

# Bad Sex and Consent\*

Elise Woodard

## Abstract

It is widely accepted that consent is a normative power. For instance, consent can make an impermissible act permissible. In the words of Heidi Hurd, it “turns a trespass into a dinner party... an invasion of privacy into an intimate moment.” In this chapter, I argue against the assumption that consent has such robust powers for moral transformation. In particular, I argue that there is a wide range of sex that harms or wrongs victims despite being consensual. Moreover, these cases are not limited to those where consent is vitiated by background conditions. I start by calling this category of consensual sex *Bad Sex*. I then distinguish subspecies of this category, including psychological pressure, social coercion, and epistemically unsafe sex. I end by responding to an objection on which we should treat at least some subspecies of Bad Sex as rape. Though this alternative proposal is often motivated by ameliorative and strategic considerations, I argue that such considerations actually count against collapsing the categories of Bad Sex and rape.

## 1 CONSENT AND ITS LIMITS

For the most part, discussions of rape and sexual assault—in legal and academic contexts—focus centrally on consent. In addition, public campaigns and university policies focus on the importance of seeking out and obtaining *affirmative consent*—not mere acquiescence—when proceeding with any sexual activity. Those who fail to do so may be found guilty of sexual assault. This focus on consent is not unjustified. Surely, nonconsensual sex is wrong. For one, by hampering the victim’s ability to decide when and with whom to have sex, it violates her autonomy (West 2016; Archard 2007).

At the same time, by focusing almost exclusively on the wrongs involved in nonconsensual sex, we risk overly legitimizing all sex that is consensual. Consent is a minimal standard. It does not necessarily turn “an invasion of privacy into an intimate moment”

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(Hurd 1996). In some cases, it merely removes one ground for complaint about that invasion. In other words, consent does not always have the robust powers of moral transformation often attributed to it. On this point, I follow Robin West. West insightfully observes that “it is a non sequitur, but a disturbingly common one, to argue from the premise that some act is bad because it is nonconsensual, to the conclusion that the same act, if consensual, is therefore good” (West 1996, 247). In other words, West notes that it is a mistake to think that consensual sex is always sufficient for good—morally or otherwise—sex. The worry here seems to be, in part, that there is a gap between consent and good sex.

Those sympathetic to consent frameworks might attempt to bridge the apparent gap between consensual sex and good sex by amending the standards for consent. More specifically, they might attempt to raise the bar for consent, thereby lowering the bar for nonconsensual sex. For example, they might argue that consent must be either *affirmative* or *enthusiastic*.<sup>1</sup> Unfortunately, this move risks *overcriminalizing* sex that is not clearly criminal. Whatever the merits of a personal policy of only having sex with partners who affirmatively or enthusiastically consent, surely less-than-enthusiastic sex is not necessarily rape. Nor, as we’ll see, is it typically experienced as such.

Before raising the bar for consensual sex, or abandoning consent frameworks altogether, we ought to get clearer on what work consent is supposed to do. If consent is a minimal standard—sufficient only for avoiding rape—then it is not necessarily worrisome that consent alone is insufficient for unproblematic sex or good sex. As Quill Kukla, echoing West, notes, “We can consent to all sorts of lousy sex, including demeaning, boring, alienated, unpleasantly painful or otherwise harmful sex” (Kukla 2018, 72). Beyond this, I’ll argue that we can also consent to sex even under some pressure to do so. Indeed, some degree of coercion or pressure does not always undermine consent (Conly 2004).

These observations motivate theorizing about cases that do not constitute rape and should not be criminalized, yet are nonetheless violating to victims.<sup>2</sup> I’ve motivated this point by looking at the apparent limitations of consent frameworks. However, the point can be framed more generally. Uncoerced or unforced sex alone will never be sufficient for good sex or even unproblematic sex. Our standard for *not-rape* should not also serve

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1. These are popular proposals on college campuses. Philosophically, Dougherty (2018) defends the necessity of affirmative consent.

2. The term ‘victim’ has many connotations and may evoke concerns about ‘victim culture.’ Unfortunately, I do not know of an elegant alternative. Note also that while many of the victims I’ll discuss are women, men and gender non-conforming and non-binary individuals are also certainly victims of what I’ll call *Bad Sex*. I say more about this point in §3.2. More generally, it’s worth noting that *Bad Sex* is part of a broader picture of sexual violence, which includes things like catcalling, public exposure, ‘revenge porn,’ and not just rape. (Thanks to Mercy Corredor for this observation.)

as our standard for good sex.

While the point that there are some cases of sex that are not rape yet are nonetheless violating is not necessarily new, this category of violating yet noncriminal sex is radically under-theorized, especially given its prevalence.<sup>3</sup> Even when theorized, it is seldom broken down into sub-categories. As I'll argue below, this is unfortunate, as there are normatively significant differences between and within different sub-categories. These include differences in how victims are harmed or wronged as well as in whether perpetrators are blameworthy. At the same time, the cases are unified in that they all give rise to distinctive agency problems.

The category between rape and just sex goes by many different names. These include 'gray rape' or 'gray sex' (or variations thereof) 'unwanted sexual intercourse,' 'unjust sex,' 'consensual sexual dysphoria,' and 'bad sex' (where 'bad' does not just mean 'disappointing').<sup>4</sup> In this chapter, I'll opt for the term 'Bad Sex.'

One might worry that the term 'Bad Sex' is a poor choice, as it is ambiguous between sex that is merely unpleasurable and sex that is morally problematic or violating.<sup>5</sup> However, there are several strong considerations in favor of this term. First, it is useful to have terms that are not obviously morally loaded—but can become so—available as starting points for classifying our experiences. For example, one might start out thinking that a particular experience was one of merely bad sex and then realize it was more morally loaded. Even extremely coarse-grained and ambiguous labels like Bad Sex can aid in understanding, as they provide a useful starting point for navigating a difficult moral landscape. Indeed, what victims seem to experience is a sense of violation that is difficult to articulate; a vague label like 'bad' is a natural one to reach for. The term Bad Sex, I suggest, facilitates inquiry.

Second, it avoids some problems with more common terms like 'gray rape' or 'gray sex.'<sup>6</sup> As we'll see in §2, the term 'gray rape' in particular has a problematic history. I

3. Prominent exceptions in the academic literature include [Gavey \(2005\)](#), [Cahill \(2016\)](#), and [West \(2016\)](#). As we'll see, much of the literature on Bad Sex is constrained to popular writing.

4. We'll see many uses of the term 'gray rape' or 'gray sex' below. [Alcoff \(2018\)](#) notes the use of the term 'unwanted sexual intercourse' but notes that it is too coarse-grained, as it sounds euphemistic for rape. [Gavey \(2005\)](#) and [Cahill \(2016\)](#), whose work I discuss below, use the term 'unjust sex.' [West \(2016\)](#) uses the term 'consensual sexual dysphoria.' The term 'bad sex' is used (in the relevant way) by [Yarmel \(2018\)](#), [Shanahan \(ms\)](#), and others. [Bennett \(2017\)](#) also uses the term 'bad sex,' noting that 'bad' refers "not to the perceived pleasure of it, but to the way you feel in the aftermath." As we'll see, much of the conversation in terms of 'bad sex' started with the publication of "Cat Person." (See, for example, [Thompson \(2018\)](#).)

