

The Moral Necessity of Consent

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The thesis that, in all situations, a sexual action ϕ involving x wrongs x if and only if it is not the case that x consented to ϕ has, by majority, been taken to be unquestionable (Archard 1998; Mappes 1987; Miller & Wertheimer 2010; Primoratz 2001; Wertheimer 2003). But this once unassailable thesis is under growing criticism.

The left to right direction of this universal biconditional — that in all situations, if a sexual action ϕ involving x wrongs x , then x did not consent to ϕ — has been rejected by philosophers such as Cahill (2016), Kukla (2018), and Woodard (2022). They contend that there are scenarios where sex was consented to by x yet that x was still wronged by this action.¹ I believe there are some important insights we can gain from these projects. However, there are also philosophers who argue against the right to left direction of the universal biconditional — that in all situations, if it is not the case that x consents to a sexual action ϕ involving x , then x has been wronged by ϕ . Philosophers such as MacKinnon (2016)², Palmer (2017), Gardner (2018), possibly Kukla (2018)³, and Ichikawa (2020) all argue that there are situations in which a sexual action ϕ involving x does not wrong x , even though it is not⁴ the case that x consented to ϕ . The purpose of this paper is to critique these arguments and to support the thesis that in all situations, if x does not consent to a sexual action ϕ involving x , then x has been wronged by ϕ .

¹ For example, if x was under an amount of coercive force that falls short of invalidating x 's consent, but which makes the action objectionable.

² This phrasing may not quite capture MacKinnon's (2016) position, but I will dive into specifics about this later.

³ Kukla (2018) has been interpreted as suggesting that consent is inapplicable for some sexual actions (namely those actions initiated in a particular sort of way, such as via "invitation"). Indeed Ichikawa (2020) even cites Kukla (2018) as an inspiration for his own belief in the inapplicability of consent to some permissible sexual actions. However, it is not obvious to me that Kukla (2018) believes this idea.

⁴ As will be discussed more, "not" here is meant in the exclusionary sense (for details about different senses of 'not' see Horn and Wansing 2022).

It is worth noting that I, like most in this field, believe that consent involved in consenting to a sexual action is fundamentally like consent involved in consenting to non-sexual actions, such as when I consent to you borrowing my bike, or when a patient consents to a doctor performing a surgery, etc... As such, I will occasionally use examples involving consenting to non-sexual actions to make my points⁵ and I believe that many of the points argued for in this paper are relevant beyond the ethics of sex.

§1.0 Background

To navigate the discourse effectively, it's important to understand the position of those who argue that there are situations where a sexual action ϕ , involving x , does not wrong x despite it not being the case that x consented to ϕ . Without explanation, one would likely misconstrue MacKinnon, Palmer, Gardner, Ichikawa's position, mistakenly thinking that these philosophers endorse the reprehensible view that some sexual actions are acceptable even if one party is against the action.

While I think these philosophers are incorrect, they are not endorsing a reprehensible view. Instead, they believe that x consenting to ϕ involves certain presuppositions — such as that ϕ is done by someone other than x , or that ϕ is done to x , or that x is doing this action at the behest of someone other than x . And in the best of sexual encounters, these presuppositions are not met, and so ϕ just won't be the sort of thing that x could or could not consent to.

While there are differences between MacKinnon (2016), Palmer (2017), and Gardner (2018), they all reason similar to the argument represented below. I have named the premises and

⁵ These examples could be modified to be about sex but, one, this would occasionally require that the modified example involves rape and, two, I think only using examples involving sex hides the fact that these points are very general and makes some of the examples unnecessarily emotionally laden. If a reader is convinced that consent involved in consenting to sex is fundamentally different than consent involved in consenting to other actions, then they may make the relevant changes, I believe that the points will still generally hold.

conclusion for easier referencing and included footnotes to indicate where these authors endorse these claims.

