explain what it is that makes such an attack sexual. Moreover, it accommodates intuitions about paradigm cases, recognising non-consensual penile-vaginal intercourse, penile-anal intercourse, and oral-genital contact as rape.

Nevertheless, this account is flawed. Firstly, non-consensual contact involving a sexual body part is not sufficient for rape or sexual assault. J.H. Bogart (1991, 121) notes that "the harm of rape does not lie in a physical attack directed at sexual organs. A beating which included blows to sex organs would not constitute a form of rape." To kick someone in the genitals is generally recognised as a *non*-sexual assault. According to Wertheimer's (2003, 91) view, however, such an attack would count as rape or sexual assault, because it is "violence...that targets the victim's sexual organs". This is a problem for the account in question.

Secondly, sexual assault need not involve any sexual body part of the perpetrator or victim. Suppose that one person holds another person's head and inserts their tongue into this person's mouth, imposing a non-consensual kiss. The body parts account would struggle to recognise this as a case of sexual assault because we do not generally consider the tongue and mouth to be sexual parts of the body. Unless we can identify a sexual body part that is involved here, the account fails to recognise this as a sexual attack.

Relatedly, accommodating attacks that we intuitively recognise as sexual requires that we say something about what it means for a body part to be sexual. Consider a case in which one person inserts a non-bodily object into the victim's anus without their consent. It is widely accepted that this constitutes a sexual assault (Cahill 2001, 11; *Sexual Offences Act 2003* s 2). According to the body parts account, non-consensual anal penetration by an object constitutes rape (a sexual attack) because it would involve one of the victim's sexual body parts (their anus).

However, the body parts account raises as many problems as it solves. Recognising the anus as sexual and so identifying a similarity between the anus and other sexual body parts (vagina, vulva, clitoris, penis, testes) indicates that Wertheimer then requires a definition of 'sexual body part', which he does not provide. One plausible definition of 'sexual body part' would be any body part that contributes to reproduction. Wertheimer (2003, 46–60, 80–85, 102–3) would probably prefer this definition, given his appeals to evolutionary psychology. However, the anus cannot be a sexual body part on this view because it does not contribute to reproduction. The same goes for Primoratz's (1999, 46) definition of 'sexual body parts' as those "that differentiate the sexes." Again, the anus cannot be a sexual body part on this view because persons have an anus regardless of their sex. It is worth noting that Wertheimer himself does not appear to treat the anus as a sexual body part. He argues that "anal rape" constitutes rape because it involves the *assailant's* "sexual organs" (their penis) and does not appeal to the contact involving the victim's anus to categorise this attack as sexual. Without a principled basis on which to recognise the anus as a sexual body part, Wertheimer's account will struggle to accommodate



the non-consensual insertion of a non-bodily object into a person's anus as sexual attack. That is, it will not properly justify recognising as sexual some of those attacks that are very widely assumed to be sexual.

This reflects an underlying problem for the account. According to the body parts account, determining whether an attack is sexual itself relies on an account of what it is for a body part to be sexual. If the body parts account is to succeed, it must explain what it is that makes a body part sexual. The account answers the question of what it means for an *attack* to be sexual by replacing it with the equally intractable problem of what it is for a *body part* to be sexual. Rather than solving the problem, it merely pushes it back a step.

Furthermore, providing a viable account of sexual body parts is likely to be impossible. Ultimately, the body parts account fails because it assumes that it is possible to specify certain body parts as sexual independently of the acts in which they are involved. Halwani (2010, 125) argues that "With the exception perhaps of penises and vaginas,<sup>32</sup> there are no sexual body parts as such; whether a body part is sexual depends on what it is doing or what is being done to it." Soble (1996, 118–19) claims that "if the hands are being used nonsexually, the hands at that time are not functioning as sexual parts, but if they are being used sexually, they have become, at that time, sexual parts of the body." Hands are sexual when they caress a person's genitals, but not when a parent platonically embraces their child; lips and tongues are often sexual when persons kiss, but usually not when one is eating; an anus is not sexual when a person undergoes a consensual medical rectal examination, but it is sexual when one person inserts an object into another person's anus without their consent. The sexual status of a body part depends on its involvement in a sexual act or a sexual attack. This explains the tension that arises in the cases I raised. It is difficult to offer a definition of 'sexual body part' that includes the mouth and the anus, because it is not clear what these have in common with (other) body parts that we think of as most obviously sexual. At the same time, these are sexual in the context of the consensual acts and assaults that I have discussed (the non-consensual kiss and the insertion of a non-bodily object into a person's anus). These body parts are sexual in these cases because they are involved in a sexual act or targeted in a sexual attack. However, this move is not open to a proponent of the body parts account, which holds that we must first determine whether a body part is sexual to then determine whether an attack is sexual given the involvement of some sexual body part.

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<sup>32</sup> Halwani's inclusion of the vagina rather than the clitoris is peculiar here, but this does not undermine the point that he makes.

## Section 5.5 – The Mental States Account

I will now address a proposal, which I call the mental states account, according to which non-consensual touching is sexual if and only if the assailant's motive is sexual.

As I discussed in Section 1.4, some philosophers define 'sexual act', focusing on cases of *consensual* contact, in relation to the mental state of those involved. To recap, Goldman (1977, 268) and Primoratz (1999, 46) both define 'sexual act' as an "activity that tends to fulfil sexual desire", where 'sexual desire' refers to the "desire for contact with another person's body" or "the desire for certain bodily pleasures" respectively. Webber (2009, 247) stipulates a distinctive phenomenal quality that our experiences of something might have and suggests that any act or desire is sexual if it is experienced in this way.

Suppose that we apply these definitions of 'sexual act' to cases of *non-consensual* contact. The mental states account holds that such contact is sexual if and only if the assailant experiences it with a sexual mental state, where this could be sexual desire, sexual pleasure, or some closely related experience.<sup>33</sup>

However, this account is unsuccessful. Firstly, the mental states account is too inclusive. Suppose that a sexual sadist punches another person in the stomach because they find this act sexually pleasurable (M. Davis 1984, 92). They do not perform any verbal utterances, physical movements, or facial expressions to indicate that they are motivated by or experience sexual desire. The punch is outwardly indistinguishable from a paradigm case of common assault and differs only because the assailant has a motive of sexual desire. According to the mental states account, this would be a sexual attack because the sadist experiences sexual gratification. I expect that many people will find this implication to be at odds with the way in which we usually discuss sexual attacks. As such, an alternative account that categorises this as a non-sexual assault would be preferable.

More worryingly, the account is too narrow. Suppose that one person inserts their finger into another person's vagina without their consent. As in many cases of sexual assault, they do this to humiliate or express dominance over the victim, and do not have a motive or experience of anything like sexual desire (Seifert 1994, 56). It would be troubling to deny that this is a sexual assault (Ormerod 2011, 737; Simester et al. 2013, 470; Sullivan 1989, 333–34). However, the mental states

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<sup>33</sup> Some commentators argue that sexual assault is not sexually motivated (Cahill 2001, 16–27; Muehlenhard, Danoff-Burg, and Powch 1998, 628–29; Seifert 1994, 55–56). If sexual assault is never sexually motivated, then the mental states account is straightforwardly inadequate, because it would not count any attack as sexual. I assume, for the purposes of evaluating it, that assailants sometimes experience such attacks as sexual.

account would deny that this constitutes sexual assault because the assailant has no sexual experience or motive, where this is understood in terms of the accounts I have raised.<sup>34</sup>

This is especially pressing when we consider sexual violence in the context of war or genocide. These attacks are overwhelmingly not motivated by sexual desire (Folnegovic-Smalc 1994, 174–75). Instead, perpetrators aim to harm the victims and their communities (Allegra 2017; Blatt 1991, 845, 860–62; Folnegovic-Smalc 1994, 174–75; Herzog 2012, 39; Stigmayer 1994, 84), weaken community bonds amongst those that they attack (Card 1996, 7–10; Seifert 1994, 63), build trust amongst those perpetrating the genocide (D. K. Cohen 2013; Herzog 2012, 38–39), and demonstrate their own masculinity or power (Herzog 2012, 38; Stigmayer 1994, 84). Testimony from captured Serbian soldiers who perpetrated sexual violence during the genocide within Bosnia-Herzegovina indicates that they raped Bosnian Muslim women and girls because they were ordered to do so (Card 1996, 10, 16; MacKinnon 2007, 223; Stigmayer 1994, 148–51, 160–61). Their testimony reveals that perpetrators lack anything we would recognise as a sexual motive or experience. The mental states account recognises attacks as sexual only when the assailant experiences sexual gratification and therefore cannot accommodate intuitive classifications of violence in conflict.

This is also reflected in cases of sexual violence in peacetime. Some perpetrators of rape claim that they perpetrated the attack as a means of seeking revenge against the individual victim, a man close to the victim, or women in general (Black 1983, 35; Scully and Marolla 1985, 251, 254–57). In at least some cases, the assailant is motivated entirely by hostility towards the victim or some other individual or group, and experiences no sexual pleasure (Scully and Marolla 1985, 255). The mental states account is unable to accommodate these as sexual attacks or non-consensual *sex* because the requisite mental state is not present in these cases. However, these attacks are instances of rape, understood as non-consensual sex, and so this reveals a flaw in the mental states account.

The mental states account has these problematic implications because it determines whether an attack is sexual by reference to some feature of the assailant's experience. The assailant's perspective is privileged on this account insofar as an attack constitutes a sexual violation only if the assailant experiences the attack in a particular way, a dismissal of the victim's perspective that might be problematic independently of its implications for the scope of sexual attacks.<sup>35</sup> As Simester *et. al*

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<sup>34</sup> Lord Goff raises similar worries about relying on the motive of the assailant in *Court* (1988, 161).

<sup>35</sup> This suggestion is partly inspired by Catherine MacKinnon's (1989b, 120) comments on the law of rape, specifically her claim that "the standard for its criminality lies in the meaning of the act to the assailant". My criticism of the mental states account here is that the sexual nature of an attack depends on what the attack means to the assailant, which overlooks other important considerations.

(2013, 470) note, “The humiliation and distress arises from [rape], regardless of whether [the assailant] seeks sexual gratification from his conduct.” That is, whether the assailant acts from a motive of sexual gratification or some other motive, we would not expect this to significantly change the experience of or harm to the victim. It is simply not clear that the assailant’s possession of a sexual or non-sexual motive is significant in a way that would justify classifying attacks as sexual or non-sexual on that basis. The mental state account goes wrong, I propose, because it grounds the sexual nature of an attack solely in the assailant’s perspective of thereof, overlooking important considerations such as the victim’s experience and the form of the physical contact itself.

Finally, consider the case of *R. v King* (2016). The assailant attempted to insert his fingers into the victim’s anus. He was reportedly motivated not by a desire for sexual gratification, but by misogynist hostility towards women. He was convicted of attempted assault by penetration, a sexual attack in law (*Sexual Offences Act 2003 s 2(1)(b)*), and this was upheld on appeal. *King* captures the flaws in both the body parts and mental states accounts. If we are to recognise this as a sexual attack, as the courts did, then this cannot depend on the mental state of the assailant, which was not sexual, or the body parts involved, at least without an account of what it means for a body part to be sexual. The sexual nature of an attack must depend on something external to the assailant’s perspective, where this cannot consist straightforwardly in the involvement of certain body parts.

## **Section 5.6 – Towards an Account of Sexual Attacks**

In this section, I will explain the approach that is required to overcome the problems I have identified in competing accounts. I propose that an attack is sexual only if it *sexualises* the victim. An assailant sexualises a victim in the relevant sense when the contact that they impose treats the victim as a sexual object. The occurrence of this treatment does not depend on the assailant’s motive, but instead on the expressive significance of the contact.

I am guided by testimony of survivors of sexual violence. Some survivors of sexual attacks report that their assailant treated them as an object, or as if they are valuable only because they are subjected to sexual contact. In a publicised case of rape and kidnapping, survivor Elizabeth Smart described her ordeal as one of being treated as a “sex object” (Associated Press 2013). In a study by Leslie Lebowitz and Susan Roth (1994, 370), Helen, a survivor of sexual violence, reports that rape “is somebody using you like a piece of furniture”. Lebowitz and Roth (1994, 370) add that “for Helen, being raped was like being used like an object”. Two further participants in the study say that being raped led them to identify their value with their sexuality, and to view their sexuality as something that could be owned by

someone else (Lebowitz and Roth 1994, 372). Generally, Lebowitz and Roth (1994, 372) note that "Survivors report feelings and interactions with others which suggest that female sexuality is frequently conceptualized as a commodity or object."