5. Of course, there are lots of ways in which sex between consenting adults might be morally problematic even according to sexual liberals, such as if it involves cheating or deception (assuming these don't undermine consent in the first place). Here I want to set such cases aside; I am instead focused on cases that seem to lie on some continuum with sexual assault.

6. A third, more radical consideration in favor of this label might be that it highlights the continuity between sex that is bad in virtue of being unpleasurable and sex that is bad in virtue of something more

think this history has made some people unduly hostile to the notion of a sexual gray area. In addition, I think we ought to be open to the possibility that the harms associated with Bad Sex are incommensurable with those of rape. However, the notion of 'gray sex' suggests a simplified model on which Bad Sex is simply a less bad or qualified version of rape. Bad Sex is also more common than the remaining alternatives, which also tend to be more theory-laden.

The aim of this chapter is to get clearer on the category of Bad Sex. I will argue that it is imperative that we develop hermeneutic and linguistic resources for understanding it. The remaining structure of this chapter is as follows. In §2, I offer some background on theorizing about Bad Sex and introduce some examples, starting with the viral story "Cat Person." In §3, I discuss three broad types of Bad Sex, which involve either psychological pressure, social coercion, or epistemic risk. In §4, I consider an objection to my project on which we ought to collapse the categories of Bad Sex and rape. I offer a response in §4.1. §5 concludes.

## 2 FROM 'GRAY RAPE' TO 'BAD SEX'

Many terms have been used to describe sex that is problematic but seems to fall short of the legal definition of rape, with some variation of 'gray rape' or 'gray sex' appearing among the most popular. The term 'gray rape' was popularized in 2007, when an article called "A New Kind of Date Rape" by Laura Sessions Stepp in *Cosmopolitan* went viral (Stepp 2007). Stepp defined gray rape as "sex that falls somewhere between consent and denial."

The article received intense yet appropriate backlash. The problem was that Stepp had illustrated this concept via examples that seemed to many to constitute rape, not 'gray rape.'<sup>7</sup> For example, one woman had clearly communicated that she did not want to have sex and believed that she was raped; however, she worried that others would not see it that way. Another woman had also communicated lack of consent, though did not identify as raped. Both women worried they were not forceful enough in protesting. In both cases, one could argue that rape myths prevented them from fully recognizing that they had been raped, but that didn't make it such that the case was *gray*. To many, these were clear-cut cases of rape.<sup>8</sup>

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serious. If some groups of people (e.g. heterosexual women) disproportionately report finding sex unfulfilling or painful, we ought to wonder if 'merely' bad sex involves failures of considerateness or failures to facilitate the development of sexual agency. These failures might make such cases lie on a continuum with Bad Sex.

7. See, for instance, Smith (2019) for discussion.

8. For helpful philosophical discussion of rape myths, see Jenkins (2017).

The term 'gray rape' has not quite recovered from its complicated history. Those critical of it rightly note that the term has been used to promote the idea that gray rape is merely the result of miscommunication, as when Kate Roiphe says, "there is a gray area in which one person's rape may be another's bad night" (Roiphe 1993a, 54). Others have criticized the notion of 'gray rape' on the grounds that it seems to imply that "some forms of sexual assault are less serious or trivial" (ConsentEd 2020). I am sympathetic to this criticism to an extent; we ought to be open to the possibility that the harms and wrongs associated with Bad Sex are incommensurable in some respects with the harms and wrongs associated with rape, especially given that Bad Sex is, as we'll see, both more normal and normalized. Indeed, this is one reason why I prefer the term 'Bad Sex,' as it avoids this implicature.

Over the past few years, there seems to have been renewed interest in understanding and developing a language around "sex that feels violating even when it's not criminal" (Gray 2018). This interest seems to have been sparked at least in part by the publication of the short story "Cat Person" by Kristen Roupenian in December 2017 (Roupenian 2017).<sup>9</sup> The virality of each of these articles is partly explained by the success of the #MeToo hashtag movement in October 2017, which came in the wake of breaking stories about Harvey Weinstein's sordid history of sexually assaulting and harassing dozens of women.<sup>10</sup> What was different about "Cat Person" was that it gave voice to—and illustrations of—sex that was not criminal but was nonetheless 'soul-crushing' (Smith 2017), transporting one to 'the place of no return' and offering a 'window into the uncomfortable reality that clouds' consent (Bennett 2017). For an experience that "we don't really have a language for talking about," these stories gave people something to point to (Thompson 2018). Indeed, both examples were seen as extremely relatable, with many recounting their own 'cat person stories' online.<sup>11</sup> In response to "Cat Person," "women seem to have been united in a collective cry of recognition and a release of righteous gratitude towards it" (Parker and Wilkinson 2017).

"Cat Person" begins with a 'boy-meet-girl' moment. Margot, a 20-year-old college student, meets 34-year old Robert at a movie theatre where she's working the concession stand. After a series of flirtatious exchanges, Robert asks Margot for her number. A

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9. This was followed shortly after with a breaking story about Aziz Ansari in Babe.net in January 2018, which seemed to offer a real-life illustration of "Cat Person's" themes. (See Way (2018).) That said, I believe the Ansari case is a bit more problematic, for the victim "Grace" had attempted to communicate that she did not want to have sex, but Ansari failed to pick up on both verbal and non-verbal cues. "Cat Person," by contrast, involved sex that was more clearly consensual and thus is a better illustration of what I'm calling 'Bad Sex.'

10. A more complete history of the #MeToo movement, and events leading up to it, can be found at Nicolaou and Smith (2019).

11. Khazan (2017). See also Gray (2018) and Bennett (2017).

series of witty text exchanges—replete with inside jokes—ensues before Robert asks Margot on a date to the movies. After the movie, he invites her to grab a beer. At the bar, Margot starts imagining what it would be like to have sex with Robert and decides to go to his house.

A disturbing and ‘skin-crawling’ sexual encounter ensues (Nicolaou 2019). Margot is disgusted at Robert’s body, recoiling at his “belly thick and soft and covered in hair.” But she finds herself unable to summon the tact required to “stop what she had set in motion,” worrying that doing so would make her seem “spoiled and capricious.” While having sex, the feeling of repulsion overcomes her again but is not enough to disrupt her ‘pinned stasis.’ Throughout, she seems committed to getting it over with, soothed and delighted only when consumed by thoughts about how excited and mesmerized Robert is by her beauty and youth. Robert moves her through a series of positions brusquely and pornographically until finally collapsing onto her.

