Dangerous Liaisons: The Pragmatics of Sexual Negotiation

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Abstract

The debate about speech acts in sexual contexts has been dominated by discussions of *consent* and *refusal*, two illocutions strictly connected to definitions of sexual assault and rape, which constitutes a crucial step in fighting male sexual violence against women. Many authors have recently claimed that this emphasis has a distorting and harmful impact on our understanding of sexual communication—for it highlights only its negative aspects (mostly how to avoid unwanted sex). Moreover, an account in terms of consent and refusal seems to presuppose a default *asymmetrical* scenario, with men actively requesting sexual activities and women passively consenting or refusing. The aim of my paper is to assess the different speech-act accounts modelling communication in sexual contexts. I will first summarize the philosophical discussion on consent and refusal in sexual contexts and underline its connections with the debate on hate speech. I will then explore the model of initiations of sex in terms of requests and requests for permission, and analyse the *asymmetry* and *benefit* objections. I will present the models in terms of invitations, gift offers, and proposals, advocated by Kukla 2018, Gardner 2018 and Caponetto 2021b for their *collaborative* nature: invitations and proposals are illocutions presenting the sexual activity as beneficial for both parties and framing sex as a joint activity. My main goal is to criticize such Collaborative Models: I will show that conceiving of initiations of sex in terms of invitations, offers and proposals does not remove but rather actually *masks* the asymmetry.

Keywords: Consent, Refusal, Speech acts, Sexual contexts, Requests, Invitations, Proposals.

1. Introduction

This paper is devoted to a particular conversational context, the context of sexual negotiation, and to the asymmetries and distortions characterising it.[1] This analysis has not only theoretical significance for the contextual dependence debate,

[1] I am interested in asymmetries and distortions that are structured by gender hierarchy, and so I will talk about sexual communication in heterosexual scenarios. Also, I will talk

Argumenta 8, 1 (2022): 137-151
ISSN 2465-2334

DOI 10.14275/2465-2334/202215.bia

but also legal and social import, and a close connection to philosophical discussions on hate speech. The label "sexual negotiation" has no romantic connotation, signalling that we are dealing with non-ideal—indeed *dangerous*—relationships.

As a matter of fact, the philosophical, legal and, generally speaking, public debate about speech acts in sexual contexts has been dominated by discussions of *consent* and *refusal*, two illocutions strictly connected to definitions of sexual assault and rape (at least as concerns the US legal system)—definitions which constitutes a crucial step in fighting male sexual violence against women. Many authors have recently claimed that the emphasis on consent and refusal may actually have a distorting and harmful impact on our understanding of sexual communication—for it highlights the negative aspects of sexual communication (mainly how to avoid undesired sexual activities), while sexual negotiation aims not only to prevent harm, but also to enhance sexual agency. Moreover, an account in terms of consent and refusal seems to presuppose a default asymmetrical scenario, with men actively *requesting* sexual activities and women passively consenting or refusing. The aim of my paper is to assess the different speech-act accounts modelling communication in sexual contexts.

The paper unfolds as follows: I will first briefly summarize the philosophical debate on consent and refusal in sexual contexts (section 2) and underline its connections with the debate on hate speech (section 3). In section 4 I will explore the model of initiations of sex in terms of requests and requests for permission, and analyse the *asymmetry* and *benefit* objections. In section 5, I will present the models in terms of invitations, gift offers, and proposals advocated by Kukla 2018, Gardner 2018 and Caponetto 2022 in virtue of their *collaborative* nature: invitations and proposals are illocutions presenting the sexual activity as beneficial for both parties and framing sex as a joint activity. My main goal is to criticize such Collaborative Models: in section 6, I will show that conceiving of initiations of sex in terms of invitations, offers and proposals does not remove, but rather actually *masks* the asymmetry. The examination of different speech-act models will help reveal key features of the inquiry on communication in sexual contexts itself, and I will make these connections explicit in the final section.

2. Consent and Refusal

When discussing communication in sexual contexts, legal scholars, philosophers and linguists focus almost exclusively on the notions of *consent* and *refusal* for their close connection to definitions of sexual assault and rape. Consent and refusal are indeed key concepts in the US legal debate, both in the so-called *No Model* and *Yes Model*. In the *No Model,* rape is defined as a man obtaining sexual intercourse with a woman who physically resisted, or verbally expressed her refusal (Estrich

about rape and sexual assault where the perpetrator is a man and the victim is a woman. I recognize that men too may be victims of sexual violence, especially queer men, or kids regardless of their sexual orientation. However, since the great majority of rape victims and survivors are women and the great majority of rapists are men, and since the definition of consent and refusal constitutes an important part of the fight against male violence against women, the debate—even when presented in terms of "sexual communication"—has a strong tendency to focus on straight sex. For simplicity, I will omit the qualifications about other kinds of scenarios. I am grateful to Bianca Cepollaro for pressing me to clarify this point.

