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## SEXUAL REFUSAL: THE FRAGILITY OF WOMEN'S AUTHORITY

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### *Abstract*

I expand on and defend a particular account of silencing that has been identified by Mary Kate McGowan. She suggests that one sort of silencing occurs when men do not think that women have the authority to refuse. I develop this proposal, arguing that it is usefully distinct from other forms of silencing, which attribute a radical misunderstanding to the perpetrator. Authority silencing, by contrast, allows that the perpetrator understands that the woman is trying to refuse. I examine the nature of authority, and of refusal, and argue that a normatively binding refusal requires authority, the normative capacity to make a determination that has a 'because I said so' structure. Women's authority in this sense is fragile. Authority to refuse sexual advances can be lost through women's attire, how much they have had to drink, location, or their profession. This account makes sense of the way that perpetrators both do and do not understand sexual refusal, and explains how they are blameworthy despite their misunderstanding.

In one sort of case where a man rapes a woman, the perpetrator knows perfectly well that the victim refuses to have sex, and he overrides her refusal, by force or coercion.<1> In the Anglo-American legal system, and in many other legal systems, this is the definition of rape. But it is not the only sort of non-consensual sexual encounter, and it is not always the case that the man has a clear grasp of the woman's refusal. As feminists have long argued, ideals of heterosexual sex are problematically entwined with gender hierarchies, and this leads to what Ann Cahill calls the 'heteronormative continuum' (2014, 303) between consensual sex and sexual assault. Date rape and acquaintance rape do not involve a sudden transformation of a normal man into a savage monster. Rather, societal norms around heterosexual sex make various degrees of forcible seduction seem an acceptable part of heteronormative interaction. Both men and women may hold problematic attitudes about women's sexual consent and refusal such that refusals are not understood as they should be. To put it another way, women's sexual refusal is sometimes 'silenced' to some degree.

In this paper I focus on a particular phenomenon that I think is under-theorized. The phenomenon is 'authority silencing', as identified by Mary Kate McGowan. McGowan suggests that one sort of silencing occurs when men do not think that women have the authority to refuse (2009, 492 and 2017, 48). My aim in this paper is to develop this proposal, as it illuminates many instances of non-consensual sex as well as harassment and semi-consensual interactions. Authority silencing is distinct from other sorts of silencing in that, in cases of silencing of sexual refusal, it involves a hostile attitude on the part of the perpetrator. This explains why the perpetrator is blameworthy

despite his misunderstanding, and makes sense of the real life data (what we know about perpetrator's attitudes and what we know about women's experiences).

## SILENCING

There is a familiar distinction between three things we could mean by talk of silencing. First, it might be that someone is not allowed to speak at all, second it might be that they speak, and are understood, but their words are ignored or dismissed, and third, is the idea that someone can speak, and yet not be comprehensible to others, not through a problem with their speech per se, but through something in their circumstances.<2>

Most recent philosophical work on the topic of silencing has focused on cases where speech is permitted, but is not effective in its intended aim. The early literature on the topic was concerned with understanding sexual violation in a patriarchal context. For example, Catharine MacKinnon argues that pornography encourages false beliefs about women so that 'no' is taken as 'yes' when uttered by a woman in response to a sexual approach (1987).<3> Lois Pineau argues that our myths about rape have it that women do want sex, but feel that they shouldn't, so (according to the myth) they want to be raped in order to take the responsibility of the decision to have sex off their shoulders. Thus when a woman says no, she is not being sincere, and in fact she wants the man to proceed (1989). Women speak, but they are not heard. Their speech - in particular their sexual refusal - is somehow silenced.

Taking those ideas as a starting point, feminist philosophers have engaged in a more general project of elucidating various speech related harms. Rae Langton (1993) and Jennifer Hornsby (1993) influentially deployed Austin's speech act theory, and in particular, his distinction between perlocution and illocution (1975).<4> The perlocutionary effect of a speech act is the effect it happens to have on the audience. It might shock or dismay them; it might please them; it might contribute to the conditions of their oppression. Illocutions, by contrast, bring something about directly. So long as the felicity conditions are met, the right illocution can marry people; promise something; name things, and so on. Langton and Hornsby both argue that women's illocutionary speech acts of refusal fail because uptake fails: the man does not understand the refusal.<5> These technical suggestions aim to identify and account for the speech related harms that MacKinnon and Pineau and other earlier writers allude to.

My focus here is on understanding what happens when men don't seem to hear sexual refusal. In some cases of rape, there is no misunderstanding at all, refusal is simply ignored. But other cases are more complex, and the feminist insight there is that the conditions somehow make women's refusals ambiguous. But where exactly is this ambiguity? Various answers have been suggested, which are usefully categorized as different sorts of silencing by McGowan (2017).<6> I will begin by briefly explaining why I think the other sorts of silencing are less applicable to real life cases than authority silencing.

McGowan identifies the sort of silencing suggested by Langton as a failure to recognize intention to refuse. On this account, the man has internalized a false view about how women express refusal. Closely related, is sincerity silencing, which is when the hearer understands that the woman is expressing refusal, but believes that women often offer refusals insincerely. As Hornsby puts it: "No doubt it requires some explaining how it could become impossible to do a perfectly good act of refusing even using a word as well suited for refusal as 'No' is. But this impossibility could be explained if we thought that a certain view of women prevailed in some quarters. I mean a view according to which women who do not behave with especial modesty or who dress with especial circumspection are ready and willing to gratify men's sexual urges, but will feign

unwillingness (whether through a pretended decency or through a desire to excite). If there were a pervasive view that this is how women conduct themselves, and if the view determined a man's expectations, then it is easy to imagine circumstances in which the harmony of speaker's intention and audience reception, for which reciprocity generally provides, could be missing." (1995, 137).

According to both of these accounts, there is a fairly radical misunderstanding: it is as if women's speech is 'scrambled' as Caroline West puts it at one point (2003). Langton even suggests that it could be that men rape women without knowing they are doing so. (2009, 58). Let's call this the 'radical misunderstanding view'. What should we make of the radical misunderstanding view, aside from any technical arguments about illocution? Is it plausible that men are so taken in by sexist ideological narratives that they become oblivious to the woman's actual verbal and non-verbal signals?

Total delusion may happen, but it is likely to be rare. There is certainly a lot of sexist ideology about, but it does not seem powerful enough to completely obscure the verbal and non-verbal signals of refusal that are often present in the sorts of case I am focusing on.<7> Most people can recognize the expressed intentions of others, at least after some repetition. My claim here is not that there is *never* a radical misunderstanding, it is that it would also be useful to theorize less radical misunderstandings in order to shed light on what seems to be the most common sort of case.