Soon after, he drives her home to her dorm. In her dorm room, Margot has complicated feelings about what transpired. On the one hand, she feels “overwhelmed with a skin-crawling loathing.” On the other hand, she worries she is being unfair: perhaps Robert “had done nothing wrong except like her, and be bad in bed.” In the ensuing days, she tries to determine a tactful way to end things, but her roommate instead sends an abrupt break-up text on her behalf. Robert replies with a series of texts which escalate from apologetic and nostalgic to jealous and hostile. The story ends with a final text from Robert: “whore.”

Throughout the story, it seems clear that the sex is consensual. Moreover, although Margot found it difficult to communicate that she did not want to have sex, this was not because “she was scared he would try to force her to do something against her will.” On the contrary, it was because she thought the norms of politeness dictated that she see this through “after everything she’d done to push this forward.” In this respect, Margot seems compelled in part by social narratives or norms, a point I return to.

The sense that “getting it over with” would be easier than saying ‘no’ is common among others who describe their own Bad Sex experiences. For example, Jessica Bennett, describing her own “Cat Person” experience, writes that by the time she was sure that she did not want to have sex, she just “let it” happen through “some combination of fear (that I wasn’t as mature as he thought), shame (that I had let it get this far), and guilt (would I hurt his feelings?)” (Bennett 2017). Margaret Cho writes, “Often I would initiate the encounter just to get it over with, so it would be behind me, so it would be done” (Cho 2019). More generally, in her pioneering work on the topic of gray area sex in *Just Sex?: The Cultural Scaffolding of Rape*, Nicola Gavey gives multiple examples of women who felt that having sex was the easiest or quickest means of achieving one

of her own needs, such as sleep or tranquility (Gavey 2005). For example, one woman interviewed named Lee said that on some occasions, she would have sex “in order to both go to sleep and for him to um, to finally relax” after an hour of him coaxing her (Gavey 2005, 142). Gavey calls these cases *unjust sex*, a double-entendre to indicate that these examples are not ‘just (mere) sex’ nor are they ‘just (normatively good) sex.’

In these examples, we’ve already seen at least two types of Bad Sex, which I’ll discuss in more detail in §3. First, we saw cases of what I’ll call social coercion in Margot and Bennett’s case. Both Margot and Bennett have internalized social norms and narratives, such as norms of politeness and narratives about ‘girls who lead people on.’ This leads them to have sex or ‘get it over with.’ In both cases, there is no obvious sign that they were pressured by their sexual partner. Second, and by contrast, we see an example of interpersonal psychological pressure to have sex in Lee’s case. Lee’s decision to have sex is partly strategic: it is based on a calculation that the costs of proceeding are lower than the costs of refusing or resisting, despite her lack of desire.<sup>12</sup> I discuss psychological and social coercion in §3.1 and 3.2, respectively.

There is, however, a further type of Bad Sex that has yet to be illustrated. These are cases of what I’ll call *epistemically unsafe sex*.<sup>13</sup> These are motivated by two observations, the first by psychologist Nicola Gavey and the second by writer Reina Gattuso. In her groundbreaking work on unjust sex, Gavey also describes cases where women consented as a strategic way of avoiding rape: they feared that a ‘no’ would be ineffective. This fear might take hold even in the absence of psychological or social pressure. Reina Gattuso elaborates on this experience, noting that it can be consistent with consent, even affirmative consent:

A lot of sex feels like this. Sex where we don’t matter. Where we may as well not be there. Sex where we don’t say no, because we don’t want to say no, sex where we say yes even, where we’re even into it, but where we fear – some little voice in us fears — that if we did say no, if we don’t like the pressure on our necks or the way they touch us, it wouldn’t matter. It wouldn’t count, because we don’t count. This feeling isn’t necessarily assault, but it is certainly on a continuum with it (Gattuso 2015).

12. Margot and Bennett’s cases might also involve some strategic calculation.

13. I have chosen this term for two reasons. First, victims may consent in these cases because it feels like the safest, or least risky, option. In other words, not consenting would seem unsafe. Second, in the cases at issue, the victims fear that their consent may be modally irrelevant: if they hadn’t consented, then they would’ve been forced to have sex anyway. This connects with the notion of *safety* in epistemology. Roughly, one’s belief is safe only if one could not easily have been wrong in similar cases (Williamson 2000). Here I’m suggesting that one’s consent is safe only if one’s consent could not easily have been irrelevant in similar cases.

In both Gavey's and Gattuso's examples, victims fear finding out what would have happened if they did not consent. More specifically, they worry about finding out that their consent was modally irrelevant: if they had not consented, their partner would have proceeded to have sex with them anyway. This consideration might motivate consent in the first place, as in Gavey's examples, or it might be a haunting afterthought, as in Gattuso's examples. In both cases, one's decision to have or continue with sex is motivated at least in small part by a type of risk aversion: one fears what would happen if one didn't consent.

Of course, the victim's perspective and the perpetrator's perspective can come apart in both directions: the victim might be wrong that her consent is modally irrelevant, or she might not be aware that the perpetrator is in fact indifferent to whether she consented. This observation raises interesting questions about how to delineate the category of Bad Sex. I discuss these cases further in §3.3.

So far, we've seen at least three types of Bad Sex: those involving interpersonal pressure, those involving social pressure (including pressure coming from social narratives and scripts), and those involving epistemic risk. Across these cases, victims may consent for strategic or calculated reasons. In the next section, I'll discuss the dynamics of these cases in more detail.

### 3 VARIETIES OF BAD SEX

I'll focus on three broad categories or dimensions of Bad Sex. These distinctions help us classify many of the cases we've already seen and to separate out different threads. I have decided to split these categories up based on victims' motivations for having sex; these categories thereby focus on different narratives of harm to victims.<sup>14</sup> I do not intend these classifications to be exhaustive, nor do I think different types of Bad Sex are mutually exclusive. Moreover, for ease of discussion, I have placed together different types of examples that may deserve further breakdown. I intend this classification to be the first step in getting clearer on different types of Bad Sex, how they harm and potentially wrong victims, and the extent to which perpetrators are blameworthy.<sup>15</sup> My di-

14. Methodologically, this approach aligns me more with theorists who emphasize the *meaning of rape*—or, in this case, *of Bad Sex*—rather than those who focus on necessary and sufficient conditions for these categories. (See Cahill (2016, 751–2) for discussion.) That said, other ways of approaching the issue of Bad Sex would also be fruitful. Thanks to Sumeet Patwardhan for raising this methodological question.

