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# Violent Sex Versus Sexual Violence: Constructing a Consensual Moral Framework

Katherine A. Barnekow  
Rollins College, [kbarnekow@rollins.edu](mailto:kbarnekow@rollins.edu)

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# Violent Sex Versus Sexual Violence: Constructing a Consensual Moral Framework

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# Violent Sex Versus Sexual Violence: Constructing a Consensual Moral Framework

Katherine Barnekow

The Department of Philosophy

Rollins College

Honors Thesis

Defended April 21, 2015

## I

Sex is, as John Barrymore put it, “the thing that takes up the least amount of time and causes the most trouble.”<sup>1</sup> Human sexuality, and even what that term entails and implies, has been a source of discussion, controversy, and debate for hundreds of years across a multitude of cultures and belief systems. The morality of varying sexual acts, desires, and preferences—the question of in what circumstances, if any, they are right or wrong, acceptable or unacceptable—has particularly held the attention of interested parties—religious organizations, philosophical thinkers, and biological scholars, as well as the layman. This continuing discourse has given rise to the development of a plethora of opinions, positions, writings, submissions, and theories. While we tend to think that the larger a wealth of knowledge and writings on a subject, the more advanced or more clear the issue becomes, this is not always the case.

This overarching discourse and theories of sex, the personal and political nature of human sexuality, and both repressive and discursive external judgments have given rise to an invented normative sexual hierarchy, or a prescription of the “most normal” and thus “most moral” (or perhaps “most moral” and thus “most normal,” depending on your perspective) kind of sex. Regardless, these historical and social factors justify the formation of a new sexual ethical framework: what this project intends to propose and justify. This newly created framework will be formed using a constructionist approach, in order to attempt to eradicate any pre-existing systems and judgements surrounding sexuality. First, to deconstruct the existing sexual hierarchy, it will employ a type of re-conceived hedonism, focusing on the intrinsic value and attitudinal

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<sup>1</sup> Celeste Liversidge, *Last One Down the Aisle Wins: 10 Keys to a Fabulous Single Life Now and an Even Better Marriage Later* (New York, NY: St. Martin’s Press, 2010), 295.

nature of the pleasures we as humans experience. The application of this approach effectively re-allows all types of sex acts and preferences as ethical and moral. Second, a concept borrowed from victim-centered deontological theory will be applied. This theory centers around the rights of a living being who is being acted upon. Simply put, it forbids the use of another person as a means to an end, without that person's confirmed agreement and consent. Layering this piece of the project on top of hedonism restricts specifically the use of others' bodies as a means, disallowing actions like molestation and rape. Last, and potentially most difficultly, this project will justify the use of a substantively neutral theory of autonomy in order to focus on and confirm consent, especially in cases in which a person may be consenting to use as a means to an end in a specific situation for a limited time or in which their consent is not readily apparent.

This thesis will proceed in three overarching sections. The first will give an overview and explanation of existing ethical frameworks and approaches of sex, justifying the need for a new ethical framework of sex. The second, proceeding in three separate steps within itself, will attempt to construct a new sexual ethical framework. Third, this project will attempt to answer pre-existing and anticipated objections and challenges.

## II

In order to better understand the varying existing positions on the ethics and morality of sex, contemporary philosopher Alan Soble has drawn a distinction between what he calls metaphysical sexual optimists and metaphysical sexual pessimists. These categories delineate philosophers based on who sees sexual impulse and action as something base or inappropriate to humankind, versus those who see human sexuality as just another dimension of our complex makeup. This tool of classification is helpful as a starting place for examining the existing positions, theories, and frameworks for the ethics of sexual action.

Sexual pessimists, argues Soble, are those philosophical thinkers who look at sex and sex acts (and often human sexuality in all of its manifestations, acted upon or not), as generally negative. There are at least five major themes present throughout this position and the arguments of those who hold it: objectification of others, objectification of the self, a reliance on manipulation and deception, loss of control and humanity, and anti-rationality. Thinkers classified as sexual pessimists often ascribe to the idea that all sexual desire and action necessarily objectifies another: the partner or partners in a sexual encounter. Objectification, or the reduction of an individual, a being, to an object, or something to be used, leads to devaluation of that individual, both personally and societally. Sexual pessimists rely on this argument to argue against the morality of sex, as Kant did, when he wrote that “Sex makes of the loved person an Object of appetite... Taken by itself it is a degradation of human nature.”<sup>2</sup> The same argument is made, regarding objectification of the self; this is the idea that any sexual act causes

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<sup>2</sup> Immanuel Kant, *Lectures on Ethics* (New York, NY: Harper & Row, 1963), 163.

an individual to reduce their own self to an object, or not a full being. This, too, argue sexual pessimists, is dangerous to the moral fabric of our society. Soble also submits that sexual pessimists cite an apparent reliance on deception and manipulation of others in order to fulfill sexual desires or needs, as Bernard Baumrim in “Sexual Immorality Delineated” makes the point, “sexual interaction is essentially manipulative—physically, psychologically, emotionally, and even intellectually.”<sup>3</sup> This manipulation or deception may stem from a lack of control of the self (and thus humanity) caused by intense sexual desire, another point that sexual pessimists, similar to the argument that Thomas Aquinas makes when claiming that any variance from heterosexual sex is a betrayal of God’s Natural Law, rely upon.<sup>4</sup> Last, sexual pessimists conclude that these factors, caused by sexuality, synthesize to create an anti-rational individual, or someone incapable of making informed, intelligent, logical (all qualities our society highly values) decisions. These elements, argue sexual pessimists, make it clear that sex is inherently an immoral and bad action, and one that does harm to individuals and society alike. They argue, generally, that sexual activity is only permissible during a specific kind of relationship (generally monogamous, lifelong, and heterosexual) with, as the most important element, procreation as the goal of the sex act.

For the purposes of this thesis, the sexual pessimist position will not be considered. This is due primarily to the fact that the justification for their submissions is often founded in religion: a subject this thesis does not intend to tackle. They are reliant on assumptions that a secular and religious pluralistic society, the one in which and for this thesis is being constructed, should not

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<sup>3</sup> Bernard Baumrim, “Sexual Immorality Delineated,” in *Philosophy and Sex*, 2nd edition, ed. Robert Baker and Frederick Elliston (Buffalo, NY: Prometheus, 1984), 300.

<sup>4</sup> Alan Soble, “A History of Erotic Philosophy,” *Journal of Sex Research* 46, no. 2 (2009): 110.

and would not endorse. These pessimistic theories also, by disallowing sexual behavior outside (usually) of marriage, restrict the intention of this thesis so far as to ostensibly render it useless.

On the other side of Soble's classification, then, are the sexual optimists. These philosophers, instead of arguing that sexuality is base, animalistic, and unworthy of human endeavor, subscribe to the belief that sexuality is natural and a vital part of what makes us human. Sexual optimists, writes Soble, are those that view sexuality and sex as natural. Main points of this argument include that sexuality is pleasing both to the self and to others, that sexual pleasure has a value in its own right, and, in answer to the claims of some sexual pessimists, that objectification is not a definitive part of sexuality or of sex.

The first of these claims, that sex is natural (and therefore not a- or immoral), can be seen in Thomas Nagel's "Thinking Sex," in which Nagel argues that sex is characterized primarily by desire, not by biological necessity or drive. The idea that sexual pleasure is pleasing both to one's self and to others is meant to justify sexual action based on the pleasure it provides to other humans, and thus its role as an essential part of "humanness." The second claim is that sexual pleasure has a value in its own right, or without dependence on some outside value-giver, and thus does not require justification for its goodness. These specific arguments developed heavily in the 1960s and 1970s, under the leadership of libertarian feminists (more on them later). This idea will come into greater play later in this piece. Last, sexual optimists argue that many of the points made by sexual pessimists against sex are not in fact necessary conditions of sex; objectification and loss of control are not definitive of sex in the same way that consuming fried twinkies and aspartame-laden diet soda are not definitive of eating.



Sexual optimism, as Soble defines and provides examples of it, then, will be the realm in which this thesis will operate. This was chosen so as to allow for a more open (and realistic) examination of sex and its morality, as well as to recognize what is becoming the majority opinion and approach (both in theory and in action) of our society today. That said, there remains a vast variance of approaches and propositions within the category of sexual optimist views and understandings. These too require an examination with a critical eye.

Before moving on to this analysis, however, a distinction must be drawn between different types of evaluations of sex one might engage in. When our society talks about having “good sex” or “bad sex,” it is usually in reference to the overall pleasure the experience provided. It may also, however, refer to how “weird,” “kinky,” or “different” the sexual act was (by the standards of the individual and/or the society at large). These types of evaluations vary greatly in their language, well beyond the above examples. Someone may be a “pervert” or engage in “perversions.” They may be “a freak in the sheets,” or maybe they “just laid there like a log.” Or maybe they were just “really good/bad at sex.” The point is, though, that this work will not engage in any type of the above evaluations. It is concerned both primarily and solely with constructing a social ethical framework that significantly broadens the range of acceptable, ethical, or moral sexual acts, while still identifying some actions, including rape and stalking, as unacceptable. What this work is not intended to do is pass judgment (explicitly or covertly) on what individuals should desire, do, enjoy, or perceive as “normal.” This work will maintain that all sexual actions can be described as either moral or immoral, while attempting to construct a defensible framework that is able to both find and justify such descriptions.