Another intuitively obvious feature of most cases of non-consensual sex is that the perpetrator seems *blameworthy*. When we think of cases where a man misunderstands refusal and presses on with sex, we usually imagine that the man deserves blame: that his behavior is culpable. But radical misunderstanding (if arrived at non-culpably) would mean that the offender is innocent of bad motives, and should not be blamed. This is not how these cases usually appear, so an analysis that accounts for blameworthiness is called for.

The common sense idea that perpetrators have bad motives and are usually blameworthy is consonant with empirical data about sexual assault. There is fairly widely shared agreement among psychologists who work on sexual violence that there are two groups of characteristics that are good predictors for sexual aggression. One is hostile masculinity, the other is impersonal sexual orientation, a preference for sex without emotional attachment (Malamuth et al. 1995). Hostile masculinity, the trait that is of interest to me here, includes suspicion, distrust and an adversarial attitude to women. Hostile masculinity is associated with serious sexual assaults, but also with more minor sexual aggression, such as reacting badly to sexual refusals (Woerner et al. 2018). <8>

These considerations suggest that in many cases of sexual violation, misunderstanding refusal is only part of the story. Misunderstanding is supplemented with a hostile attitude, and those factors together explain the lack of uptake of refusal. This shows that, applied to real life cases, the radical misunderstanding view is more radical than it needs to be. Someone who completely misunderstands refusal may not be hostile, or have bad motivations of any kind. After all, they sincerely believe that the woman has not refused (and usually this is taken to entail consent). There is no uptake of refusal, because they do not see any refusal. But if we allow that there is most likely some hostility, we can dial back the level of misunderstanding that is necessary to make sense of the uptake failure.

Someone who is hostile may be in a state of *partial* misunderstanding, where although he does not fully grasp the refusal, he does not believe he has consent either. We can thus explain why perpetrators of sexual violence, including in the less serious cases, are blameworthy despite their misunderstanding.<9> So it makes sense to focus on accounts of silencing that involve partial as opposed to radical misunderstanding.

Of course, not all misunderstandings, whether full or partial, involve hostility. Take the third sort of silencing that McGowan identifies, 'recognition silencing'. In this case, the hearer thinks that the speaker's true feelings are not reflected in her refusal, and so it is not a valid refusal. The man

recognizes that there is an intention to refuse, but does not think that the intention is well formed or stable, and thinks that he knows better what will be good for the woman. This is a partial misunderstanding rather than a radical one, but does not involve hostility in the sense identified above. It is a form of benevolent sexism, rather than hostile sexism. It is, of course, misguided, but the motive that explains disregarding refusal is not itself a hostile one. This sort of misunderstanding may occur, but anecdotal evidence as well as psychologists' findings about hostility suggest that this is not the most common sort of case.

Finally, then, consider McGowan's final category, authority silencing. Authority silencing involves a failure to recognize that the speaker has the authority to refuse. As McGowan explains using an example, "Suppose, for instance, that my department chair tells me that I cannot have a professional leave, but I falsely believe that only the dean can do this. In this case, I fail to realize that the speaker (in this case, the department chair) is in a position to refuse my leave request." (2017, 45). The idea applied to sexual refusal is that the man recognizes that the woman intends to refuse, but does not believe that she has the authority to refuse, and so does not take her refusal to be successful.<10>

Authority silencing does not always involve hostility. Sometimes a mistake about authority is a simple mistake, as the mistake about whether the chair has the authority to grant leaves. However, there are two ways in which authority silencing of sexual refusal in particular involves hostility. First, the belief that women do not have the authority to refuse sexual advances is unlikely to be an innocent mistake. It is not a simple evidence based belief, but an ideological one, and it is plausibly blameworthy. Accepting that women lack authority is likely to be motivated by hostile emotion rather than by evidence.<11>

More importantly, as I shall argue in detail below, someone who takes lack of authority to be *decisive* in the sexual refusal case is blameworthy for that. That is, believing that refusal is infelicitous is one thing, but ignoring attempted (but supposedly failed) refusal is another thing. We can contrast the department chair case. If don't believe that my chair has the authority to grant me a leave, then even though I see she wants to grant my leave, her desires here are irrelevant to my behavior. I should ignore her failed authorization, and go and check with the dean, and I am not blameworthy for doing that. However, in the sexual refusal case, seeing that someone *wants* to refuse should be enough to inhibit further sexual advance – continuing is blameworthy. So the notion of authority silencing can help us to identify both the way in which there is a misunderstanding of refusal, and the way in which there is a blameworthy disregarding of the agent's autonomy.

I begin by clarifying what authority is, and what refusal is. I go on to explore four different cases of authority silencing, from obvious legal authority silencing to more complex and subtle limits to women's authority to refuse sex and sexual advances. These cases show that according to patriarchal norms, women's authority to refuse sex is fragile.

## AUTHORITY

I will start by giving a brief account of what authority is. First, authority needs to be distinguished from power. Power is simply the ability to get things done. Authority, however, is normative, it is the right to make a determination, and thereby to change the normative situation. A highway patrol officer has the authority to issue a speeding ticket, which creates new duties for the recipient. A state has the authority to make laws, thereby obligating the citizens. I have the authority to tell my babysitter not to give my kids candy, and she is then obligated not to give them candy.

Authority is not always backed up by power, even when the authority is not in dispute. If the driver of a getaway car sees a highway patrol car and simply puts his foot down, there is nothing the

highway patrol officer can do. The officer's authority is not in question, but her power is. By contrast, an armed robber may have the power to extort money from passing motorists, but he does not have the authority to do so. No-one, not even the robber himself, thinks that he has the authority to demand money, but everyone recognizes his power to do so. Thus there is a fairly clear conceptual distinction between power and authority (I'll come back to the reality, which may be less clear).

Authority, then, is a normative capacity to give others obligations. These obligations come about because of the authority, not because the other reasons point towards that course of action. In fact, if someone has an obligation that is brought about because of an authoritative determination, the obligation may not accord with the other reasons. A political authority may introduce a law against marijuana use, which is not backed by good reasons, but nonetheless, if the state is a legitimate authority that law is valid. In other words, authoritative commands have a 'because I said so' structure.<12>

This is why political authority is very hard to justify. It is not easy to see why someone would have authority over someone else regarding issues that concern that other person's self-regarding conduct and well-being. How does a state have the authority to tell me not to grow marijuana for my own personal use? However, the authority I am interested in here is much less controversial. My premise is that we have authority (to at least some extent) over our own persons. We have the authority to decide what happens to our bodies and ourselves. I have the authority to determine that I will not eat meat, for example. And it seems obvious that normal authority over oneself includes the authority to refuse sexual contact.