PASSIVE PRESUPPOSITION	That x consents to ϕ presupposes that ϕ is done to x by someone other than x . ⁶
ETHICAL OBSERVATION	In ideal sex, sex is so mutually engaged that sex isn't done to any one person but instead done by all involved parties. ⁷
BRIDGING PREMISE	If PASSIVE PRESUPPOSITION and ETHICAL OBSERVATION , then MORAL NON-NECESSITY OF CONSENT ⁸
MORAL NON-NECESSITY OF CONSENT	There are scenarios in which sex involving x doesn't wrong x despite it not being the case that x consents to the sex. ⁹

Ichikawa (2020) provides a different argument for the same conclusion:

BEHEST PRESUPPOSITION	That x consents to ϕ presupposes that someone else is trying to get x to ϕ . ¹⁰
ETHICAL OBSERVATION*	In ideal sex no one is trying to get the other to do any particular action. ¹¹
BRIDGING PREMISE*	If BEHEST PRESUPPOSITION and ETHICAL OBSERVATION* , then MORAL NON-NECESSITY OF CONSENT
MORAL NON-NECESSITY OF CONSENT	There are scenarios in which sex involving x doesn't wrong x despite it not being the case that x consents to the sex. ¹²

⁶ “By consenting, one is placing oneself in the position of patient and the other in the position of agent, so far as what is consented to is concerned. From there, one can quickly see that the question ‘was there consent?’ presupposes an asymmetry of exactly the kind that I suggested is not to be found in good (teamwork) sex. It presupposes that the sexual activity was not fully agent–agent symmetrical” – Gardner 2018, pg. 58.

“Intrinsic to consent is the actor and the acted-upon” – MacKinnon 2016, pg. 440

“Consent as a concept describes a disparate interaction between two parties: active A initiates, passive B agrees reluctantly in or yields to A’s initiative” – MacKinnon 2016, pg. 440

“Consent is inherently asymmetric... a consent framework implies that sex always involves one (active) person doing something to another (passive) person.” – Palmer 2017, pg. 5

⁷ “In reality, sexual encounters often develop organically and mutually, without the parties taking on fixed active or passive roles ... the most positive sexual encounters [are] jointly instigated by mutually active partners, because both partners are in a state beyond consent, a state of active involvement and participation rather than reaction or submission.” – Palmer 2017 pg., 6.

“With good sex ... there is no agent–patient asymmetry.” – Gardner 2018 pg., 56.

⁸ This premise or a similar one is implicitly accepted when these authors infer **Moral Non-Necessity Of Consent** from the other premises. Since there is interesting discussion to be had here, it is worth making this premise explicit.

⁹ “Thus, while consent is clearly absent from the worst sexual encounters it will also be absent in the most positive sexual encounters jointly instigated by mutually active partners, because both partners are in a state beyond consent, a state of active involvement and participation rather than reaction or submission.” – Palmer 2017 pg., 6.

¹⁰ “Consent to ϕ , I suggest, presupposes that someone else is trying to get one to ϕ ” – Ichikawa 2020 pg., 11

¹¹ “But your having ethical sex does not require that someone else is trying to get you to do something” – Ichikawa 2020 pg., 7

¹² “Therefore, your having ethical sex does not require your consent” – Ichikawa 2020 pg., 7

I will argue that both **PASSIVE PRESUPPOSITION** and **BEHEST PRESUPPOSITION** are false. This undermines these arguments for **MORAL NON-NECESSITY OF CONSENT** and allows us to hold on to our commonsense belief that sex involving x doesn't wrong x only if x consents to that action.

§2.0 The Argument Against **PASSIVE PRESUPPOSITION**

While there are many different reasons various philosophers endorse **PASSIVE PRESUPPOSITION**, a historically significant motivation comes from the idea that we have claim-rights against other people doing various actions (e.g., I have a claim-right against you, the reader, entering my apartment) and that an agent consenting to that action for a specific other person is that agent waiving their claim-right against the other person doing this action (e.g., me consenting to you coming to my house is me waiving my claim-right against you entering my apartment) (Kramer 2000, Healey 2018). That x waives a claim-right they have against some other person doing ϕ , presupposes, among other things, that someone other than x is doing ϕ . And so, if x consenting to ϕ just is x waiving their claim right against someone else doing ϕ , then x consents to ϕ , presupposes that someone other than x is doing ϕ .