To explain sexualisation in a way that accommodates this testimony, I seek to articulate an insight expressed by Bogart:

What it means to say that rape involves sex is that rape is an attack on a person as a sexual being, it is an attack on a person through their sexuality. For that reason, in order for a rape to occur, it is necessary for there to be contact with the victim and for that contact to implicate the victim's body as sexualized, even if the contact need not take a definite and predetermined form (Bogart 1991, 121).

My proposal, following Bogart, is that an attack is sexual if and only if it sexualises the victim. Bogart does not explain what this means. Cahill (2001, 120, emphasis mine) provides some explanation when she claims that "Rape is sexual because it *uses* the *sexualized* body parts, and the very sexualities, of the victim and the assailant as a means to commit physical, psychic, and emotional violence." I believe that Cahill is correct to note that sexual violence is sexual because it sexualises the victim and that this involves treating the victim as a means to some end. I propose that to sexualise someone is to *treat them as a means to sexual gratification*. I take 'sexual gratification' to mean the fulfilment of some sexual desire. I will adopt Webber's view of sexual desire, although I believe that competing views, including those proposed by Goldman and Primoratz, are consistent with my account. When sexualisation occurs as non-consensual bodily contact, the assailant has imposed a sexual attack. I will develop the notion of sexualisation in such a way that my account remains distinct from the mental states account.

One strength of this approach is that it maintains a strong conceptual link between sexual attacks and sexual objectification, reflecting the testimony from survivors I have noted. It also accommodates the claim advanced in many of the accounts that I have discussed in previous chapters, that sexual assault treats the victim as an object (Gardner and Shute 2007, 16–22; Hampton 1999, 135; McGregor 1994, 235; Shafer and Frye 1977, 345). An attack is sexual only if it sexualises the victim, treating them as a means to sexual gratification. Numerous theorists view this kind of treatment as central to sexual objectification. Martha Nussbaum (1995, 257) discusses "Instrumentality", one person treating another "as a tool of his or her own purposes", as a mode of objectification. Linda LeMoncheck (1985, 35) proposes that a necessary condition of sexual objectification is that "A [the objectifier] values B [the objectified person]...solely or primarily in terms of B's instrumental ability to sexually attract, stimulate, or satisfy A." She highlights the phenomenon of one person acting as if another person's most salient feature is their capacity to provide sexual gratification. Similarly, MacKinnon (1989a, 329, emphasis mine) argues that being "sexually objectified means having a social meaning imposed on your being that defines you *as to be sexually used*, according to your desired uses, and then *using you* that way", while Sandra Bartky (2008, 54, emphasis mine) claims that "A

person is sexually objectified when her sexual parts or sexual functions are separated out from the rest of her personality and reduced to the status of *mere instruments* or else regarded as if they were capable of representing her." These theorists each link objectification to treating a person as a means to fulfil sexual desire. Sexualisation is similar; one person sexualises another if they treat them as a means (or 'instrument') to the fulfilment of some sexual desire.<sup>36</sup> According to numerous conceptions of objectification, sexualisation, particularly without a person's consent, treats the sexualised person as a sex object.

Sexualisation is a form of objectification that consists in treating a person in a sexual manner, and specifically the treatment of a person as a means to sexual gratification. This does not mean that one person acts on another with a sexual motive. An account that defines 'sexualisation' in this way would collapse into the mental states account because the presence or absence of sexual desire would determine whether the attack is sexual. We have seen that this account fails to accommodate cases of sexual violence in which the assailant has no such experience or motive, notably those of *King, Taaffe*, and rape in conflict. While some sexual attacks might involve a motive of sexual gratification, they must be sexual in virtue of something other than this motive.

Therefore, a successful account must define 'sexualisation' in a way that does not rely on the assailant having a sexual motive or experience. In this context, sexualisation occurs when one person *treats* another in a sexual way without necessarily acting from a sexual motive. Following Bogart, the assailant sexualises the victim in virtue of the form of the contact that they impose. This is how we should understand sexualisation when determining whether an attack is sexual. Sexualisation can occur in non-consensual and consensual acts, and there is nothing necessarily wrong with this when it occurs consensually. My claim is only that when it occurs in non-consensual contact, the attack perpetrated is a sexual one.

In the next section, I explain how sexualisation can occur without a motive of sexual gratification by arguing that an act can convey a sexual message. At this juncture, I present the following examples of consensual sexualisation by way of motivating the view that it is possible to *treat* someone else in a sexual manner even when one has no sexual motive and does not experience sexual desire or pleasure. First, suppose that one person briefly squeezes another person's buttocks while they walk down a street together. Neither party sexually desires the act or receives any sexual pleasure; perhaps they are a couple expressing intimacy or two heterosexual male friends doing this jokingly.<sup>37</sup> It nevertheless seems as though there is something

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<sup>36</sup> I use the term 'sexualisation' because 'sexual objectification' is often taken to encompass treatment beyond treating someone as a means to fulfil some sexual desire (Nussbaum 1995, 257).

<sup>37</sup> This joke would be in poor taste, relying on their shared belief that there is something to be mocked in intimate contact between two men.

sexual about the way that they treat each other. Indeed, if the contact was in no way sexual, the actions of those involved would be unintelligible. The couple who squeeze each other's buttocks only express intimacy by this action insofar as it is recognisable as a sexual act, something that it is appropriate to do only in the context of a sexual relationship (or explicitly acknowledged mutual sexual attraction). Similarly, the heterosexual men who perform this contact jokingly only engage in it because they believe that there is something amusing in two men engaging in contact that appears in some way sexual.

Second, suppose that one person inserts a dildo into another person's anus for the purposes of filming pornography for money. Neither experiences any sexual desire or gratification. Nevertheless, there is something distinctly sexual about the act. The actors have no motive of sexual gratification, but it would be peculiar to claim that there is nothing sexual about the contact in which they are involved, or that it is only sexual because it might later be viewed by an audience seeking sexual pleasure. It is not implausible to suggest that the actors treat each other in a sexual way even though they do not interact to experience sexual gratification.

To summarise my account so far, an attack is sexual if and only if it sexualises the victim in the relevant sense. I take 'sexualisation' to involve treating a person as a sexual object. In this context, sexualisation involves treating a person in a sexual way (as a means to sexual gratification) where this does not mean that the agent acts from a motive of sexual desire or an intention to fulfil a desire for sexual pleasure. In the next section, I show how this is possible.

My account recognises sexualisation where this does not rely on the assailant having a sexual motive, and this is necessary to accommodate the cases that I have discussed thus far. An account with these features can accommodate the attacks in *King* and rape in conflict because it holds that the assailant's motive does not determine whether an attack is sexual. Given that the assailant has no sexual motive or experience, one can only recognise these attacks as sexual by allowing that an assailant can treat the victim in a sexual manner even when they are not motivated by a desire for sexual gratification.

## **Section 5.7 – Sexualisation and Expressive Significance**

I have proposed that an attack is sexual if and only if the assailant treats the victim as a sexual object, which I call 'sexualisation'. The relevant form of sexualisation cannot depend on the assailant having a sexual motive. Therefore, my account holds that it is possible for an assailant to treat someone in a sexual way without seeking sexual gratification. MacKinnon (2007, 210) argues that when an assailant perpetrates sexual violence, "a specific tool of domination is selected, a distinctive

message and meaning conveyed." Similarly, Shafer and Frye (1977, 341) claim that rape "conveys to [the victim] that she is seen as an object with a sexual function." The claim that sexual violence "conveys" a "distinctive message" offers an insight into how an assailant might sexualise a victim even in the absence of a motive of sexual gratification.

In making sense of this, I draw on Barnhill's notion of *default expressive significance*. Barnhill (2013, 5) argues that interpersonal physical contact often conveys certain attitudes, regardless of whether anyone involved actually has the relevant attitude, because the contact has a "default expressive significance". The default expressive significance of bodily contact is the attitude that it conveys independently of any attitudes held by those who engage in it. A person can engage in contact that is expressive of an attitude in virtue of its default expressive significance and thereby treat someone in a certain way without having this attitude. For example, the default expressive significance of spitting on someone is that the agent feels contempt towards the other person (Barnhill 2013, 5). We can recognise that spitting on someone conveys or communicates contempt even if we know nothing about the feelings of the agent. To spit on someone is to treat them contemptuously even if one does not feel contempt towards them.

Anderson and Pildes (2000, 1567) note that a person might also act with the intention of expressing a particular attitude towards another but fail to express this if their action does not have the relevant expressive significance. Someone who attempts to communicate contempt towards another person by patting them on the back or embracing them will fail to express their contempt. Similarly, one person who spits on another in an attempt to communicate respect for them will struggle to express this attitude (Barnhill 2013, 5). Acting with the motive of expressing a certain attitude does not mean that one will succeed in expressing this attitude. The attitude conveyed by bodily contact is not straightforwardly determined by the agent's attitudes or intention.

I propose that bodily contact can have a *sexual* default expressive significance; certain forms of contact are expressive of the agent viewing the other person as a means to sexual gratification, and therefore as a sexual object. They convey the message that the other person is used or can be used in this way. I use the phrase 'sexual default expressive significance' to capture those instances in which the message conveyed is that the other person is a means to sexual gratification or a sexual object.

This is reminiscent of the phenomena of social meaning and expressive content I have discussed in earlier chapters. Anderson and Pildes (2000, 1506–8, 1512–13) claim that some acts have social meaning or public meaning, and can express or convey mental states, including attitudes, desires and beliefs, even where the agent does not experience the relevant mental state or even intend to convey it. For example, burning a country's flag conveys anger at the government or one of its



policies and playing sad music conveys sorrow (E. S. Anderson and Pildes 2000, 1506, 1508). Dempsey and Herring (2007, 482) propose that an act has social meaning insofar as "it expresses something normatively meaningful" independently of the agent's intentions. When I attribute sexual default expressive significance to an act, I claim that the act, in virtue of its physical form, conveys that the agent holds a certain attitude, namely that they seek sexual gratification from the person on whom or with whom they act, or that they view the other person as appropriately used for the purposes of sexual gratification. Hampton (1999, 125, 129, emphasis in original) claims that "*human behaviour is expressive*, and what behaviour expresses is partly a matter of cultural convention", such that this can be "read off of" the behaviour itself without appeal to the agent's intentions or the experience of anyone else involved. My discussion of sexual expressive significance is partly a development of the accounts of social meaning and expressive content that I discussed in Chapters 2 and 3. My claim here is that there are certain forms of contact that convey a sexual attitude towards another person, partly as a result of social conventions, independently of any person's intention or experience.

One person can sexualise another even if they do not initiate contact for the purposes of sexual gratification insofar as the contact carries a sexual default expressive significance. For example, when one person squeezes another person's buttocks, this conveys a sexual attitude even if neither party has the relevant attitude. This parallels the case of the person who spits on another without intending to communicate contempt; in both cases the act conveys an attitude that the agent does not harbour or intend to express. In the sexual case, they treat the other person as a sexual object by conveying the message that they seek to use them in this manner or view them as the kind of entity that may be appropriately acted upon for the purposes of sexual gratification, even if they do not in fact engage in the act for in pursuit of some sexual desire.

Equally, certain sexually-motivated acts can fail to convey a sexual attitude when the contact does not have sexual default expressive significance. These cases parallel that of the person who attempts to express contempt by an embrace; the agent attempts to express a certain attitude but fails to do so because the contact they initiate lacks the relevant expressive significance. For example, the sadist punching a person's stomach (consensually or otherwise) does not convey a sexual attitude because this form of contact is not recognised within the relevant community of interpreters as conveying that the other person is a means to sexual gratification.

This clarifies sexualisation as it pertains to sexual attacks. When an assailant non-consensually imposes onto the victim a form of contact with sexual default expressive significance, they treat them as a sexual object insofar as this contact conveys the message that the victim is a means to sexual gratification and can be

used in this way.<sup>38</sup> Following Mackinnon's terminology and Smart's testimony, the distinctive message conveyed by sexual attacks is that the victim is a sexual object. The notion of default expressive significance explains how sexual attacks can convey this message without appeal to the assailant's motive. The motive of the agent does not determine whether the contact carries a sexual default expressive significance. An attack is sexual if and only if the contact carries a default expressive significance that the victim is a sexual object.

