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Sex as a Joint Action: Toward Symmetrical Consent
Exploring John Gardner's Concept of Sex as Teamwork and Its
Implications for Sexual Consent

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Zusammenfassung

Diese Masterarbeit beleuchtet ein bislang weitgehend unbeachtetes Feld der Philosophie. Sie betrachtet Sex als eine gemeinsame Handlung und untersucht die daraus resultierenden Implikationen für das Konzept des sexuellen *consent*. Ausgangspunkt ist dabei John Gardners Artikel „The Opposite of Rape“, dessen zentrale These hinterfragt wird. Gardner argumentiert, dass die Auffassung von Sex als gemeinsame Handlung, oder wie er es bezeichnet, *teamwork*, zwangsläufig zu einer Ablehnung des Konzepts des sexuellen *consent* führt. Um dies zu widerlegen, analysiert der erste Teil der Arbeit zentrale Elemente von Gardners These, dass guter Sex *teamwork* ist, und vergleicht diese mit etablierten Theorien der gemeinsamen Handlung, darunter die von Margaret Gilbert, John Searle, David Velleman und Michael Bratman. Der zweite Teil ordnet Gardners Verständnis von sexuellem *consent* in aktuelle Debatten ein. Der dritte Teil entwickelt auf Grundlage von Gardners Kritik eine Neudefinition von sexuellem *consent*. Diese Arbeit zeigt, dass sowohl Gardners Konzept von Sex als *teamwork* als auch Theorien gemeinsamer Handlung nicht ausreichen, um Sex als gemeinsame Handlung zu erfassen. Während Gardners Ansatz theoretische Lücken aufweist, scheitern etablierte Theorien gemeinsamer Handlung daran, Spontanität, welche ein zentrales Merkmal von Sex ist, angemessen zu berücksichtigen. Dennoch bietet die Betrachtung von Sex als gemeinsame Handlung wertvolle Erkenntnisse über die Grenzen des traditionellen Verständnisses von *consent*. Anstatt Gardners Ablehnung von «consent» anzunehmen, plädiert diese Arbeit für eine Neudefinition von sexuellem *consent*. Sie schlägt ein Modell vor, das auf Symmetrie basiert und sowohl einen mentalen Zustand der Übereinstimmung als auch performative Aspekte einbezieht.

Abstract

This master's thesis explores one of philosophy's underexamined fields by adopting a novel perspective. It examines sex as a joint action and its implications for the concept of sexual consent. Drawing primarily on John Gardner's article "The Opposite of Rape", this thesis challenges his claim that conceptualizing sex as a joint action, or, as he describes it, teamwork, necessarily leads to a rejection of sexual consent. To do so, the first part analyzes key elements of Gardner's idea of good sex as teamwork and compares them to established joint action theories, including those by Margaret Gilbert, John Searle, David Velleman, and Michael Bratman. The second part situates Gardner's understanding of consent within contemporary debates on sexual consent. The third part proposes a redefinition of sexual consent based on Gardner's critique. This thesis reveals that both Gardner's idea of sex as teamwork and theories of joint action fall short of conceptualizing sex as a joint action. While Gardner's framework contains theoretical gaps, established joint action theories fail to account for spontaneity, a key aspect of sex. However, exploring sex as a joint action provides valuable insights into the limitations of the traditional understanding of consent. Rather than following Gardner's rejection of consent, this thesis argues for a redefinition of sexual consent. It proposes a model of sexual consent based on symmetry, referring to both a mental state of *being in agreement with* as well as introducing performative aspects.

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1 Preface: Let's Write About Sex

For most of the people reading this thesis, sex¹ is an important, or at least a part, of life. Some of us have a lot of it, some wish they had more, and some are not interested in it at all. But regardless of our individual experiences, it's undeniable that most of us think about sex regularly².

Given its centrality to human life, it might come as a surprise that philosophers, who seek to think about the fundamental aspects of human existence, have only recently begun to engage with the topic in a significant way³. In the Introduction to the "Routledge Handbook of Philosophy of Sex and Sexuality", Clare Chambers, Brian Earp, and Lori Watson reflect on philosophy's traditional ignorance towards sex:

'Philosophy' and 'sex' are two words that may seem an uncomfortable pair. Philosophy is lofty, abstract, contemplative, concerned with drawing clear distinctions, and often done in the isolation of one's study; at least, common caricatures paint it as such. Sex is tangible, embodied, desire-driven, resistant to categorization, and often best when done with others; at least many think so. (Chambers, Earp, and Watson 2022, 1)

Feminist thinkers might add another dimension to this analysis. Not only is sex associated with attributes that are traditionally seen as incompatible with philosophical inquiry, but the historical neglect of sex in philosophy also reflects a gendered division. Philosophy, with its focus on reason, abstraction, and the public sphere, has historically been considered a male

¹ In this paper, *sex* is defined in its broadest sense as: "...the physical activity between people that involves the sexual organs" ("SEX Definition and Meaning" 2024). This definition is particularly useful because it sets its focus on sex *between people* rather than masturbation, which, while an important part of human sexuality, is excluded in this paper. As this definition shows, this thesis does not emphasize specific genders, except for certain passages on the feminist critique of heterosexual sex. Additionally, the definition does not impose a limit on the number of people involved in sexual activity, though some aspects of joint action may not fully apply to group sex. Lastly, more "extreme" sexual practices, such as BDSM, will not be specifically discussed in this thesis.