15. Joel Feinberg distinguishes harms from wrongs as follows: a harm is a setback to someone's interests; a wrong is an *indefensible* setback to someone's interests (Feinberg 1987). Readers are welcome to translate my claims into wrongs as they see fit. I have chosen to speak primarily in terms of harms, rather than wrongs. This is partly for ease of expression and partly because issues of blameworthiness or whether there is a specific wrongdoer are complicated in the case of Bad Sex, as we'll see. That said, I think many of



agnoses are necessarily tentative and schematic, and I emphasize throughout that more work needs to be done to investigate the different dimensions of Bad Sex. Nonetheless, by starting to describe and distinguish between different types of Bad Sex, we can start to make progress on creating hermeneutic and linguistic resources for understanding and articulating the problems with gray area sex.<sup>16</sup>

### 3.1 *Psychologically Pressured Sex and Calculated Trade-Offs*

The first category captures two types of cases that are highly interrelated. The first focuses on cases of psychological pressure. Psychological pressure includes cases involving non-physical threats or threats of unfavorable emotional responses. Examples include threats of cheating, leaving, withholding money or other resources, or threats of emotional responses like sullenness, sulking, unkindness, or anger.<sup>17</sup> The second type of case captures what I'll call calculated trade-offs. These are cases where an agent decides to have sex because she feels it is the least bad option among the alternatives. This includes many of the remaining cases Gavey describes, such as cases where a woman felt like having sex was the most efficient way of achieving one of her own needs, such as sleep or tranquility (e.g. avoiding tension). It also includes cases that Jessica Bennet describes as "begrudgingly consensual sex, because, you know, you don't really want to do it but it's probably easier to just get it over with" (Bennett 2017).

Why classify these two types of cases together, under one heading? One reason is that calculated trade-offs are often made against a backdrop of psychological pressure. For example, the threat of an unfavorable emotional response may be what renders sex the least bad option. Calculated trade-offs may also be made against a backdrop of *social* pressure, something I'll discuss below. For example, a woman may prefer to have sex rather than feel guilty for 'leading someone on' or being 'prude.' A man might prefer to have sex because he knows that if he refuses, his partner will interpret his refusal as a sign that she is unattractive or undesirable—particularly given the stereotype that men

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the examples I'll describe do involve wrongs to victims, not merely harms. Thanks to Sumeet Patwardhan and Jonathan Sarnoff for prompting me to clarify my focus on harms.

16. Although there are ways of filling in the details of the cases I discuss such that they constitute nonconsensual sex or rape, rather than merely *Bad Sex*, there are surely some versions of the cases that are intuitively consensual and not-rape. My aim here is to understand why these cases, so understood, can still be bad despite not constituting rape.

17. Note that psychological pressure need not always be explicit. As Robin Morgan writes, "The pressure can be there without being 'a knife blade against the throat; it's in his body language, his threat of sulking, his clenched or trembling hands, his self-deprecating humor or angry put-down or silent self-pity at being rejected'" (Morgan 1977, 165). Coercive offers and psychological manipulation also arguably fall under or neighbor the category of psychological pressure—at the very least, they seem to involve a similar dynamic. (Thanks to Angela Sun for this point.) Finally, note that although some cases of psychological pressure *will* undermine consent, this is not always the case. (See Conly (2004) for discussion.)

are always interested in having sex. Of course, these situations reflect problematic but operative social scripts and narratives.

That said, calculated trade-offs can be made without any backdrop of pressure. For example, an individual might consent to sex simply to get it over with rather than have to express her preferences, feel the need to explain herself, or say ‘no.’ On this, Margaret Cho writes, “I said yes because it was too much trouble to say no. I said yes because I didn’t want to defend my ‘no,’ qualify it, justify it—deserve it” (Cho 2019, 3).<sup>18</sup> Nonetheless, it seems like calculated trade-offs are most obviously problematic when they intersect with some type of pressure—psychological or social. For this reason, I’ve grouped these cases together.

In cases of psychological pressure, an agent can be made to feel complicit in her own assault (or something akin to it). This is especially true in cases where she consents after consistently having her preferences manipulated and her agency strategically used against her. For example, in *Longing to Tell: Black Women Talk about Sexuality and Intimacy*, Tricia Rose describes the story of ‘Sarita,’ who was manipulated into having sex by a 50-year old man whom she trusted when she was in college. Sarita writes: “I wouldn’t call it date rape, but I would call it rape by mental force. I was completely manipulated and made to have sex through my own mental shortcomings – by a person I trusted. ... I still have a lot of shame about it because deep down I feel like I played along with it” (Rose 2004, 32–33). As Linda Alcoff highlights, it is important to discuss cases where agents are made to feel complicit in their own assault. She observes that “part of the manipulation here is to displace causal agency and deflect blame” (Alcoff 2018).

Sarita’s story and Alcoff’s observation help us see one distinction between paradigmatic examples of psychological pressure and of rape. As Ann Cahill argues in her discussion of *unjust sex*, which includes cases of psychological pressure, *unjust sex* and rape differ in the way they involve sexual agency. Whereas rape typically involves overcoming, overwhelming, nullifying, or utterly disregarding the victim’s sexual agency,<sup>19</sup> *unjust sex* implicates a diminished sexual agency. In the latter cases, “women’s sexual agency is actively sought, but its efficacy is severely limited in a variety of ways, all of which refer back to the instigator’s sexual preferences, interests, and needs, thus resulting in a weak, stunted form of intersubjectivity that does not sufficiently recognize or

18. Authors have been rightly critical of the emphasis on refusals and saying ‘no’ as opposed to non-verbal communication or negotiation. See, for instance, Gavey (2005, 135–136) and Kukla (2018). I should emphasize again that there are certainly cases where one prefers to have sex rather than verbally refuse due to some type of pressure. In addition to cases mentioned above, one might feel uncomfortable refusing due to norms of femininity that prescribe gentleness and nurturance (Gavey 2005, 136).

19. The last possibility comprises cases where someone “exploits a situation wherein the victim’s will is inoperative,” such as when she is unconscious (Cahill 2016, 753).

further women’s sexual agency” (Cahill 2016, 758). In other words, unjust sex, but not rape, involves a sort of *split* or ambivalence on the part of the woman. For instance, she may be forced to choose between two selves: a sexual agent or a ‘dutiful’ wife or partner, or between prioritizing her (lack of) desire or sleep (or simply emotional tranquility).<sup>20</sup>

In short, in paradigmatic cases of psychological pressure, the victim’s agency is actively deployed against her in ways discussed above. This is a distinctive type of harm, especially if she is made to feel complicit or like an accomplice in her own assault. Moreover, the perpetrator who pressures the victim is often blameworthy for psychologically pressuring the victim into having sex.<sup>21</sup> However, as noted above, there can be cases where an individual experiences psychological pressure, or makes a calculated trade-off, despite no explicit pressure from her partner at the time.

What should we say about cases of calculated trade-offs that occur without any backdrop of pressure? First note that these cases are less likely to involve any blameworthiness. However, they can still be harmful and, indeed, wrongful. Specifically, these cases still reflect or contribute to a diminished or stunted form of sexual agency. In the ideal case, agents base their decision to have sex on their desire to have sex.<sup>22</sup> This desire need not always be physical. Rather, one might desire to have sex with her partner as a form of gift-giving.<sup>23</sup> In the cases at issue, however, one bases her decision to have sex on a desire to avoid something worse, such as exhaustion, emotional distress, or the inconvenience or difficulty of saying ‘no’. One does not in fact act on a desire—direct or indirect—to have sex but rather to avoid an alternative.<sup>24</sup>

This discussion is necessarily schematic, and more work would need to be done to flesh out the normative dimensions—including the harms, wrong, and blaming conditions—of these cases. The key point is that the harms or wrongs here plausibly differ from those of nonconsensual sex. For example, it is commonly thought that nonconsensual sex violates the victim’s autonomy.<sup>25</sup> In cases of psychological pressure

20. That said, some cases might not involve such ambivalence; rather, the problem is simply that you don’t have enough choices for full agency. Thanks very much to Carolina Flores for this observation.