1987).[2] An unwelcome consequence of this model is that *silence* (i.e. the absence of verbal or nonverbal refusal) equals consent. As underlined by legal scholar Michelle Anderson, it is deeply misguided to consider silence as evidence of consent: "people sometimes experience peritraumatic dissociation and paralysis when confronted with sexual aggression, which causes silence and stillness but does not suggest agreement".[3] In the *Yes Model,* rape is defined as a man obtaining sexual intercourse with a woman without her affirmative consent.[4] The *Yes Model* maintains that silence by itself does not equal consent but continues to imply that an individual may nonverbally consent: "If she doesn't say 'no', and if her silence is combined with passionate kissing, hugging, and sexual touching, it is usually sensible to infer actual willingness" (Schulhofer 1998: 272-73). The *Yes Model*, then, still relies on men's ability to infer consent from women's body language, and still contends that prior intimacy ("passionate kissing, hugging, and sexual touching") is evidence of consent. Again, this may be highly problematic, for a) men tend to overestimate the extent to which women's nonverbal behaviour is evidence of sexual intent, and b) "people substitute other intimacy for penetration in order to avoid the health risks associated with it, so prior instances of intimacy cannot be interpreted to mean agreement to penetrative acts" (Anderson 2010: 83-4). In Anderson's words "When things heat up, then, the *Yes Model* melts into the *No Model*, in which silence constitutes consent".[5]

A clear definition of consent to sexual activities is sorely needed, as indicated by the alarming statistics on US colleges. Sexual violence on campus is indeed pervasive: according to the US's largest anti-sexual violence organization, RAINN (Rape, Abuse & Incest National Network), among undergraduate students, 26.4% of females (and 6.8% of males) experience rape or sexual assault.[6]

Unsurprisingly, the definition of consent plays a pivotal role in University conduct codes. To give an example, Yale Sexual Misconduct Policies require, for any sexual activity, *affirmative consent*, which is defined as "positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent cannot be inferred merely from the absence of a 'no'. A clear 'yes', verbal or otherwise, is necessary". Moreover, consent to intercourse cannot be inferred from contextual factors such as clothing, alcohol or drug con-

[2] See Estrich 1987: 102: "'Consent' should be defined so that no means no".
[3] Anderson 2010: 83, see also Möller *et al.* 2017.
[4] See Schulhofer 1998: 283: "[Consent means] actual words or conduct indicating affirmative, freely given permission to the act of sexual penetration".
[5] Anderson 2005: 105. On the interpretation of nonverbal behaviour as evidence of sexual intent, see Anderson 2005: 117 (and works cited there): "A well-developed body of social psychology literature documents that men interpret women's body language as indicative of sexual intent when women have no such intent […] Men are more likely to misinterpret a woman's consumption of alcohol as conveying sexual intent. Men misinterpret women's friendly body language as indicative of sexual intent. When assessing interpersonal distance, eye contact, and casual touch, men rate women as more seductive and more promiscuous than women rate other women and themselves. Men are more prone to interpret flirting as indicative of sexual intent, whereas women tend to view flirting as 'relational development'. In short, the literature documents the male tendency to see female sexual consent where there is none".
[6] RAINN uses as its primary data source the National Crime Victimization Survey (NCVS), an annual study conducted by the US Justice Department: https://www.rainn.org/.

sumption, flirting or engaging in some form of intimacy: "Consent can be accurately gauged only through direct communication about the decision to engage in sexual activity".[7]

3. Consent, Refusal and Hate Speech

The debate on consent and refusal in sexual contexts holds a close connection with the debate on hate speech in philosophy of language, ethics and political philosophy. The general idea is that some sexist materials (paradigmatically pornographic materials, but also mainstream films, TV shows, romance novels and advertising) help to propagate false beliefs about men and women in sexual contexts, and to foster harmful attitudes and prejudices. According to feminist philosophers, such materials *silence* women by interfering with their ability to perform a range of speech acts, most notably sexual refusals (Langton 1993, Hornsby and Langton 1998). In particular, pornographic materials create a distorted communicative environment reinforcing dangerous gender stereotypes, such as "women always want sex; they enjoy violent, abusive sex, they fantasize about rape; rape is normal or legitimate. Hence the utterance of 'no' and similar locutions is not taken by a man to be a refusal but instead to be a part of the game".[8]