² A study from 2012 found that men, on average, think about sex 19 times a day, while women do so about 10 times a day. Despite the binary gender perspective and the observed difference, these numbers suggest that thoughts about sex are relatively frequent, especially given that the same study found that thoughts about food occur with similar frequency (Fisher, Moore, and Pittenger 2012, 72).

³ Historically, particularly in Western philosophy, the treatment of sex has been largely negative, with many arguing that sex is dangerous or morally compromising. Nowadays, the philosophy of sex and sexuality addresses a broad range of conceptual as well as normative issues (Halwani 2023). In doing so, this field of philosophy plays a crucial role in examining power asymmetries in sexual relationships, the influence of pornography, the perpetuation of gender-based inequalities, and, as this paper does, the role and nature of sexual consent (Chambers, Earp, and Watson 2022, 2).

domain. Whereas sex, intimacy, and the body have been regarded as private matters belonging to the female sphere (Hausen 1976, 368). In this sense, writing about the philosophy of sex and sexuality inherently engages with feminist critique.

However, recognizing this is only one of many challenges that come with writing about sex. Sex and sexuality are complex topics shaped not only by patriarchal structures but also by history, politics, religion, and other social structures (Chambers, Earp, and Watson 2022, 1). Moreover, writing about sex requires an awareness of it being a highly sensitive and personal subject. It touches upon intimate experiences and personal identities, requiring philosophers to approach the topic with care, particularly in terms of language.

I argue that it is precisely these difficulties, the historical neglect, its complexity, and its sensitivity, that make thinking and writing about sex so important and interesting.

2 Introduction

The debate on sexual consent⁴ has gained significant attention in recent years. This has been especially fueled by the #MeToo movement in 2017⁵, which emerged in response to sexual abuse allegations against American film producer Harvey Weinstein (Halwani 2023). This has led not only to public discussions but also to legal reforms. Since 2018, seven European countries have introduced the so-called affirmative consent model (Hedgecoe 2022). Meaning that their laws now require each person involved in sexual activity to give their consent before and during the sexual encounter.⁶

Beyond public discourse, I have also noticed the increasing presence of the concept of consent in personal contexts. The way my friends and I talk about sex has changed in recent years. Sexual consent now plays a much larger role than it did when I was a teenager.⁷

Given this growing emphasis on consent in public discourse and personal context, it may come as a surprise that the concept itself poses serious philosophical challenges. There is a variety of valid reasons why sexual consent is more problematic than it might seem at first glance.

Tanya Palmer identifies four main reasons why sexual consent fails to distinguish sex from rape or sexual assault: (1) it neglects the affective and relational aspects of sex, (2) it's inherently asymmetrical and unequal, (3) it fails to reflect the varied and multifaceted nature of sex, and (4) it does not sufficiently consider contextual factors (Palmer 2016, 11).⁸

There are many proposed solutions to these problems. Ellie Anderson distinguishes three main approaches: (1) rejecting the concept of sexual consent entirely, (2) dethroning it as the ultimate norm while still acknowledging its role, or (3) redefining it (Anderson 2022, 2, 3).

⁴ For now, let's think of sexual consent as a general willingness to engage in sexual activity. What exactly this means will be discussed in depth throughout this thesis.

⁵ The phrase *MeToo* was first used by activist Tarana Burke in 2006 to raise awareness of the sexual abuse of African American women.

⁶ As of 2023, 14 EU countries have adopted an "only yes means yes" approach. Some states, such as Germany and Austria, follow a "no means no" model. The remaining countries define sexual assault and rape based on other criteria, such as violence or threat, rather than on the concept of consent (Schulten 2024).

⁷ Of course, my parents taught me early on that I did not have to do anything sexual that I did not want to do, but this was never explicitly framed using the term *consent*. This might be partly because I was born in Switzerland and grew up speaking Swiss German, where the translation of the English word consent (such as "Zustimmung" or "Einverständnis") is not commonly used in a sexual context. In recent years, however, people have started using the English term.

⁸ This is by no means a complete list, but it includes some of the most frequently discussed problems in the literature. Some of these issues will be further explored in this thesis.