This raises the question of how forms of contact acquire sexual default expressive significance. A plausible suggestion is that they acquire this expressive significance when people typically engage in this form of contact with the motive of fulfilling a sexual desire. When such contact predominantly occurs for the purposes of sexual gratification, people within that culture come to perceive a link between the form of the contact and sexual desire or gratification. Certain forms of contact then convey the message that the assailant views the victim as a sexual object, someone who may be used for sexual gratification.

The following example may help to illustrate this process. Choking a person's neck is not generally recognised as sexual contact in the absence of contextual cues to this effect. According to the view I propose, this is because people do not choke each other primarily for sexual purposes, and so choking has not acquired a sexual default expressive significance. However, if consensual choking for sexual pleasure continues to become more prominent, there may come a time when one person choking another is recognised *by default* as sexual contact even if we know nothing about why they engage in the act, at least when certain contextual cues pertain. In certain contexts, choking would come to communicate that the agent seeks sexual gratification through contact with the other person. To foreshadow the final step in my account, non-consensual choking would then constitute sexual assault. Insofar as choking in the relevant context would convey that the assailant views the victim as a means to sexual gratification, the assailant would treat the victim as a sexual object in the course of this attack.

This framework can explain the sexual element in the cases of consensual contact I have discussed. The two people who squeeze each other's buttocks engage in a form of contact with a sexual default expressive significance. In many societies, this is recognised as conveying sexual desire for the other person or for acts that might proceed and conveying that one person views that other as an appropriate means to sexual gratification. People often squeeze each other's buttocks when they sexually desire this contact, so it is unsurprising that this form of contact has come to convey

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<sup>38</sup> There are a range of further attitudes that *non-consensual* sexual contact can also communicate, such as misogyny, racism, contempt, a desire to dominate, and so on. I focus on the assailant's treatment of the victim as a means to sexual gratification because I believe that this distinguishes sexual attacks from non-sexual attacks.

that they desire sexual gratification through contact with the other person even when they do not. Equally, the pornographic actors *treat* each other in a sexual manner without seeking sexual gratification because the insertion of an object into another person's anus outside of medical contexts conveys sexual desire for the contact itself or for the other person and that one views the other person as an appropriate means through which to secure sexual gratification. Again, this is unsurprising. This kind of contact predominantly occurs for sexual gratification, and so it has acquired this expressive significance even when it does not occur for this purpose. The people in these cases sexualise each other because the form of contact conveys by default the message that they seek to fulfil some sexual desire.

The notion of sexual default expressive significance grounds the possibility of treating a person as a sexual object without acting towards them with a sexual motive, accommodating sexual attacks that do not involve any sexual motive. It provides an insight into MacKinnon's (2007, 210) claim that the assailant conveys a "distinctive message", and holds that the message conveyed by the assailant is that the victim is a sexual object. Plausibly, forms of contact acquire a sexual default expressive significance when people generally engage in them for sexual gratification. An attack is sexual when it sexualises the victim in this way.

Paradigm cases of rape and sexual assault, such as non-consensual penile-vaginal intercourse, penile-anal intercourse, oral-genital contact, and the groping of a person's buttocks or breasts all constitute sexual attacks on my account because each of these involves a form of contact with a sexual default expressive significance. Consider a case of penile-vaginal rape perpetrated by a man against a woman. He treats her as a means to sexual gratification, regardless of whether sexual gratification plays any role in his decision to attack, because the assault conveys the message that he views her as a sexual object. Penile-vaginal penetration has acquired a sexual default expressive significance, and therefore communicates that one person seeks sexual gratification through contact with the other regardless of the actual intentions or attitudes they hold. The non-consensual imposition of this form of contact therefore constitutes an attack in which the assailant sexualises the victim.

My account also accommodates cases that Wertheimer's account and the mental states account cannot, such as the attack attempted in *King*. The insertion of a finger into a person's anus carries a sexual default expressive significance. When it occurs outside of medical contexts and with the consent of both parties, it conveys that each person views the other as a sexual object. Plausibly, this is because anal penetration predominantly occurs in pursuit of sexual pleasure. When this form of contact is imposed without consent, it conveys that the assailant views the victim as an object for the purposes of sexual gratification, even when they do not in fact act with this purpose. As such, the assailant sexualises the victim in virtue of the non-consensual contact itself even in the absence of any sexual motive or the involvement of straightforwardly sexual body parts.

## Section 5.8 – Potential Objections

In this section, I consider potential objections to my account. First, I have concentrated on non-consensual bodily contact, and one might therefore be concerned that my account does not apply to non-consensual impositions without bodily contact, such as exhibitionism, voyeurism, and sexually explicit comments.

This is not a problem for my account, which applies quite straightforwardly to attacks that do not involve bodily contact. An attack is sexual when the contact has a sexual default expressive significance and thereby sexualises the victim. There is no reason that this cannot apply to sexual impositions or attacks that do not involve bodily contact. For example, non-consensual voyeurism constitutes a sexual attack because watching someone while they are in a state of undress or engaged in a sexual act is widely recognised as aimed at sexual gratification. It therefore acquires a sexual default expressive significance in much the same way as do certain forms of bodily contact. Watching someone in this manner without their consent conveys the message that they are an object for sexual gratification, and non-consensual voyeurism therefore meets my definition of a sexual attack. Exhibitionism ('flashing') is also a sexual attack. Overwhelmingly, persons who expose themselves to another person in this way do so for sexual gratification or as a precursor to acts that are themselves sexually gratifying. Exposing oneself in this way to another person thereby acquires a sexual default expressive significance. The non-consensual commission of this act constitutes a sexual attack because it is the imposition of an act that carries a sexual default expressive significance and therefore conveys the message that the victim is a sexual object.

Second, it might be objected that my account raises difficulties for assigning moral responsibility and legal culpability to the assailant for some sexual attacks. An attack can convey a sexual default expressive significance even when the assailant does not intend to convey the relevant message. An assailant could commit a sexual attack without realising that the mode of contact that they impose carries this sexual significance, and therefore perpetrate a sexual assault without intending to.<sup>39</sup> They would be straightforwardly responsible for committing a common assault, but it is more difficult to determine their responsibility for committing a *sexual* attack.

However, this concern is not specific to my account. There are real-world cases in which the assignment of responsibility raises difficult philosophical issues. Consider again the practice, which I discussed in Section 2.2, whereby medical students were directed by medical staff to perform pelvic (vaginal) examinations on anaesthetized

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<sup>39</sup> This problem arises in any case in which an act depends on some contingent social norm. The perpetrator may simply be unaware that their act conveys the relevant message (E. S. Anderson and Pildes 2000, 1512–13, 1524; Blackburn 2001, 468–69; Dempsey and Herring 2007, 483).

patients solely for educational purposes and without specific consent (Bibby et al. 1988; Coldicott, Pope, and Roberts 2003; Schniederjan and Donovan 2005; Rees and Monrouxe 2011). Patients object strongly to this practice, and many recognise it as sexual assault (Bibby et al. 1988; D. S. Davis 2003; Schniederjan and Donovan 2005). However, in many cases the medical personnel have not recognised any wrongdoing in this practice, and would certainly not have characterised it as a sexual violation (Barnes 2012; D. S. Davis 2003; Rees and Monrouxe 2011, 269; Schniederjan and Donovan 2005; Ubel, Jepson, and Silver-Isenstadt 2003, 578). Assuming that non-consensual examinations are sexual attacks, the medical staff and students involved have perpetrated a sexual attack without knowing this, raising difficult questions about the moral responsibility and legal liability of the medical personnel involved. These problems arise because there are impositions that are properly recognised as sexual attacks in which the assailants do not view their conduct as a sexual attack.

A similar problem arises in discussions of consent. Tom Dougherty (2013, 717–22) and Herring (2005, 2007) argue that deception undermines consent to sexual contact when the consenting party would not have consented to the contact if they had not been so deceived. Dougherty (2013, 221) acknowledges that this position is contrary to popular intuitions, a claim reflected in legal precedent (*The Queen v Barrow* 1865-1872; *R. v Linekar* 1995) and academic writing (Gross 2007). If Dougherty and Herring are correct, this allows for cases in which a person commits a sexual attack without intending to or even knowing that they have done so. Suppose an individual believes that some forms of deception do not undermine consent to sexual contact, and they deceive another person into agreeing to sexual contact (by falsely promising to pay them, lying about their job, and so on). The assailant does not know that they have perpetrated a sexual attack because they do not know that their deception has undermined the other person's consent. On Dougherty and Herring's views, they have committed a sexual attack without realising, which raises a range of issues for how we should assign moral responsibility for the attack.

While there is any disagreement over the nature of sexual offences or consent, it is possible that an assailant could impose a sexual attack without knowing that the attack is sexual. That my account allows for this possibility is not a problem for this account specifically.

Third, a critic might charge that my account makes the sexual status of an attack relative to the cultural context. The sexual default expressive significance of a form of contact depends on recognition within society that the form of the contact occurs predominantly for sexual gratification. The same form of contact might therefore carry a sexual default expressive significance in one culture but not another. On my account, it would follow that the same attack could constitute sexual assault in one cultural context and a non-sexual assault in another.

This is not an insurmountable problem. The sexual status of an attack relies on the cultural context, but it does not follow that its sexual status is *relative* to a culture or *differs* between cultural contexts. It is likely that all cultures will recognise most of the same kinds of contact as conveying the relevant message and therefore recognise the same set of attacks as sexual. Given general cross-cultural facts about the biological composition of human persons and the sensitivity of certain body parts to certain forms of contact, these forms of contact come to be recognised as conveying a sexual message in any cultural context. Therefore, it is unlikely that a cultural context could develop that does not assign a sexual default expressive significance to certain forms of contact (such as penile-vaginal intercourse and oral-genital contact) when these occur. Most attacks that are sexual in one culture will be sexual in all others. Equally, the sexual status of an attack is relative only to those forms of contact that society recognises as sexual gratifying in consensual contexts and cannot be changed by the choice of any individual or group of individuals.

Nevertheless, the development of sexual default expressive significance cannot always be traced to the biological sensitivity of certain body parts to certain kinds of contact. For example, kissing a person on the mouth has been perceived as both sexual and non-sexual in different cultures (E. Anderson, Adams, and Rivers 2012; Burton 2014).

My account therefore retains some cultural relativism regarding sexual attacks, but some relativism is beneficial. Consider that in Regency and Victorian England, a woman's ankle might have been considered a sexually explicit part of her body.<sup>40</sup> This impacts the expressive significance of contact involving a woman's ankle. On my account, some impositions, such as lifting a woman's clothing to reveal her ankle or compelling someone to touch one's own ankle, would constitute sexual attacks in Regency or Victorian England but not in present-day England.<sup>41</sup> This is as it should be. The attitudes towards women's ankles in Regency and Victorian England substantially change the nature, ethical implications, and victim's experience of non-consensual contact involving a woman's ankle, so it is not a problem if my account entails that these impositions are sexual attacks in some cultural contexts and not others. Where my account entails *some* cultural relativism regarding which attacks are sexual, we should view this as enabling sensitivity to meaningful cultural differences and not as a problem.

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<sup>40</sup> It is not clear whether women's ankles were in fact viewed this way, although the following comment by Richard Steele (1714, 196, emphasis mine) provides some evidence: "We who follow Plato...can see a Lady's Ankle with as much Indifference as her Wrist: We are so inwardly taken up that the Same ideas do not spring in our Imaginations, *as do with the common World.*" I found this quote through the work of *Behind the Times* (2011).

<sup>41</sup> I am indebted to Alison Toop for this example.

## Section 5.9 – Concluding Remarks to Chapter 5

Although it underpins our discussion of sexual violence, it is difficult to ascertain what it is that makes an attack sexual. While we recognise rape and sexual assault as morally abhorrent attacks that are importantly distinct from other kinds of assault, there has been little investigation into exactly what it is that makes an attack sexual, and what differentiates such violations from a host of other ways in which an individual might touch someone without their consent.

Existing accounts are unsuccessful. The common-sense view, that some kinds of contact are obviously sexual and the non-consensual imposition of these constitutes a sexual attack, does not adequately explain what it is for an attack to be sexual. While the body parts and mental states accounts offer more theoretically robust explanations of what it means to say that an attack is sexual, a range of counter-examples demonstrate that they do not capture what we mean when we say that an attack is sexual.