Thomas Nagel presented his ideas around the ethics of sex in his 1969 piece, “Sexual Perversion.” Nagel is, by Soble’s classification, a sexual optimist. This is to say that he allows, ethically, for sexual action outside of procreative action. This is made clear when Nagel focuses on “the desire itself, rather than... the biological function that the desire serves.”<sup>5</sup> In other words, Nagel is concerning himself with the desire for the act, not the procreative biological aspect of the sex act. Nagel’s undertaking then, is an examination of what makes sex natural sex, versus what makes sex unnatural, or, as Nagel will call it, a perversion. This process leads Nagel eventually to focus on the ideas of self-reflexivity or awareness and sex as a type of communication.

Nagel’s talk of self-awareness rests on the understanding that when an individual is engaged in a broad range of acts that may be interpreted as sexual (these may range from smiling at someone one finds attractive across the room to flirtatiously touching a shoulder, from engaging in a physical sex act with someone for the first time to undressing in front of a life-long partner), they become aware of themselves as a sexual being, or as someone embodying an element of sexuality. It seems, then, that this manifestation of sexuality (whatever action it may be) is not directed solely at another person, but at the back-and-forth between more than one person, and thus at one’s own self as well. Instead of directing all sexual energy at a secondary party, some of it is being directed at one’s self. This, ostensibly, makes one aware of their own self as a sexual(ly attractive) being. This is developed in part through action and intention of one’s self and in part through observing the other(s) involved in the sex act and their reaction to

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<sup>5</sup> Thomas Nagel, “Sexual Perversion,” *The Journal of Philosophy* 66, no. 1 (1969): 7.

one's self. This is the exchange on which Nagel bases his submission that sex is a type of communication.

Sex, argues Nagel, is, at its core, a type of communication between two (or more) people. Nagel attempts to illustrate this point, using two heterosexual classically romantic characters, Romeo and Juliet, and a classically sexually-charged environment, a bar. The two engage in a somewhat complex exchange, increasing in sexual energy as the exchange continues. At a certain point in this exchange of both nonverbal and verbal communication, the two become aware that they are both observing and being observed by one another. This realization comes along with the secondary realization that there is clear sexual energy/desire being shared between them, carried back and forth through this observing/being observed action. This continues until the two are, in Nagel's words, "saturated" with sexual desire. This, one can presume, leads to sexual action or intercourse. The conclusion that we can draw about Nagel's understanding from this illustrative passage is that sex is fundamentally and essentially a form of communication and relation between or among people. Inter-personal communication and relations are, by definition, reciprocal. Nagel uses, then, this conclusion about what sex fundamentally *is* to expand his theory to include what ultimately sex *should be*, committing a fallacy that will be further addressed later. Sex *is normally* and thus, *should be*, according to Nagel, reciprocal communication.

This normative judgment is the line that Nagel draws between "normal" and "perverse" sexual acts, his ultimate goal in the article. By this standard, sexual perversions would be characterized by their lack of exhibited communication and reciprocity. Nagel lists, for example, exhibitionism, sadism, masochism, fetishism, and bestiality as examples of sexual perversions

(notably both by his invented standard and society at large's standard). While Nagel notably does not attempt to pass moral judgment on these "perversions," labeling them as such within our society is likely still to do a significant amount of damage—potentially the same amount that labeling them as "immoral" would.

It can be argued that Nagel's framework is one of the best modern approaches to the ethics of sexual acts. The first reason for this is the implication of a mandate of consent, an element often lacking in philosophers' evaluation of sex. This mandate, while not explicit, is apparently present based on the idea of reciprocity. It would seem that a sexual act could not be characterized as reciprocal (and growing in reciprocity) if consent was not both initially and continually given. Second, it does not attempt to pass moral judgment on all types of non-procreative sex, as do most of the dominant narratives of prescribed sexuality in today's wider society. Instead, it takes sex as a given and then attempts to examine its roots. This examination, again, implicitly, endorses sexual action as something not to be forbidden or passed judgment on, but something to better understand.

These acknowledgements made, there are multiple serious objections that can well be made to Nagel's framework. The first of these is the label of "perversion" being plastered not only on the acts listed above, but "possibly," Nagel writes, homosexuality. While this, again, supposedly passes no moral judgment, it is certainly discriminatory, damaging, and unfounded based even upon Nagel's own description (without an assumed heterosexual dominance). Second, acts like masturbation fail to meet Nagel's concept of sex as a form of communication between at least two individuals. If procreation is not the intention or moralizing factor of sex, then it seems logically ill-founded to characterize sex without the possibility of procreation (i.e.

with only one participant) as a perversion. Last, and perhaps most significantly, Nagel's framework ascribes an ideal type of sex. This supposed ideal appears to be unfounded on anything other than society as it already exists; Nagel's argument takes the existing norm and, framing this norm as a prescriptive ideal, imposes what is at least the foundation of a necessarily harmful sexual hierarchy. Despite not carrying an intended moral judgment, the label of "perverse" to anything other than socially acceptable acts shows Nagel's framework to rest on assumptions of the dominant culture in society: heterosexual, vanilla, monogamous, etc..

One of the first widespread movements that both addressed sex and challenged these dominant establishments in society was the the feminist and women's rights movement. These groups of women began their own conversations around sex, sexuality, and the role of oppression within sex. Those conversations led to debates, which led to, metaphorically, anyway, wars. The Feminist Sex Wars were made up of a series of debates in discourse which centered around a range of issues relating primarily to sex and sexual activity.<sup>6</sup> The feminist movement divided, generally, into two separate camps: the radical feminists and libertarian feminists (or "self-styled 'anti-prudes'").<sup>7</sup> The emergence of these two groups, as well as the locus of their attention on sexual analysis, points to the rise of a newer, and more contemporary type of, discussion about sexuality. These two sides separated over their contrasting viewpoints regarding the level of violence involved, inherently or necessarily, in sex in our society. Ferguson argues that there are both historical and political differences between the two groups.

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<sup>6</sup> Ann Ferguson, "Sex War: The Debate Between Radical And Libertarian Feminists," *Signs: Journal of Women in Culture and Society* 10, no. 1 (1984): 106.

<sup>7</sup> Ibid.

The radical feminists, historically, are those who have identified within a lesbian-feminist community. These communities tend to reject heterosexual sex entirely, viewing it as male-dominated and therefore inherently oppressive and violent.<sup>8</sup> They also reject all practices that they deem to have either implicit or explicit ties to power imbalances, rooted in dominant/subordinate practices in a society characterized by male dominance.<sup>9</sup> These practices include “sadoomasochism, pornography, prostitution, cruising, adult/child sexual relations, and sexual role playing...”<sup>10</sup> They make the argument that these types of activities, due to their relationship to power imbalances within a male-dominated society, are marked by an ideology of sexual objectification.<sup>11</sup> This ideology both leads to and lends support to male sexual violence against women, and, therefore, women should reject any practice that “supports or ‘normalizes’ male sexual violence.”<sup>12</sup> It is interesting to note that this position shares several critiques with the sexual pessimist camp, including concerns of objectification and exploitation. These normative judgments characterize the radical feminists’ viewpoint; they also argue that feminists should focus on what is supposed to be women’s true concern, intimacy, not with men’s, performance.<sup>13</sup> They also define the ideal sexual relationship as between partners who are equal, consenting, emotionally involved with one another, and who do not participate in opposite or “polarized” roles.<sup>14</sup>

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<sup>8</sup> Ibid., 107.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., 108.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

The views of the libertarian feminists contrast sharply with those of the radical feminists. Historically, they include both lesbian and heterosexual feminists, and so they do not then, of course, reject either hetero- or homosexual sex. They make the argument that sex is not, as radical feminists believe, characterized by objectification, but by repression stemming from dominant male and bourgeois classes.<sup>15</sup> The primary normative judgment of this belief is not that feminists should reject a certain type of sex, but rather that feminists should reject a certain type of *analysis, restriction, or judgment*: any that “stigmatizes[s] sexual minorities,” through direct discourse, exclusion, or punishment.<sup>16</sup> Reclaiming sexuality, to libertarian feminists, involves standing up unequivocally for the right to engage in whatever sexual practices produces for them satisfaction, pleasure, and spirituality. This means that the ideal sexual relationship is characterized by the equality of the partners and their consent for each other, as well as their negotiation between one another in order to maximize sexual satisfaction and pleasure—by whatever means chosen.<sup>17</sup>

These points can be neatly summed up into the understandings that libertarian feminists cite a lack of repression, pleasure, satisfaction, and negotiation as elements of what sexuality should be, while radical feminists call for a lack of objectification, intimacy, emotional involvement, and a lack of polarization in sex acts. These two opposing camps have given a solid foundation in contemporary analysis of sex and sex culture, as well as in projects such as this one, building an approach for ethically evaluating sex acts.

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid., 107.

<sup>17</sup> Ibid., 108.

Feminist analysis of sex in society also gave rise to a theory surrounding what our culture or society dubs the “rightness” or “appropriateness” of different types of sex. This theory outlined a detailed hierarchal structure, known generally as the sexual hierarchy, which places some types of sex closer to the top, or ideal, level than others. It both has been created by and continues to reinforce norms and stigmatizations in our society which mandate both explicitly and implicitly which sexual practices, acts, or preferences are most “okay” for members of our society to engage, or desire to engage, in, and which are not okay. The sexual hierarchy pretends to be a basis for what is truly most moral, normal, or acceptable for both individuals and groups, though in reality it was formed through complex social, economic, and political movements.

