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Biography: I am a PhD candidate at the University of Cambridge, working at the intersection of moral and legal philosophy. My thesis—*Essays on Consent*—is supervised by Tom Dougherty and Rae Langton, and is funded by the Arts and Humanities Research Council. Before coming to Cambridge, I studied law, economics, and philosophy (variously) at the Universities of Manchester, North Carolina, Bologna, Hamburg, Bristol, and Oxford.

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Sexual Consent and Having Sex Together

As part of its *Bodies and Embodiment* theme, this conference aims to explore “The limits of consent in regulating access to bodies.”¹ This paper explores the limits of consent in regulating *sexual* access to bodies.

Many people feel that something goes awry when we conceptualise sexual morality in terms of consent. The concern goes roughly as follows: We consent to the actions of other persons.² To the extent that we conceptualise sexual morality in terms of consent, then, we conceptualise sex as the action of another person—something that person does to us. Ideally, however, sex is not something that another person does to us. Ideally, it is something we do together. This concern has led some theorists to suggest that the concept of consent is inapposite in sexual morality, and that consent is not even a necessary condition for sex to be morally permissible. I first draw on recent work by Catharine MacKinnon, John Gardner and others to articulate this concern more precisely.³ I then suggest that the concern rests on a mistaken view of the metaphysics of sex. These theorists are correct that, ideally, sex is something we do together. But they also claim that when we have sex together, neither of us does anything *to* the other. I argue that this is a mistake. Frequently, we do things together *by* doing things *to* each other. For example, we dance together *by* touching each other. To do so permissibly, each of us requires the other’s consent. But neither of us consents to the joint action of dancing. Instead, each of us consents to individual actions that partly constitute the joint action—I consent to you touching me, and you consent to me touching you. Similarly, individuals permissibly having sex together do not consent to the sex. Instead, each consents to individual actions that partly constitute their joint action of having sex together. In the “straight sex” example that concerns Gardner, a cis-woman consents to a cis-man penetrating her vagina with his penis, and he consents to her enveloping his penis with her vagina.⁴ This analysis restores the conventional wisdom that consent is necessary but insufficient for morally permissible sex,⁵ explains why rape law is framed in terms of non-consensual penetration rather than non-consensual sex,⁶ and suggests the need for an additional criminal offence of non-consensual envelopment.⁷

¹ <http://globoethics2019.weebly.com/call-for-papers.html>.

² See Simmons (1979: 76).

³ MacKinnon (2016); Gardner (2018). See also Palmer (2017); Anderson (2005); Kukla (2018).

⁴ On “enveloping” see Dworkin (1987: 81).

⁵ See, e.g., Morgan (2003); Webber (2009).

⁶ Compare Archard (2007).

⁷ Contrast McKeever (Forthcoming); Weare (2018).

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