I have proposed that we can nevertheless make sense of this. Certain attacks sexualise the victim, treating them as a sexual object. In these cases, the assailant treats the victim in a sexual manner by conveying the message that the victim is a means, or appropriately used as a means, to sexual gratification. This does not require that the assailant seeks sexual gratification. Instead, an attack sexualises the victim in virtue of the contact itself. I have proposed that it does so when the contact conveys a “distinctive message”, following MacKinnon (2007, 210). Physical contact can convey a message or attitude independently of the assailant’s motive when it has default expressive significance, a notion developed by Barnhill. Contact carries *sexual* default expressive significance when it conveys that the agent views the other person as someone who may be used as a means to sexual gratification. Therefore, an assailant sexualises the victim when they impose without consent a form of contact that carries sexual default expressive significance. The presence of this form of sexualisation determines whether an attack is sexual. Plausibly, forms of contact acquire sexual expressive significance in virtue of being commonly engaged in for the purposes of sexual gratification and thereby being recognised as expressive of this motive.

In Chapter 6, I will offer my account of the distinct wrongness of sexual attacks. In the present chapter, I hope to have identified what it means for non-consensual contact to be sexual. Plausibly, if sexual attacks involve a distinct wrong, this must consist in the features of such attacks that distinguish them conceptually from non-sexual attacks, as these are the only relevant candidates for morally salient features that are necessarily present in all sexual attacks and absent in non-sexual attacks. My strategy to explain the distinct wrong of sexual attacks is therefore to begin with my account of what a sexual attack *is* and to argue that this is morally significant. In this chapter, I have proposed my account of what it is for an attack to be sexual. In

Chapter 6, I propose an account of why this is morally significant by way of arguing that sexual attacks involve a distinct wrong against the victim.



## Chapter 6

# The Distinct Wrong of Sexual Attacks: A Proposal

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### **Section 6.1 – Introduction to Chapter 6**

In this chapter, I offer my own account of the distinct wrong of sexual attacks. I propose that sexual attacks can be morally distinguished on the basis of their default expressive significance. I argue that consensual sex conveys by default a desire or willingness to provide the other person with sexual gratification. The assailant exploits this in sexual attacks, conveying by the attack the extremely cruel message that the victim is somehow complicit in the violation of their self-ownership claims.

In Section 6.2, I set out the resources that we might usefully employ in an account of the wrongness of sexual offences. In Sections 6.3 and 6.4, I set out the framework for my account, examining how the expressive significance of sexual contact might explain how sexual attacks objectify the victim. In Section 6.5, I offer a proposal for the distinct wrongness of sexual attacks, applying my framework to an expressive significance that I think is widely attributed to sexual contact. In Section 6.6, I show how my account avoids the flaws that I have identified in other accounts and discuss some remaining problems.

### **Section 6.2 – Existing Accounts and Useful Resources**

In this section, I summarise and develop those concepts from the literature that offer an instructive insight into the wrongness of sexual attacks. In Chapters 2, 3, and 4, I examined accounts of the wrongness of sexual violence that I take to be unsuccessful, or else in need of elaboration and further defence. Gardner and Shute claim that, in rape, the assailant's objectification of the victim is extreme because they subvert the social meaning of consensual sex as a union of two selves; I argued that their formulation of the social meaning of consensual sex is unstable and inaccurate and suggested that they do not fully explain how the social meaning of consensual sex can be subverted to affect the wrongness of non-consensual sex. McGregor, Shafer and Frye, Murphy, Hampton, and Archard each propose that rape is seriously wrong because sex is central or important to every person's identity; I responded that there is no available interpretation of what it is for something to be central to a person's identity that positions sex as central in this way for all persons and explains why rape is therefore distinctly wrongful. Numerous theorists, including Dripps, Posner, Wald, and Wall argue that rape is seriously wrong given the manner

in which it violates the victim's self-ownership claims; I objected that this is not sufficient to explain the distinct wrongness of sexual attacks, even if the violation of the victim's self-ownership claims takes a necessary explanatory role here.

One way to understand the flaw in each of these accounts is that they do not offer a viable and sustainable explanation of what it is that makes sex special. Their strategy is to explain the special wrongness of non-consensual sexual contact by appeal to some feature of sex that distinguishes it from most other human activities and experiences. For each of these accounts, I suggest that what is lacking is a viable, sustainable, and sufficiently wide-ranging explanation of what makes sex special in the (morally) relevant sense. To meet the traditionalist's challenge, Gardner and Shute require an account of the social meaning of consensual sex that is very positive, applies to all forms of sexual contact, and is unique to sexual contact. In the absence of this social meaning, they cannot explain how the profoundly positive social meaning of consensual sex is subverted in every act of rape, such that the victim is objectified more severely than in non-sexual assault. Those theorists who discuss rape as an attack on something central to a person's identity must explain what it means for something to be central to a person's identity such that a person's sexual desires or history is central to each person's identity and attacking something central to a person's identity exacerbates the wrong committed against them. Similarly, self-ownership accounts rely on an explanation of why sexual violations of self-ownership claims are *prima facie* more serious than non-sexual violations of these claims. Each of these accounts, to varying degrees, explains the distinct wrong of sexual violence by establishing that there is something special about consensual sex or sexual contact. While I have raised some problems for these evaluations of wrongdoing more generally, each account ultimately fails because it does not establish that there is something distinct about sexual contact that could explain the serious wrongness of a sexual attack.

The notion of expressive significance likely plays an important role in understanding the wrongness of sexual violence. In this context, this is the idea that non-consensual physical contact can convey messages or attitudes about the victim's worth, about the proper role of the victim, and about how the victim might appropriately be treated. This is prominent in Hampton's (1999, 135) account of the wrongness of rape; she argues that rape conveys the messages that the victim is an object of the rapist and that women are properly treated as property by men. Shafer and Frye raise a similar idea. They argue that rape "conveys to her [the victim] that she is seen as an object with a sexual function" (Shafer and Frye 1977, 340). Gardner and Shute (2007, 22) claim that non-consensual sexual penetration can "come to represent a paradigm of subject-object relations." Accordingly, they argue that rape has a particularly stark "social meaning" that the victim is an object, and rape is therefore best understood as "the *sheer use* of the person raped" (Gardner and Shute 2007, 22–25). That is, Gardner and Shute claim that non-consensual sexual penetration carries a social meaning; it conveys that the victim is an object.

I have accommodated the motivation behind some of these claims in developing the concept of sexualisation. In Sections 5.6 and 5.7, I proposed a form of sexualisation in which one person treats the other as a sexual object, that is, as a means to sexual gratification. I proposed that bodily contact can carry a default expressive significance such that it conveys the message that the victim is a sexual object and appropriately used for sexual gratification. On my account, non-consensual contact is sexual when the form of the contact carries this sexual expressive significance. Such offences treat the victim as an object because they convey by this expressive significance that the victim is a sexual object and that they are appropriately used for sexual gratification.

Moreover, I have argued that sexual default expressive significance is not only a feature that might explain the serious wrongness of such offences, but that an attack or offence is sexual in virtue of instantiating this feature. The presence of this expressive significance determines what it is for an attack to be sexual. If my account of (the definition of) sexual attacks succeeds, then this feature is present in all and only those attacks that are sexual. If I can explain how sexual default expressive significance exacerbates the wrongness of a non-consensual imposition, then this will provide an explanation of exactly why sexual attacks are distinctively wrongful. I will therefore develop and examine the moral implications of the notion of sexual default expressive significance that I have proposed.

Hampton's notion of a moral injury is also instructive. To recap, Hampton (1999, 131–32) claims that a moral injury is the denial of a person's value that occurs when their entitlements are disrespected and violated. Hampton's account of moral injury illustrates how the expressive significance of sexual attacks grounds or exacerbates their wrongness. Insofar as these attacks convey such attitudes or claims about the victim and the victim relative to the assailant, they deny the victim's value and violate claims generated by this value. These attacks convey that the victim is inferior, an object or tool, rather than a person of equal worth. Given the expressive significance of sexual attacks, they attack the dignity of the victim.

I have argued that Hampton's account does not establish the wrongness of sexual violence as distinct from non-sexual violence. She argues that the moral injury inherent in rape is particularly severe because a person's humanity is deeply connected to and engaged in sexual activity (Hampton 1999, 147, 149, 151). On her view, the claim that rape is distinctly wrongful relies on a conception of sex as central to the self. I have argued that it is therefore incomplete for the same reason as other accounts according to which sex is central to the self, such as those advanced by McGregor (1994) and Shafer and Frye (1977). Nevertheless, none of this is a problem for her conception of moral injury. I will draw on her claim that the expressive significance of contact can wrong a person in virtue of what the contact conveys about the person's status. My response to the traditionalist's challenge will appeal to a conception of the expressive significance and moral injury of sexual

attacks, which does not itself rely on claims about the centrality of sex to a person's identity.

Theorists also consider sexual attacks as violations of claims that persons have over their own body. McGregor (1994, 233) and Shafer and Frye (1977, 338–40) discuss this in the terminology of a person's "domain". According to these accounts, sexual violence wrongs the victim in part because the assailant intrudes into the victim's domain, denying their claims over this. Similar ideas arise in self-ownership accounts of sexual violence. Dripps (1992, 1993), Posner (1993), Wald (1997), and Wall (2015) each argue that sexual violence wrongs the victim because it violates their self-ownership claims, where these are the claims that a person has over their body, specifically of exclusive access and control. Sexual violence, like other non-consensual bodily contact, violates these claims by imposing contact onto a person to which they have not consented.

The proposal that a person has claims to exclusive access and control over their own body (and perhaps certain aspects of their surroundings) offers a useful explanatory resource for this project, for reasons that I advanced in Chapter 4. First, it captures a morally salient aspect of sexual offences, one that is likely to affect the experiences and suffering of the victim. Sexual offences involve an attack or imposition onto the victim's body. Like many of the most serious wrongs, sexual offences attack the person themselves, rather than a possession of theirs or some other entity. Second, an appeal to the stringent claims that a person has over their own body grounds and justifies the privileging of negative sexual autonomy over positive sexual autonomy in cases where these might be said to conflict.

### **Section 6.3 – The Approach of my Account**

Building on these ideas, I propose a framework for an account, which I develop in the next section. In Chapter 5, I offered an account of what it is for an attack to be sexual. In the next three sections, I offer an account of the wrongness of sexual attacks.

Like other attacks, non-consensual sexual contact wrongs the victim in part because it violates their self-ownership claims over their own body. It wrongs the victim by violating an important entitlement. As attacks targeting the victim's body, they can be understood as direct attacks on the victim themselves. This is an aspect of the account that I advance, as I explain later.

I have argued that an attack is sexual insofar as it involves a particular default expressive significance; these attacks convey that the assailant views the victim as an object, or a tool to be utilised for the assailant's purposes. All sexual attacks objectify the victim insofar as they convey these claims or attitudes about them. A

promising way to understand the wrong of sexual attacks, then, is that they objectify the victim and treat the victim as a tool for the assailant's sexual gratification, regardless of whether the assailant in fact aims for or experiences this. The distinct wrongness of sexual attacks is explained by the assailant's objectification of the victim, which is itself explained by the expressive significance of the non-consensual contact that constitutes the attack.

This aspect of my account bears similarities to Gardner and Shute and Hampton's views on rape. It also accommodates a claim, which is frequently raised in the literature but rarely developed in significant depth, that sexual attacks wrong the victim in part because the assailant compels the victim to serve the assailant's ends; the victim not only has their bodily integrity violated and their person attacked, they are hijacked unwillingly for the assailant's purposes. On my account, the objectification (and more specifically, the sexualisation) of the victim in sexual attacks consists in the assailant conveying the message that the victim is a tool for the assailant's purposes. It is embedded in my account of the nature of sexual attacks that the assailant goes beyond attacking the victim's body and uses the victim for the assailant's own purposes.

These observations get us some of the way towards an explanation. In particular, it is a morally significant feature of sexual attacks that they convey not only that the victim lacks claims against non-consensual contact over their person, but that the victim is appropriately used as a tool for the assailant in the assailant's pursuit of their own ends. Many acts of violence are such that the assailant views the victim as an obstacle to their goal, and attacks them to achieve this goal, when they could have achieved their goal just as effectively if they had never acted on the victim. Sexual attacks are different insofar as they at least convey the message that the assailant experiences sexual gratification in the violence perpetrated. That is, the assailant conveys that the violation of and use of the victim is an essential component of the assailant's goal and motivation.