John Gardner seems to offer yet another perspective by rejecting sexual consent as a criterion for good sex⁹, arguing that it involves an inherent asymmetry shaped by patriarchy. Instead, he proposes an alternative view of sexuality, that of good sex as *teamwork*. He writes: “Elsewhere, I have labelled the relevant kind of action-with-others ‘teamwork’. When we engage in teamwork, there is something (not everything, but something) that was done not by me, not by you but only by us together” (Gardner 2018, 51). This notion of teamwork closely resembles what is often described as “joint action” or “joint activities”.

Joint action theory explores what it means to act together, using examples such as walking together, carrying heavy objects, or dancing together. Abraham Sesshu Roth writes: “Sometimes individuals act together, and sometimes they act independently of one another. It’s a distinction that matters” (Roth 2017).

Despite the big interest in joint action theory, it is striking that so far, few philosophers have explicitly considered sex as a joint action. Given this gap, my thesis aims to explore the concept of sex as a joint action and its potential to reshape the philosophical, legal, and political understanding of sexual consent.

To do so, I propose the following research question for my master’s thesis:

What are the implications of viewing sexual activity as a joint action for the legal and moral understanding of sexual consent?

In answering this question, I will also consider the following sub-questions:

How can sexual activity be conceptualized as a joint action?

What are some of the most relevant legal and moral understandings of sexual consent?

What are the key philosophical problems of sexual consent, and what are possible solutions?

My primary goal is to redefine the concept of sexual consent in a way that aligns with the framework of sex as a joint action without leading to serious philosophical contradictions.

⁹ There is, of course, a distinction between what distinguishes sex from rape and what distinguishes good sex from other sex or rape. However, as Gardner argues, there is a relevant overlap between these questions. I will return to this point later in this thesis.

To better understand the implications of viewing sexual activity as a joint action, it is essential to consider the current state of research. Theories on joint actions, sometimes also referred to as “joint intentionality” or “shared agency”, have been and continue to be a central focus for a large and diverse group of philosophers. Some of the most influential thinkers in the field include John Searle, Michael Bratman, and Margaret Gilbert.

Similarly, the study of sexual consent is an expansive field, with contributions from philosophers, legal theorists, and feminist scholars. Catherine MacKinnon, Andrea Dworkin, Ann Cahill, and Manon Garcia are among the leading figures in this area.

However, very few have explored sex as a joint action and its implications for the concept of sexual consent. John Gardner is one of the philosophers to do so. In his 2018 journal article “The Opposite of Rape”, he argues against the concept of sexual consent by introducing the idea that good sex is, in fact, teamwork.

Several philosophers have responded directly to Gardner’s article. Some, like Karamvir Chadha in “Sexual Consent and Having Sex Together” and Tom Dougherty in “Sexual Consent without Passivity”, have been highly critical of Gardner’s conclusions.

As this short overview of the current state of research shows, while there has been a growing interest in the intersection of sex as joint action and sexual consent, there remains a need for a deeper and potentially interdisciplinary analysis of the subject.

I will use a theoretical qualitative approach based on literature analysis to answer the research question while simultaneously adopting normative stances.

The thesis is divided into three main parts. In the first two, I critically examine and clarify key concepts (“sex as a joint action” and “sexual consent”) before combining the two fields in a third part, in which I reflect on my analysis and propose ethical solutions based on normative reasoning.

In the first part, I focus on John Gardner’s article “The Opposite of Rape”, as it serves as an interesting starting point for conceptualizing sex as a joint action, even though Gardner does not explicitly frame it in these terms. After introducing his argument, I analyze key elements of his idea of good sex as teamwork (“shared agency”, “we-intentions”, and “mutual responsiveness”), and compare these with standard accounts of joint action.

In the second part, I introduce the concept of sexual consent, drawing primarily on Manon Garcia's book "The Joy of Consent", which provides a comprehensive overview of the topic. I focus on two key aspects relevant to my research. The first concerns the framework in which sexual consent is relevant, whether as a criterion for the permissibility or the quality of sex. The second concerns the content of sexual consent, whether it should be understood as an agreement, or whether alternative conceptualizations might be preferable. This analysis then serves as the foundation to discuss Gardner's view and critique of sexual consent.

Finally, in the third part, I explore the implications of conceptualizing sex as a joint action for sexual consent. First, I present two main difficulties (asymmetrical and patriarchal structure of consent) that lead Gardner to the conclusion of rejecting sexual consent altogether. I then consider two key objections to Gardner's criticism by Karamvir Chadha and Tom Dougherty, who both seem to accept Gardner's idea of sex as teamwork but disagree with his rejection of consent. Building on these discussions, I ultimately propose a redefinition of sexual consent that aligns with the framework of sex as a joint action while addressing the concerns raised by Gardner.

By structuring the thesis in this way, I aim to provide a comprehensive and nuanced exploration of the topic of sex as a joint action and the concept of sexual consent while offering a novel perspective.