Scholar Gayle Rubin describes the growth of the sexual hierarchy through a reliance on the Foucauldian idea that sex is not a purely physical or biological phenomena, but one that is created, molded, and deployed by institutions of society.<sup>18</sup> Human sexuality relies on biology in order to exist, but it cannot be explained solely in terms of biology; it is a social construct.<sup>19</sup> Understanding this is necessary to understanding both how the sexual hierarchy developed and how it is constantly re-deploying and reinforcing itself today. Rubin cites six ideologies operating to create sexual hierarchies: sexual essentialism, the idea that sex or sexuality must have certain traits in order to be legitimate; sex negativity, the understanding of sex to be dangerous and destructive; the fallacy of misplaced scale, in which more significance is given to sexual acts and their consequences than is reasonable; the hierarchical valuation of sex acts, the basis for the idea of a hierarchy at all; the domino theory of sexual peril, which maintains that if any sexual “rules” are broken, something dangerous and unspeakable may happen even to those

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<sup>18</sup> Gayle Rubin, *Devotions: A Gayle Rubin Reader* (Durham, NC: Duke University Press, 2011), 147.

<sup>19</sup> *Ibid.*



not committing any ills; and the lack of a concept of benign sexual variation, or the understanding that different individuals can favor different sexual acts or partners without causing harm.<sup>20</sup>

These six concepts, though distinct, operate in conjunction with one another both to create hierarchies, stemming in part from religious ideals and laws, and to reinforce those which already exist.<sup>21</sup> The sexual hierarchy operating today, in the Western world in the 21st century, values most sex that is heterosexual, vanilla, reproductive, monogamous, private, and white (see figure 1, page 54). The beginnings of these values can be seen in a number of social constructs, including cities and armies (the need for heterosexual and reproductive sex), systems of racial oppression, and religion (ideals which required sex to be private, less obscene, and shameful). The hierarchy then descends from these values, with characteristics like gay, non-monogamous, non-procreative, in public, alone, fetishized, etc.. These types of sex are less valued in our mainstream culture—whether this is seen through middle school sexual education, popular films, or the way we view public figures—creating a hierarchy of value and worth of individuals, based upon their sexual activities, preferences, and fantasies.

The mere existence of this sexual hierarchy, however, is not enough to make any normative judgments about it or its role in society. What remains to be seen, then, is what impact the formation and ongoing existence of the sexual hierarchy have. The most likely, and perhaps the most common, effect that the maintenance of the sexual hierarchy has is a perpetuation of discrimination against both individuals and communities. This plays out much as any discrimination or abuse in a relationship where there is a power imbalance: those with higher

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<sup>20</sup> Ibid., 148.

<sup>21</sup> Ibid., 149.

levels of power and capital (in this case, those nearer to the top of the sexual hierarchy) maintain power and privilege over those with less (or those closer to the bottom of the sexual hierarchy). This not only reinforces and strengthens the power differentials already existent within the sexual hierarchy, but subjects those not at the top to oppression, disadvantage, and harm. This can be seen in a number of examples, varying from the seemingly mundane judgment of “weird” or “sick” on a fellow individual’s sexual preferences, to the life-threatening persecution by right-wing and religious extremist groups for sexual “perversions.” Both in the United States and across the world, there is evidence that there are higher rates of mental illness, suicide attempts, and successful suicides among those identifying as lesbian, gay, bisexual, and transgender.<sup>22</sup> These events are direct effects of the sexual hierarchy.

Further quantifiable illustrations of the manifestation of this hierarchy can also be seen in the actions of the legal system across the United States. Sodomy laws in the United States show the asymmetrical nature of both the existence of and the application of laws about sex and sexual acts. In twelve states, oral and/or anal sodomy is still illegal (despite a supreme court case overruling such laws over a decade ago). But individuals—well, heterosexual, married, adult individuals—are certainly not summoned to court every month on charges of sodomy. We can see by the mere existence of these laws, first, how they are aimed at specific, “minority” sexual acts and the individuals who are supposed to engage in them—perverts, freaks, and homosexuals. The law itself, regardless of its application, is acting to perpetuate hierarchies in an unequal system. Second, by looking at its application, however, we can see how much deeper the problem goes. These laws are not applied to those at the top of the hierarchy; its used on those

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<sup>22</sup> Jay P. Paul, Joseph Catania, Lance Pollack, Judith Moskowitz, Jesse Canchola, Thomas Mills, Diane Binson, and Ron Stall, “Suicide Attempts Among Gay and Bisexual Men: Lifetime Prevalence and Antecedents,” *American Journal of Public Health* 92, no. 8 (2002): 1338.

already at the bottom. The 1986 Supreme Court Case *Bowers v. Hardwick* ruled that a Georgia law banning oral and anal sex (yes, even in private) was constitutional—when applied to gay individuals. The opinions in the case were homophobic and degrading, and the ruling has been cited as a precedent in many gay rights cases, even though it was overruled by *Lawrence v. Texas* in 2003.

Other ills caused by the perpetuation of the sexual hierarchy include repressions and negative self- or group-identity. When someone identifies with a group, categorization, or class lower on the totem pole of society, as it were, they are less likely to acknowledge fully—to themselves or others—this identity. Repression of desires or a failure to fully accept them, then, may prevent someone from living their life to the full extent that they wish to live it. This repression, along with negative judgments or stereotypes around certain practices or identities, may lead to an adverse understanding of one's self or group.<sup>23</sup>

Feminist critiques of theories of sex and gender, including those from both radical and libertarian feminists, as well as an understanding of the way the sexual hierarchy functions in society, are necessary to understanding and evaluating the effectiveness of contemporary frameworks for evaluating the morality of sex.

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<sup>23</sup> Charles Taylor, *Multiculturalism* (Princeton, NJ: Princeton University Press, 1994), 38.

## III

When discussing the idea of creating or adopting an ethical framework for a particular subject—like sex—several questions may naturally arise. First: why? Why create a framework for this particularized subject, instead of a framework that can be universally applied? In essence: why does sex need its own framework?

The most general answer to this question comes from the feminist assertion that “the personal is political”: sex is both personal and political. Sex, both as a social act and as a private choice, is not spared attention nor judgment from any side: religious, familial, or political outlets of discussion. This makes sex a unique element in society and the institutions we have constructed; few other elements of human life—much less ones as universal as sex—are so extensively discussed, encouraged, condemned, and regulated.

Sex and/or sexuality have also often been viewed as a puzzling or unique aspect of humanity; such a variance in approaches and beliefs about the subject, across time and space, make it an intriguing topic for many philosophers, scientists, and laymen alike. For some individuals, and many groups and communities, sex has always been, and remains today, an inherently immoral (or “bad” or “wrong” or “gross”) act and desire. By the same token, many traditions have suppressed or denied entirely sex and sexual gratification to themselves and others—for religious, moral, or other reasons. Conversely, there have been societies and religions who celebrated or even worshipped the act of sex, constructing a very different narrative around it. Governments have limited the amount of procreative sex one may engage in, offered incentives for increasing procreative sex, criminalized certain sex acts, and regulated who was

allowed to have sex with whom. All of these examples, and many other factors, including those previously discussed, have contributed to the formation of the sexual hierarchy previously outlined. They also act to perpetuate it.

These puzzling and often conflicting manifestations, along with an increased discourse around sex, set a precedent for the formation of an ethical sexual framework. The consistent and constant conflict over the idea of morality in sex (whether or not it is, inherently, and what factors are at play there) alone makes this subject a viable candidate for its own ethical framework. There is also an interesting paradox when one compares some of the world's most common moral and ethical systems, be these religious or secular; they all tend to provide similar answers to inquiries around the morality of acts that play or have played a large role in our society, such as murder, slavery, theft, or fraud. Ask the same individuals or groups to evaluate the morality of questions concerned primarily with sex, however, and one is overwhelmed with such a diverse barrage of answers and opinions on subjects such as homosexuality, sadomasochism, or premarital sex.

If the need for an ethical sexual framework is thus satisfied, it still must be established that we are in current need of a *new* ethical sexual framework. After all, what is wrong with the one(s) that we have in play right now? There are a number of guarantees that a new ethical sexual framework must meet, that are not currently being met. The first of these is the goal of the sexual optimists, as outlined previously: to allow for sexual pleasure when possible, as an essential element of humanity. It also must, taking into account feminism's critique of sexual hierarchy, account for sexual variation and pluralism in order to work against discrimination against individuals or groups for sexual preferences or acts, such as hate crimes against the

LGBTQ+ community. While allowing for this pluralism and inclusion of as many sexual acts and practices as possible, however, it must also provide strong protection from sexual violence for all, and especially so for vulnerable populations. This protection must take into account issues ranging from date rape to accidental death in BDSM practices to the so-called “happy housewife” syndrome, in which an abused individual maintains that she is actually happy in a harmful relationship or situation.<sup>24</sup>

These requirements make for a tall order. It is evident that whatever moral or ethical framework our society is currently operating under in terms of sex is not sufficient: it is neither fully open to pleasure nor fully protective from danger. A new ethical framework, specific to sex, must then be developed, in order to balance these requirements against one another and begin to combat the restrictions, privilege, oppression, and violence that are all too prevalent in today’s social approach to sex.