21. There may be extenuating cases where the perpetrator is excused.

22. Cf. MacKinnon (2017, 167): “[W]hat you get out of sex as such is that you are doing it. [...] This is what sex as a human right could look like: the right to have sex that is mutual, so equal that it is its own reward.”

23. See Kukla (2018) for helpful discussion of such cases.

24. Even more worrying, two studies have shown that women who consent to unwanted sex are at greater risk of experiencing sexual aggression. (See Shotland and Hunter (1995) and Krahé et al. (2000).) However, the causal connection is unclear. One possibility raised by Impett and Peplau (2003) is that “previous experiences with a coercive male partner may lead a woman to develop compliant sexual strategies as a way of avoiding potential conflicts” (p. 96). While making trade-offs in one-off cases may seem relatively unproblematic compared to the harms of rape, doing so can contribute to a problematic pattern where women are more likely to be victimized. Moreover, this fact suggests that the way sexual agency is diminished in cases of Bad Sex is seriously wrongful, not merely non-ideal.

25. See, for example, Archard (2007); West (2016). See also Rubenfeld (2012) who agrees with this claim

and calculated trade-offs, the victim's autonomy and agency is instead diminished or strategically used against her. It is important to get clearer on this latter, undertheorized type of harm in future work. For now, this suggestion is merely a starting point.<sup>26</sup>

Some might try to argue that these are really just cases of rape, rather than Bad Sex. Indeed, consent theorists can claim that psychological coercion can render consent invalid in some cases.<sup>27</sup> It is certainly true that there are ways to fill out the details of some of the cases discussed above to render them rape. However, it seems both implausible and unhelpful to claim that all cases of psychological coercion and trade-offs constitute rape. Moreover, intuitively, there seems to be some morally important difference between the examples described above and rape. The point of this chapter is in large part to argue that we should develop more fine-grained tools for classifying sex that is not morally neutral yet does not constitute rape.<sup>28</sup> That said, the question—both descriptive and normative—of whether we should really classify all or many cases of Bad Sex as rape is an important one, and I return to it in §4.1.

### 3.2 *Socially Coerced Sex*

We can now turn to social coercion. Social coercion is the pressure induced by cultural expectations and social conventions or scripts, some of which are socialized, internalized, and institutionalized. Certain sexual scripts can also arguably be socially coercive. In the context of marriage, social coercion has historically arisen from social pressure on women to be 'dutiful' wives and thus they sometimes consent to unwanted sex with their husbands.<sup>29</sup> More common today, social coercion can arise from rape myths regarding what women 'owe' to men upon 'leading them on' by, for example, letting them pay for dinner or by wearing provocative clothing.<sup>30</sup>

An example will illustrate. Consider Jessica, who feels like she owes her date, Drew, sex in virtue of going on a date with him and letting him pay. There are operative social scripts, just relatively recently being explicitly called into question, that say she owes him sex. She might think there may be consequences of her not going back to

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but uses it to argue against consent frameworks for analyzing rape.

26. See [Melo Lopes \(forthcoming\)](#) for illuminating discussion of how women can be 'half victims, half accomplices.'

27. See for example [Conly \(2004\)](#), who offers four conditions for psychological pressure to vitiate consent.

28. This point echoes [Conly \(2004\)](#).

29. In her 1983 book, D. E. H. Russell observed that "many women feel obliged to accommodate their husbands' sexual wishes no matter how repelled they are by them" ([Russell 1983](#), 356). While these norms are less prevalent now in the United States, unfortunately they persist globally. See, for instance, [https://www.who.int/violence\\_injury\\_prevention/violence/norms.pdf](https://www.who.int/violence_injury_prevention/violence/norms.pdf).

30. [Gavey \(2005\)](#) gives several examples of this. See also [Jenkins \(2017\)](#) for a recent philosophical treatment of the effects of rape myths on women's ability to make sense of their experiences.

his place after, or going back and not having sex, such as him getting angry with her or spitting vitriol. Even if she thinks he is a ‘nice guy,’ she might worry about the risks of saying ‘no’ either based on past experience or how these scripts operate in the public imagination.<sup>31</sup> She might not make these calculations explicitly but simply think ‘this is what is supposed to happen next,’ as often happens when norms are deeply internalized.<sup>32</sup>

Alternatively, one might worry about what failing to act in accordance with these social norms expresses about *her*. Consider again Margot, from “Cat Person.” We are told that Margot allows the encounter to continue not because she “was scared he would try to force her to do something against her will.” Rather, she worried that “insisting that they stop now, after everything she’d done to push this forward, would make her seem spoiled and capricious, as if she’d ordered something at a restaurant and then, once the food arrived, had changed her mind and sent it back” (Roupenian 2017).

Women are, of course, not the only group to suffer from social norms and scripts. For example, men (both straight and queer-identified) have cited pressure to conform to the stereotype of always being interested in sex.<sup>33</sup> Gender identity, sexual orientation, and race also plausibly intersect with social norms regarding sex. For example, in the context of work on unwanted orgasms, Sara Chadwick et. al. have found that queer women who slept with other women felt especially pressured to orgasm due to narratives about women being especially skilled at making other women orgasm, and bisexual men have cited feeling special pressure to “perform” with every partner to prove their sexual identity (Chadwick et al. 2019). It seems plausible that these narratives could intersect not only with pressure to orgasm but also with the question of whether to have sex in the first place, e.g. to ‘prove’ one’s sexual orientation or conform to stereotypes about always being interested in sex, lest they offend their partner. Race plausibly exacerbates some of these narratives. For example, black bodies are often hypersexualized, and this plausibly affects social norms or expectations.<sup>34</sup>

Social norms can vary in how deeply they are internalized by individuals. More generally, agents can differ in their reasons for conforming to social norms. If a social norm is deeply internalized, it is difficult for the agent to do anything *but* conform to the norm. (Note that internalizing a norm does not entail endorsing it.) In other cases, an agent might conform to a social norm out of fear of the consequences of not doing so, or for the expressive value of doing so. Of course, there are positive reasons to

31. Compare the claim that rape benefits all men (at least indirectly).

32. Thanks to Mercy Corredor for this point.

33. See, for example, Chadwick et al. (2019, 2450).

34. See Rose (2004) for narratives by black women. See Collins (2002)—especially chapter 6—for classic discussion of hypersexualization.

conform to social norms as well; for example, they allow us to coordinate. However, as we saw earlier, this coordination often asymmetrically benefits one party (often men) to the detriment of another (often women).