I believe that x consenting to ϕ does *not* presuppose that someone other than x is doing ϕ and I argue for this here. But given the popularity and significance of **PASSIVE PRESUPPOSITION**, I will, one, also provide a critique of MacKinnon (2016), Palmer (2017), and Gardner (2018)'s arguments that is compatible with **PASSIVE PRESUPPOSITION** and, two, expand upon the arguments against **PASSIVE PRESUPPOSITION** initially presented here in another paper.

Though Ichikawa (2020) also argues for **MORAL NON-NECESSITY OF CONSENT**, the first argument against **PASSIVE PRESUPPOSITION** comes from Ichikawa (2020). The second argument, which I find to be even more pressing, is original.

§2.1 Ichikawa's argument against PASSIVE PRESUPPOSITION

Ichikawa gives us the following case: Alice and Bob are two peers of roughly equal social power in a happy romantic relationship for many years. One day at an appropriate time and not in a forceful or threatening way, Bob expresses a desire to have Alice perform some intimate action on his body (e.g., giving him a massage, kissing his neck, or performing oral sex on him). Alice happily and freely agrees to the action. With this set up, here is Ichikawa's argument that **PASSIVE PRESUPPOSITION** is false:

- (1) If **PASSIVE PRESUPPOSITION**, then the sentence "Alice consents to kissing Bob on his neck" involves a presupposition failure.
- (2) The sentence "Alice consents to kissing Bob on his neck" does not involve presupposition failure.
- (3) Therefore, **PASSIVE PRESUPPOSITION** is false.

I believe Ichikawa's (2020) argument is sound, and will provide justification for both premises, starting with the first. **PASSIVE PRESUPPOSITION** is the thesis: that x consents to φ presupposes that φ is done to x by someone other than x . So, if **PASSIVE PRESUPPOSITION**, then the sentence "Alice consents to kissing Bob on his neck" must presuppose that Alice is acted upon and someone other than Alice is doing the kissing. However, this supposed presupposition is not met because it is not the case that someone other than Alice is doing the kissing. And so, if "Alice consents to kissing Bob on his neck" presupposes that someone other than Alice is doing the kissing then the sentence involves a presupposition failure in this case. And so, the first premise is well justified.

The argument for the second premise is as follows:

- (2.a) If "Alice consents to kissing Bob's neck" involves a presupposition failure, then it is not true that Alice consents to kissing Bob's neck.
- (2.b) It is true that Alice consents to kissing Bob's neck.
- (2) Therefore, "Alice consents to kissing Bob's neck" does not involve presupposition failure.

While it is disagreed about whether a sentence involving a presupposition failure is false or neither true nor false, it is widely agreed that such sentences are not true (c.f., Beaver et al., 2021) and, so (2.a). (2.b) is justified by our pre-theoretic ethical beliefs about the case. Given the setup of the case, it seems that Alice does consent to kissing Bob’s neck. There are no invalidating circumstances of consent in the case as described, and Alice voluntarily, even happily, agrees to the action. And so, there is good reason to think that in this case the sentence, “Alice consents to kissing Bob on his neck” is true. Given (2.a) and (2.b), “Alice consents to kissing Bob’s neck” does not involve presupposition failure.¹³

§2.2 A new argument against PASSIVE PRESUPPOSITION

One of the most important and characteristic aspects of presupposition as opposed to entailment or implicature is that presuppositions “project” over negation (Grice 1989, Blome-Tillmann 2008, and Beaver et al. 2021). This entails that if x consents to ϕ presupposes that someone other than x does ϕ to x , then x does not¹⁴ consent to ϕ also presupposes that someone other than x did ϕ to x . This characteristic feature of presupposition, even noted by some of the philosophers arguing for **PASSIVE PRESUPPOSITION**, gives rise to another worrisome argument against **PASSIVE PRESUPPOSITION**.

If we change the situation such that when Bob asks Alice to do this intimate act on Bob, there are circumstances that invalidate Alice’s consent (e.g., Alice is underage, Bob is Alice’s direct supervisor, Bob is asking in a threatening or coercive manner). In these scenarios (e.g., Bob asks Alice to kiss his neck and threatens her with force if she does not agree), we rightfully

¹³ Additionally (2.a) and (2.b) could be altered to discuss the felicitousness of the sentence “Alice consents to kissing Bob on the neck”. If “Alice consents to kissing Bob on the neck” has a presupposition failure, then “Alice consents to kissing Bob on the neck” is infelicitous. But “Alice consents to kissing Bob on the neck” is not infelicitous, it is perfectly appropriate and normal to utter this sentence or to ask, “Did Alice consent to kissing Bob on the neck”. Therefore, “Alice consents to kissing Bob on the neck” does not involve presupposition failure.