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<sup>24</sup> Ann Ferguson, “Sex War: The Debate Between Radical And Libertarian Feminists,” *Signs: Journal of Women in Culture and Society* 10, no. 1 (1984): 110.

## IV

Prominent critics and theorists have called, on more than one occasion, for a new theory or ethical framework for sex. Ann Ferguson began to construct what she called a “transitional feminist sexual morality” that distinguishes between varying levels of endangerment.<sup>25</sup> Gayle Rubin, too, has called for a furthered analysis and framework outlining how, exactly, sexual acts and experiences should be judged, as opposed to by the sexual hierarchy: “by the way partners treat one another, the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasure they provide.”<sup>26</sup> This is the goal that this project aims to reach.

This section will focus on constructing a consensual moral framework that meets the goals expressed by Rubin and that corrects the ills of our society’s current sexual ethic. This will be undertaken using a social constructionism methodology and approach, in order to avoid a singularity of moral viewpoints or understandings of sex. It will, acknowledging that meaning is built across relationships and that our understanding of the world is built from our attempts to rationalize experience, attempt to level the playing field, as it were, by destroying the sexual hierarchy using philosophical theories. By then re-restricting some practices, the framework will maintain that some practices are certainly impermissible. This will be developed, however, through a philosophically-rooted and non-discriminatory technique, in order to avoid the repressive, violent, and controlling methods used in the past. The techniques used in the construction of this framework are also intended to ensure that individuals maintain ownership

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<sup>25</sup> Ibid., 111.

<sup>26</sup> Gayle Rubin, *Deviations: A Gayle Rubin Reader* (Durham, NC: Duke University Press, 2011), 284.

over their selves, at all times, in order to satisfy all requirements regarding the lack of control or coercion required for true consent. Previous and anticipated objections to both the framework as a whole and philosophical elements within it will be discussed and answered in an additional section.



## V

As demonstrated, the sexual hierarchy has real and damaging effects on individuals and identity groups. These ills come about in spite of the socially constructed nature of the hierarchy, and so it can be understood that they can be combated through the social deconstruction of that hierarchy. In other words, an entity which has been formed not from something objectively measurable, but from something constructed by our society, can only be destroyed using the same tools with which it was built: social tools and understanding. This, the breakdown of the sexual hierarchy from which most—if not all—social judgments, stigmas, and damages come from—is the goal of this section. Destroying the sexual hierarchy is the first step in this project’s method to constructing a new, more fair, and more ethical framework for sex.

In order to accomplish this task, an approach often dismissed will be employed and, hopefully, redeemed. Once deemed the philosophy of “swine,” hedonism has come in a variety of styles and been defended in a multitude of ways. This section will, by exploring both the history and theory behind hedonism, attempt to draw on a more updated and hopefully more advanced version of elements relied upon by the philosophy of hedonism—namely, pleasure. The implications of what “pleasure” entails can be broken down and understood in different ways. Pleasure does not have to be, nor should it be, restrained by simplistic understandings of physical pleasure, nor by misconceptions about how these physical pleasures are created, measured, and kept. An un-limiting of this understanding of pleasure and a re-conception of the way that hedonism operates will allow for a number of things. First, it will open up the community’s idea of hedonism, perhaps allowing its foundations to be redeemed, through the

help of contemporary philosopher Fred Feldman. Second, it will show hedonism to be a flexible theory, one that can be applied not only as a universal principle or ethic, but to specific contexts and issues. Third, through the demonstration of this application to the issue of sex—as the first step in the wider object of this project—it will be shown to be a useful tool in the destruction of a harmful social construction. The ultimate task of the hedonism employed in the project, then, will be to deconstruct, breakdown, and ultimately destroy the sexual hierarchy originally identified and described by feminist analysis decades ago, allowing for the continuation and subsequent steps of this project’s construction.

Hedonism’s roots lie not in one singular idea, but in a number of conceptions of the theory. Feldman writes that we may do better to think of hedonism more as a “fairly large family of axiological theories,” as opposed to one singular doctrine.<sup>27</sup> Hedonism is often understood merely to be the idea that “pleasure alone is intrinsically good,” or “pleasure is the only thing worth seeking.”<sup>28</sup> Much of this understanding of hedonism comes from the Cyreniac school of hedonism, most often credited to Aristippus of Cyrene. This school of thought claims that pleasure is in fact the highest good, and measured by hedons and negated by dolors of pain. This particular line of hedonistic thought seems to purport that physical, bodily pleasures are more valuable than mental ones, just as pleasures that are available in the short term have more value than those one must wait extensively for.<sup>29</sup> The intrinsic value of one’s life, then, can be measured by the amount of pleasure, or hedons, obtained by that individual. With this basic

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<sup>27</sup> Fred Feldman, *Pleasure and the Good Life: Concerning the Nature, Varieties and Plausibility of Hedonism* (Oxford: Clarendon Press, 2004), 30.

<sup>28</sup> Fred Feldman, *Utilitarianism, Hedonism, and Desert: Essays in Moral Philosophy* (Cambridge: Cambridge University Press, 1997), 80.

<sup>29</sup> Fred Feldman, *Pleasure and the Good Life: Concerning the Nature, Varieties and Plausibility of Hedonism* (Oxford: Clarendon Press, 2004), 30.

understanding of hedonism at the forefront of one's mind, it is easy to see how hedonism has been sidelined by critics who see it as an indulgent, self-serving, egoistic theory—one perhaps worthy only of basic, instinctual animals.

Feldman, through an untangling of the discourse around hedonism and a reexamination of how hedonism itself does or should measure pleasure, attempts to redeem this axiological standpoint. Much of the criticism around hedonism may stem from the confusion about what it actually *is* or *does* or *claims*.<sup>30</sup> In order to answer these criticisms, or indeed to go forward with the theory at all, a more clearly formulated and explained version of hedonism is required.

In response to what he outlines and deems “Default Hedonism,” or “DH” (a version of hedonism made up of the basic tenants accepted as essential to hedonism), Feldman develops his own conception of what hedonism is—or perhaps merely fleshes out and understands differently the concepts already at hedonism's core. He calls this formulation attitudinal hedonism, focusing on attitudinal, or propositional, pleasure. This theory, according to Feldman, is distinct from other conceptions of hedonism—both the ones discussed here and others he takes the time to detail in his own work—by way of their approach to the good life, pleasure, and the measurement of pleasure. Feldman also thinks that the strongest objections to or critiques of hedonism are effective only against these other, previous, “naive forms of hedonism,” failing to bring any serious damage to attitudinal hedonism.<sup>31</sup>

Feldman begins his explanation of attitudinal hedonism by dismissing the idea that hedonism is or should be based on the senses: the understanding that hedonism focuses on

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<sup>30</sup> Fred Feldman, *Utilitarianism, Hedonism, and Desert: Essays in Moral Philosophy* (Cambridge: Cambridge University Press, 1997), 106.

<sup>31</sup> Fred Feldman, “The Good Life: A Defense of Attitudinal Hedonism,” *Philosophy and Phenomenological Research* 65, no. 3 (2002): 605.

pleasure resulting from what we consider the five senses, so good sounds, good touches, good sights, good scents, and good tastes. This “Sensory Hedonism” is rejected by Feldman on the grounds that it is the wrong interpretation of Stoicus’ life and desires for peace and quiet (wishing for them because of the sensory pleasures they bring instead as an end in themselves), essentially robbing the individual of their own agency in deciding whether or not—and to what extent—their life was good.<sup>32</sup> Attitudinal hedonism, then, is meant to solve this problem, by focusing on and seeking out the *qua* of our own human feelings and what Feldman calls the “feeling element” of consciousness,<sup>33</sup> and by encouraging the type of life which, at least in Feldman’s estimation and understanding of the good life, “ought to be sought, by each for himself and for the whole community of rational and sensitive beings of which he is a member.”<sup>34</sup>

In order to understand attitudinal hedonism, one must first understand attitudinal pleasure; after all, one thing everyone can agree on is that hedonism is based on pleasure. The difference between sensory pleasure and attitudinal pleasure here is key. Sensory pleasure is, as exemplified above, merely good senses for the body: tastes, touches, sounds, etc.. This is, on the whole, a relatively simplistic understanding of pleasure. Attitudinal pleasure, alternatively, understands pleasure to be based in the amount and type of pleasure that someone, an individual, takes in a certain experience. This pleasure is felt *toward* something, and it has a measurable (theoretically, if not practically) duration. This understanding of pleasure is the starting point for Attitudinal Hedonism and the way it operates.

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<sup>32</sup> Ibid., 611.

<sup>33</sup> Fred Feldman, “On the Intrinsic Value of Pleasures,” *Ethics* 107, no. 3 (1997): 454.

<sup>34</sup> E. E. Constance Jones, “Rational Hedonism,” *International Journal of Ethics* 5, no. 1 (1894): 80.

When an individual experiences what we may call “happiness” or “pleasure” or “satisfaction,” it seems to be the case that they are taking this attitudinal pleasure *in* something.<sup>35</sup> They feel happiness *toward* the presence of their family; they take pleasure *from* the taste of greasy french fries; and they feel satisfaction *about* the accomplishment of defending their senior thesis successfully. This rejects, then, a distinct “feeling view.” In other words, there is “no such thing as a feeling of pleasure itself.”<sup>36</sup> But rather, a person can *take pleasure in something*, regardless of the sensory feelings he is experiencing. Feldman’s understanding of hedonism focuses on the intrinsic value of this pleasure—this attitudinal pleasure.