Why might some cases involving social coercion count as Bad Sex? There are at least two reasons. First, if one feels socially coerced into having sex, there is clearly something non-ideal about the situation. More specifically, as in cases of calculated trade-offs discussed in §3.1, it seems that one's sexual agency is stunted or diminished.<sup>35</sup> Second, some paradigmatic examples of Bad Sex involve problematic social norms. We saw this while discussing "Cat Person" and in the case of women consenting to unwanted sex with their husbands. Again, these cases are explicitly described as consensual though they feel violating, and it is implausible that all cases involving social coercion count as rape.

Cases of Bad Sex involving social coercion raise important and under-explored questions about blameworthiness, assuming that socially coerced sex can wrong victims.<sup>36</sup> For illustration, consider again Jessica and Drew. Given social norms and expectations, Jessica felt like she owed Drew sex in virtue of going on a date with him and letting him pay. Is Drew blameworthy for having sex with Jessica, given that she felt socially coerced? That depends on the details. For example, is Drew aware of the operative social norm, and does he actively exploit it? If so, then this seems clearly blameworthy. On the opposite end of the spectrum, if Drew was unaware of this norm through no moral or epistemic fault of his own, then it's difficult to say that he is blameworthy. In between lie cases of motivated ignorance. Another relevant question pertains to the nature of Drew's duties. Is he obligated to attempt to cancel the relevant norm if aware of it? I think the answer is plausibly yes. Yet if Drew tries his best to cancel it, and if Jessica has internalized the norm or doesn't trust his sincerity, then he may still be off the hook morally speaking.

What this discussion highlights is that Bad Sex can occur without any particular person being blameworthy. Indeed, some individuals hesitate to attribute responsibility to their partner despite feeling socially coerced. One woman writes, "I know I was feeling coerced and not doing it willingly most of the time. But I'm not sure it was done by him.

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35. Note that, unlike in paradigmatic cases of psychological coercion, Cahill (2016)'s analysis of unjust sex does not seem to apply. In cases of social coercion, there need not be a particular agent seeking out the woman's consent and deploying it against her. A similar point holds for epistemically unsafe sex, which I discuss in §3.3. This illustrates the importance of getting clearer on varieties of Bad Sex before offering general diagnoses. (Of course, Cahill might note that unjust sex is merely a subspecies of Bad Sex, in which case I am sympathetic to her distinction between unjust sex vs. rape.)

36. That said, I think agents can be blameworthy for, e.g., failures to care or perform due diligence, even if such failures do not wrong the victims. However, I will not argue this point here. Thanks to Jonathan Sarnoff for raising this issue.

It was really my own upbringing and the things that I'd been taught" (Finkelhor and Yllö 1985, 86). Indeed, cases of social coercion illuminate the importance of challenging insidious social norms and rape myths on more than just an individual level while educating individuals on them to be more aware. This raises many questions that demand exploration. Again, the discussion here is necessarily schematic. The category of Bad Sex, though underexplored, is ripe for further philosophical and political analysis.

### 3.3 *Epistemically Unsafe Sex*

The final type of category we'll consider is what I'll call *epistemically unsafe sex*. This includes cases where consent is motivated partially by risk aversion: one does not want to risk finding out that her consent was irrelevant. It also includes cases where one affirmatively consents simply out of a desire for sex, yet then fears that her consent was modally irrelevant—as we saw in Gattuso's case. Cases of epistemically unsafe sex are compatible with consent, even affirmative consent, yet they can nonetheless be violating. For example, learning—or suspecting—that one's own consent is modally irrelevant can undermine one's sense of autonomy or sexual agency in deciding whether to have sex. One worries that her "consent wouldn't count, because we don't count" (Gattuso 2015).

Suppose the victim is correct that her consent is modally irrelevant. What does this look like from the perpetrator's perspective? On one extreme, a perpetrator *A* might be reckless in their decision to have sex with their sexual partner *B*. For example, they might ignore apparent evidence that *B* did not consent (even though *B* did). On another extreme, *A* might be negligent. For example, *A* might fail to seek out any evidence for *B*'s consent. They may fail to do their due diligence in seeking out *B*'s consent. (This at least seems problematic in the early stages of a sexual relationship, given the high stakes.) In either of these types of cases, *A* might be indifferent to whether *B* consented—or, more realistically, *A* might fail to care sufficiently about whether *B* consented. *A* might prefer that *B* consent, but would still—intentionally or inadvertently—likely have had sex with *B* in the absence of their consent.<sup>37</sup> The perpetrator in any of these variations seems blameworthy for failing to care sufficiently, if at all, about whether their partner consents.<sup>38</sup>

37. Indeed, one might think that some cases of sex procured by fraud are similar in that the perpetrators fail to care sufficiently about whether their partner consents.

38. Note that there might be some versions of these cases that count as attempted rape, rather than just Bad Sex. These are cases where the perpetrator intended to rape the victim, and this is the reason the victim's consent is modally irrelevant. Instead, I'm focused here on cases where the perpetrator does not intend to rape the victim, but her consent is nonetheless modally irrelevant in virtue of *A* not being sufficiently sensitive to facts about *B*'s consent. Thanks to Mercy Corredor and Jonathan Sarnoff for discussion.

Importantly, *A*'s indifference is compatible with *B*'s consent. This is most obvious on views where whether *B* consented depends entirely on *B*'s mental state. However, it's also true for views on which consent requires communication and on views where consent must be affirmative. We can imagine that *B* affirmatively consents to *A*, but *A* fails to hear it or give it uptake, or *A* would've had sex with *B* anyway.

Of course, *B* might never worry nor realize that her partner was indifferent to whether she consented. Or, she might suspect he was indifferent, but be wrong. Do such cases count as Bad Sex? These are tricky questions, and the answers depend in part on the roles of the term 'Bad Sex.' Insofar as Bad Sex is a large, gerrymandered bucket that captures any sex that is sufficiently similar to but not quite rape, then I think there is some reason to classify both types of cases as Bad Sex. In the first, there is a dangerously close nearby world where *A* rapes *B*; at the very least, *A* seems blameworthy. This may seem like a harm, even if *B* never realizes this fact. In the second, the victim may still suffer from the (reasonable) suspicion that *A* is indifferent and thus be hurt (a subjective notion), even if she is not harmed or wronged. On the other hand, one might prefer Bad Sex to be more restrictive. While I am sympathetic to the former view, I am happy for now to restrict Bad Sex to cases where the victim (at least) truly believes that her consent is modally irrelevant.

Even with this restriction, one might wonder whether this is really a case of Bad Sex. To put the question bluntly, the objector asks: "Is this really that bad?" I think the answer is yes: it can be. Indeed, I think this is a particularly undertheorized kind of Bad Sex. If you justifiably believe or learn that whether or not you consented is irrelevant—or not sufficiently important—to the person having sex with you, then this would likely feel violating and arguably objectifying. In the words of Gattuso, you would feel like you 'don't count,' or that your interest in sex is less important than his pleasure. In more extreme versions of the case, this realization can make one feel frightfully close to being assaulted; had you not wanted to have sex, you would have anyway. Learning that one's consent is modally irrelevant can undermine one's sense of autonomy or sexual agency in deciding whether to have sex. In addition, I think that perpetrators may harm victims by being careless or indifferent toward whether they consent.