¹⁴ Here ‘not’ is used in the “choice” sense (for details about different senses of ‘not’ see Horn and Wansing 2022).

say that Alice does not consent to doing this action. Damningly, **PASSIVE PRESUPPOSITION** is incompatible with it being the case that Alice does not¹⁵ consent to kissing Bob on his neck even in this coercive case. As will be explained and argued for, **PASSIVE PRESUPPOSITION** entails the problematic, and false, verdict, that when Alice is threateningly told to kiss Bob on the neck this is a situation in which it does not make sense to talk about Alice consenting or not consenting to kissing Bob.

In the given situation, it is not the case that someone other than Alice is kissing Bob's neck, and so *if* "Alice does not consent to kissing Bob on his neck" presupposes that someone other than Alice is doing this action, then "Alice does not consent to the action of kissing Bob on his neck" involves a presupposition failure. In other words, since Alice is the one who is doing the action, if "Alice does not consent to kissing Bob on his neck" presupposes that someone other than Alice is doing the action (as suggested by **PASSIVE PRESUPPOSITION**), then there is a presupposition failure for "Alice does not consent to kissing Bob on his neck" in this situation.

This is a serious problem for **PASSIVE PRESUPPOSITION** because it does entail that "Alice does not consent to kissing Bob on his neck" presupposes that someone other than Alice is doing this action. And so, given that it is Alice doing the action, if **PASSIVE PRESUPPOSITION** were true (which, I don't believe), then it would not make sense to talk about Alice not consenting to this action. But of course, not only does it make sense to say that Alice did not consent to this action; it is true to say this!

MacKinnon (2016), Palmer (2017), and Gardner (2018) seem to think that **PASSIVE PRESUPPOSITION** will only imply a presupposition failure for sentences about consent in ideal cases of sex. But this simply isn't true. **PASSIVE PRESUPPOSITION** also implies presupposition

¹⁵ In the choice sense of the word.

failure in horrific cases. If **PASSIVE PRESUPPOSITION** was true, then what are intuitively morally reprehensible situations involving a person not consenting to an action, would in fact be cases where it does not make sense to talk about the person consenting or not consenting (due to presupposition failure). This is a terrible result from a theoretical standpoint given that it simply is false that it doesn't make sense to talk about Alice not consenting to kissing Bob's neck in the case where he threatened her. But, also, this is a terrible result from a practical and ethical standpoint because if there was presupposition failure in these cases, we would be robbed of our ability to truthfully say that these cases do not involve consent.

§2.3 Final Notes on the Argument for MORAL NON-NECESSITY OF CONSENT from PASSIVE PRESUPPOSITION

I take the arguments against **PASSIVE PRESUPPOSITION** to be sound, but I acknowledge that there are objections, which I believe fail, that could be raised against these arguments. Given the significance of **PASSIVE PRESUPPOSITION** in the consent literature at large, I more thoroughly deal with the subject as the main purpose in an alternative paper.

Instead, I want to show how we can still have a rather commonsense view about the role of consent even if we were to accept **PASSIVE PRESUPPOSITION** and the idea that good sex is not done by any one person to another person. The **MORAL NON-NECESSITY OF CONSENT** thesis may seem incredibly revisionary but this thesis, despite how it may seem, doesn't contradict the thesis that sex is morally permissible only if consent is *involved*. This is because within any sexual encounter there will be a myriad of actions such that any party involved will be subject to actions that, even accepting **PASSIVE PRESUPPOSITION**, will make sense to talk about. And for any of the actions, ϕ , involved in the sexual encounter such that it makes sense to ask if a person consented to it, the sex as a whole is morally permissible only if ϕ was consented to by the

relevant party. And so, it will still be the case that good sex necessarily involves consent, even if **PASSIVE PRESUPPOSITION** were true. Even if we are not able to aptly say that in ideal cases of sex there is a person that consented to the sex, when by “the sex” we are referring to one extended action that isn’t done by any one person only or to any one person only, we can still say that the sex involved consent.