By representing women as only apparently declining sexual proposals while in fact longing for and intending to accept them, this kind of sexist material actually legitimizes men in persisting in their advances and disregarding women's refusals. Sexist stereotypes dictate, for instance, that the act of refusal fails (that is, it does not take effect as a binding refusal) if it is performed by women disregarding bigoted gender expectations—with violations such as going out alone at night, wearing short skirts or tight jeans, drinking too much, flirting or engaging in some form of sexual activity.[9]

At least four different kinds of failure of the acts of refusal of sexual advances may be identified.

1. *Uptake* failure: a man imbued with sexist stereotypes may fail to recognize the illocutionary force of the woman's refusal.

[7] https://smr.yale.edu/find-policies-information/yale-sexual-misconduct-policies-and-related-definitions. Further conduct rules state that "Consent to some sexual acts does not constitute consent to others, nor does past consent to a given act constitute present or future consent. Consent must be ongoing throughout a sexual encounter and can be revoked by any participant at any time. Consent cannot be obtained by threat, coercion, or force. Agreement under such circumstances does not constitute consent. Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated due to alcohol, drugs, or some other condition". As Michelle Anderson aptly remarks, "AIDS killed the romance of uncommunicative sex twenty years ago" (2005: 136).

[8] Bird 2002: 6; for a similar characterization, see Maitra 2004: 192: "women always want sex, but also […] they tend to be coy in response to sexual overtures […] they try not to appear promiscuous, or overly sexually forward". It is notoriously difficult to define pornography: the authors working on silencing usually refer to a subset of pornography that "presents, endorses and eroticizes a hierarchical sexual relationship": McGowan 2017: 41. On this point, see MacKinnon 1987.

[9] For beliefs and stereotypes on sexual consent in the UK, see the 2018 Report of the *End Violence against Women* Coalition: https://yougov.co.uk/topics/resources/articles-reports/2018/12/01/publics-attitudes-sexual-consent.

2. *Sincerity* failure: a man may fail to recognize that the woman is sincere in her refusal: her act is taken as a form of teasing, part of a sexual game.
3. *Authority* failure: a man may fail to realize that the woman has the requisite authority to refuse—for he falsely believes that women have no authority over their own body (over which fathers, brothers or husbands do have authority).
4. *True feelings* failure: a man may fail to recognize that the woman is refusing if he falsely believes that the (sincere and authoritative) refusal does not accurately reflect the woman's true feelings.[10]

In this sense, pornographic materials endorsing and eroticizing hierarchical sexual relationships may be considered forms of hate speech, for they ultimately contribute to legitimizing sexual assault and rape.

4. Consent and Refusal in Sexual Contexts

Many authors have recently claimed that good-quality sexual negotiation requires that we do much more with language than request, consent to, and refuse sex. Additionally, the emphasis on consent and refusal has a distorting and harmful impact on our understanding of sexual communication. In their 2018 paper in *Ethics*, Quill Kukla (writing as Rebecca Kukla) maintains that the focus on consent and refusal is too narrow. People use language not only to decide whether or not they will have sex, but also "what kind of sex [they] are going to have, involving which activities, what [they] like and don't like, what [their] limits and constraints are, and when [they] want to stop" (Kukla 2018: 70). Moreover, the focus on consent and refusal tends to emphasize the negative aspects of sexual communication (mostly how to *avoid* undesired sexual activities), while sexual negotiation aims to not only prevent harm, but also enhance sexual agency.

With these provisos in mind, we now turn to an examination of the initial moments of a sexual negotiation. Consent and refusal are replies to some illocution previously performed by the speaker.[11] But to which kind of illocution? Let us examine the main accounts of the speech acts that consent and refusal are a reply to, starting with the Request Model. We will see that the Request Model is deemed problematic for two different reasons: both requests and requests for permission

1. involve one-sided activities, to be pursued by the H alone (in the Request Model) or by the S alone (in the Request for permission Model) (the *asymmetry objection*);
2. present the activity as beneficial for the S and costly for the H (the *benefit objection*).

4.1 Requests: The Asymmetry Objection

Consent and refusal are typically interpreted as a reply to exercitive or directive illocutions or, more precisely, to acts of either *requests* or *requests of permission*. When S performs a request, S asks for an action on the *hearer*'s part, while when

[10] See McGowan 2009, and 2017: 45-50; Caponetto 2021a. For a detailed analysis, Bianchi 2021a, ch. 2.
[11] Cf. Kukla 2018 and Caponetto 2017.