The expressive significance of sexual attacks exacerbates the wrongness of these violations. To adopt the terminology employed by Anderson and Pildes (2000, 1527–30), sexual attacks impose an "expressive harm" onto the victim. They claim that a person suffers an expressive harm when an individual or group acts in a manner that conveys a "negative or inappropriate attitudes towards her" (E. S. Anderson and Pildes 2000, 1527). Importantly, they argue that a person is harmed when another individual acts towards them in a way that conveys an unfavourable attitude about them. The message conveyed by the assailant's conduct in a sexual attack is that the victim is a sexual object and appropriately used as a tool by the assailant; as such, they convey that the victim is inferior in value to the assailant. Sexual attacks meet Anderson and Pildes's condition for expressive harm; the assailant conveys a negative message about the victim's status and the victim's claims to be treated and not treated in certain ways.

This approach is similar to that which Hampton (1999, 126–35) advances with her conception of moral injury. While I endorse her claim that sexual violence wrongs the victim by conveying the message that the victim is inferior to the assailant and constitutes an attack on the victim's equal status, I believe that my approach goes further. First, I do not rely on the claim that sex is central to a person's identity to explain why the expressive harm inherent in a sexual attack is especially condemnable. Second, I have elaborated on the expressive significance of sexual attacks itself. Sexual attacks convey not only a message of the superiority of the assailant or that the victim lacks important normative claims over their person, as almost any attack might convey; their expressive significance is also such that the assailant conveys that the victim is an object for explicitly sexual purposes. The views found in Hampton's work, and to a lesser extent in Shafer and Frye's discussion, that sexual attacks convey that the victim is superior and that the victim lacks claims against abuse, follow from my own conception of the expressive significance of sexual attacks. However, my account goes further in specifying the expressive significance of these attacks and identifying what it is that makes the message conveyed sexual and how this is distinct from the messages that are generally conveyed by non-sexual attacks.

The notion of expressive harm is drawn from different accounts, and I will say something here about how I utilise it in my own proposal for understanding the wrongness of sexual attacks. Blackburn offers a compelling account of the wrong perpetrated in unjustified expressive harm. He claims that these harms constitute "something like a diminution of status" (Blackburn 2001, 470). The victim of an unjustified expressive harm is wronged because they are treated as if they are not an equal person with the moral claims that this entails, and instead as a being who is inferior and lacks the claims to which they are properly entitled. Blackburn's view echoes Hampton's (1999, 135) account here. Unjustified expressive harm wrongs the victim because the assailant thereby conveys a denial that the victim is an equal person with corresponding rights and claims. Plausibly, expressive harms wrong the victim because they set back the victim's interest against acts that convey disrespect towards them. Alternatively, it might be that acts with expressive significance that convey a negative message about a person without justification wrong the victim because they disparage and disregard the victim's status, regardless of whether we posit an *interest* in avoiding such disparagement. The wrong perpetrated by acts with a degrading expressive significance towards the victim might consist in a violation of the victim's status rather than a wrongful setback to their interest. I will remain neutral on this question.

When I claim that sexual attacks are seriously wrongful because they carry a sexual expressive significance, I do not mean to suggest that the content of the expressive significance or the severity of the injury to a person's status is equal across all sexual attacks nor that we can treat the expressive significance as entirely separate from

the other features of the attack that exacerbate its wrongness, such as the invasiveness of the bodily intrusion or the physical pain caused.

Sexual attacks convey that the victim is a sexual object, that they are used and appropriately acted upon for the purposes of sexual gratification. They also convey that the victim lacks claims over their person or that these claims may legitimately be violated. This allows for significant diversity in the ways in which a person can be treated as a sexual object and in the self-ownership claims that are violated in sexual attacks.

Consider the following two examples of wrongful non-sexual acts with radically different expressive significance. First,

Suppose some neighbours cavalierly toss their beer bottles onto your lawn. The ugliness of the litter and the inconvenience of picking it up are burdens, but they are not expressive harms. The expressive harm is in the neighbours' *rudeness*, the casual disregard for your interests expressed in their actions (E. S. Anderson and Pildes 2000, 1527, emphasis in original).

Second, Hampton (1999, 129) relays an event relayed by Bill T. Jones, about a white farmer and a black farmhand. In response to a perceived slight, the farmer hung the farmhand and his sons in burlap bags from a tree and set them on fire. In defiance, one of the men asked him for a cigarette. The white farmer used a knife to cut off the man's penis and shoved it in his mouth.

The second case is far more harmful than the first to the extent that substantive comparisons between the two may verge on poor taste. It is extremely invasive, painful, and injurious, whereas the harm of the former consists in mild inconvenience. The expressive significance of each act is also profoundly different. While the littering conveys disrespect and a lack of consideration towards the litterer's neighbour, the attack in Jones's story conveys a total disregard for the humanity and worth of the victims. It also conveys that the victims are comparable to "a burning pile of trash", that they are inferior on the basis of their race (by invoking imagery of lynching in hanging them on a tree), and that at least one of them is not really a man (by castrating him) (Hampton 1999, 129). The littering case conveys only that the neighbour's comfort and convenience is unimportant and that the litterer is superior to their neighbour only to the extent that they might infringe some minor claims of their neighbour when this is convenient for them. The attacks in Jones's story convey that the victims are so worthless that they may appropriately be destroyed in a manner that causes them extreme pain, and that their bodies may be violently cut apart. Where the littering case involves a disregard for some of the victim's claims, the racist attack conveys a total disregard for or denial of all of the victims' claims and a complete denial of their value.

I raise these cases to demonstrate the complexity of expressive significance. While Jones's story depicts an attack with a much more complex multiplicity of social meanings, the acts in both cases convey a disregard for the interests of the victims

and a denial of their status as equal persons. As I have documented, the way in which this expressive significance manifests and operates is profoundly different between the cases. Insofar as it is even possible to identify an expressive significance that is common to both cases, the nature and severity of this differs greatly. Identifying that two acts involve an expressive significance that can be minimally described in the same way allows for profound differences in how this significance operates between the two acts. There is a sense in which it is true that the littering case and the murder case both convey a disrespect of the victims and disregard of their claims, but the nature and extent of the expressive significance is radically different.

Analogously, my suggestion that the distinct wrongness of all sexual attacks is grounded by the sexual default expressive significance of the contact imposed allows for very significant differences between sexual attacks. For instance, I claim that non-consensual penile-vaginal intercourse and the non-consensual groping of a person's buttocks are both sexual attacks. This entails only a very minimal similarity between these attacks and allows for important differences in their expressive significance. Some sexual attacks convey that the victim is a sexual object to the extent that they do not have any claims against violence from others, while others might not convey this. More invasive assaults convey that the victim might permissibly have the entirety of their body co-opted for the gratification of the assailant, while less invasive sexual assaults may not. I do not attempt to offer a taxonomy of more or less wrongful forms of sexual assault. I wish to show only that recognising sexual attacks as seriously wrongful on the basis of a particular expressive significance does not entail that they are all similarly wrongful or that there are not profound differences between them. The law sets far greater penalties for some forms of sexual offence than for others, and my comments here indicate that this is as it should be. Recognising the distinct wrongness of sexual attacks as grounded by their expressive significance accommodates radical differences in the severity of such attacks.

My proposed approach is that sexual attacks are distinctly wrongful in virtue of the expressive significance of the non-consensual contact imposed, which conveys that the assailant violates the victim's self-ownership claims in a manner that does not occur in non-sexual attacks.

## **Section 6.4 – A Proposed Framework**

This leaves a significant aspect of my account to be developed. I have not yet explained why an attack is more seriously wrongful in virtue of conveying a *sexual* expressive significance and treating the victim specifically as a *sexual* object. Thus far, I have argued that such attacks are seriously wrong because they convey that



the victim may permissibly be treated as a tool in service of the assailant's interests and that they do not have the claims against the assailant's conduct that they in fact possess as equal and valuable persons. However, this does not establish that there is something wrong in sexual attacks as distinct from otherwise similar non-sexual attacks.

Many non-sexual assaults carry an expressive significance that denigrates the status of the victim, and it is not yet clear what sets sexual attacks apart from these, morally speaking. Suppose that an assailant repeatedly punches and kicks their victim to satisfy and alleviate their anger or for revenge against them. The default expressive significance of this contact is that the assailant hates the victim, takes them to be deserving of pain, and that the victim lacks claims over their own body against forceful non-consensual contact. With more contextual information, the attack might convey that the victim is appropriately treated as an object for the purposes of the assailant's goal, to relieve their anger or provide them with vengeance. This is a paradigmatic non-sexual attack that violates the self-ownership claims of the victim and conveys that they are appropriately used as an object for the purposes of the assailant, whatever these purposes are. Those features of sexual attacks that I identified as the basis for condemning all instances of these attacks specifically are also present in non-sexual attacks. I must still explain how the features that are unique to sexual attacks exacerbate their wrongness.

To recap, sexual attacks are conceptually distinct because the contact carries a default expressive significance to the effect that the assailant treats the victim as a sexual object, a means to sexual gratification. The claim that sexual attacks are distinctly wrong therefore relies on the view that a wrong occurs when the default expressive significance of the non-consensual contact is that the assailant treats the victim as a means to *sexual* gratification, where the very same wrong would not be perpetrated if it conveyed that the assailant treats the victim as a means to non-sexual gratification. In the remainder of this chapter, I propose an explanation of the distinct wrongness of attacks that convey by default that the victim is a *sexual* object.

My approach in what follows is not far removed from that which is adopted by Gardner and Shute. My strategy is to identify some feature that is unique to consensual *sexual* acts. I then argue that this feature of consensual sexual contact influences the default expressive significance of the contact when it is imposed without consent, and that this exacerbates the wrongness of the attack. My approach differs from Gardner and Shute's account both in the expressive significance that I attribute to consensual sexual contact and in my view of the link between the expressive significance of consensual sexual contact and the wrongness of sexual attacks.

In Section 6.5, I will illustrate how the default expressive significance of consensual sexual contact factors into the wrongness of sexual violence. In the present section,

I will illustrate the structure of my account by showing how it would operate given different (flawed) conceptions of the expressive significance of consensual sexual contact. The first example instantiates the conservative moral framework that underpins the traditionalist's challenge. I find this argument deeply objectionable but present it to illustrate the broader structure of my argument, that the default expressive significance of consensual sexual contact explains why the non-consensual imposition of contact that conveys that a person is a *sexual* object exacerbates the wrongness of the attack.

Suppose that most individuals within a society subscribe to a traditional misogynist conception of sexual contact, to the extent that we can talk meaningfully about this being the society's or culture's view of sexual contact. According to this view, sexual contact is a regrettable necessity for reproduction within marriage and is otherwise a dirty and degrading relief of bestial urges, especially for women who participate. Sexual contact thereby develops a related default expressive significance and conveys that those involved are degraded, lack dignity, or are properly disrespected for the purposes of fulfilling desires that have little value. Under these conditions, persons engaging in non-procreative consensual sexual contact would convey that they do not respect their sexual partner, and that their partner has sufficiently little dignity that they may be degraded for purposes as trivial as the relief of these bestial urges. Even partners who do not subscribe to this view of sex are likely to face the default expressive significance of sexual contact in this society as an obstacle to healthy and enjoyable sexual relations.

We can say something about how the expressive significance of sexual contact in this social context would exacerbate the wrongness of sexual attacks. In this context, the default expressive significance of sexual contact is such that it is degrading qua sexual contact. When an assailant imposes a sexual attack, they violate the victim's self-ownership claims with contact that conveys that they are a means to sexual gratification. Given a traditional conception of sexual contact, the assault is particularly wrongful qua *sexual* attack. The assailant imposes contact onto the victim that is degrading and conveys that the victim may be used in a manner that is particularly disrespectful and harmful for the physical release of the assailant. The expressive significance of sexual contact in this society is such that non-consensual sexual contact is especially degrading and conveys that the victim's claims and wellbeing matter so little that the victim may permissibly be used in a demeaning act for the assailant's base satisfaction. In short, one might explain the special wrongness of sexual attacks in this context by arguing that sexual attacks are a particularly cruel and extreme way to treat the victim as if they do not matter.