§3.0 The Argument Against **BEHEST PRESUPPOSITION**

The **BEHEST PRESUPPOSITION**, especially if taken exactly as suggested by Ichikawa (2020)¹⁶, is obviously false. There are some more careful ways of putting it that overcome the many counterexamples but they also fail or depart so far from the **BEHEST PRESUPPOSITION** that there is no longer any clear argument from it to **MORAL NON-NECESSITY OF CONSENT**.

It is easiest to see why the **BEHEST PRESUPPOSITION**, taken literally, is obviously false by starting with one of the many counterexamples. Let’s imagine that Logan breaks into Harper’s house.¹⁷ Here is the argument:

- (1) If **BEHEST PRESUPPOSITION** is true, then “Harper does not consent to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do the action of Logan’s entering Harper’s house.
- (2) If “Harper does not consent to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do the action of Logan’s entering Harper’s house, then “Harper does not consent to Logan’s entering Harper’s house” involves a presupposition failure.
- (3) “Harper does not consent to Logan’s entering Harper’s house” does not involve a presupposition failure.
- (4) **BEHEST PRESUPPOSITION** is false.

¹⁶ “Consent to ϕ , I suggest, presupposes that someone else is trying to get one to ϕ ” – Ichikawa 2020 pg., 11

¹⁷ I switch away from talking about sexual actions for two reasons. One, keeping the discussion on sexual actions would soon lead to very triggering examples which I would prefer to avoid. And two, I don’t believe that sexual consent is something completely different than consent in other areas. Any reader who finds fault in this switching is invited to consider the cases with relevant changes such that sexual actions are being discussed.

The first premise of the argument above comes from the previously discussed fact that presuppositions project over negation; a fact noted and endorsed by Ichikawa himself (2020, pg. 5-6). So, if “Harper consents to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do the action of Logan’s entering Harper’s house (as **BEHEST PRESUPPOSITION** entails), then “Harper does not consent to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do the action of Logan’s entering Harper’s house (hence the first premise). But quite obviously Logan is *not* trying to get Harper to do the action of Logan’s entering Harper’s house (this barely makes sense!). And so, if “Harper does not consent to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do the action of Logan’s entering Harper’s house, then “Harper does not consent to Logan’s entering Harper’s house” involves a presupposition failure (and this is just the second premise of the preceding argument). But, as I will argue in the next paragraph, “Harper does not consent to Logan’s entering Harper’s house” does not involve a presupposition failure. Hence, **BEHEST PRESUPPOSITION** is false.

If “Harper does not consent to Logan’s entering Harper’s house” involved a presupposition failure, then this sentence would not only not be true but wouldn’t even make sense. But the sentence does make sense and is in fact true! To deny this would be to depart so far away from the pre-theoretical concept of consent that I am not even sure what we are talking about. And for practical or legal matters this would result would a nightmare since, as Hurd (1996 pg. 123) says “consent turns a trespass into a dinner party; a battery into a handshake; a theft into a gift” but it need not be that in the trespass, battery, or theft case the perpetrator was trying to have the victim do some action. And so, the **BEHEST PRESUPPOSITION** would entail

that it would not make sense to talk about the victim not consenting in these cases; but, of course, it does! The fact that the victim didn't consent is the problem!

Quite obviously it is not just actions we do that we consent to; we very often consent or don't consent to the actions of others. It seems that in trying to distance himself from **PASSIVE PRESUPPOSITION**, which he takes to be false, Ichikawa (2020) went too far in the opposite direction, at least in a literal understanding of his writings.

§3.1 A revision and reply

The immense number of cases that can be constructed to show that **BEHEST PRESUPPOSITION** is false makes it seem likely that Ichikawa (2020) had something slightly different in mind. Perhaps, the following would be better:

BEHEST PRESUPPOSITION* That x consents to ϕ presupposes that someone else is trying to get x to either do ϕ or allow ϕ .