S performs a request of permission, S asks for permission relative to an action on the *speaker*'s part.[12]

Many scholars find it objectionable to frame the initial moments of a sexual negotiation in terms of exercitives or directives, for they seem to presuppose a default *asymmetrical* scenario, where one individual asks for a sexual activity (or asks for permission to perform a sexual activity) and the other individual either consents or refuses to perform the sexual activity (or to let the speaker perform the sexual activity upon them). This *asymmetry objection* has been raised by, among others, Anderson (2005: 108: "Consent […] is permission to be acted upon in some way. By itself, it suggests a passive response to the actions of another"); MacKinnon (2016: 440: "Consent as a concept describes a disparate interaction between two parties: active A initiates, passive B acquiesces in or yields to A's initiatives"); and Gardner (2018: 58: "by consenting, one is placing oneself in the position of patient and the other in the position of agent, so far as what is consented to is concerned. From there, one can quickly see that the question 'was there consent?' presupposes an asymmetry of exactly the kind that […] is not to be found in good (teamwork) sex").

What's more, this asymmetrical scenario combines with a cultural aspect where, typically, it is men actively asking and women passively consenting or refusing.[13] This default scenario tends to reinforce the stereotype of the active man and the passive woman—a stereotype that is part of the ideology legal scholars and philosophers are trying to challenge.[14] As Kukla summarises the objection, "All these authors presume a default scenario in which men want sex, women want to refuse sex, and refusal is, for one reason or another, pragmatically difficult" (Kukla 2018: 78).

4.2 Requests: The Benefit Objection

The Request Model faces another problem—one connected to the pragmatic structure of requests. Not only are they attempts to commit the H to doing something, but they also frame the desired action as being to the *advantage of S* and at the cost of H.[15] A similar objection may be raised as far as requests of permission are concerned: again, the action to be performed by S is framed as beneficial for

[12] Note, however, that for Leech, requests for permission are requests for an action *by H*, "namely the verbal act of giving of permission for S" to do something (2014: 142). For a detailed analysis of requests and requests of permission, see Caponetto *forth*. Caponetto observes that there is a substantial consensus on the idea that consents and refusals are replies to requests for permission—and quotes McGowan 2009: 489: "it seems intuitively clear (and perhaps even obvious) that refusals concern permission"; Cowart 2004: 514: "The act of giving your consent revolves around willingly giving permission to someone to do something that they do not have a right to do without asking for your permission»; Dougherty 2015: 226: "Consent is "morally valid" when, all else equal, it succeeds in generating a moral permission".

[13] See McGowan 2017: 44: "This consent model is problematic since it seems to presuppose that one person (typically a male) is the initiator or proposer of sexual activity and the other person (typically a female) accepts or declines that proposal".

[14] See also Gardner 2018: 68: "[the] overwhelming emphasis on consent—might have helped to reinforce the very ideology that the attempts were supposed to be challenging".

[15] Actually, things are far more complex than that: see Caponetto *forth*. for the hybrid nature (directive and commissive) of many illocutions.

S but costly for H. In both cases (requests and requests for permission), the illocution presents the desired activity as an activity to be performed without taking into account (or without acknowledging) H's desires.

What is more, requests for permission seem to presuppose a model of woman's sexuality as a piece of *property*, owned by one part and desired by another, and used with or without the owner's permission (cf. Du Toit 2008: 151; Du Toit 2009).

5. Collaborative Models

5.1 Invitations and Offers

In light of the objections raised against the Request Model, Kukla suggests a different, more *collaborative* model of initiations of sex in terms of invitations and gift offers. The general idea is that invitations, to a greater degree than requests, enhance our sexual agency because they are *welcoming*, rather than demanding, illocutions: they create a hospitable space for the invitee to enter and present the activity to be performed as beneficial to both S and H. Moreover, invitations leave the invitee free to accept or turn down the invitation, but at the same time they do not propose a neutral choice:

> Invitations open up the possibility of sex, and not just as a neutral possibility; the invitation makes clear that the one issuing it hopes for acceptance from the invitee. They are welcoming without being demanding. Accepting them is not a favor to the one issuing the invitation, as granting a request would be. Although we are generally pleased when people agree to have sex with us, we generally don't want people to agree to sex with us as a favor to us. While a rejection may well be disappointing, the inviter has no license to feel aggrieved if the invitation is turned down (Kukla 2018: 82).[16]