I sketch this account to draw out a feature of my own argumentative strategy. This account explains the wrongness of sexual attacks by appeal to something that is distinct about the default expressive significance of consensual sexual contact. It holds that sexual attacks wrong the victim in a way that non-sexual attacks do not by recognising that the non-consensual imposition of contact with the relevant

expressive significance, which is unique to sexual contact, is on this basis distinctly wrong.

There are some observations that it is important to reiterate here. It is possible that something like this expressive significance continues to be attributed to sexual contact. Indeed, it is not entirely dissimilar to the view that I discussed in Section 2.4 of sex as something that one person does to another and that harms one of the parties, usually a woman or any person who is penetrated. Regardless, this account is inadequate because it instantiates one horn of the traditionalist's challenge. If it succeeds, it does so on the basis of a conservative conception of sex. I hope to develop an account that can explain the wrongness of sexual attacks even when these conservative, pessimistic, and misogynistic conceptions of sex no longer attract any support nor influence widespread cultural beliefs about sex, a state of affairs that we have good reason to aim for. The account that I have sketched here clearly will not fulfil this condition nor meet the traditionalist's challenge. Nevertheless, it reveals the structure of the account that I have in mind.

The overarching structure of my account can also helpfully be illustrated by something like an account that I have already considered. To reiterate, some accounts hold that sexual attacks are distinctly wrongful because they attack something central to a person's self or identity (Archard 2007; Hampton 1999; McGregor 1994; Shafer and Frye 1977). In places, these accounts draw heavily on the expressive significance of sex and sexual attacks. This is particularly overt when Archard (2007, 390), following Hampton, claims that a rapist "can be taken to say to his victim 'You do not count, or count for very little, even in respect of that which matters very much to you'." Sex is central to a person's identity. When an assailant imposes non-consensual sexual contact, they convey that the victim lacks the value present in equal persons because the assailant disregards or violates the victim's will for their own purposes. It is distinctly wrongful as a sexual attack because it conveys that the victim lacks value to the extent that they can be treated in this way even with regard to something that is very important to them.

On this reading, Archard explains the distinctive wrongness of sexual attacks by appealing to a distinct feature of consensual sexual contact. Consensual sexual contact is relevantly distinct from most consensual non-sexual contact because it involves something that is central to a person's identity. An implication of this is that when an assailant imposes sexual contact without consent, they convey (amongst other things) that the victim is of so little worth that they might be attacked in a way that targets something central to whom they are. This expressive significance is not present in most forms of non-sexual attack, and so establishes a normatively significant distinction between sexual and non-sexual attacks. We can identify a familiar structure in this reconstruction of Archard's account. There is some feature of consensual sexual contact that distinguishes it from all or most forms of non-sexual contact. Given this feature, non-consensual sexual contact carries an expressive significance that is not present in non-sexual attacks. This expressive

significance conveys something demeaning or degrading about the victim, and thereby has a normative significance.

Of course, I disagree with Archard's account, along with those advanced by Shafer and Frye, McGregor, and Hampton, because they rely on the claim that sex is central to each person's identity. All the same, the structure of these accounts as I have presented it here is promising; sexual attacks are distinctly wrong because consensual sex carries a distinct expressive significance, such that the imposition of this contact without consent violates the victim's self-ownership claims in a way that conveys something distinctly degrading about the victim and their status. However, if an account with this structure is to succeed, I must identify a feature that is peculiar to (consensual) sexual contact and show how this grounds a normatively distinct expressive significance of sexual attacks and, in turn, the distinct wrongness of sexual attacks. The framework of my account, then, is that sexual contact carries a particular expressive significance, such that the non-consensual imposition of sexual contact conveys something distinct about the victim. Sexual attacks are distinctly wrong for this reason.

## **Section 6.5 – The Normative Content of Sexual Expressive Significance**

The remaining question is how we should understand the expressive significance of sexual contact and how this explains the distinct wrongness of sexual attacks. To begin, I return to the account developed by Gardner and Shute. The problem with Gardner and Shute's conception of the social meaning of consensual sex is that it is idealised and excessively positive. However, we can make claims about consensual sexual contact that are more realistic reflections of commonly held views and are more likely to persist between cultural settings and over time. In a later paper, Gardner (2018, 54) makes claims about consensual sexual contact that are more modest and for that reason more compelling. He claims that there is at least an expectation of sexual contact generally that both parties cooperate to ensure each other's "pleasure and satisfaction" (Gardner 2018, 54). Similarly, Natasha McKeever (2016, 208–9) argues that persons usually expect sexual contact to be pleasurable and for those involved to aim at each other's gratification as well as their own.

Thomas Nagel's (1969) conception of complete sex likewise offers some insight into dominant expectations of and assumptions about sexual contact. He argues that sex is complete and therefore non-perverted only when it involves the following experiences for those involved. Each person must perceive and be aroused by ("sense") the other (Nagel 1969, 10–11). They must recognise the other as being aroused and be aroused further by their arousal. Then, they realise that the other is aroused by their arousal and become aroused further upon this realisation. For

Nagel, complete sex follows a complex psychological process in which each person recognises that their potential partner is aroused by them, aroused by their arousal, and is themselves aroused further by this. This involves sexual excitement engendered by the recognition of the effect that one's own sexual response has on one's partner.

I do not endorse Nagel's conception in its entirety here. Certainly, I do not believe that his discussion reflects the way in which persons tend to think about sex and sexual attraction. However, I do believe that he reveals something about the way in which persons often perceive and think about sexual contact given his focus on mutuality and responsiveness to another person's arousal plays. My suspicion is that most persons approach consensual sexual contact with an expectation that one's partner not only aims for one's own pleasure, but also that they themselves take pleasure in this response. More generally, there is a broad expectation that individuals engaged in consensual sexual contact aim for each other's pleasure and themselves take pleasure in the enjoyment of their partner.

Each of these views is indicative of a default expressive significance of consensual sexual contact that applies quite broadly and in numerous cultures. We generally think of consensual sexual contact as a joint enterprise in which those involved seek to provide each other with sexual satisfaction. Consensual sexual contact therefore has a distinct default expressive significance. It conveys that both persons seek to provide each other with gratification. This phenomenon is sufficiently prevalent in sexual contact, and in popular expectations of sexual contact and conceptions of good sex, that sexual contact has arguably acquired this default expressive significance. When one perceives or hears a description of sexual contact, one is therefore likely to infer that both partners seek to provide each other with sexual gratification and that they take pleasure in doing so, unless this presupposition is defeated. The default expressive significance of consensual sexual contact is one of pleasure and reciprocity. Consensual sexual contact thereby conveys by default that one aims for one's own gratification and the gratification of one's co-participant(s).

In some cases, the focus might be on one partner experiencing pleasure. This is to be expected amongst partners with a mutually satisfying sexual relationship in which they sometimes take turns to focus on providing the other person with sexual pleasure, for example, by performing oral sex on them. More worryingly, we might expect that heterosexual persons who subscribe to the sexist view that women cannot or should not experience sexual fulfilment will likely engage in sexual contact in which the focus is on providing sexual gratification to only one partner (the man). These cases may be sufficiently widespread to impact the default expressive significance of sexual contact more widely. Therefore, I propose a very broad expressive significance of sexual contact, which accommodates diffuse views of sex and is likely to persist over time and (often) between cultures. The expressive significance of sexual contact is that those involved both aim for the gratification of at least one partner.

When physical forms of contact with a sexual default expressive significance occur in consensual contexts, there is usually at least the expectation that those involved aim for each other's gratification (or the gratification of at least one partner). This is an empirical claim, a full defence of which would require empirical evidence about the societies in which we live, and I cannot provide this here.

Instead, I note that this view of the expressive significance of sexual contact is minimal in its commitments, especially in comparison to that which Gardner and Shute attribute to sex detailed in Section 2.3. My claim here is only that there is a widespread cultural view that associates sexual contact with partners aiming for the pleasure of at least one person involved in the act. This avoids the grandiose and romanticised claims advanced by Gardner and Shute. The claim that sexual contact generally carries this expressive significance is also consistent with other conceptions of the expressive significance of sex I have discussed. It is consistent with the claim that sex is viewed as something that is degrading outside of marriage and an unfortunate necessity for procreation; it is possible for this view of sex to be prominent in a society in which persons also believe that sex generally occurs to provide at least one participant with pleasure. That is, it is possible that sex could be viewed as degrading in most circumstances and as being performed primarily for the pleasure of at least one party. Indeed, the natural law tradition that I discussed in Section 1.6 holds that non-marital sex is wrong exactly because it is a pleasurable act that takes place under certain conditions. That sex has the expressive significance I propose is also consistent with Hampton's suggestion, which I discussed in Section 2.4, that the expressive significance of sex could be such that sex is viewed as a non-serious recreational activity engaged in for fun and relaxation. My proposal that sexual contact carries an expressive significance according to which those involved aim for the pleasure and gratification of at least one party is both minimal in its commitments and consistent with it being the case that sexual contact is subject to a host of other expressive significances.

Furthermore, this expressive significance of sexual contact is also stable because the predominant motivation for consensual sexual contact is to provide gratification to at least one of the persons involved. As long as this is the case, sexual contact will be associated with physical gratification. If persons ceased to expect or experience physical gratification in sexual contact, it is plausible that there would simply be much less sexual contact, as few reasons remain to engage regularly in these activities if the pleasure is no longer present. We can reasonably expect that, at least while sexual contact remains a popular human interaction, it will continue to be associated with physical gratification and pleasure.

Sexual attacks are distinctively wrong because they attack the victim and the victim's agency in a way that non-sexual attacks do not, in virtue of their expressive significance. In a sexual attack, the victim is subjected to contact that, in consensual contexts, would convey that each person aims to provide the other with gratification. Sexual attacks are particularly cruel because the assailant imposes contact that

conveys by default that those involved seek each other's gratification. The assailant selects a form of imposition that conveys that the victim seeks the gratification of at least one party. A particularly despicable form of victim-blaming levelled against survivors of sexual assault is the claim that they were a willing participant in the attack or even that they themselves enjoyed it. My claim is that the assailant in a sexual attack conveys this message to the victim by the default expressive significance of the contact that they impose. By imposing contact that, in consensual contexts, signals that both persons aim for the gratification of those involved, the assailant conveys the message that the victim seeks the gratification of the assailant. The non-consensual imposition of contact with a sexual default expressive significance violates the bodily integrity (or some closely related claim) of the victim while at the same time the assailant conveys the message that the victim is in some sense a co-conspirator in the attack on themselves.

Of course, anyone who is at least minimally reasonable and minimally compassionate will recognise that the victim experiences sexual attacks as deeply unwelcome and uncomfortable, and often traumatic and sites of great suffering. The suggestion that victims might take pleasure in such an attack or seek the gratification of the assailant is both absurd and deeply immoral. Indeed, it is for this reason that the feature of sexual attacks that I seek to explicate shows them to be so seriously wrong. The assailant conveys the message that the victim is somehow complicit in the attack by utilising contact with a sexual default expressive significance, given the expectations and meanings that surround this contact when it occurs in consensual contexts. This is how the expressive significance of consensual sexual contact is utilised against the victim. Given the role they play in consensual interaction, forms of physical contact with a sexual default expressive significance convey that those involved seek the gratification of at least one party. This is subverted when such contact is imposed without consent; the assailant selects a form of contact that would, in consensual contexts, carry such an expressive significance.

In this regard, sexual attacks are quite unique. However, there are some attacks or other kinds of imposition that are analogous. I have proposed that sexual attacks are seriously wrongful because the assailant attacks the victim with a form of contact that conveys a message about the victim that is not only false and deeply offensive (that the victim is appropriately used as an object by the assailant), but also that sexual attacks convey a relationship between the assailant and victim (that they are complicit in the violation of their own claims to full and equal personhood), which denigrates the victim's status further.

There are cases of other attacks that take this form, which exacerbates the severity of the wrong perpetrated and/or the harm inflicted on the victim. Consider the following analogy. A colonial power violently invades and occupies another country. Some native citizens of the country resist and are violently suppressed by the military forces of the colonial power, and many are murdered or captured. The

colonial military physically force those who are captured into the colonial military dress and use threats of violence to compel the partisans to perform salutes and utter chants in the style of occupying force's personnel. Suppose that they also compel indigenous children to attend educational institutions in which they are forced to renounce the cultural traditions of their homeland and adopt those of the occupying colonial power.