The claim that this attitudinal pleasure is intrinsically good is the claim on which attitudinal hedonism as a whole rests. Feldman’s exploration of this idea proceeds by first locating the fact that traditional sensory pleasures that we, in general, think of as pleasant, like the taste of cold beer or the smell of roses, do not give everyone pleasure, or even the same amount of pleasure.<sup>37</sup> This, when tied back to the idea of attitudinal pleasure, leaves what Feldman explores as the circumstances surrounding the occasion on which the pleasure is felt. In other words, pleasure does not come solely from the thing that we say gives pleasure, but also from the mindset and personality of the person experiencing the pleasure, the time and place at which the pleasure is being experienced, and the effects of past events. This, or the “whole state of affairs,” is what gives the pleasure experienced intrinsic value, according to Feldman, as opposed to the sensory perception itself.<sup>38</sup> This understanding of pleasure accounts for, if not

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<sup>35</sup> Fred Feldman, “The Good Life: A Defense of Attitudinal Hedonism,” *Philosophy and Phenomenological Research* 65, no. 3 (2002): 611.

<sup>36</sup> Fred Feldman, “On the Intrinsic Value of Pleasures,” *Ethics* 107, no. 3 (1997): 464.

<sup>37</sup> *Ibid.*, 450.

<sup>38</sup> *Ibid.*, 457.

entirely explains, the differences between your preference for a certain sandwich on Monday and on Thursday, the differences between your and your mother's liking of that Cabernet you always have at Thanksgiving, and the differences between your and George W. Bush's reception of paintings of puppies.

Attitudinal hedonism, then, says that individuals should be able to act in such a way that maximizes this internal, intrinsically valuable pleasure (or well-being, enjoyment, lack of un-enjoyment, etc.), in whatever way is best for them. Attitudinal hedonism uses this pleasure as the basis for its evaluation of goodness, and similarly uses this same theory in regards to pain for its evaluation of badness; it evaluates the worth of someone's experience, and even their life, based on the sum of the attitudinal, or propositional, pleasure and pain felt toward an experience, a day, or indeed an entire life.

This same approach, when applied to the topic of sex and sexual acts, makes up the first step in the construction of a new sexual ethic. This can be done simply, though it requires some specific clarifications, shown in part through example, after the fact. Working with attitudinal hedonism, we find the value in any act in the intrinsic value of the pleasure that results from the entirety of the state of affairs that is occurring, including the time, place, surrounding circumstance, the individual's history and mindset, the sensory inputs the individual is experiencing, etc.. This, when applied to sex and sexual acts, as one can plainly see, allows for a great number and variety of actions—evaluated, essentially, only by the pleasure they provide to the individual at the specific time of their occurrence—on a notably equal playing field. And because attitudinal hedonism is of the mindset that one should be allowed to maximize this pleasure, we must then say that individuals not only should be allowed to, but should in fact

behave in such a way so as to maximize this value, this pleasure. Now this, one might say, sounds an awful lot like the sensory hedonism that so many scorn, a philosophy fit for swine. The answer to this is both yes and no. Yes, it does allow for a great deal of sensory pleasure, as would sensory hedonism. This is simple, and an easy point to understand. No, however, because of the means with which that pleasure is evaluated and because of the greater purpose of this application of attitudinal hedonism. Yes, perhaps surprisingly, sensory hedonism and attitudinal hedonism sometimes may come to ostensibly the same observable response, as Feldman notes.<sup>39</sup> This does not mean, however, that they operate in the same manner; it is merely a coincidence. Attitudinal hedonism allows for this behavior based upon the intrinsic value of a pleasure felt toward some wider state of affairs or experience—not based merely upon physical pleasure. What practical implications does this have? Most obviously, when discussing sexual preferences and acts, it allows for pain during a sex act to be considered pleasurable. Why? Because the value in pleasure is not in solely the physical feeling (meaning that pain during sex would be measured in negative dolors, not positive hedons), but comes from the pleasure one feels toward the situation as a whole. And so, if someone feels positively toward or satisfied with feeling pain during sex, that, too, is considered pleasure and valuable within attitudinal hedonism. In other words, a person can take pleasure in a situation, regardless of the sensory feelings they are experiencing. This same argument can just as easily be applied to other, perhaps more subtle, sex scenarios in which the experience is more than solely physical pleasure, including public sex, specific dialogue during sex, or role play. This outcome is also different than that of sensory hedonism because of the specific role attitudinal hedonism is playing in this application. Sensory

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<sup>39</sup> Fred Feldman, "The Good Life: A Defense of Attitudinal Hedonism," *Philosophy and Phenomenological Research* 65, no. 3 (2002): 611.

hedonism, it can be argued, is employed as a means of justification for selfish, unjust, or un-critiqued behavior. It frees the individual of responsibility to others, allowing damage to be done that might otherwise not be. Attitudinal hedonism, in this application, does just the opposite. By applying the principles of attitudinal hedonism to sex and to today's society's approach to sex, the sexual hierarchy is broken down, flattened. It equalizes all sexual preferences, acts, and desires, destroying a hierarchy that has done, and continues to do, as outlined previously, such harm, in so many different ways, to individuals and to groups. Sensory hedonism and attitudinal hedonism then do not only operate from different core evaluations of what makes pleasure worthwhile, but also operate within different scopes and for different purposes, making them—both as theories and within their possible application here—very different.

The application of attitudinal hedonism to the sexual hierarchy creates what may best be described as a kind of “anything goes!” mentality, at least in regards to sexual acts or preferences that meet the theory's requirements for pleasure. So the hierarchy, the source of the harm, is destroyed, but now we find ourselves within a landscape still horrifying—allowing for any and all sexual practice that causes pleasures, including, presumably, rape, stalking, and abuse of children. This problem, different, though equally worthy of attention, is what is addressed in the next step of this construction of a new ethical framework for sex.



## VI

The destruction of the sexual hierarchy, while important, leaves other problems that a sufficient ethical sexual framework must address. An entirely open playing field, as established by the employment of attitudinal hedonism in the last section, while effectively removing hierarchal oppression, leaves open the possibility of other harms. Under this “anything goes” type framework, there is an openness in permissible action that leaves the door open to specific abuses. These include a number of types of sexual abuse, including rape and molestation, that would be allowed when the sole means used to evaluate the morality of a sex act was the attitudinal pleasure required by the hedonism employed in the previous section.

In order to stem the possibility of these, and other, acts of abuse which do not take into account the wishes or desires of the individual being acted upon, but instead look only at the mindset of the actor themselves, another philosophical tool or idea will be employed and layered on top of the framework as it has, so far, been set up. This required piece of the puzzle is intended to mandate a certain level of rights to each living individual, thereby restricting the rights of other individuals to use others to gain attitudinal pleasure. Because this step is focused on protecting the rights and body of the individual, deontological theories are a logical place to begin. Beginning broadly from deontology, or duty-based ethical formations, in the end victim-centered deontological theory stands out as the best tool with which to continue the construction of a new ethical sexual framework.

In order to understand the role and requirements of victim-centered deontology, general deontology and its goals and methods must first be understood. Perhaps the easiest, and most

straightforward, way to begin this inquiry is with the etymology of the word itself. Deontology comes from the Greek root *deont-*, “that which is binding” or “duty.” Deontological theories, in general, then, are those which ethically evaluate scenarios based upon required action, or duty.

This type of theory is generally understood as coming, at least to some extent, out of an individual’s “sense that there are certain sorts of things that we ought to do... or not do.”<sup>40</sup>

Perhaps the most famous of deontological theories is that of Immanuel Kant and his categorical imperative. In contrast with both consequentialist approaches which evaluate instances by the outcomes of an action and with virtue ethics which employ the virtues an individual ought to have or the type of person one ought to be, deontological theories focus on what one ought to *do*. Thus, they are normative theories, or those which make claims about what ought to be done or how they are to be done, and generally absolutist, maintaining that the required “restrictions or requirements” must categorically, absolutely, always be followed.<sup>41</sup>

Within this categorization, however, there are a number of variations of means of ethical evaluations that are still considered deontological. For the purposes of this project, victim-centered deontology, known sometimes also as patient-centered deontology, will be focused on and later employed/applied. Victim-centered deontology is a way of understanding what one should do or ought to do that has an additional focus on rights, not only on the duty of the actor. Victim-centered deontology promotes a way of evaluating actions or choices based upon the rights of the individual being acted upon—the passive individual or entity—in any given interaction, as opposed to solely the active actor themselves or the action itself. This creates a

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<sup>40</sup> Anthony Ellis, “Deontology, Incommensurability and the Arbitrary,” *Philosophy and Phenomenological Research* 53, no. 4 (1992): 855.

<sup>41</sup> *Ibid.*, 857.

previously nonexistent focus on and attention to the individual actually affected by the action. Adding this level of evaluation lends an additional depth to deontological understandings of ethics that may be passed over or not considered when one looks solely at the action of an individual.