Kukla suggests an additional "ethical" model, conceiving initiations of sex in terms of *gift offers*: "generous offers of sexual gifts, designed first and foremost to please one's partner rather than to directly satisfy one's own sexual desires, are a normal part of an ongoing healthy relationship" (Kukla 2018: 86). According to Kukla, offering to have sex out of generosity rather than desire is an ethical and sensible option—at least as far as long-time partners are concerned.[17]

Invitations and gift offers are more ethical initiations of sex in virtue of their pragmatic structure, that is because they are "welcoming", "hospitable" and "generous" illocutions. Indeed, when performing an invitation, the speaker presents the action to be performed by H as being to the advantage of H (or of H and S) and at a cost to S—as when S invites H, say, to dinner and commits themself to arranging things for the meal, to H's expected benefit. Similarly, when S offers H a box of chocolates, or a flower bouquet, S is presenting the action as being at

[16] Note that in an Invitation Model, consent and refusal are no longer the appropriate replies: "One can't consent to an invitation—one accepts it or turns it down" (Kukla 2018: 82).

[17] Kukla 2018: 84: "Not all sex or all parts of sex have to be enthusiastically desired by all parties in order to be ethical and worthwhile". Interestingly, this last opinion runs contrary to many sex education courses, requiring "undivided enthusiasm on everyone's part as an ethical precondition of sexual activity": Kukla 2018: 84. See, as an example, the video series "Consent 101", created by Planned Parenthood: https://www.youtube.com/watch?v=qNN3nAevQKY.

a cost to themself and, in principle, to the advantage of H: "A gift must be designed to please the recipient. It might not actually succeed in pleasing, but an offer of something that is not expected to please is not in fact a gift" (Kukla 2018: 85).

5.2 Proposals

Two objections may be raised against the Request Model:

1. the *asymmetry objection*: requests and requests for permission involve one-sided activities;
2. the *benefit objection:* requests and requests for permission present the activity as beneficial for the S and costly for the H.

The Invitation Model and the Offer Model are less problematic, at least as far as the *benefit objection* is concerned, for the cost/benefit configuration is reversed. Indeed, when inviting H to a certain activity, the speaker S presents the action to be performed by H as to the advantage (also) of H and as at a cost to S. Likewise, when offering H a certain activity, the speaker S presents the action to be performed by S as to the advantage (also) of H and at a cost to S.

However, as Caponetto has pointed out, neither the Invitation Model nor the Offer Model can overcome the *asymmetry objection*: they both seem to involve one-sided activities: "Offers (e.g. "I can lend you some money, if you wish") are promises that the speaker commits to keep on condition that the hearer accepts. […] The bringing about of the state of affairs at stake (e.g. […] lending money) requires the active contribution of one party ([…] the offerer), but not necessarily a contribution from the other" (Caponetto 2021b).[18] A similar observation goes for invitations. True, the activity to which S invites H may involve some agency on H's part, but there is still an asymmetry between the two agents: "although an invitation, once accepted, calls for action on both sides (the inviter will have to throw the party and the invitee will have to show up), the details of the event are appanage of the inviter" (Caponetto 2021b).[19] Again, this asymmetry combines with a stereotypical scenario where an active individual (typically a man) not only initiates but also sets up the details of the sexual activity, and a passive individual (typically a woman) either accepts or declines the invitation to (or the offer of) a sexual activity.

Hence, Caponetto suggests a *Proposal* Model of initiations of ("good, agency-enhancing") sex. In her model, what S proposes to H is a *joint activity*, with both S and H in charge:

> A genuine proposal is an attempt to get another person to take part in some joint, fully collaborative activity. Conceiving of sex as something initiated by a proposal means, I claim, conceiving of it as an agent-agent symmetrical activity (Caponetto 2021b).

[18] Note that Caponetto is also sceptical as far as objection 2. is concerned: according to her, just as it is intuitively wrong to say that one who approaches someone for sex is asking her to do something solely or primarily for one's own benefit; it seems utterly wrong too to say that, in making sexual advances, one is offering to do something that would please the other person but involve a cost for oneself (Caponetto, personal communication).

[19] According to Leech, an invitation "is an offer taking place in a hospitality frame; it means that S, in the role of host, offers to provide something nice for [H] in the role of guest" (Leech 2014: 180).

The activity proposed is not only symmetrical (overcoming objection 1.), but also presented by S as beneficial for both S and H (overcoming objection 2.). In this way, the Proposal Model emphasizes the *collaborative* nature of sex, that is it construes sex as an activity "that one does *with* the other person, and over which each partner has an equal say" (Caponetto 2021b).