When someone has authority, 'because I said so' is enough to justify the relevant determination. That doesn't mean that it isn't sometimes polite or helpful to give the reasons, but it is important to contrast exercises of authority with persuasion. Imagine two different conversations that I might have, one with my babysitter and one with my co-parent, about what to do with the kids over the holidays. When talking to my babysitter, we can discuss the reasons and disagree about what would be best, but in the end, I can say, 'right, I know you disagree, but I have decided, they are going to camp.' And because I am the parent, I have the authority, and so that ends the discussion. Whereas, when talking to my co-parent, neither of us can end things, neither of us have more authority than the other, and so one of us has to persuade the other.

A good test then, for whether someone has the authority to refuse something, is the extent to which we think they must give reasons, and convince their interlocutor that their preferred option is a good idea. The more normal it seems for the reluctant party to have to explain themselves, to give reasons, the less likely it is that they have authority to refuse. As Rebecca Hanrahan and Louise Antony put it, in discussing the way that women teachers face challenges in the classroom: "The fact is that the kind of authority that is everywhere and always open to challenge is...no authority at all. Having authority may not mean never having to say you're sorry, but it must at least mean not having to do it on demand" (2005, 64).

This appeal to what actually happens – how normal it seems to give reasons – is an appeal to social reality. There is an ambiguity in the notion of 'normative capacity': are we talking about the way things should be, or the way things are? Women have the same official authority in the classroom that their male colleagues do, but students often don't see it that way, and that means that *in reality* women do not have the authority that men have. It is important to recognize that there can be situations where someone morally ought to have authority, but they do not. This takes us back to the discussion of illocutionary speech acts and sexual refusal. Some commentators worry that if there has been no refusal there has been no rape. So, we need to distinguish between what has happened morally, and what has happened as a matter of social reality. If a woman refuses sex, and she is sincere and doing her best to use the linguistic resources available to her, then morally, her

refusal is valid. But the social reality may not reflect the moral reality. So, when we say that someone does not have authority, we need to be clear whether we are talking about the moral situation or the social reality. A woman professor has the same moral (and institutional) authority as her male colleague, but she may not have the *de facto* authority.

The point here is that heteropatriarchal norms in many societies do not grant women robust authority to tell people what to do in a range of contexts. One thing that women do not have robust authority to do is make sexual refusals.<13> Women, of course, have the moral authority to refuse, but not the *de facto* authority.

This leads to the next question, which is how *de facto* authority can be gained and lost. Moral authority depends only on the moral situation. Legal authority is gained or lost through legislative action. *De facto* authority is gained or lost through social processes. I think it is worth mentioning two, though it is likely that there are more, and my rough sketch of these two is a simplification of many more complex sub-mechanisms. First, authority can be bootstrapped out of power. Ishani Maitra discusses various ways that authority can be gained (2012). (She is interested in defending the idea that pornography could have the right sort of authority to have illocutionary force, which is not an argument I am concerned with here). Maitra argues that there are various different sorts of authority, and describes how they can be acquired without legislative action. Most useful for my purposes is her idea that authority can be *licensed*. If someone acts in authoritative way and they are not challenged, they have effectively been licensed, they are accepted as an authority.

We can see how this happens in reverse, for example, to women, or to student teachers in the classroom. If their authority is not accepted, if they cannot get the class to accept their authority, they have no authority. So, authority can be bootstrapped out of power, and lack of authority can follow from powerlessness. That doesn't collapse the distinction between power and authority: the difference lies in what is socially accepted. If the mafia takes over traffic control, people may at first stop out of fear. But as it becomes accepted that the mafia are in charge of traffic, it becomes a normative issue: the mafia seem to have the right to ask people to pull over.

Another mechanism by which *de facto* authority can be gained or lost is ideology. Our narratives about who we are, what roles we suit, and so on, are of course ideological, and we can accept them even when it is not in our interests to do so. As Catharine MacKinnon and other feminists writing about pornography have argued, pornography is part of the social construction of gender and sexuality, and it normalizes and sexualizes women's submission to men. Pornography is not alone in this. A recent video essay by Jonathan McIntosh documents the ubiquity of rape casually portrayed as seduction in films.<14> Such scenes are so common that McIntosh manages to make the point by looking only at films starring Harrison Ford.

Furthermore, everyday authority is masculine coded, as Hanrahan and Antony argue: "...typically male characteristics – deep voice, physical bulk – are implicitly used as markers of authority, while female characteristics – small stature, conciliatory behavior – are thought to make someone unfit to assume a position of power." (2005, 73-74). What explains women's struggles to maintain authority in the classroom, for example, is that the social markers of authority are incompatible with femininity. The authoritative professor is tall, deep voiced, bearded, and so on. Ideology permeates the subtle ways that we apportion authority.

In sum, authority is a normative capacity, and it must be socially recognized to be effective in the world. When someone has authority in a domain, they can make a determination about what happens, and they do not have to defend it with reasons. This determination gives other agents an obligation to respect that determination.

## REFUSAL

The term 'refusal' is used in different ways, but refusal in the normative sense requires authority. If women don't have authority, then their refusals are not going to be taken seriously. As Austin points out in his account of the felicity conditions for illocutionary speech acts, authority is a necessary condition for performing certain illocutions. In order to marry two people, for example, it is crucial to have the right sort of state sanctioned authority. In order for a refusal to be a successful illocution, the speaker must have the right sort of authority.

To reinforce that point I will respond to a recent worry by Laura Caponetto (2017). Caponetto argues that seeing sexual refusal as an illocution requiring authority is problematic. She says that refusal is a "second turn illocution": it is a response to an open call (like question-answer; greeting-greeting, offer-acceptance). So, the first step is that there is a proposal, or invitation, or something similar, and the refusal is then appropriate as a response. According to Caponetto, there are two kinds of open calls: simple requests (proposals, invitations, offers) and permission requests. The former do not require authority to accept or refuse, the latter do. Caponetto argues that this leads to a dilemma: if sexual advances are proposals, no authority is required to refuse. But on the other hand, if we construe sexual advances as permission requests ("can I use your body?"), then authority is required, but the framework is sexist. Further, if there is a permission request, there is a tacit recognition of authority from the asker.

My reply to this is that this misunderstands refusal. Refusal's aptness is not limited to proposals and open calls. A sexual advance can be various things. Sometimes a sexual advance is a permission request, and I agree with Caponetto that that is not a good model, though I shall not pursue that issue here. Sometimes it is a proposal, (and I shall argue below that authority is required to refuse a proposal). However, refusal is also possible when there has been no proposal, and no permission request.