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Let us take stock. I briefly described three general types of cases of *Bad Sex*: psychological pressure and calculated trade-offs, social coercion, and epistemically unsafe sex. A unifying feature of these cases is that agents have their sexual agency or autonomy diminished or stunted, albeit often in different ways.<sup>39</sup> In cases of psychological

39. The agency problems involved in rape tend to be more severe (Cahill 2016). Moreover, rape is



pressure, her agency is actively deployed against her. In cases of social coercion and some cases of trade-offs, her agency is stunted in more subtle ways; she is prevented from basing her decision to have sex on her desire to have sex. In cases of epistemically unsafe sex, victims might exercise their agency in deciding to have sex, yet if they find out that their consent is in fact modally irrelevant, this could hinder their sense of agency. I do not claim to have gotten the details or classifications—descriptive or normative—completely right. Nonetheless, I hope to have made some progress toward getting clearer on different dimensions and underexplored choice-points for theorizing about Bad Sex.

#### 4 WHENCE AMELIORATION?

Now that we have gotten clearer on some varieties of Bad Sex, I want to return to an important question alluded to earlier. Why should we theorize this liminal category of Bad Sex? Why not instead try to expand our notion of rape to include such cases?

Indeed, as Catharine MacKinnon notes, there are political reasons for widening the scope of the term ‘rape.’ She writes:

Politically, I call it rape whenever a woman has sex and feels violated. You might think that’s too broad. I’m not talking about sending all of you men to jail for that. I’m talking about attempting to change the nature of the relations between women and men by having women ask ourselves: ‘Did I feel violated?’ To me, part of the culture of sexual inequality that makes women not report rape is that the definition of rape is not based on our sense of our violation (MacKinnon 1981, 82).

Moreover, what counts as rape has been expanded—often for the better. We have come a long way in identifying acts like marital rape and date rape as *rape*.<sup>40</sup> Why think that the examples of Bad Sex we’ve seen are any different? In addition, there are narrative and strategic reasons for classifying instances of what I’ve called Bad Sex as rape. Accusations of rape are taken far more seriously. Of course, this is arguably for good reason. The problem arises when people wrongly infer that just because an act is not rape, it is therefore unproblematic; it is *just sex*, to use Gavey’s term. (Indeed, the point of this chapter is in part to push back against this tendency.) Moreover, as Reina Gattuso notes, “The ‘gray zone’ idea has often functioned as a tactic to minimize or dismiss violence, and therefore evade accountability, by claiming that sex is inherently a murky, illegible

clearly punishable in a way that Bad Sex is not.

40. For similar examples and discussion, see Reitan (2001).

realm” (Gattuso 2018).<sup>41</sup> Viewing Bad Sex as a gray area, rather than definitively rape, is thus not without its risks.

Another way to press the objection is as follows. The concept *rape* is in desperate need of amelioration. When we ask the question, “What is rape?”, we are not merely engaged in a descriptive or conceptual project. That is, we are not merely trying to achieve descriptive adequacy or a satisfactory conceptual analysis. We are also trying to figure out what concept of *rape* we *should* have, given our emancipatory and political ends of combatting sexual inequality.<sup>42</sup> Moreover, rape is an *essentially contested concept*, and thus extending the boundaries of what counts as rape is in fact part of the proper use of the term (Reitan 2001). Especially given that it’s within our rights to expand the notion, perhaps our political ends demand it.

#### 4.1 Response: Against Collapse

In response, I’ll argue that there are important reasons to make room for victims to be able to make sense of these experiences without facing the binary choice between seeing them as *rape* or *just sex* as usual. First, the experience of ‘gray area sex’ is extremely common, but currently victims report having few hermeneutic and linguistic resources available for understanding or articulating their experiences. Second, this suggests that ameliorative considerations actually point in favor of theorizing the category of Bad Sex on its own terms. Third, important strategic and narrative considerations point *against* expanding our definition of rape to encompass all instances of Bad Sex. I discuss each of these in turn. By classifying all cases of Bad Sex as rape, we miss out on important moral, legal, and narrative nuance; in other words, we flatten the normative terrain.

##### 4.1.1 LINGUISTIC AND HERMENEUTIC RESOURCES

First, and perhaps most importantly, victims and advocates have expressed a dire need for linguistic and hermeneutical resources for understanding and discussing sex that seems violating but does not rise to the level of rape. For example, Elsie Whittington—a lecturer at the University of Manchester who has a background in sexual health youth education—notes that the gray area is a ‘tricky topic’ because ‘we don’t really have a language for talking about it’ (Thompson 2018). Similarly, writer Ashley Ford remarked

41. Indeed, we have already seen this when discussing the history of the term ‘gray rape.’ In addition, so-called libertarian feminists like Katie Roiphe have trivialized the gray area, claiming that ‘there is a gray area in which one person’s rape may be another’s bad night’ (Roiphe 1993b).

42. See Haslanger (2006) for this three-way distinction between conceptual, descriptive, and ameliorative projects. See Hänel (2018) for an ameliorative proposal for conceptualizing rape. Her view seems to entail an expansion of the concept of *rape*, which she argues is a cluster concept.

in a powerful Twitter thread on the need for “more definitive language” about the “spectrum of harm” inflicted on victims as a result of experiences that were consensual but felt violating and harmful. These include years of feeling like one owes their partner sex as a ‘compromise’ or ‘thank you’ (Thompson 2018). Alexandra Brodsky—senior editor of Feministing.com—echoes experiencing a linguistic gap. She writes, “I don’t have the language for this substratum of violence we refuse to name as such” (Brodsky 2014). She offers examples involving psychological pressure or stealthing (where a man removes a condom during sex). These calls for expanding linguistic and hermeneutical resources are not limited to the United States. For example, in her “Towards a language of sexual gray zones,” Lena Karlsson documents a series of similar demands in a Twitter-initiated #talkaboutit campaign in Sweden, which focused on these ‘gray areas.’ One author observed that “we need a language, we need to think about our own and others’ boundaries, about respect, about desire, lust and fear” (Karlsson 2019, 211).

In addition to expressing the absence of language to talk about these gray areas, others note that we also need to challenge the general narrative that just because a particular sexual encounter is consensual, then it is morally and politically unproblematic. Commenting on Aziz Ansari and similar examples, Emma Gray writes:

If the #MeToo movement is going to amount to sustained culture change—rather than simply a weeding out of the worst actors in a broken system—we need to renegotiate the sexual narratives we’ve long accepted. And that involves having complicated conversations about sex that is violating but not criminal (Gray 2018).