John Gardner holds a similar opinion: the speech acts of consent and refusal belong to an individualistic framework, to an idea of sexual activity as something that an individual does not *with*, but rather *to* another individual. ("Good") sexual activity must be conceived as a joint activity or even as "teamwork": "There have to be three agents in the room at least: the me, the you and the we. The actions of the me and the you have to contribute constitutively to the actions of the we. In this situation, nothing is being done *to* anybody. What is done, including what is done constitutively by me or you, is now being done *with* somebody" (Gardner 2018: 56).

6. Collaborative Models: A Critical Assessment

Let's take stock. The Request Model faces two objections: the *asymmetry objection* (requests involve one-sided activities) and the *benefit objection* (requests present the activity as beneficial for the S and costly for the H). While requests are exercitives (or directives), namely acts designed to influence the H's behaviour for the S's benefit, regardless of, or even contrary to, H's own desires—invitations, offers and proposals have a *commissive* component, namely they are acts designed to commit the S to a certain course of action in principle for the H's benefit.[20] It is this very structure that supporters of Collaborative Models deem more appropriate to a "regulative ideal" of initiations of sex: when S initiates sex, S is suggesting an activity for the expected benefit of both S and H. In this sense they are inherently positive ("welcoming and generous") illocutions. The Invitation Model and the Offer Model, then, overcome the *benefit objection*, but not the *asymmetry objection*, for they involve one-sided activities to be performed or planned mainly by the S. As far as the asymmetry objection is concerned, the Proposal Model seems to fare better. Proposals present the suggested activity not only for the *benefit* of both S and H (overcoming the benefit objection), but also to be planned and performed by both parties together (overcoming the asymmetry objection).

In the remainder of this paper I will assess the Collaborative Models, and challenge the very idea of *inherently positive* illocutions.

6.1 The Cost Objection

The different pragmatic structure characterizing requests on the one hand, and invitations, offers and proposals on the other, is reflected in politeness theory. As requests are exercitives (or directives)—namely acts designed to influence the H's behaviour to the S's benefit—they are often conceived as *FTA*, face-threatening acts, inherently *negative* illocutions, for they are a threat to H's negative face (her

[20] Strictly speaking, also requests have a commissive dimension—i.e. they aim at directing the audience's conduct, but also commit the speaker to a future course of action: when I request you to do something, I am not only trying to make you do something, I am also committing myself to *let* you do something. I thank Laura Caponetto for pointing out this aspect.

desire to be independent and to have freedom of action and freedom from imposition). Invitations, offers and proposals, instead, have a commissive component: they are acts designed to commit the S to a certain course of action—in principle to the H's benefit. As such they are often conceived as *FEA*, face-enhancing acts, inherently *positive* illocutions, for they preserve H's positive face (her desire to be appreciated and approved of).[21]

It is obvious, however, that invitations, offers and proposals are at the same time a potential threat to H's negative face—for they menace her personal space and freedom of action. This explains why, for example, we ask for permission for performing an offer, as in

(1) May I buy you a drink?

or an invitation, as in

(2) May I invite you to dinner?

It would be odd to ask H for permission to do something to her *benefit*: with (1) and (2), S is showing awareness of the menacing aspect of his invitation or offer.

Moreover, invitations and offers are not only a threat to H's personal space and freedom of action: they are also a demonstration of *immodesty* on S's part—for S is presupposing that his invitation or his offer would be welcomed by H (cf. Leech 2014: 183). The same goes for proposals, where illocutions such as

(3) Let's start a musical duo

or

(4) Let's have sex

typically present the activity suggested as beneficial for both parties: again, such presupposition is a potential breach to the Modesty Maxim (Leech 2014: 94).

Invitations, offers and proposals, in this sense, far from being intrinsically FEA, are potentially FTA. They may become unwelcome, even *predatory* acts for they constitute i) potential impositions, intromissions, interferences with H's privacy (a threat to H's negative face) and ii) a violation of general strategies of politeness, requesting S to express or imply "meanings that associate […] an unfavourable value with what pertains to S" (Leech 2014: 90).