Consider the Scottish habit of breaking into singing *Auld Langsyne* in crowds. In this situation, the person next to you will expect to take your hand at some point in the song. They may, through words or gestures propose to you that you hold hands. However, they may simply assume that you will go along with it, and take your hand. Either way, you can refuse: a refusal is an appropriate move.

Sexual advances are like this. They may be a proposal, but they may also take the form of an action that the initiator hopes/expects the other to fall in with. It is often the case that in perfectly benign contexts, there is no proposal but rather an expectation that the other will fall in. In a long-standing relationship for example, this may be a reasonable way to proceed. It may also be reasonable in certain other contexts. There can be situations where 'sex is in the air', and it is not impermissible to make a sexual advance that consist of an action, a starting to have sex, rather than a verbal request. If the advance is unwelcome, the subject can say, 'no, don't do that, that is not welcome'. Telling someone to stop doing something they are doing is a sort of refusal, and it does not require the person to have invited the possibility of that response.

Let's come back to Caponetto's worries. She thinks that refusal is a special sort of second turn illocution, and that refusal only needs authority behind it if it is a permission request. I have argued that refusal makes sense even when it not invited, but the point about authority is independent of that. Is Caponetto right to say that proposals and invitations can be refused without authority? I think not.

Consider this example: I invite someone to a party at my house. They politely refuse. Unbeknownst to me, that person is under house arrest, so they do not have the legal authority to accept, and their refusal, it seems to me, is not quite felicitous.<15> We do not normally think of



the authority required to accept invitations because we take for granted that everybody has that authority over themselves, but thinking about the exceptional cases where they don't (as when they are under legal house arrest) makes clear that authority is required.

A different sort of worry about the idea of refusal is voiced, in passing, by Daniel Jacobson. He suggests that refusal is not a speech act at all: "refusing sex is not necessarily an illocutionary act - one can also refuse by physically resisting." (1995, 75). This is too broad an account of refusal: it conflates refusal and resistance. A felicitous refusal can be non-verbal, but it should not require resorting to physical resistance. Refusal is normative, it changes the *normative* situation for others. We can change the *actual* situation by fighting, by hitting, by running away. But these things are very different from refusing. Of course, refusal and resistance have the same *expressive* force - they tell the approacher that the approach is unwelcome. But it is important to keep refusal distinct from non-normative attempts to stop something from going forward.

This is not to deny that the word 'refusal' is used in looser senses. We might say that the dog is refusing to eat. All we mean is that she does not want to eat, and is not eating: we do not usually think that dogs perform authoritative illocutionary acts, though they express their desires. We also talk about refusal in cases where we really mean *attempted* refusal. We might say that a child is refusing to come out of his room. In fact, if we do not think the child has the authority to refuse that, and so we should really say that he is resisting us.

Let me sum up the important features of refusal. First, a felicitous refusal changes the normative situation. It creates a duty to desist, and it creates that duty through authority. If we focus on the moral norms, an otherwise felicitous refusal changes the moral situation even if there is no uptake: the approaching agent has a duty to desist, even if he does not realize that. If we focus on the legal and social norms, it may be that the same refusal does not succeed in creating new duties. Under a particular social order, a refusal to sit in the designated area of the bus, or to take one's hat off in the presence of a social superior, may not be permitted, and so does not have the desired normative result. The refusal is infelicitous.

When I argue, in what follows, that women do not have the authority to refuse, I mean of course, they are not granted that authority by our actual social norms. But societies are not homogenous, and acceptance of social norms varies. Perhaps the patriarchal norms I describe below are on their way out. Nevertheless, my point is that they are accepted and internalized by a sufficient number of people to be worth examining.

## THE FRAGILITY OF WOMEN'S AUTHORITY

I will argue that in societies with a broadly patriarchal structure, including the Anglophone world, women are denied robust authority to refuse sex or sexual advances in some circumstances. By a patriarchal structure, I mean that the society functions so that adherence to a certain set of rules of masculinity and femininity is enforced in formal and informal ways, and that power and authority are coded as masculine. In even a moderately patriarchal society, the social reality is that women have only a fragile authority to refuse sexual advances. In what follows I will discuss four cases where sexual refusal goes awry and argue that these cases can all be understood in terms of lack of authority.

## THE MARITAL RAPE EXCEPTION

The 'marital rape exception' refers to the inability of a wife to bring rape charges against her husband: the law does not see that as rape. Most countries in the world do not criminalize marital rape.<16> On one understanding of the legal history, English common law originally treated marriage as a property contract. In marrying a woman, a man comes to own her, and as she is his property, he can do what he likes with her. In that case, the woman does not have the authority to refuse sex. Alternatively, but with the same result, we could understand laws as being based on the feudal doctrine of coverture: on marriage, the woman's identity is subsumed under the man's, and he can no more rape his wife than he can rape himself, as Sir William Blackstone put it in 1765.<17>

It might be objected that the justification for the marital exception is not property or coverture, but prior consent. Alan Wertheimer, in his book on consent, takes it as obvious that the idea is that in getting married, the woman has consented to all future sexual relations with her husband (2003). On this interpretation, it is not that the woman's consent does not matter, it is rather that it has been given.

However, this account collapses when we focus on the fact that consent is generally revocable. In many cases of marital rape, the woman is clearly refusing. If her consent is important, why would it not matter that she is now refusing? Defenders of the consent interpretation of marital contracts may suggest that marriage entails consent to all future sexual relations *and* giving up the right to revoke that consent. But that is not consent, that is consent plus something else. If prior consent cannot be undone, it is normatively equivalent to lost authority. In the case of the marital rape exception, we have a situation where a woman does not have the legal authority to refuse sex.

The marital rape exception example also illustrates the way that authority silencing makes sense of the relationship between misunderstanding and blameworthiness. Imagine a man who genuinely thought that he did have the moral (and legal) right to have sex with his wife whenever he wanted to. We would nonetheless hope that he could see some reasons not to force sex on his wife: we can see how his behavior is morally problematic if he does. Sometimes, having a right to do something does not mean that it is blameless to do it. Consider this example from Julia Driver about a related phenomenon, what she calls the category of the suberogatory (1992). A student who has forgotten his pen in an exam asks the person next to him to borrow one. The person next to him can refuse. It is within his moral rights to do so. Yet, it is not morally perfect either, it is permissible but nonetheless blameworthy.

If a man believes he has a right to proceed with sex, he believes it is permissible for him to do so. But we can see that even if he were correct in that view, he may still be blameworthy for proceeding. Proceeding despite seeing reluctance exhibits a hostile attitude, a disregard for the woman's well-being and autonomy. The authority loss view captures the disturbing way in which the perpetrator takes harm to be irrelevant rather than non-existent. And it is consistent with what psychologists say about the hostile attitudes that tend to be present in perpetrators of sexual violation. A man who takes his right to have sex as being more important than his partner's desire not to is displaying a contemptuous and adversarial attitude.