In **BEHEST PRESUPPOSITION*** we add that cases where y is trying to get x to allow ϕ do not involve presupposition failure, and so it will make sense to say that x did or did not consent to ϕ in these cases. This helps since presumably, when Jack, a thief, tries to take money from Raina, Jack doesn't want Raina to stop his taking of the money, and so, **BEHEST PRESUPPOSITION*** (unlike **BEHEST PRESUPPOSITION**) is compatible with us sensibly saying that "Raina did not consent to Jack taking her money". But **BEHEST PRESUPPOSITION*** is also false.

Cases where the perpetrator doesn't care whether we allow their action, and, even more horrifically, cases where they want their action to be against our wishes, show that **BEHEST PRESUPPOSITION*** is false. For example, imagine that Logan wants to go to jail and so Logan

wants Harper to try and stop them and have them arrested. The following argument is based on such a case:

- (1) If **BEHEST PRESUPPOSITION***, then “Harper does not consent to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do or allow the action of Logan’s entering Harper’s house.
- (2) If “Harper does not consent to Logan’s entering Harper’s house” presupposes that Logan is trying to get Harper to do or allow the action of Logan’s entering Harper’s house, then “Harper does not consent to Logan’s entering Harper’s house” involves a presupposition failure.
- (3) “Harper does not consent to Logan’s entering Harper’s house” does not involve a presupposition failure.
- (4) **BEHEST PRESUPPOSITION*** is false.

The justification for these premises is the same *mutatis mutandis* as the justification for the analogous premises in §3.0.

§4.0 Against negative presuppositions for consent in general

PASSIVE PRESUPPOSITION, **BEHEST PRESUPPOSITION**, and **BEHEST PRESUPPOSITION*** all being false is consistent with **MORAL NON-NECESSITY OF CONSENT** being true, but I take it that **MORAL NON-NECESSITY OF CONSENT** is commonsensically false and, absent a compelling argument for it, we should deny this thesis.

Yet I can offer some further support to the idea that there is not some negative, or nonideal, presupposition inherent to the concept of consent that leads to **MORAL NON-NECESSITY OF CONSENT**. Doing so is beneficial since the idea that there is some negative or nonideal presupposition inherent to the concept of consent seems to be the main motivation philosophers have cited for **MORAL NON-NECESSITY OF CONSENT**. I believe I can undercut much of the motivation for believing that there is some negative presupposition inherent to consent by showing that much of the cited reasoning for believing in a negative presupposition inherent to consent rests on a confusion between implicatures and presuppositions.

Both a false presupposition and a false implicature can give rise to linguistic oddity. But importantly, a sentence with a false implicature can still be true, whereas a sentence with a false presupposition cannot. MacKinnon (2016 pg. 450) is right when she says “No one says, “We had a great hot night, she (or I or we) consented” ” but she is wrong to infer that this means consent isn’t involved. Often when someone communicates there is an implicature that the communication isn’t obviously true to all listeners. If someone is saying that “We had a great hot night”, then the listeners would take “I consented” as obvious in that situation, and so the explicit statement of this feels unnecessary and odd. But this alone does not give us a reason to think that it would be false to say that “I consented” in the situation. In fact, the issue seems to be that “I consented” is obviously true and so doesn’t need to be said! And if “I consented” is true of that situation, even if it is odd to speak the sentence in that context, then we are not dealing with presupposition failure but instead with a false implicature.

Another way to distinguish between implicatures and presuppositions is that implicatures depend very heavily on contexts of utterance whereas presuppositions do not. With this said, let’s imagine that Fredrick asks Jane if she can house-sit for him while he is away and water his plants, Jane goes to house-sit but she accidentally sets off an alarm at Fredrick’s house, the police arrive, apprehend Jane, call Fredrick, and say, “We found someone by the name of ‘Jane’ attempting to enter 766 Cypress Walk, Jane says she is house sitting for you, did you consent to her house-sitting your home while you were away?”. In this case it is not even odd for Fredrick to report that he consents to Jane’s entering his house. As a comparison, it is helpful to see a similar example but where there really is a presupposition failure. Imagine that in the previous case the police officer dialed Fredrick’s number incorrectly, and so got a random person on the phone and the police said “We found someone by the name of ‘Jane’ attempting to enter 766

Cypress Walk, Jane says she is house sitting for you, did you consent to her house-sitting your home while you were away?” here it does seem infelicitous for the stranger to say either “Yes” or “No” because this isn’t their residence.