Indeed, abusive agents take advantage of social norms and politeness norms in order to achieve their goals. On the one hand, they exploit positive politeness norms to impose themselves, by presenting certain activities as beneficial (also) for the H. On the other, they exploit H's tendency to comply with politeness norms, according to which refusals are always dispreferred options (for they threaten the positive face of the interlocutor: cf. Brown and Levinson 1987). This is especially true for women—who, more than men, are socialized to be polite and compliant. A compelling example of the interaction between politeness norms and stereotypical gender expectations is provided by North American or Western European bars—*sexualized* places where women's polite refusals of men's offers and invitations often turn out to be problematic, as they are typically perceived as rude and frequently disregarded. When a man offers a woman a drink, or invites her to dinner, he frames offer or invitation as pleasurable *for both of them*: presenting the suggested activity as beneficial for both partners places the woman

[21] See Brown and Levinson 1987, Leech 2014. On *FEA*, see Kerbrat-Orecchioni 1997.

in the awkward position not only of avoiding an unwanted activity, but also of having to justify an "irrational" choice.[22]

Conceiving of initiations of sex in terms of invitations, offers and proposals (illocutions that present the sexual activity as beneficial for both parties) and of sex as a collaborative activity presupposes that the suggested sexual activity has not only the same *benefit* for both partners, but also an analogous *social cost* for men and women, boys and girls. However, the collectively defined value of what is being transacted (still) has an importantly different weight for the two parties, for the social expectations in the sexual domain are tenaciously gendered—in terms of reputation, emphasis on virginity or chastity, unwanted pregnancy, and exposure to sexually transmittable diseases. In this sense, conceiving of initiations of sex in terms of invitations, offers and proposals does not eliminate but actually *conceals* the asymmetry. I will return to this point in my conclusion.

6.2 Real Life or Ideal Situations?

In this concluding section, I will comment on the general project we are engaged in when discussing initiations of sex. Are Kukla, Caponetto and Gardner dealing with the illocutionary acts actually performed by individuals approaching other individuals for sex in *real life* contexts, or are they rather dealing with the illocutionary acts that should be performed by individuals willing to initiate sex in *ideal* contexts—where sex is conceived in ethical terms, as an agency-enhancing activity?

While Gardner and Caponetto are quite explicit in outlining their enterprise as *normative*, Kukla is more ambiguous. It is unclear if Kukla's Invitation Model is a descriptive account ("invitations are a more common and typically more appropriate way of initiating sex than are requests": Kukla 2018: 82) or a normative account ("typical initiations of sex—particularly of agency-enhancing, ethical, good sex—are not requests or imperatives, but rather invitations and gift offers": Kukla 2018: 80-81).[23]

[22] Elinor Mason gives a nice analysis of such interaction in her *forth*.: 12-13: "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 women 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". Note, however, that Mason frames her explanation of such interactions in terms of *lack* of authority: "If the woman had robust authority here, she would not have to give justifying reasons" (Mason *forth*.: 13). A more suitable way, I believe, would be to frame the explanation in terms of authority *undermined*, *denial* of authority, lack of authority *recognition*, or else failure to *recognize* that the speaker has the authority to refuse. The choice is not only terminological, especially as far as sexual refusals are concerned: it matters for many victims of rape and sexual assault that they *did* have the authority to refuse, even if their authority was not acknowledged, and there was a failure of some sort (see Bianchi 2021b).

[23] Similarly, at times Kukla's objections to the Request Model are almost *empirical* in character: "Contrary to the consent model, requesting sex, while it is certainly something that we sometimes do, is not really the typical way we enter into sex, at least not when things are going well. (Requests along the way once sex is initiated are more common)" (Kukla

Moreover, the normative interpretation of Kukla's project is in tension with two claims, suggesting that Kukla has in mind non-ideal situations:

1) standard invitations and sexual invitations bear important differences;
2) the use of safe words should be extended as standard practice to "traditional" sexual negotiations.

1) According to Kukla there are important differences between standard invitations and sexual invitations: "One peculiarity of sexual invitations is that, unlike standard invitations, I do not owe you regret if I turn down your invitation. Another more important peculiarity is that I can back out of my acceptance of a sexual invitation at any time, for any reason at all" (Kukla 2018: 83). An individual may revoke their acceptance of a sexual activity at any time without any *normative residue*, such as justifications, excuses or expressions of regret.[24] Moreover, unlike standard invitations, just as I do not owe someone *regret* if I turn down their sexual invitation, similarly I do not owe someone *gratitude* for being invited to have sex with them. Kukla acknowledges that this is due to the non-ideal nature of so many sexual contexts, particularly as far as women are concerned:

> in our culture showing gratitude for a sexual invitation is often unacceptably risky, especially for women, because it carries with it all sorts of extra meanings and expectations and triggers various problematic social norms […] we live in a world filled with so many inappropriate sexual invitations, and so many men who refuse to take no for an answer if they sense any possible weakness or opening, that we often have good reason to forego showing gratitude, even if it is called for in some sense (Kukla 2018: 83-84).[25]

2) Safe words are discursive tools typical of the BDSM scene, designed to create a safe framework for sex: "they offer a tool for exiting an activity cleanly and clearly, with no real room for miscommunication […] and allow people to engage in activities, explore desires, and experience pleasures that would be too risky otherwise".[26] Kukla suggests extending the use of safe words as a standard practice to traditional ("vanilla") sexual encounters, especially when young and inexperienced people are involved—in order to help explore and understand their and their partners' desires, pleasures, boundaries and fantasies: "in my view it would be fantastic if the use of safe words became standard practice, and in particular if training on the use of safe words became a completely standard part of sex education for teens" (89).