The fact that the marital rape exception was and is so widespread reveals something deep and important about attitudes to women's authority to refuse sex. In the Anglo-American legal system, the law has changed, but, I shall argue, closely related attitudes remain prevalent. Women can lose the authority to refuse sex very easily.

## VICTIM BLAMING

One of the most common rape myths is the idea that a woman who flirts, or drinks, or is dressed in revealing clothing is ‘asking for it’, and that correlatively, a man who assaults or harasses her is not as culpable as he would have been.<18> A 2017 survey by the Fawcett society in the UK found that more than a third of people agree that a woman who dresses in a short skirt and drinks alcohol is to blame if she is sexually assaulted.<19> A recent review of the empirical work on the topic between 1990 and 2015 has similar findings. (Lennon et al. 2017). The research also shows that men tend to blame the victim more than women do. In other words, there is a popular belief, particularly among men, that dressing a certain way makes sexual aggression inevitable, or explicable, or even justifiable.

This idea is not confined to popular imagination, but appears in the law as well. Jessica Wolfendale (2016) discusses several US court cases in which judges and juries have appealed to the woman’s attire in justifying a lenient sentence. The idea that women are sometimes to blame for being assaulted may also affect the likelihood of a case coming to court in the first place. Lisa Frohmann (1991), for example, found that prosecutors were less likely to take on rape cases when a victim admitted to having had sex with the accused on a previous occasion, or having engaged in some sexual activity other than the non-consensual activity, or when she had been drinking (as well as various other ‘red flags’). These are the classic victim blaming conditions. The prosecutors Frohmann studied were making decisions on the basis of what they believed would hold up in court. In other words, they were anticipating the attitudes of the judges and juries.

It is not completely obvious what the victim blaming attitude is committed to. One possibility is that it is a pragmatic point, that given the way the world is, a woman who dresses in a certain way will be in danger, and she should know that. Regarding stranger rape, the best interpretation of apparent victim blaming is probably a pragmatic attitude: that there are risks that should not be taken, but that of course the rapist is still to blame.<20> However, there is evidence that in acquaintance rape cases, there is a stronger claim, something more like: ‘she brought it upon herself’, or ‘she deserved it’.<21>

One way to interpret the stronger claim is as the view that the assailant was so aroused that he could not control himself, and therefore has an excuse. As Wolfendale argues, we can see this as akin to a provocation defense: it seems that the argument is that men have been provoked, and so are not fully responsible. The provocation defense as it is used in law applies only to murder: the idea is that there can be some circumstances such that no reasonable person would be able to keep their cool. In such cases, there is at least a partial excuse. Wolfendale argues that the idea of provocative dress is used the same way. The background picture (which Wolfendale is arguing against) is that men have strong sexual urges, their sexuality is strong, primitive and untamable.<22> Thus women must be careful, and if they dress ‘provocatively’ they are asking for it. This shifts responsibility from the man to the woman, as Wolfendale points out, and is a troubling picture of gender relations. If that is the right picture of the way that idea of provocative dress is used in courts and in cultural discourse, it is clearly sexist, but it does not show that women lack authority.

However, we might interpret the tendency to victim blaming as an attempt at *justification* for sexual assault. An excuse accepts that there was wrongdoing but denies responsibility (or at least, denies full responsibility). By contrast, a justification denies that a wrong was done. This is congruent with the fact that perpetrators often admit that they had non-consensual sex, but deny that it was rape. Many of the most common rape myths can function as a justification: women are temptresses, women enjoy it, nice girls don’t get raped, rape isn’t very harmful, she led me on, she was drinking.

There is empirical evidence that victim blaming is used as justification rather than excuse. A 2006 study of 41 incarcerated rapists in the UK found that 51% made comments describing women

as sex objects, whose function is to be sexually available to men at all times and 44% expressed feelings of entitlement, assuming that as a man they could take what they wanted from the woman (Beech et al. 2006).<sup><23></sup> A more recent US study of men who had not been convicted of anything but admitted to acts sexual aggression had similar results, summed up by the authors as follows: “Most perpetrators endorsed several justifications, with the most strongly endorsed items being “She had gotten you sexually aroused,” “She led you on,” and “You thought she’d enjoy it once it started.” The frequency with which these items were endorsed suggests that feelings of sexual entitlement are incredibly common among perpetrators... These men have not learned that their partners’ wishes must be respected regardless of how sexually frustrated that might leave them.” (Wegner et al. 2016, 11).

If these attitudes are interpreted as justifications, we need to examine how the justification works. One possibility is that the behavior of the victim prior to the assault is taken to signal consent. For example, Wolfendale entertains the possibility that appeal to provocative dress has a justifying function, that what is going on is that the way a woman dresses can be taken to signal consent. In that case, presumably, the courts (and public opinion) judge that the man had a reasonable belief that the woman consented. Thus he was justified in pressing on. We might think the same thing about flirting and other sexual activities, and acts such as going home with someone. Perhaps the man in these situations believes that the woman has consented.

As with the marital rape exception, the idea that prior consent is being appealed to doesn’t hold up. To see this, consider again the fact that consent is revocable. Even if we could assume that by dressing a certain way, or by behaving a certain way, a woman is signaling consent, she should still be able to revoke that consent verbally. A clear refusal should override any prior consent. But that seems not to be the case, rather, certain behaviors render subsequent refusal invalid. What is it for refusal to be rendered invalid in this way? The woman no longer has the normative power to refuse. So the justification in this case is not really prior consent, but rather, lost authority.

Of course, this is a reconstruction of what may not be a well-formed theory in the minds of perpetrators and their apologists. But my story about the fragility of authority is a story about the ideology of patriarchy, and ideology works in complex and subtle ways. Ideological commitments may be un-self-aware. My aim is to uncover the entailed commitments of common practices in order to critique them. The suggestion that appeals to provocative dress are appeals to prior consent may reflect what an unreflective self-report would say. But on deeper examination that is not consistent with what the appeal is used to justify.

A closely related case is the case where a woman’s work as a sex worker is taken to make her unrapable. One way to understand that is as a loss of authority. Think about the remarks that judges sometimes make. In a 2007 case, the judge ruled that the rape of a sex worker was not actually rape, but rather ‘theft of services’. Judge Deni said that prosecuting sex worker clients “minimizes true rape cases and demeans women who are really raped.”<sup><24></sup> Judge Deni’s justification was that there had been prior consent. The victim in this case was raped at gunpoint: she was clearly attempting to refuse. Her consent or lack thereof is obviously not important, again, what is doing the real work is the idea that women like her do not have the authority to refuse sex, only the authority to ask for money for it.