There are a multitude of very serious wrongs perpetrated by the colonial power and its military personnel in this case, and it is difficult to disentangle them. I propose that a serious wrong is perpetrated in forcing the captured indigenous partisans to wear the military dress of their oppressors and in forcing the indigenous children to adhere to the oppressors' cultural traditions. There is something strikingly cruel in these practices. There is also something more complex at play here than if the military personnel had beaten their victims into submission, as condemnable as this would also be. The colonial military draws on the expressive significance of certain practices to inflict an especially targeted means of humiliating and degrading their victims. In ordinary cases, wearing the uniform of an institution and performing utterances that are typical of membership of this institution convey allegiance to or support of this institution. To a lesser extent, adhering to the cultural institutions of a particular society may convey an affinity to that society. As such, the practices of the colonial power's military themselves acquire a powerful expressive significance that exacerbates the wrongness of their already unjust conduct. They violate a multitude of moral claims of the indigenous people to force these people into a role that, by default, conveys affinity or allegiance to those who wrong them.

This aspect of the colonial power's practices conveys something about the indigenous individuals that they oppress, namely that these individuals invite or approve of the violence committed against them and support the aims of the oppressors. While many very serious wrongs are present here, the injustice perpetrated by the colonial power is exacerbated by the expressive significance of this practice, in particular because this conveys that the victims hold a positive attitude towards the violence perpetrated against them and towards their oppressors. The colonial military utilise practices with a particular default expressive significance, conveying the (clearly false) message that the partisans and children of the colonised group are in some way complicit in the violence perpetrated against them.

This example may strike the reader as unnecessarily brutal or gratuitous, and I am wary of the gravity of this kind of case. Nevertheless, I believe this example is important to illustrate the kind of harm I have in mind. In the colonisation case, the assailants violate the victims' rights over their own bodies to impose treatment that conveys that the victims support the colonial power. When they compel the victims to wear clothing and participate in practices that are synonymous with the colonial regime, they convey that the colonised persons support the colonial power and welcome their own subjugation, and this is part of what makes their actions so



horrifying. This is comparable to the wrong that is perpetrated in sexual attacks, according to my account. In a sexual attack, the assailant violates the victim's self-ownership claims, the rights they have over their own body, by imposing contact that carries a sexual default expressive significance. The expressive significance of sexual contact is that both parties aim for the pleasure or gratification of at least one person involved. When an assailant imposes sexual contact, this carries the expressive significance that the victim is in some way complicit in or supportive of the assailant's violation of their self-ownership claims, in much the same way as the colonial military's impositions convey that their victims welcome or are in some sense supportive of the systemic wrongs perpetrated against them. In both cases, the assailants impose something during an attack (practices associated with the colonial power and sexual contact respectively) whose expressive significance is such that the attack conveys the complicity or support of the victims. There is something especially cruel, even perverse, in the mechanism by which the colonial power chooses to degrade, dehumanise, and dominate the victims of its atrocities, and I propose that something similar occurs in sexual attacks. This analogy also shows that default expressive significance, although quite an abstract phenomenon, can explain or ground serious and horrifying wrongs against a person.

I hope that this analogy helps to illustrate my account of the distinct wrongness of sexual attacks. While sexual attacks are unique, the wrong perpetrated is comparable to that which occurs in this case. Given typical features of consensual sexual contact, forms of contact with a sexual default expressive significance convey by default that both parties seek at least one party's gratification. In a sexual attack, the assailant conveys not only that the victim is an object who may appropriately be treated as a means to their own goals and lacks moral claims against such treatment, but also imposes a form of physical contact that would ordinarily (in consensual contexts) signal that both parties aim for sexual gratification. This remains the case even though no reasonable observer could entertain the suggestion that any victim ever welcomes the imposition of non-consensual sexual contact. It is instead a claim about the default expressive significance of the contact imposed. The assailant chooses to impose contact that, by default, conveys particular messages given the role that such contact plays in consensual contexts.

I believe that discussing the expressive significance of sexual attacks in this way helps to explain the claim advanced by some theorists in the philosophical literature that sexual violence is distinct insofar as the assailant uses the victim as a tool to pursue ends that are directly "contrary" to the victim's (Hampton 1999, 135; McGregor 1994, 235; Shafer and Frye 1977, 345). Initially, these claims appear unhelpful in distinguishing sexual from non-sexual violence, as both can meet this condition. For example, an assailant who punches and kicks their victim for revenge or to satisfy their anger seems to use the victim for ends contrary to their own in much the same way as the assailant in a sexual attack. My account offers a mechanism to understand these claims in a way that grounds a meaningful

distinction between sexual and non-sexual attacks. According to my account, it is only in sexual attacks that the assailant imposes contact for which the default expressive significance is one of cooperation between parties. The expressive significance of sexual attacks is such that the assailant hijacks or co-opts the victim's body and agency in a way that does not generally occur in non-sexual attacks.

Sexual attacks are distinctly wrong because they violate the victim's self-ownership claims in a way that constitutes a unique denigration of the victim's status. The assailant in a sexual attack chooses to impose contact onto the victim, the default expressive significance of which is that those involved seek the pleasure or gratification of at least one party. In a sexual attack, the assailant thereby conveys that the victim is complicit in or supports this violation of their rights over their own body by imposing this contact. The victim's interests, rights over their own body, and autonomy are not only ignored, but their existence denied in the contact imposed by the assailant. The assailant conveys by their assault that the victim is merely a tool to be used for their own purposes, and that the victim's own preferences are moulded to this end.

If my comments here are plausible, then we have a strategy to meet the traditionalist's challenge. I have proposed an account that offers a meaningful and morally significant distinction between sexual and non-sexual attacks. That is, there is at least one feature that exacerbates the wrongness of an act that is present only in sexual attacks. This entails that sexual attacks are seriously wrongful in a way that non-sexual attacks are not, and that a sexual attack is more seriously wrong than an otherwise similar non-sexual attack because it involves this feature. Importantly, my proposal does not entail a conservative or restrictive sexual ethic for consensual sexual contact. It relies only on the claim that individuals engaging in consensual sexual contact generally do so with a view to providing those involved with physical gratification, and that this occurs with sufficient frequency that persons generally recognise the relevant forms of contact as indicative of an intention to provide such gratification.

Lastly, I will comment on the scope of my proposal. The feature of sexual attacks that I have identified might appear somewhat obscure, especially if it is to ground the wrongness of sexual attacks, many of which are intuitively uniquely abhorrent. However, it is important to avoid overstating the importance of this feature, which I advance to answer the traditionalist's challenge, in explaining the wrongness of any actual sexual attack. If one is prompted to explain the very serious wrongness of an act of rape, this is far better explained by the suffering imposed on the victim and the intrusion into very private areas of their body than it is by anything I have proposed here. It would be more fruitful to explain the wrongness of voyeurism and exhibitionism by appeal to the fear and intense discomfort that they often cause, as well as the implied threat of even more invasive contact. In many cases, the wrongness of groping and verbal street harassment is best explained by reference to the sheer frequency with which (predominantly) women are targeted by these

impositions and by the resultant message that certain public spaces are not safe or accessible for individuals marginalised on the basis of their gender. However, my proposal is necessary because there are cases of these kinds of sexual attacks that do not exhibit these features but are nevertheless seriously wrong, and because it explains the general intuition that any sexual attack is more seriously wrongful than an otherwise similar non-sexual attack.

A similar point obtains for the distinctions we might draw between sexual attacks. There is a range of features that explains the severity of the moral wrongness of sexual attacks other than the expressive significance that I have identified. Attention to these is necessary if we are to distinguish between different kinds of sexual attack. For instance, the statutory regulation of sexual offences across jurisdictions overwhelmingly identifies multiple kinds of attack as criminal and assigns differing penalties for conviction of these offences. To justify punishing some of these offences more than others, one probably must rely on the claim that a normatively significant feature is present in one but not the other. My account is entirely consistent with this. I have aimed only to justify the claim that, for any act of sexual intrusion, the act is distinctively wrong in virtue of being sexual. That is, I have aimed only to identify a feature that all sexual attacks have in common that distinguishes them from non-sexual attacks. This allows for a great deal of complexity and nuance in distinguishing different sexual attacks. On my account, all sexual attacks share a default expressive significance that exacerbates the wrongness of these attacks, and this allows for extensive normative differences between sexual attacks.

## **Section 6.6 – Comparisons to Competing Accounts**

In this section, I argue that my account overcomes the objections that I levelled against other accounts of the wrongness of sexual attacks and raise some remaining problems for my account.

I rejected Wertheimer's account because it explains the wrongness of sexual attacks by appealing to the victim's experienced suffering. This is problematic for two reasons; there are sexual attacks of which the victim has no experience and we have good reason to view the victim's trauma in response to these attacks as a reaction to being subjected to a serious wrong that itself must therefore be explained by something other than this suffering. My account avoids this worry because I do not explain the serious wrongness of sexual attacks by appealing to the victims' experienced suffering. My account is consistent with the claim that a sexual attack constitutes a more serious wrong insofar as the victim's suffering is more severe, all other things being equal, but its explanation of why sexual attacks qua *sexual* attacks involve a distinct wrong does not depend on the suffering of the victim.

While I have drawn on survivors' testimony to investigate the wrongness of sexual attacks, especially in my attempt to ascertain what it is for an attack to be sexual, I have not suggested that the wrong of sexual attacks consists in the victim's suffering. These argumentative strategies are consistent with the claim that the suffering of victims of sexual attacks is a response to the wrong perpetrated against them, where the feature that explains the distinct wrong of sexual attacks is something other than victims' conscious suffering. In response to the kind of view that Wertheimer advances, Gardner and Shute argue that we should prefer an account that explain why victims' psychological suffering and traumatic responses are reasonable and proportionate given the serious wrong perpetrated against them. My own account is consistent with this model; it holds that sexual violence is seriously wrong because the assailant violates the victim's self-ownership claims in a manner than conveys that the victim is an object for the assailant's gratification and that they are complicit in this violation of their rights. The psychological suffering of victims can be understood as a reaction to this wrong perpetrated against them.

Although aspects of Gardner and Shute's (2007) view are promising, I rejected their account because it relies on a conception of the social meaning of consensual sex that is excessively positive. I suggested that this is not a stable or sufficiently widespread expressive significance of consensual penile-vaginal intercourse and that it may not pertain effectively in the case of many other sexual acts. Like Gardner and Shute's account, I also rely on the claim that there is a set of meanings or features widely attributed to consensual sexual contact, where I discuss these as 'default expressive significance' rather than 'social meaning'. However, the default expressive significance that I attribute to consensual sexual contact is different from and more minimal than that advanced by Gardner and Shute. In my view, there is a widespread recognition that individuals who engage in sexual contact generally aim to provide each other (or at least one party) with sexual gratification, and so the default expressive significance of this contact is that participants aim for this. This is far less ambitious, and I think more realistic, than the claims that Gardner and Shute advance about the social meaning of consensual sexual contact. As such, my account is not vulnerable to the objections I raised against Gardner and Shute.

I also objected to a diverse group of accounts according to which sexual attacks are seriously wrongful because they target something central to a person's identity (Archard 2007; Hampton 1999; McGregor 1994; Murphy 1994; Shafer and Frye 1977). I argued that these accounts are flawed because there is no interpretation of their central claim on which we can make sense of the views that sex is central to each person's identity and that attacking something central to a person's identity exacerbates the wrongness of the attack. My account is not vulnerable to this objection because I make no reference to sex as something central to a person's identity. On my account, sexual attacks involve a distinct wrong because the contact conveys by its default expressive significance that the victim is a sex object and is in

some way complicit in the violation of their self-ownership claims. None of this depends on any view of the victim's identity or the role that sex plays here.

Finally, I raised concerns about existing self-ownership accounts of the wrongness of sexual violence, focusing on the objection that they cannot meet the traditionalist's challenge because they do not ground a normatively significant distinction between sexual and non-sexual attacks. I argued that the most promising self-ownership account of the wrongness of sexual attacks would therefore be one in which the violation of the victim's self-ownership claims is a necessary feature of the wrongness of sexual attacks, but part of a more complex explanation. This reflects the structure of the account that I have advanced here. The violation of the victim's claims over their own body is an important aspect of the wrong of sexual attacks, but the normative distinction between sexual and non-sexual attacks is itself explained by the default expressive significance of the sexual contact by which the assailant violates these claims.