By focusing on an understood living right of each individual to dignity and rights in regards to what happens to them, victim-centered deontology requires an evaluation of not only what one ought to do, but what one ought to do *given the rights and desires of the individual(s) whom a given action will affect*. By this token, victim-centered deontology maintains that the best ethical action is that which focuses on protecting the accepted right of all individuals to be treated not as a means to an end, but as an end in and of themselves. This focus is important, particularly for the application of this approach to the project of constructing an ethical sexual framework.

What does this victim-centering mean in practical, real-life terms? The added focus on the individual who is actually being acted upon means that someone may not, under victim-centered deontology, use any aspect of another person as a means to an end, without that individual's express permission or consent. This includes the person's body, abilities, thoughts, and so on, including essentially all aspects of that individual, no matter how one may define them. This effectively restricts the use of any other people as a means, or a pathway to achieve, some specific ends, or resulting scenario, situation, or action. Each person, instead, by way of their right, must be understood to be, respected as, and treated as an end—or totality or result—in and of themselves, their very existence. They may not be used by someone in order to gain anything else.

Applying this, as with attitudinal hedonism, to the topic of sex and sexual acts, is really more of a matter of examining a particular section of any wider practical application of victim-centered deontology. Because one may not use another as a means to an end, no one is allowed to use another person or persons as a means to sexual gratification, or ends without their consent. This application obviously forbids physical use of someone's body as a means to one's own sexual enjoyment, gratification, completion, etc., again without that person's explicit consent. This would restrict the open playing field previously established by attitudinal hedonism, effectively by ruling out rape, sexual assault, stalking, and so forth (all use of another person's body as a means to an end *without that person's knowledge and consent*). This restriction of the use of others' bodies also, notably, directly addresses the concerns of objectification cited by both radical feminists as a criticism of certain types of sex or sexual action.

It is necessary to specify what type of entities, exactly, this theory and application applies to. For the purposes of this project (other cases being the topic of perhaps an entirely separate thesis), the focus of victim-centered deontology should apply not only to human beings, as some may assume it is meant to, but to all animals, including non-human animals. This method is chosen in part in recognition of the continually failing project of some to effectively philosophically argue a distinct difference between human animals and non-human animals—arguing that this approach should apply to human animals but not to non-human animals would in fact be much more difficult than applying it universally to animals. Now focusing on this application of victim-centered deontology, it becomes clear that this step of the project also now addresses issues of bestiality. Bestiality, or similar conduct, would be judged immoral by this

framework, given the use of non-human animals as a means to sexual gratification of a human animal.

Some will inevitably, as Gayle Rubin addressed, bring up the apparent issue of the use of objects for sexual pleasure, whether they be intended for that use or another. Because objects—be they our shoes or our vibrators—were invented by us for use, we do not require their permission to use them for purposes we deem fit. We do not ask a shoe if we can wear it, though we ask a person if we can touch them. Therefore, we do not need to ask permission for any sexual practices or acts involving an object. Or, as Rubin puts it, if “we do not ask permission for our shoes to wear them, it hardly seems necessary to obtain dispensation to come on them.”<sup>42</sup> These acts, essentially and no more than a form of masturbation, are accepted as moral by the evaluative means of this project.

The method here employed of victim-centered deontology, along with its firm establishment of rights of an individual and focus on the mandate of what one ought (or ought not) to do, is necessary in order to move forward in this project. It addresses the concerns of radical feminists regarding objectification and abuse, and it also establishes the need for recognition of individual preferences and identities, just as the need for recognition of group preferences and identities was established in the previous section. It is also a methodology that links this project into ethical frameworks with wider applications with foundations that are accepted by our general society, allowing for a bridge between real life and the ideal of this philosophical endeavor.

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<sup>42</sup> Gayle Rubin, *Deviations: A Gayle Rubin Reader* (Durham, NC: Duke University Press, 2011), 181.

## VII

The third and final major step in the construction of this ethical sexual framework is one that focuses on consent and thus, necessarily, the autonomy of an individual required in order to truly, fully, or effectively consent to sex or sexual acts. This particular issue, while arising relatively (at least one would hope) naturally when discussing sex, involves much more depth and complexity than perhaps initially apparent. This specific section will address the topic of consent (and what is required to effectively consent, given one's own morality and personal preferences and understandings of themselves) to not only sex as a general act, as addressed in previous sections, particularly the prior one, but to those that may appear or be at first perceived to be non-consensual or non-"ideal" (according to the sexual hierarchy) sexual practices or acts. This section is also necessary in order to guarantee and support the sections and tools previously employed, attitudinal hedonism and victim-centered deontology, by affirming the ability—not only the right—of individuals involved in any sex act to make and confirm their own choices in regards to sexual acts, preferences, or desires. This step in the construction also guarantees the rights of individuals to a higher level than the previous section of victim-centered deontology is able to; the rights of passive individuals will not only be protected from the perspective of an outsider, but additionally from an authentic and accurate understanding of their own ability to agree or to reject to specific actions that directly affect them.

The remainder of this section, then, will be spent discussing theories of autonomy, the best type of understanding of autonomy to employ in this particular project, and the application of said understanding to the topic at hand. Through these steps, this section of the project aims to

re-affirm the rights and protections of individuals established in previous sections, allow for appropriate consent to apparently consensual acts, and also to allow—through a non-prescriptive and more nuanced understanding of autonomy—for sexual acts that may be interpreted by those not participating in them as non-consensual. This section will also develop and introduce the idea of a chain of consent, allowing for and explaining the ethical theory behind such practices or acts.

As in previous sections, a foundational understanding of the philosophical tools and concepts employed in this section is necessary before any specific concepts or applications can be explained. Autonomy, as it is generally understood, refers to the ability to make one's own choices, think one's own thoughts, and to live one's life in accordance with one's own personal belief and reasoning systems, free from an altering or influencing outside force. Classically, autonomy has been thought to refer primarily to independence, self-sufficiency, and similar liberalism-esque ideals, something that has led to assumptions of necessary individualism in moral and ethical understandings of the idea. It is important to note this, that many “‘mainstream’ philosophical discussions of autonomy... are often explicitly linked to defenses of liberalism.<sup>43</sup> More recently, however, autonomy has begun to be understood as a much more complex, dynamic, and varying concept: one that may refer to the above ideals, but that does not do so necessarily, and one that is vital to a number of kinds of moral and ethical theories. Autonomy, as the trend has continued, has begun to be used more as a tool to break that kind of individualistic thinking, philosophically and personally, and thus has found itself attached to

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<sup>43</sup> Diana T. Meyers, *Feminists Rethink the Self* (Boulder, CO: Westview Press, 1997), 41.

some points of conflict and debate. What needs to be understood about autonomy first, then, is the variance in understandings and applications of it.

There are many types, and varying understandings of what autonomy means, what autonomy does, and what autonomy should be used for. The idea of a singular or “correct” form of autonomy is not only flawed, it is unsupportable. As Marilyn Friedman writes, autonomy takes on a range of understandings “familiar to ordinary people, notions such as being ‘true to myself,’ doing it ‘my way,’ standing up for ‘what I believe,’ thinking ‘for myself,’ and, in gender-egalitarian reformulation, being one’s ‘own person.’”<sup>44</sup> These “folk” conceptions of autonomy touch upon the true range of types and understandings of autonomy; autonomy means different things to different people and in different contexts. These varying understandings must take into account not only the type of autonomy (moral, personal, or ideal) being employed in any given context, as discussed previously, but also *who* is doing the evaluating of autonomy, and that person’s beliefs and understandings surrounding autonomy. Yes, in its most basic form, autonomy is “self-determination.”<sup>45</sup> But how is this evaluated, and by whom? No one is spared entirely from the influence of their family and friends; at what point does this influence impact or negate one’s autonomy? Answers to these questions vary, and this must be kept in mind when employing autonomy, especially as a key point in an ethical framework.

As stated, the perhaps most generally understood conception of autonomy rests on individualistic and liberal ideas like self-sufficiency and independence. Even this idea, however, does not distinguish between ideas like moral autonomy, personal autonomy, or ideal autonomy. Moral autonomy, fittingly, refers to one’s ability to govern their own self in accordance with their

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<sup>44</sup> Marilyn Friedman, *Autonomy, Gender, Politics* (Oxford: Oxford University Press, 2003), 3.

<sup>45</sup> *Ibid.*, 4.



own moral or ethical beliefs, making their own judgments of their available choices, and making the choice that they deem the most moral, correct, or acceptable. Personal autonomy, on the other hand, refers more to one's ability to simply do the action they wish to do, think the thought they wish to think, or make the choice they wish to make. This project will, specifically, focus on a combination or morphing of these two types of autonomy into one necessary autonomy. Ideal autonomy, however, refers more to a goal to be achieved or strived for on an individual level. This concept, however, is not something particularly relevant to this project, and thus it will not be further addressed here.

These types of theories on autonomy, though varying between authors, philosophers, and different understandings, generally rely on two necessary elements: ability factors and authenticity factors. The first of these, often also referred to as competency factors, focuses on and requires the ability for an individual to actually make a choice, do a particular action, judge a particular thought, etc.. This element is one that focuses on the actual individual being described as autonomous and their own personal ability—or lack thereof—to behave or think in an autonomous way. The second factor, looking at the authenticity and organic nature of one's choices, actions, etc., focuses on possible influences that may hide behind the decision, action, etc. an individual makes. Specifically, this section is concerned with confirming a lack of deception, malicious outside influence, etc. on an individual that may prevent them from being honest with themselves and authentic in their understanding of themselves, in whatever way that may apply to the particular instance at hand.