Some advocates reject the notion of gray areas partly because they think that it excuses sexual violence. They worry that it would contribute to “the absurd notion that sexual violence is ‘less bad’ in some cases” or would risk being victim-blaming as it implicates the victim’s agency (ConsentEd 2020). The demand for nuance gives way to a putative demand for justice for victims. On the contrary, Linda Alcoff notes that:

The idea that rape is a simple, straightforward matter actually works to dissuade the many victims from coming forward who feel that their own experience had complexity and ambiguity, and it inhibits the vitally necessary process of being able to discuss one’s experience with others. Acknowledging ‘gray rape’ thus becomes a way to respect the perspective of survivors themselves (Alcoff 2018).

Indeed, terms like ‘bad sex’ and ‘gray sex’ often better reflect victims’ experiences by their own accounts. For example, the victims surveyed by Gavey repeatedly described

their experiences as ambiguous, often expressing ambivalence about how to classify the experience. In Cahill's words, "[t]o attempt to resolve such ambiguity prematurely would risk missing something important about heterosex as currently experienced by heterosexual women" (Cahill 2016, 751). While it's true that we cannot always defer to victims' own descriptions about their experiences—given the phenomenon of unacknowledged rapes—that doesn't mean that we ought to dismiss their experiences as articulated out of hand.

#### 4.1.2 AMELIORATION

The fact that victims have expressed the need for more fine-grained hermeneutic and linguistic tools offers us a response to the ameliorative considerations for expansion. Even if we accept that the concept of rape is in desperate need of amelioration, I don't think that identifying all instances of Bad Sex as rape actually serves emancipatory ends. Rather, what seems genuinely emancipatory is recognizing Bad Sex as a *problem* to be cared about independently of whether it falls under the extension of rape. As noted, there are good reasons for a more nuanced understanding of the range of sexual harm that can occur to individuals, ranging from rape on the one hand to various forms of sexual harassment. While it's true that appeals to the gray area have often been used to excuse sexual violence, this is not a reason to avoid theorizing this area; instead, it is a reason to advocate for its importance and to correct this misunderstanding.

Moreover, as we've seen, it's not clear that encouraging women to use the term 'rape' to describe cases of Bad Sex adequately fits their experiences. For one, as we've seen, some women consent to sex specifically to *avoid* being raped. Moreover, attempting to expand the term 'rape' in such a way may feel empowering to some but stultifying to others. Indeed, it can be traumatic to identify oneself as a rape victim. Rather, we need a larger vocabulary to describe the types and range of harms we can suffer.

#### 4.1.3 STRATEGIC AND NARRATIVE REASONS

Third, there are important strategic and narrative reasons *against* expanding our definition of rape to encompass all instances of Bad Sex. The highly emotionally charged connotations of 'rape' are a double-edged sword. This has consequences for both victims and for broader political struggles. The fact that 'rape' carries these meanings might make some victims of Bad Sex reluctant to describe their experience in that way. In many of the cases Gavey considers, for instance, women struggle to find the vocabulary to convey that they were sexually violated in a way that was not as severe as rape. As we've seen, with few conceptual resources available, they thought that the harm that

was done to them was more imaginary than real.

On a political level, expanding the use of the term ‘rape’ can lead to backlash. While conservative outlets seem more likely to publicly complain that the term ‘rape’ is being watered down,<sup>43</sup> others privately express their grievances about movements like #MeToo, telling alleged victims to ‘grow up’ (Merkin 2018). Of course, some prominent French women have also denounced #MeToo publicly, writing, “Rape is a crime. But insistent or clumsy flirting is not a crime, nor is gallantry a chauvinist aggression” (Safronova 2018). Similarly, Bari Weiss claimed that Aziz Ansari was only guilty of not being a mind reader. She wrote dismissively “I’m apparently the victim of sexual assault. And if you’re a sexually active woman in the 21st century, chances are that you are, too” (Weiss 2018). These complaints are not new. For example, Katie Roiphe—a figure we’ve seen before—remarked in 1993 that the definition of rape has been “stretched” and “the lines between rape and sex begin to blur” (Roiphe 1993b).

Backlash not only hurts political movements. It also hurts victims of both rape and Bad Sex. It hurts victims of rape who might worry that their claims will not be taken as seriously—that perhaps they mean rape in this ‘watered down’ sense. It hurts victims of Bad Sex who don’t have any other tools at their disposal, as we’ve seen. It also makes it easier for those accused of rape to claim that they did not actually commit rape by the legal definition, when they did, by saying that the accuser meant the term in a very broad way.<sup>44</sup> The accuser, reluctant to divulge details, may find it harder to ‘correct’ the record.

Of course, we shouldn’t merely be motivated by considerations of backlash in determining whether to extend the use of a concept. Indeed, the prospect of backlash is arguably inherent in many attempts for social progress. The point here is simply that in addition to strategic reasons in favor of expanding our use of the term ‘rape’ to include Bad Sex, there are also costs worth bearing in mind. In addition to these costs, we’ve also seen a host of positive reasons for classifying many of the cases we’ve seen as Bad Sex rather than rape. Thus, we ought to think carefully about whether these costs are worth paying when expansion can harm victims and when there is a clear compromise solution, namely to carve out and articulate this middle ground of conduct that is not criminal—and not even always blameworthy—yet is still harmful to victims.

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Attempts to expand our understanding of what constitutes rape are important. Indeed, much social progress has been made this way. However, attempts to understand

43. See, for instance, <https://patriotpost.us/articles/52127-leftists-water-down-the-meaning-of-sexual-assault-2017-10-30>

44. If this sounds far-fetched, I can at least report first-hand experience of this tactic.

cases of Bad Sex on its own terms are also important and, moreover, underexplored. We've now seen three reasons why this project is worth pursuing, appealing to the need for richer linguistic and hermeneutical resources, ameliorative considerations, and strategic reasons.<sup>45</sup> If we were to collapse the distinctions between Bad Sex and rape, we would not only miss out on important moral and legal nuances; we would also, inadvertently, hamper victims' ability to make sense of and communicate their own experiences.

## 5 CONCLUSION

Theorizing about rape has focused centrally on consent. However, by focusing almost exclusively on the wrongs involved in nonconsensual sex, we risk overly legitimizing sex that is consensual. Both proponents and opponents of consent frameworks have failed to fully recognize that consent is, at best, a minimal standard for avoiding rape. On the one hand, this is bad news for consent theorists: it limits consent's powers of moral transformation. On the other hand, it is good news: apparent problems for consent frameworks can be accounted for by acknowledging the existence of Bad Sex. I've argued that Bad Sex includes cases of psychological pressure, social coercion, and epistemic risk, and I have attempted to sketch a descriptive and normative profile of each. Over the past few decades, feminists have helped us make significant progress in understanding the harms of various sorts of encounters, ranging from sexual assault to sexual harassment, and more. By motivating the importance of theorizing about Bad Sex, I hope to have contributed in some small way toward this project.

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45. See Cahill (2016, 751–752) for further considerations against collapse.

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