There are some challenges to my account that warrant further research. I outline these here without attempting a full response. First, my account of expressive significance leaves open the possibility that the wrongness of sexual attacks depends on conceptions of sex that might vary between cultures. I have argued that the distinct wrongness of sexual attacks relies on the expressive significance of consensual sex, which depends on beliefs and attitudes widely held within a particular culture. Specifically, I suggest that the expressive significance of sex is, amongst other things, that both parties aim for the pleasure or gratification of at least one participant. It is not clear what my account would say of societies in which sexual contact does not carry this expressive significance, and perhaps it would simply fail to ground or justify the distinct wrongness of sexual attacks that occur in these circumstances. That is, the scope of my account might be limited to societies in which sexual contact has this expressive significance, and there may be societies in which it does not.

There are two ways to mitigate this problem with my account, although I am not sure that either of them succeeds entirely. In Section 5.8, I argued that some forms of contact are likely to convey that those involved seek sexual gratification in almost any society. Given cross-cultural, biological facts about human persons, we might think that certain forms of contact will only occur frequently in pursuit of sexual pleasure. As such, it is very unlikely that a culture would develop that does not recognise these forms of contact as sexual. The same argument applies here. For similar reasons, we might think that sexual contact overwhelmingly comes to be associated with pleasure and gratification across societies, so that the expressive significance of contact that is imposed in sexual attacks is that those involved seek the sexual gratification of at least one party. While we can imagine a society in which this expressive significance is not attributed to sexual contact, this is unlikely given the sensitivity of certain parts of the body to certain kinds of contact. As I proposed in Section 6.5, the expressive significance that I attribute to sexual contact

is also minimal in its commitments and consistent with many other claims and attitudes being so attributed. Therefore, diverse societies with a wide range of cultural attitudes towards sex may nevertheless attribute this expressive significance to sexual contact, and my account of the distinct wrongness of sexual attacks would therefore apply very broadly.

Alternatively, it may be instructive to separate the framework that I proposed in Sections 6.3 and 6.4 from my application of this framework in Section 6.5. In Section 6.5, I identified what I take to be an expressive significance attributed to sexual contact in many societies. In Sections 6.3 and 6.4, however, I raised the more general strategy of identifying an expressive significance that is unique to sexual contact and arguing that the assailant in a sexual attack takes advantage of this to violate the victim's self-ownership claims in a manner that is particularly cruel, degrading, and opposed to the victim's status as an equal human person. Considering the framework of my account more broadly enables its application to societies that do not attribute to sexual contact the expressive significance according to which those involved aim for the pleasure or gratification of at least one party. In Section 6.4, I showed how this framework might apply in societies that attribute a different expressive significance to sexual contact.

These arguments show that my account applies very broadly. However, they do not entirely allay the concern that there might nevertheless be a society in which there is no distinctive expressive significance attributed to sexual contact that could explain the distinct wrongness of sexual attacks, however unlikely it is that such a society exists. A fully satisfying defence of my account against this charge therefore requires further research.

A second problem with my account is that there are outstanding questions about exactly how the expressive significance of sex grounds the distinct wrong of sexual attacks. Many theorists argue that rape conveys that the victim is inferior to the assailant and lacks the status of a full and equal person, and suggest that this explains the distinct wrongness of these attacks (Archard 2007, 388–90; Gardner and Shute 2007, 22–24; Hampton 1999, 128–32, 135, 143; Shafer and Frye 1977, 338, 340). Anderson and Pildes argue that when the expressive significance of acts, or something like it, conveys certain negative attitudes about a person or group of people as inferior or undeserving of equal status, this is sufficient to render that action legally illegitimate, at least in the sphere of US constitutional law (E. S. Anderson and Pildes 2000; Pildes 1998). Following these arguments, it might be that the fact that an act conveys an unjustified negative attitude towards another person and/or that their status is diminished is a wrong-making feature of the act, and that this requires no further explanation. If I have succeeded in showing that sexual attacks convey a distinctly negative claim about the victim of the attack, then perhaps this is sufficient to show that sexual attacks are distinctly wrongful.

However, an opponent of my account might respond that I have not yet shown how this grounds the distinct wrong of sexual attacks. That is, they might object that an act cannot be more seriously wrongful just in virtue of the expressive significance of the act, and that I require a further argument to show why the expressive significance of sexual violence makes sexual violence more seriously wrongful. I will not address this objection here, except to say that, following some of the theorists that I have discussed throughout, it is a plausible assumption that one person wrongs another by acting in a manner that conveys that this individual is not an equal person or that their status is in some other sense diminished. A full investigation and defence of this is an apt subject for further research.

## Conclusion

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I conclude by summarising my arguments and findings. I have endeavoured to resolve a problem that I call *the traditionalist's challenge*. The traditionalist's challenge notes that many persons view sexual attacks as being seriously wrongful in virtue of being *sexual* attacks. A sexual assault is more seriously wrongful than a non-sexual assault that causes comparable psychological suffering and physical injury just because the former is sexual. To justify this, we require an account of how the sexual status of an attack exacerbates its wrongness. The traditionalist's challenge holds that one cannot explain the special wrongness of sexual violence without appealing to a traditional or conservative conception of the moral status of sex more generally, which would entail that casual sex and non-monogamous sexual arrangements are morally problematic. We therefore seek an account of what it is that makes sexual attacks especially wrongful qua non-consensual *sexual* contact that does not commit its proponent to a restrictive sexual ethic for consensual contact.

I have discussed a range of accounts as responses to the traditionalist's challenge. I argue that they do not succeed in explaining the distinct wrong of sexual attacks, but that they provide a compelling insight and useful resources for this project.

Wertheimer (2003, 103, 112, 156) argues that rape is seriously wrongful because it causes very significant experienced suffering and often elicits a traumatic response in the victim. That is, rape is seriously wrong because it causes a great deal of suffering. Gardner and Shute (2007, 4–6) argue that this approach is inadequate because there can be cases of rape (and sexual offences more broadly) that cause no experienced suffering for the victim but are nevertheless seriously wrongful. They also propose that we should prefer an account that explains the wrongness of rape independently of the victim's experiences suffering (Gardner and Shute 2007, 6–7). In doing so, we can establish the traumatic experiences of victims to these attacks as rational and proportionate reactions to something awful that has been committed against them (Gardner and Shute 2007, 6–8).

Gardner and Shute's account is more promising, although I argued that it is ultimately flawed. They claim that the social meaning of sex "in our culture" is that this act is a "complete and literal intertwining of two selves" (Gardner and Shute 2007, 22). Rape is seriously wrong because it exploits and subverts the positive social meaning of consensual sexual penetration (Gardner and Shute 2007, 22). The idealised and very positive social meaning of consensual sex entails that non-consensual sex (rape) treats the victim as an object in a particularly egregious manner. As a result, rape objectifies the victim in a way that non-sexual assault does not. The most pressing problems with Gardner and Shute's account concern the social meaning that they attribute to consensual sex. If a society moved away from



the view of consensual penile-vaginal intercourse as distinctly unifying towards the view that it is merely a fun recreational activity, then their argument about the wrongness of rape would no longer apply. It is also questionable how far this social meaning currently applies to non-consensual sexual contact other than penile-vaginal penetration. Gardner and Shute's account could only succeed with a more accurate and stable description of the social meaning of consensual sex.

An alternative strategy holds that sexual violence is seriously wrong because sex constitutes a central part of a person's identity or self, and so non-consensual sexual contact attacks something central to a person in a way that most non-sexual violence does not. Versions of this account are offered by Archard (2007), Hampton (1999), McGregor (1994), and Shafer and Frye (1977). I considered a range of interpretations of their claims that sex is central to the self and argued that they either fail to offer an account according to which sex is central to the identity of each person or fail to offer an account according to which an attack that targets something central to a person's identity is thereby more seriously wrong. That is, there is no interpretation of the arguments advanced here according to which sex is central to the identity of each person and sexual attacks are, for that reason, seriously and distinctively wrong.

I then examined self-ownership accounts, according to which sexual attacks wrong the victim insofar as they violate claims or rights that the victim has over their own body. I argued that the most promising versions of this account understand self-ownership as the claims to do as one wishes with one's own body and to prevent others from contact with one's body, without stipulating any further similarities between the wrong of sexual attacks and the wrong perpetrated when other ownership claims are violated. There are two ways in which self-ownership might ground the distinct wrong perpetrated in sexual attacks. Either sexual attacks are distinctively wrong because they violate the victim's self-ownership claims in a way that non-sexual attacks do not, or sexual attacks are distinctively wrong for some reason other than the violation of the victim's self-ownership claims. I argued that the first approach is unsuccessful. Therefore, the distinct wrong of sexual attacks consists in something independent of the violation of the victim's self-ownership claims, even if this plays a necessary role.

Having taken issue with these existing accounts of the wrongness of sexual attacks, I developed my own account by first considering what makes an attack sexual. The question of what distinguishes sexual from non-sexual attacks is discussed very briefly by philosophers, if at all. I argued that we should not categorise sexual attacks in virtue of the body parts involved or the assailant's motivation, but by appeal to the expressive significance of the contact imposed. Following Barnhill (2013) and Anderson and Pildes (2000), I proposed that forms of contact can communicate attitudes or claims independently of the intentions or experiences of those involved. This is the expressive significance of the contact. Some forms of contact convey that one person seeks sexual gratification with or from the other.

When these forms of contact are imposed without consent, the assailant conveys that the victim is a sexual object and appropriately (ab)used for sexual gratification. When non-consensual contact has this sexual default expressive significance, the assailant sexualises the victim and the attack is sexual.

I built on this to develop my account of the distinct wrong of sexual attacks. Sexual attacks impose an “expressive harm” (E. S. Anderson and Pildes 2000, 1527–30) or “moral injury” (Hampton 1999, 126–35) onto the victim; they convey that the victim is appropriately used by the assailant for the purposes of sexual gratification and therefore convey that the victim lacks the entitlements owed to persons and is inferior to the assailant. To explain the distinct wrong of sexual attacks, we must appeal to the claim that only sexual attacks convey that the assailant treats the victim as a means for *sexual* gratification. Sexual attacks are distinctly wrongful because they involve contact with this expressive significance.

There are various ways in which the expressive significance of sexual contact might exacerbate the wrongness of sexual attacks, depending on the expressive significance that one thinks is in fact attributed to such contact. In a traditional society where the expressive significance attributed to sex is that it is a harmful manifestation of bestial urges, the assailant in a sexual attack will convey by their contact that the victim may be violated in a manner that is particularly obscene and degrading. It would therefore convey that the victim lacks entitlements or value in a way that non-sexual attacks do not. If the expressive significance of sexual contact was that it is central to a person’s self or domain, as proposed by McGregor (1994) and Shafer and Frye (1977), then sexual attacks would perpetrate a distinct wrong because they would convey that the victim matters so little that they may permissibly be attacked in a way that targets something central to who they are.

Sexual attacks convey that the assailant treats the victim as a sex object, as existing for sexual gratification. Explaining the distinct wrong of sexual attacks requires that we consider the expressive significance attributed to sexual contact to discern why it should be worse to be treated as a sexual object during non-consensual contact, rather than a non-sexual object.

I am more tentative in setting out the remaining steps of my account, but I seek to identify an expressive significance that is widely attributed to sexual contact in my own society (the modern-day UK) and that is sufficiently minimal that it is likely to apply quite broadly across cultures. I propose that the expressive significance of sexual contact is that those involved aim to provide pleasure or gratification to at least one of the participants. When an assailant imposes non-consensual sexual contact, they choose a form of contact that conveys that both parties aim for the gratification of at least one of them, and thereby convey that the victim is complicit in the violation of their self-ownership claims. There is a kind of victim-blaming conveyed in the non-consensual contact itself. This reflects the claim by some theorists that the assailant takes control of or co-opts the victim’s body against their

will (Hampton 1999, 135; McGregor 1994, 235; Shafer and Frye 1977, 345). It is this feature of sexual attacks that explains their distinct wrongness. Of course, many such attacks are horrific for further reasons; they cause very severe suffering and trauma, they are physically invasive, they are injurious. However, sexual attacks are morally distinct from non-sexual attacks because each of them carries this default expressive significance. In all cases, the assailant conveys that the victim is complicit in the violation of their self-ownership claims and the attack on their body.

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