Consideration of the role of provocative dress or behavior shows that what we have here is not a situation where women *never* have the authority to refuse sex. Rather, and this is culturally familiar, only ‘good girls’ have the authority to refuse sex. And one’s status as a good girl is fragile. It can be lost, not just by doing sex work, but through wearing the wrong outfit, or drinking too much, or flirting, or going some way with sexual contact. And once authority is lost, it is very hard to get back.

Furthermore, both the belief that women do not have authority to refuse sex, and willingness to proceed with sex on that basis in the face of clear reluctance, reflect hostile attitudes to women. The ideology that tells us that women lack authority is a misogynistic ideology. The men who both embrace the ideology and act on their perceived entitlements are the men who psychologists characterize as being in the grip of hostile masculinity. The authority loss view explains the way that these men are confused and mistaken, but also how they are nonetheless badly motivated and plausibly blameworthy.

To be clear, my claim is not that all instances of victim blaming can be interpreted as authority loss. My view is that some can be, and that the idea of authority loss is a useful addition to our understanding of victim blaming. For example, there are implications for education of both potential offenders and potential victims. Current education programs focus on the importance of consent, but perhaps what is needed is to stress that women always have the authority to refuse, and that they do not lose that authority through dress or other behavior. To put it another way, education programs should focus on the fact that men do not have authority over women's bodies under any circumstances.

### *HARASSMENT AND POLITENESS NORMS*

I have argued that perpetrators of sexual aggression often have a (possibly unconscious) belief, backed up by patriarchal norms, that women do not have the authority to refuse sex. This is why women's refusals are not effective. We might think that the ideological myths I have been discussing are not widely accepted. In this section I will point to another phenomenon, not as serious as non-consensual sex, but even more common, to support my argument that the fragility of women's authority to refuse sexual advances is culturally ingrained.

In the situations I discuss here, as in the previous cases of the marital rape exception and victim blaming, hostile masculinity can supplement the ideological view about women's authority, and that will tend to make the man's behavior worse. However, even men who are not in the grip of hostile masculinity may find themselves cooperating with these less catastrophic norms of limited authority for women.

The standard patriarchal norms of seduction expect that men instigate sexual contact, and women are passive. Nonetheless, on the surface it seems that those norms allow women the right to refuse sexual advances. I will argue that on closer examination it becomes clear that women's right to refuse is limited in subtle ways. This sort of harassment is not usually criminalized, and nor should it be, but it is worth examining as part of a problematic pattern: the heteronormative continuum. It is a sort of microaggression, which can add up to serious harm over time, and it echoes and reinforces more serious harms.

Here is a scenario that will be familiar to many: a woman is alone, or with another woman in a bar, pretty much anywhere in North America or Western Europe. A man sends over a drink, or offers to buy her a drink, and comes over to sit with her. She attempts refusal, politely but firmly. If she is lucky the encounter ends there, but that is rare. There is usually a period of negotiation, the man insists that he would like to get to know her, that it would be nice for both of them. She refuses again, politely, and he may stop there, or he may go on. One way the woman can end the interaction is by giving a reason, by saying, 'I'm married', or, 'I am on a date'. But if the woman insists on politely saying no without giving a reason, very often, the man reacts as if the woman has been suddenly and inexplicably rude to him.<25>

One thing that goes on in this sort of situation, (and also in more serious cases of sexual assault and date rape), is that the man takes advantage of politeness norms, to make it seem as if

refusal is rude. Women tend to be socialized to be polite and self-effacing, and it is possible to use those norms to bully women into consent. Again, many women are familiar with the regret that follows having, out of sheer unwillingness to seem rude, allowed a man to buy a drink, and then sit there politely while he bores on about himself. And that, of course, is the best case scenario.

However, I think a deeper analysis of the mechanism here is possible. Sometimes, what is going on in the bar scenario, is that the context is such that the man does not take the woman to have the authority to refuse his advances. (He might still think she has the authority to refuse sex, my point here is about her authority to refuse the interaction in the bar). Notice that what happens is the man takes the first 'no' as the start of a negotiation. If her refusal is accompanied by arguments that are not convincing to him, he presses on. He gives reasons, and expects reasons in return. It is tempting to give them – 'I'm married' / 'I'm here on a date' – those reasons are decisive and will (usually) end it. But why should the woman have to *persuade* the man not to sit with her? If the woman had robust authority here, she would not have to give justifying reasons.

Bars are sexualized places, and being in a bar, at least a certain type of bar, gives people a license to make sexually motivated approaches. Different spaces give different licenses. But the situation for women in heterosexually coded bars is very different to the situation for men, and very different to the situation for people in non-heterosexual spaces. In many gay bars, sexual approach is expected, but refusal is more likely to be accepted without objection.<26> The entitlement that heterosexual men feel to women's time is not functioning in a non-heterosexual space.

So, the point about spaces is very similar to the provocative dress point: some behavior apparently constitutes the giving up of authority to refuse sexual advances. The same used to be true of spaces other than bars. Professional work environments for example, used to be like that for women. That is no longer true of the work place. It is also not usually true of restaurants, or cinemas, or public parks. But a woman's status changes if she is alone in a bar.

I think this case can teach us something in addition to the role of venue in the risk of changed status. The fact that it *is* rude to refuse a drink, as indicated by the fact that both men and women feel that; the bar staff colludes with the man, takes his money and sends the drink over; and the fact that bystanders would rarely think anything amiss when a man walks over to a strange woman in a bar. (Contrast how bystanders might be expected to react if a man walks over to a strange woman in the street at night, or even in a public park during lunch hour). If I am right, that it really is rude (even if it shouldn't be) that lends support to my claim that women do not have the authority to refuse the interaction. Our conventional authority norms are backed up by our politeness norms, so our politeness norms are a good indicator of what our authority norms are.

There is a complication here. It seems that there are some things that I have the ultimate authority to refuse, but that it would nonetheless be rude of me to refuse. Consider again the suberogatory. A student has the right not to lend his pen to another, but we would certainly take it to be very rude if he refuses to do so. This shows us that our politeness norms do not purport to track ultimate moral authority. Rather, they track what I will call 'quotidian' authority. In other words, authority has two levels. There is ultimate authority, which is very strict: we have ultimate authority to do or refuse to do many things that it would be bad to do or refuse to do, such as refusing to lend a pen to a fellow student. Exercising ultimate authority may be socially awkward. But there is also quotidian authority, the authority that is absolutely automatic and accepted. We usually have quotidian authority to accept or refuse invitations to parties: I can say yes or no without it causing any ripples. Or even more straightforwardly, we have quotidian authority to accept or refuse a cup of tea.<27> In both cases it may be polite to give reasons *as explanations*, but there is no need to persuade, to treat the other as an equal decider in the matter.