Autonomy is not only not uniform in type or understanding (as discussed above), but it is also not uniform in quantity or consistency. What does this mean? As it is true that different

types of autonomy exist in both our understanding of it and in terms of people's own applications and lives, different *amounts* of autonomy that any given individual has may vary, over time, situation, company, or other factors. This distinction is important because assuming that because one person has a certain kind of and a certain level of autonomy at one point in time (in a particular scenario, with particular company, etc.) because they have had that same kind of and level of autonomy at another point in time (in a different scenario, with different company, etc.) is speculative, at best. Not only would this assumption be unfounded, but it may also prove to be dangerous—within the scope of this project and in other scenarios or issues. It is entirely conceivable—and certainly accurate—to say that I had a certain type of and level of autonomy last week when I decided to reschedule my dentist appointment that I did not have when I was seven and certainly not allowed to stay home from my dental cleaning and x-ray appointment. It seems unlikely that this is disputable—in this extreme or in different, more nuanced, cases. It must be affirmed, then, that autonomy in a given situation or scenario (given one's mindset, location, company, and other factors) must be evaluated independently of one's autonomy the day, week, month, or decade earlier, or later. While a number of more specific theories and understandings of these factors of autonomy exist, this project will move to focus on a particular kind of autonomy, substantively neutral autonomy, that will later be employed in the ethical sexual framework here being developed. This particular conception, after being outlined and explained, will be shown to be the best understanding of autonomy for the particular project at hand. It will then be applied to the ethical sexual framework, layered on top of the existing philosophical steps taken in previous sections.

Substantive neutrality in autonomy theory means, in essence, that autonomy does not, and should not, rely upon a certain type or instance of action, practice, or behavior. In other words, substantively neutral autonomy makes the claim—in contrast to more liberal conceptions of autonomy—that you may behave any way you desire to behave and still be autonomous. This may sound exactly like the above description, so why is this meaningful? Some understandings of autonomy judge that in order to truly be autonomous, you must assert this autonomy in a certain way or manner. This may include anything from maintaining financial independence to disregarding a professor's advice, from refusing to join a hierarchical organization to agreeing to do a particular task even when part of you does not want to do it. This stems from the more liberalistic understanding of autonomy that says that autonomy is based on independence, not interdependence or dependence. Substantively neutral autonomy, however, rejects this notion, that one must behave a certain way in order to prove or justify their claim to autonomy. Instead, it advocates for no critique (from an autonomy standpoint) of an individual's behaviors or recommendation of particular practices or actions. What this means, then, is that autonomy may in fact be realized through situations that are seemingly paradoxical: situations where it may not appear that someone is autonomous, but in fact they asserted their autonomy by autonomously entering into such a situation.

In order to back up and maintain this type of substantively neutral autonomy, however, several things are required. The first of these is a negative requirement of sorts, or the lack of something: effective coercion. This, generally, means that someone's autonomy may be compromised when faced with, immediately or previously, coercion from an outside force to make a decision, opinion, etc. different than that individual's own belief. Effective is a key word

here, though. The mere fact that someone has attempted to change an individual's mind or influence their belief system is not enough to say that the individual lacks autonomy; the attempted coercion must in fact be effective, changing the individual's mind, understanding, or belief based upon this coercion or persuasion. Without this negative requirement, autonomy—substantively neutral or otherwise—cannot be guaranteed. Second, the intended autonomous individual must be, both as an individual and within the action or choice at hand, both self-reflective and self-reflexive. What does this mean? In a nutshell, self-reflection here refers to the requirement that the individual both is able to and actually does reflect on the choices or action that they have made. In other words, to guarantee and retain autonomy, one must consider the choices they have made; if they do not, there is no way to guarantee that they have been autonomous within them. Self-reflexion, additionally, specifies that these choices or actions, now reflected upon, stem truly from and accurately reflect the values of the individual, the preferences of the individual, and the image of the self that the individual portrays or wishes to embody. This element is admittedly harder to evaluate and quantify. Along with self-reflexion, self-introspection and the comfort (both in terms of one's comfort with oneself and in terms of one's environment) of an individual play a large role within the guarantee of these elements.

These elements of self-reflexion and self-reflection, in addition to a lack of effective coercion, are required for one to evaluate one's own autonomy. If this cannot be guaranteed (i.e. if these elements are lacking), substantively neutral autonomy will fail to work. This is so because, in such a scenario, the evaluation of one's autonomy must come from someone besides the actual individual, coming from without instead of from within. This would leave us to revert back to a liberalistic understanding of autonomy, straightforward independence and solitude (the

only conceivable means of evaluating someone else's level of autonomy without access to their own belief systems and understandings), which is of course the opposite of a substantively neutral understanding of autonomy.

With these three elements guaranteed, then, a substantively neutral theory of autonomy may be employed, thus entrusting an individual with their own autonomy and rights, as well as widening our traditionally Western understanding of what it means to be an autonomous self. In order to see how this theory plays out in real life, as well as within this developing framework, it must be applied to the subject of sex and sexual acts. The following section will also address issues like maintaining a level of autonomy and handling power imbalances.

Applying this substantively neutral theory of autonomy to sexual acts means basically what it does for any act or practice: an immediately apparent liberalistic kind of autonomy does not need to be present in order for autonomy to actually be present. And autonomy is especially important, as referred to in the previous section, for purposes of consent. In order to provide true consent, one must have a level of autonomy that guarantees their own values, choices, preferences, and thoughts be reflected in the way that they wish them to be in their actions. The previous section allowed for consensual sex acts that do not infringe upon the rights of another's body without their explicit consent; what this section, with the application of a substantively neutral theory of autonomy, aims to do is to allow for other sex acts that may not immediately appear to be consensual. Examples of this type of action or preference include bondage, domination, and sadomasochism (BDSM), and other similar preferences and fetishes.

By allowing for autonomy (with the previously addressed requirements) without prescribing specifically how a person should exercise that autonomy, this project allows for an

individual to consent to an action that, in some way or sense, actually gives up a level or quantity of autonomy, such as consenting to be submissive in a domination sex act, asking to be choked, or participating in a role play scenario such as rape. In this way, again, emphasizing a lack of effective coercion and the continuing presence of both self-reflection and self-reflexivity, an individual may, seemingly paradoxically, autonomously give up some autonomy in a given scenario. In order to explain this, the concept of a chain of autonomy will be introduced.

The idea of a chain of autonomy, much like previously discussed varying levels of autonomy, can be understood as a sort of continuum of the self that enters into a scenario in which personal autonomy may be limited, such as a BDSM experience. This “chain” of autonomy, then, is maintained as one makes the decision to enter the relationship or experience, throughout the experience, and afterwards—meaning, essentially, that while some autonomy may be given up or appear to be given up, at no point does the passive actor in such a scenario ever truly lose autonomy and, thus, the right to give—or, necessarily, the right to take away—consent. Again emphasizing a lack of effective coercion and continuing self-reflection and self-reflexivity, an autonomous person may willingly enter into such an experience or act under the above requirements, without ever giving up their autonomy or their right to revoke their previous consent to an action: this is the element within this framework that simultaneously allows for such sex acts and protects against abuses like rape within such sex acts. The chain of autonomy, when maintained properly, then, illustrates that one may continue to have control even when one is not acting out control in the scenario in which they are acting. Key elements of this, stemming from continued autonomy, also include the right to exit and the temporal nature of the act. Because autonomy and the right to revoke consent are maintained, an individual always has the

right to exit an experience or act, meaning that they are (if these guidelines are followed) protected against rape or abuse. Key to this justification of such acts, too, and linked to the right to exit, is the temporal nature of the act. Whether the act lasts five minutes or an entire day, the individual is not permanently giving up any rights or autonomy, meaning that they will always maintain the previous protection guaranteed.

The issue of power imbalances within such sex acts must also be addressed here. They are key to radical feminist critiques of some ethical evaluations of sex, and they should be addressed immediately in order to support the validity of this particular ethical sexual framework. Though it may often be said that sex is about power, there is a legitimate concern, especially when one is attempting to eradicate harm done by hierarchies, not recreate it, regarding the harm that can be done by power imbalances, such as those created in a scenario when one behaves submissively or passively in a sexual act, such as the acts here being discussed. The key to understanding why those classic concerns are not issues in this particular framework lies in the consenting, limited, reversible, and temporal qualities of power imbalances in a sexual act that this framework requires. First, autonomy and consent are required, as discussed in-depth previously. These points will not be re-articulated here. Second, it is important to note that any giving up of autonomy (or visible) autonomy, in a BDSM sexual act or others, would be limited by previous discussions within partners before the act began. These might include the actions each were comfortable with and the location for such an action. Third, a vital part of any such BDSM sexual act is the reversible and temporal nature of it. In other words, the power imbalances created within it are not permanent, and they will in fact be destroyed (and reverted back to standard) not only when the act is completed, but whenever any

partner decides they would like to, upon the iteration of a safe word. These are all key qualities for any apparently non-consensual act to fit within the guidelines of this ethical framework.