§5.0 Concluding Remarks

I have critiqued two of the most significant ways of arguing for **MORAL NON-NECESSITY OF CONSENT** and found that a key premise in both of them is false. Given that the commonsense view is that **MORAL NON-NECESSITY OF CONSENT** is false absent a compelling argument for it, we should not believe it. That being said, I also took a look at some of the motivation for the false premises involved in both arguments for **MORAL NON-NECESSITY OF CONSENT** and argued that a likely source of the motivation for these false premises (involving the idea that consent makes some negative or nonideal presupposition) rests on a confusion between implicatures and presuppositions.

This is important because it gives us a better understanding about consent. We must be careful to distinguish what things are implied given that a speaker is saying it in a particular context, which will involve implicatures, as opposed to what is fundamental to the concept of consent itself, which will involve presuppositions. The fact that speakers talking about consent in some contexts implies that there were non-ideal aspects of the situation does **not** show that these non-ideal aspects are necessary for the very application of consent to make sense. And in fact, I have argued against such a hypothesis. This vindicates our giving the concept of consent great legal and philosophical importance.

References

- Alexander, L. (1996). The Moral Magic of Consent. *Legal Theory* 2 (3):165-174.
 Archard, D. (1998) *Sexual Consent*, Boulder, CO: Westview Press.

- Beaver, David I., Bart Geurts, and Kristie Denlinger, "Presupposition", *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2021/entries/presupposition/>>.
- Blome-Tillmann, Michael (2008). Conversational implicature and the cancellability test. *Analysis* 68 (2):156-160.
- Cahill, Ann J. (2016). Unjust Sex vs. Rape. *Hypatia* 31 (4):746-761.
- Davis, Wayne, "Implicature", *The Stanford Encyclopedia of Philosophy* (Fall 2019 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/fall2019/entries/implicature/>>.
- Dougherty, T. (2015). Yes Means Yes: Consent as Communication. *Philosophy and Public Affairs* 43 (3):224-253.
- Gardner, J. (2018). The Opposite of Rape. *Oxford Journal of Legal Studies*, 38(1), 48–70.
- Grice, H. Paul, 1989, *Studies in the Way of Words*, Cambridge, Massachusetts: Harvard University Press.
- Horn, Laurence R. and Heinrich Wansing, "Negation", *The Stanford Encyclopedia of Philosophy* (Winter 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), URL = <<https://plato.stanford.edu/archives/win2022/entries/negation/>>.
- Hurd, H. M. (1996). The Moral Magic of Consent: Heidi M. Hurd. *Legal Theory* 2 (2):121-146.
- Ichikawa, J. J. (2020). Presupposition and Consent. *Feminist Philosophy Quarterly*, 6(4), Article 4.
- Kramer, M. (2000). Rights Without Trimmings. in M. Kramer, N. E. Simmonds, and H. Steiner (Eds.), *A Debate Over Rights* (pp. 7–112). Oxford University Press
- Kukla, R. (2018). That's What She Said: The Language of Sexual Negotiation. *Ethics*, 129(1), 70–97.
- MacKinnon, C. (2016). *Rape redefined*. 10(2).
- Mappes, T. (1987) "Sexual Morality and the Concept of Using Another Person", in *Social Ethics: Morality and Social Policy*, third edition, Thomas A. Mappes and James S. Zembaty (ed.), New York: McGraw-Hill, 248–262.
- Miller, F and Wertheimer, A. (2010), *The Ethics of Consent: Theory and Practice*, Oxford: Oxford University Press.
- Palmer, T. (2017). Distinguishing Sex from Sexual Violation: Consent, Negotiation and Freedom to Negotiate. In *Consent: Domestic and Comparative Perspectives* (1st ed., pp. 9–24). Routledge.
- Primoratz, I. (2001) "Sexual Morality: Is Consent Enough?" *Ethical Theory and Moral Practice*, 4(3): 201–218.
- Wertheimer, A. (2003) *Consent to Sexual Relations*, Cambridge: Cambridge University Press.
- Woodard, Elise (2022). Bad Sex and Consent. In David Boonin (ed.), *Handbook of Sexual Ethics*. Palgrave. pp. 301--324.