2018: 80). At other times their objections are more *ethical* in character: requests don't seem to be the ideal way to initiate sex because they frame the action to be performed by H as an action that does not take into account (or does not acknowledge) H's desires.

[24] An individual may back out of their acceptance of a sexual activity at *any time* "including moments before we begin" (83): Kukla underlines that this pattern characterizes all invitations to participate in intimate bodily activities, such as invitations to donate an organ or gametes, gestate a child, or participate in medical research.

[25] According to Kerbrat-Orecchioni 1996: 83, the situations where it is appropriate to thank others allow us to identify what, in our society, is conceived as a gift (or, more generally, as a benign action). If we do not owe someone gratitude for some action—this action cannot be conceived as a gift or an offer.

[26] Kukla 2018: 88-89. BDSM is an acronym for "Bondage, Domination, Sadism, and Masochism": "It roughly refers to any consensual sexual practice involving the intentional infliction of pain or discomfort, restriction of motion, or asymmetric power play" (73n).

I argue that this proposal results from the non-ideal nature of many (traditional) sexual contexts. In ideal, ethical situations, all parties would be attuned to the others' desires and pleasures, and responsive to discursive cues, especially if highly conventional and standard, such as the use of "no" in order to exit from an activity at any time "without having to explain themselves or accusing anyone of transgression or any other kind of wrongdoing" (88). If, in a "traditional" sexual context (that is a sexual context with no role-playing coercion or domination and submission), we need to establish safe words in order to exit from an activity without pressure, coercion, or ambiguity, it is because we are navigating in non-ideal contexts, where collaboration and sensitivity to discursive cues are assumptions that interlocutors can no longer reasonably make—and where even standard language conventions are either no longer in place or lack their usual application. Only in non-ideal (and sometimes even strategic or conflictual) contexts could discursive tools such as "no", "I don't want to", "Stop it", "I don't feel we should continue anymore", and so on, be considered ambiguous, unclear, non-literal or in need of interpretation.

7. Conclusion

The philosophical and legal debate concerning the context of sexual communication is dominated by discussions of consent and refusal, focusing massively on how to avoid harm, and to prevent unwanted sexual activities, and rape. True, this casts a negative light on sexual negotiation, and obfuscates all kinds of illocutions occurring before, during and after sex and designed to communicate desires, boundaries and conditions to start, continue, and stop sex. Communication in sexual contexts undeniably has the power to enhance our sexual agency and autonomy, and to lead us to non-abusive—and arguably better, more pleasurable—sex. While non-abusive sexual interactions indeed require the recognition of the relevance of the desires of all parties involved, the Collaborative Models, *per se*, run the risk of masking prevarication and abuse. In these models, women's sexual agency is presupposed and presented as a *given*, while in real life cases its efficacy is limited in a variety of ways, all of which refer to the man's sexual preferences, benefits, and desires. Policies and laws (and much philosophical analysis) must too often deal with non-ideal, real-life contexts, where the parties involved are not necessarily engaged in ethical undertakings, with more or less the same goals, and more or less the same price to pay for the activities performed. Presupposing otherwise has the unwelcome consequence of camouflaging the different takes on sex that men and women, boys and girls still have—by favouring "hypocritical" models of initiations of sex over realistic ones. Realistic contexts include cases where women feel significant pressure to have sex with their partners and where men actively ask for activities presented (more sincerely) as beneficial for themselves. Sometimes the benefit for women (and more generally, for disadvantaged individuals) cannot be cast in terms of pleasure or personal flourishing, but in more mundane terms as ways to be included in a group, prevent conflict with the partner, or even avoid additional violence.[27]

[27] On unjust sex vs. abusive sex, see Cahill 2016. On sexual consent in *real life* as opposed to *ideal* contexts, see Garcia 2021.

I am deeply indebted to Laura Caponetto and Bianca Cepollaro for countless discussions and comments on this and related topics.

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