The goal of this section, and the final major step in the construction of this ethical sexual framework, has been to delve into a theory of autonomy that accomplishes a number of goals. First, it is meant to be employed in order to affirm the abilities of individuals to make their own choices, morally and personally, about the types and kinds of sex acts, preferences, and fantasies they have, they want, and they align themselves morally with. This also works to support the previous section on deontology; by affirming the ability of individuals to make their own moral and personal decisions, we affirm the necessity of the right of protection of those individuals from being infringed upon and the ability of those individuals to make decisions themselves (as opposed to others making them for them) about the actions that will directly affect them. Last, this section has attempted to expand upon a framework that should now not only allow for immediately evidently consensual sex acts, but sex acts that may have the appearance of not following the generally accepted (hierarchical) types of sex or even the previous two sections of this thesis alone. By ascribing to this non-prescriptive autonomy theory, this project protects both individuals' rights to engage in whatever actions they desire and their rights to not have their body used in a way that they do not truly desire or consent to.



## VIII

The preceding steps, including various philosophical tools and definitions, have served to, when combined and layered upon one another, construct a new ethical sexual framework. They are meant to, in turn, destroy a harmful hierarchical order that currently exists, disallow the use of another for sexual pleasure without their consent, and allow for cases of sexual acts or practices that may not appear to be consensual through an emphasis on substantively neutral autonomy. The resulting framework provides a means of evaluation for sexual acts and preferences that will, if it meets its goals, discourage and prevent discrimination, while allowing for a broad range of pleasures available to the human species.

The final step in this project is to attempt to outline anticipated objections and critiques to the constructed framework, as it exists and has been laid out for application. These potential objections stem primarily from the radical feminist camp standpoint, though some may also fit well from the point of view of a previously determined sexual pessimist, and others do not have an obvious position or camp, but rather could be classified better as general questions. After each objection, challenge, or question is outlined, they will each individually be answered. This will be done using the same arguments and understandings employed in the rest of this thesis; the answers to the objections should already exist within this work and framework. This section merely serves to highlight those answers *as answers* to specific, though not necessarily comprehensive, objections.

This undertaking of anticipating objections and answering them is essential to this project for more than one reason. First, outlining these objections serves as a recognition of the potential

holes or points of weakness within the project as a whole. This demonstrates a comprehensive understanding of the material and framework as it has been constructed. Second, actively answering these questions not only supports the work as a whole, by demonstrating how those points of weakness can be strengthened by elements already contained within the project, but also lends legitimacy to the project, both as a supportable theoretical entity and as a practically applicable one.

Those who identify as radical feminists, a viewpoint outlined in an earlier section of this piece, believe that heterosexual sex is often, if not always, characterized by violence, power imbalances, and objectification. Coming from this viewpoint, there are a number of objections to this project as it exists, particularly in relation to the third and last section, regarding the justification of practices that do not immediately appear to be consensual, particularly BDSM sex acts and preferences.

Radical feminists are likely to argue that power imbalances within any sex act or sexual relationship are not only reflective of, but encouraging of, power imbalances that exist within interpersonal relationships, particularly those influenced by the context of a patriarchal society. They may argue that this can magnify harmful gender roles or orderings of power that already exist in a male-female relationship. While this argument appears sound on its surface, the comparison falls apart in accuracy, and thus in meaning. The same tools as previously discussed, including reversals, safe words, and the self-reflectivity and self-reflexivity emphasized in the final section this project, can and should be employed in order to prevent any harm that this counter-argument may be referencing. By controlling the situation through these means, actual power is in fact held—even by the apparently subjugated. This causes the critique that gender

roles are reinforced to fall apart; these roles are not only not reinforced, but in fact destroyed by the maintenance of power by both or all parties involved in the act.

There is a second argument from the radical feminist perspective that focuses on a lack of empowerment in the private sphere (i.e. sex acts) echoing or mirroring a lack of empowerment in the public patriarchal sphere and an emphasis on the damages that this may cause. This argument rests on the assumption that all power imbalances within a sexual relationship are both gendered and divided in the way that power imbalances within a patriarchal society are. This assumption is not only unsupported, but false. BDSM sex acts often involve the reversal of the gendered power imbalances existent within society, which makes the link in this argument much less clear. Even when the power imbalances are mirrored, however, there are several other factors that deserve specific attention. The level of power imbalance is one of these factors, and it is particularly important here; consensual sex acts involve elements of reversibility and temporality that do not exist within patriarchy. This makes the acts simulated play, not a reproduction of harmful power structures and norms. Second, even in the cases in which the power imbalances are gendered in the same way that a patriarchal society is (e.g. a woman submitting to a man or to more than one man), this same stark difference between playing out, enacting, and exploring a scenario and reproducing a damaging one is important. The maintenance of autonomy, as discussed in the third section of this project, provides this assurance. Third, dismissing actions like this, those with a power imbalance, as immoral or damaging based on one's own understanding of someone else's sexual preferences falls back into the creation of a sexual hierarchy that does more damage than good. Last, autonomous individuals are both allowed morally and accepted socially to enter into roles and scenarios in which they give up some form or piece of their autonomy every day,

be this a hierarchal institution (such as a place of employment), a religious organization, or a personal relationship. If autonomy allows for this on such a larger and more permanent scale, then there is no reason whatsoever it should not allow for it in a temporary and reversible way.

A third objection, based upon the radical feminist idea regarding heterosexual sex comes from a focus on objectification. Radical feminists believe that objectification is not only an occurrence, but a vital characteristic, of sex. The objection, then, would be the idea that allowing for relationships and sex acts like BDSM encourages the objectification of an individual, something that is morally impermissible. The second element of this project, however, which focuses on victim-centered deontology, disallows the use of another living creature as a means to an end. This forbids the type of harmful objectification that the radical feminist camp fears. A situation in which one is objectified through their own consent, however, could still conceivably be entered into with appropriate self-reflection and maintained autonomy, as discussed. In this way, autonomy is never given up, and so an individual is not actually being objectified. An object is not allowed its own autonomy, ability to reverse or change a situation, or to maintain its own preferences.

There is an unavoidably noticeable similarity between the responses to all of these objections. There is a specific and intentional reason for this; in all of them, the focus is on a woman's (or perhaps other non-dominant or oppressed identity's) ability to make her/their own choices, as well as to self-reflect and know when she is choosing for herself and when she is being coerced or denied her full autonomy. This ethical framework or theory is meant to break down hierarchies and destroy the harm they perpetuate; such a theory should not reach this goal by imposing another framework or to ascribe what is good for another individual. The focus and

power, then, should be in the hands of an individual—not in those of a higher power, structural ascription, or other individual. In order to avoid this, this framework has been developed in a way so as to stop abuse while simultaneously allowing morally and ethically for autonomous inter-personal relationships.

## XI

The aim of this project has been to construct a framework with which to ethically evaluate sexual acts and practices, working both to substantively expand the list or range of morally acceptable acts and to deconstruct the sexual hierarchy and the ills that it necessarily causes, while still labeling some acts as definitely and inherently unacceptable and unethical. This has been done through a combining of several philosophical tools and understandings that, when put together and layered on top of one another and applied to the topic of sex and sex acts, construct a framework for the evaluation of sex acts, whether hypothetically or practically evaluated.

This work has laid the groundwork for future work in the field of sexual ethics, and it has a number of implications for practical application in governmental, legal, and nonprofit fields. Future work in this field may focus on expanding specific applied case studies of this framework, particularly past legal cases, as well as working to further delineate how one's autonomy may be personally evaluated, understood, and shared with others. This framework may also be used as a foundation for evaluating current and constructing new governmental, legal, and nonprofit work related to sexuality and sex acts. As reviewed and shown in this work, many governmental understandings of sex, as reflected through written and case law, do not meet the standards laid out in this piece. These should be reviewed and altered. Further work of a similar nature, too, should be reviewed with the evaluative means outlined here in mind, in order to ensure not only a lack of discrimination towards those who practice certain acts, but in order to actively work both to protect vulnerable populations and to alter our society in such a way that removes

discrimination based upon the sexual hierarchy, including preferences, acts, and desires. Legally, this work may be employed to further understand cases of rape, molestation, and stalking, in order to best provide for the victims of these crimes. This could be done through re-writing this work in a negative (as opposed to positive) prescription, and then forbidding those acts as punishable offenses. Those not working directly in our regulatory bodies, too, may make use of this work. The number of nonprofits dedicated to helping those who identify as lower on the sexual hierarchy and those who have been assaulted or stalked is tremendous, and the programs that these organizations employ, both preventative and reparative, should be evaluated in order to ensure they are working toward the type of understanding—both by staff/volunteers and by participants in their programs—gained through this project. The construction of a new sexual ethical framework contributes both to theoretical understandings in the field and to future endeavors by programs meant and working to protect and better today's society.

Figure 1

**The charmed circle:  
Good, Normal, Natural, Blessed Sexuality**

- Heterosexual
- Married
- Monogamous
- Procreative
- Non-commercial
- In pairs
- In a relationship
- Same generation
- In private
- No pornography
- Bodies only
- Vanilla



**The outer limits:  
Bad, Abnormal, Unnatural,  
Damned Sexuality**

- Homosexual
- Unmarried
- Promiscuous
- Non-procreative
- Commercial
- Alone or in groups
- Casual
- Cross-generational
- In public
- Pornography
- With manufactured objects
- Sadomasochistic

<http://drsarahjensen.blogspot.com/2012/05/hierarchies-of-sexual-value.html>



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