Consider now a case where people have ultimate authority but not quotidian authority, and that is accurately indicated by our politeness norms. Imagine that you move into a new house in a

new neighborhood, and your neighbor leans over the fence and starts chatting, trying to get to know you.<28> It seems to me it would be rude to refuse to engage. But it also seems to me that although you have the ultimate moral authority not to engage, you do not have the quotidian authority to refuse to engage. Our politeness norms (and our conventional authority norms) accurately track the moral situation here: you *should* engage with your neighbor, though you do have the ultimate authority to refuse to do so. To put that in Driver's terms, it would be suberogatory, but not impermissible, for you to refuse. In this situation, the conventional authority tracks the moral authority. We do not have quotidian authority to refuse to engage with our neighbors (a little!), and that is indicated by our politeness norms.

In the case of women's authority to refuse sexual advances, our conventional norms are less morally accurate. Our conventional norms have it that women frequently lack quotidian authority to refuse sexual advances. Now we have a fuller explanation of what happens in the bar, and why it seems rude for a woman to refuse a man's attentions. In the bar scenario, there are two ways for the woman to end the interaction. She can give justifying reasons, for example, that she is married, and that will end things without conflict. But she has not asserted her authority there. Or, she can insist on asserting her authority. Because she is taken to have ultimate authority but not quotidian authority, this is rude. The encounter ends awkwardly, sometimes, depending on how much hostility the man harbors, with the man berating her for her inexplicable rudeness. That same man will very likely admit that the woman has the ultimate authority to refuse, and that is why, in the end, he walks away. But he thinks she has been rude, she has behaved badly, like the exam hall student who refuses to hand over his pen.

In sum, reflecting on our politeness norms helps us to see the complexities in the picture. The sort of (social) authority that women lack is sometimes ultimate authority, as in the sex worker case. Women who are not sex workers can lose ultimate authority too, through their dress or behavior. But even if women are acknowledged to have ultimate authority, they may lack quotidian authority. I have argued that in mundane cases of sexual harassment, women lack quotidian authority to refuse the attentions of the man.

### *AMBIVALENT CONSENT*

I have been trying to show that the notion of authority silencing is a valuable resource in the project of making sense of the silencing of sexual refusal. Sexist ideology deprives women of *de facto* authority to refuse sex in some circumstances. I have argued that this is complex, varying according to situation, location, and other social factors. When women's sexual refusal is silenced it is not usually completely silenced. The man often understands that the woman is trying to refuse, and is thus blameworthy when he presses on, even if he believes that her refusal is infelicitous.

Thinking about authority loss can also shed light on cases where there is consent, but it is ambivalent. As Ann Cahill argues, the heterosexual continuum includes some heterosex that is consensual – but the consent has not been given in the right way, it has been finagled (2016). The sex may not be rape, but it is nonetheless 'unjust sex' as Cahill puts it.

First, we can appeal to the distinction between ultimate and quotidian authority and the operation of politeness norms to explain why women sometimes feel pressured into sex. It may be that the woman recognizes that in this social order, she doesn't have quotidian authority, and so she sees that there will be an awkward struggle. She will have to assert her ultimate authority, and having to do that is often very socially disruptive, as I pointed out above. Compare again, the situation where someone does not want to talk to their neighbor. In order to avoid it, they will have to be rude. This adds an extra cost, the social disruption.

Social disruption is a particular kind of cost: it is not just, 'I will hurt his feelings'. Contrast the case where A, politely and non-coercively asks B out on a date. B will surely notice the fact that turning A down will hurt his feelings, and although that is a cost, it does not weigh against the action: it is sometimes necessary to hurt people's feelings, we all recognize that. That does not disrupt things, it is not a *transgression*. We see that it is sometimes inevitable, a necessary ill. However, we have a built-in reluctance to transgress social norms.<29> And the pressure on women to be polite is usually greater than the pressure on men. Or perhaps, the politeness norms that apply to women are stricter than the politeness norms that apply to men: the threshold for what counts as rude is lower. Either way, politeness norms are powerful enough to be mildly coercive.

I think that the pressure to be polite explains a lot of cases, but there is another way to understand the role of authority here. Our tendency to internalize norms means that it is very easy to begin to think that the conventional authority norms are accurate, and so for the woman herself to think that after a date, or a series of dates, that it *is* unreasonable to refuse sex. Effectively, she accepts that she no longer has the authority to do that.

I have described things very starkly in order to see the different conceptual possibilities clearly, but of course in these situations our perceptions are dim and muddy. It is not that the agent is usually clear headed enough to think, 'I lack authority here, so there is no point in refusing'. Rather, she might have a vague feeling that refusal is not an option, and not be able to identify why. She finds herself engaging in the argument, *negotiating*, as if she has no authority, and feeling something amiss but not being clear about what. Furthermore, it is important to us to think of ourselves as autonomous, so our own construction of the situation will tend towards an explanation in which we acted autonomously, even if we did not. And there are narratives to hand that lend support to the view that autonomous women consent to sex in these situations, that it is fun to be raunchy, that this is not being complicit in one's own oppression or objectification, but what the modern woman does.<30> All these things make it hard to give any definitive account of how things really are. My point is just that it seems plausible that thinking about authority gives us some new and useful tools for thinking about ambivalent consent as well as the silencing of refusal.

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### *Notes*

1. I am interested in rape and harassment that is structured by gender hierarchy, and so I talk about cases where the perpetrator is a man and the victim is a woman. I recognize that rape and harassment are not always structured by gender hierarchy. For simplicity I will omit the qualifications about other possible forms of rape and harassment in what follows.
2. See for example, Langton's use of this distinction in her 1993.
3. The feminist literature has focused chiefly on pornography, but other forms of entertainment are equally problematic: Hollywood movies, in which the woman's refusal is a way of flirting, and is not to be taken seriously, pop videos, which objectify women, and advertising, which often has a



background story about women's' appropriate roles. These forms of media all provide cultural scripts, and plausibly, can affect our lives in problematic ways. I do not worry about the nature of the causal mechanism here. My concern is to elucidate the nature of the effect – that fact that women's refusal goes awry – rather than the exact nature of the cause.

4. One reason for the turn towards philosophy of language is to rebut the argument that pornography is protected by principles of free speech. The point of getting into the technical details of speech act theory is to make sense of the way in which women's freedom of speech is limited. My view is that it is not so much the speech of women that is limited, but their rights.

5. A large amount of literature on silencing has focused on questions about illocution and perlocution, and the distinction between them. (e.g. Jacobson 1994, Bird 2002). One point of critique is that it is not obvious that uptake failure should entail that there was no illocution: perhaps what we have is a successful refusal, but the perlocutionary effect failed. Furthermore, there is something slightly odd, and perhaps politically misguided, about saying that a woman *did not refuse* in a case where there is uptake failure. I do not engage these issues here. My focus is on *why* there is uptake failure, on what exactly the man who does not grasp the force of a refusal is misunderstanding.

6. See also McGowan 2009. She discusses sincerity silencing further in McGowan 2014.

7. As various critics of Langton and Hornsby have argued.

8. This doesn't reduce rape to individual psychopathology, rather, it recognizes that we need to talk *both* about the societal causes and the individual causes. It is important to note that, whatever the ideological story is, it does not affect all men the same way. Most men don't rape women. So an account of the effect of sexist ideology needs to be supplemented by an account of what makes some men susceptible to it.

9. A version of this worry appears in the literature on illocutionary silencing. Daniel Jacobson 1995, Alexander Bird 2002, and Nellie Wieland 2007 all object to Langton's account that the responsibility of the man is, at the very least diminished. If the import of the word 'no' is 'yes' in this context, or if the conventional or pragmatic meaning of refusals in this context implies consent, then the man does not have the *mens rea* required for rape. So there is no rape, as Jacobson puts it. Maitra & McGowan 2010 reply that the standards for finding out about consent are very high, so blameworthiness can usually be established. Antony Duff argues the same thing in the context of legal theory (1990). However, if sexist ideology is thorough enough to make it the case that refusal is incomprehensible, it seems also to be thorough enough to obscure the duty to double check for consent. See Mason 2021 for an argument about that possibility.

10. Closely related to this is a phenomenon that might be characterized as a form of testimonial injustice. As Miranda Fricker puts it, "the dehumanizing sexual ideology is such that the man never really *bears* the woman at all—her utterance simply fails to register with his testimonial sensibility." (2007, 140.). The idea is that a woman's refusal is worthless, because she is not the sort of person who is worth listening to on this sort of topic. See also Hesni 2018.

11. We can imagine an ideological and blameworthy version of the belief that chairs lack authority to grant leave – e.g. in a system in which chairs were routinely undervalued and deans had unearned power and privilege. Of course, more needs to be said about why beliefs of this sort are blameworthy, but I will rely on it being intuitively plausible for now.

12. See Thomas Christiano's *Stanford Encyclopedia of Philosophy* article on Authority for a clear statement of that point: "The duty of the subject is grounded not in the content of the command itself but in the nature of the source issuing the command. The duty to obey is then automatically generated when the command is issued by the appropriate authority and when it has the right form and provenance. In this respect, the duty to obey is content independent or independent of the content of the particular command. One must obey because one has been commanded and not

because of the particular content of the command. One must do it because one has been told to do it.” (2013, section 1.2). Rebecca Hanrahan and Louise Antony make the same point in their account of authority (2005, 64).

13. McGowan usually talks as if authority silencing involves a mistake on the man’s part: the man mistakenly believes that the woman lacks authority. At one point though, McGowan says, “If all authority is socially constructed, then one might deny that the [...] has the requisite authority” (2017, 48).

14. McIntosh’s Pop Culture Detective series examines sexist tropes in popular media.

15. An anonymous referee points out that the agent might have the authority to accept, but not the power to go to the party without punishment. That might describe the moral situation, if her house arrest is unjust. If we assume that the house arrest is justified, then I would argue that authority to perform the speech act of acceptance is dependent on authority to attend the party.

16. See Michelle Anderson 201 for an account of the legal history. The laws in US states began to criminalize marital rape between the 1970s and the 1990s. In Scotland the marital rape exception was abolished in 1989, and in England and Wales in 1991.

17. Quoted in Anderson, op. cit.

18. The idea of rape myths was introduced by Susan Brownmiller (1975) and is designed to illuminate ideology that trivializes, normalizes, or denies the prevalence of rape.

19. The survey asked: “if a woman goes out late at night, wearing a short skirt, gets drunk and is then the victim of a sexual assault, is she totally or partly to blame?” Fawcett’s analysis reveals: 38% of all men and 34% of all women said that she is totally or partly to blame, and 14% of men aged 18-34 say she is “totally to blame”. (Taaffe 2017). Other surveys find even larger numbers, e.g. a 2019 survey commissioned by *The Independent* newspaper in the UK found that 55% of men and 41% of women believed that a woman in revealing clothes is more likely to be sexually assaulted. (Oppenheim 2019).

20. As Lindsey Kushner QC put it in summing up her judgment on a rape case: “I don’t think it’s wrong for a judge to beg women to take actions to protect themselves. That must not put responsibility on them rather than the perpetrator. How I see it is burglars are out there and nobody says burglars are OK but we do say: ‘Please don’t leave your back door open at night, take steps to protect yourselves.’” Quoted in *The Guardian* (Rawlinson 2017).

21. For a review of psychological research on victim blaming in rape cases see Gravelin et al. 2019.

22. This is Lois Pineau’s (1989) interpretation, for example.

23. Some did appear to make an excuse: 15% said that they were unable to control their sexual urges.

24. Philadelphia Municipal Court Judge Teresa Carr Deni. This case and others is discussed in a *Salon* article by Mary Elizabeth Williams (2015).

25. A Saturday Night Live sketch (Girl at a bar) riffs on the phenomenon I describe (thanks to Matt King for pointing it out to me). The frequency of this phenomenon is widely confirmed by social psychologists. See e.g. Kavanaugh (2013), a typology of sexual victimization in urban nightlife, or Graham et al (2014), a study which confirms that bystanders often encourage the aggressor. Samia Hesni makes a similar point to the point I am making here in her discussion of illocutionary frustration. She argues that failure of leave-taking (ending a conversation by using conventional signals) can indicate a lack of standing: the speaker does not have the standing to use those signals.

26. This is certainly true for women, but may be more complex for men, as varying (contested) constructions of gay male sexuality may muddy the waters of what counts as sexual harassment according to the social norms.

27. The much copied Thames Valley Police animated film explaining consent in terms of offers of cups of tea support this: we can see that as recognizing that women do not have the quotidian

authority to refuse sex the way they do to refuse tea, and the comparison is an effort to put refusing sex back on a par with refusing tea. The animation is by Emmeline May, aka Rock Star Dinosaur Pirate Princess (2015).

28. Thanks to Penelope Mackie for this example.

29. See e.g. Sripada & Stich 2007.

30. See Bauer on self-objectification (2011).

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