3 Sex as a Joint Action

Humans are inherently social beings, which means that much of what we do in our lives is done with others.¹⁰ From drinking coffee in the morning with a significant other to collaborating with colleagues at work to dancing with friends at a party, our lives are full of shared activities. But what does it mean *to do things together* in philosophical terms?

Imagine you are sitting on a bench in a park, watching people pass by. You observe two people walking alongside each other. They walk at the same pace and in the same direction without talking to each other. You notice that one of them is your friend Noah. When she sees you, she stops while the other person continues walking alone. Noah then asks if you would like to join her on her walk since she was walking alone. You agree, and soon you and Noah are walking at the same pace, in the same direction, without much conversation.

This example illustrates a clear intuition about the difference between two people walking separately but side by side and two people walking together. Both situations, the one where you observe Noah and the stranger and the one where you walk with Noah, look almost identical from an outside perspective: two people walking side by side at the same pace and in the same direction without talking to each other. The similarity is such that, at first glance, you might assume Noah is not walking alone but with the stranger. You only realize this is not the case when Noah invites you to join her and explains that she was walking on her own. Her explanation already indicates that the difference between these two situations lies not only in the observable activity itself but in something more profound.

This question of the distinction between mere parallel action and genuine joint action lies at the heart of philosophical theories concerning joint action, shared agency, and collective intentionality.¹¹ Philosophers have examined joint action in a variety of contexts, from simple activities like the previously mentioned walking together to more complex phenomena such

¹⁰ Of course, individuals have different levels of desire for time with others. However, studies show that social isolation has serious effects on both mental and physical health. It can even significantly shorten our lifespan (Hawkey and Capitanio 2015, 3).

¹¹ These concepts are closely related but emphasize different aspects of acting together. For the purpose of this thesis, I will not explore their distinctions in detail, as they are not central to my research question. Unless stated otherwise, I will use the term “joint action theory” synonymously with related concepts, as it captures the overall relevant aspect of acting together in a joint way.

as musical performances and even political movements. However, one important domain of life has been overlooked in this framework: sexual activity.

Excluding masturbation, which is clearly not a joint action, aren't we intuitively drawn to say that two or more people have sex *together*? Referring to the example of walking together, how would we interpret sex in this context? In my example of walking together, the individuals perform the exact same activity at the same time (both walking next to each other in the same direction at the same pace and so on). However, this is not the case for all joint actions.

To illustrate this, imagine that while Noah and I are walking together, she starts whistling her favorite song. I do not join in because I am unable to whistle. Even though we are now not performing the exact same activities, we would still say that we are walking together. One might object that Noah's whistling does not affect our walking together and is therefore irrelevant to the assessment of our shared activity. But this objection loses significance if we modify the example: suppose that while Noah whistles, I sing along. Now, not only are we walking together, but we are also making some sort of music together. This example shows that doing something together might involve completely different activities.

The same reasoning applies to thinking about sex as a joint action. Sexual activity often involves different actions being performed by each person (one person might be kissing their partner's neck while the other is caressing their partner's genitalia). Despite these differences in activity, we wouldn't describe this as two people having sex alone next to each other.¹² Rather, we would say they are engaging in sex *together*. This leads us to consider whether sex, much like walking together or making music together, can be understood as a joint action.

In the following section, I will explore this consideration in detail by critically analyzing John Gardner's article "The Opposite of Rape". While Gardner touches upon the idea that sex can be understood as a form of teamwork or joint action, he does not provide a fully developed theoretical framework for understanding sexual activities in these terms. This is precisely where my analysis begins.

¹² Of course, such activities can be imagined as part of specific sexual preferences, but I argue that this is not what most people have in mind when they think about sexual activity with one or more partners.

3.1 “Sex as Teamwork” – Gardner’s Approach

In his article “The Opposite of Rape”, legal philosopher John Gardner introduces his idea of sex as teamwork. While his broader argument and critique of sexual consent will be discussed in later chapters, this section focuses specifically on his conceptualization of sex as a joint action.

At the core of Gardner’s argument lies the idea that good sex¹³ is what he calls “teamwork”. He elsewhere describes teamwork in a non-sexual context as “...intentional co-ordination, also known as co-operation, [or] concerted action...” (Gardner 2002, 7). This definition highlights several key aspects of teamwork that are relevant to his argument.

First and foremost, Gardner emphasizes that teamwork is a concerted or joint action. Meaning that it is something done together. While seemingly trivial at first glance, his point is that teamwork does not entail multiple individuals performing the same or similar activities independently but doing something together. In a sexual context, this means that the participants are not simply *doing something to each other*, such as A kissing B’s neck or B caressing A’s genitalia, but they *do something together*, as in they have sex together. Gardner writes in his abstract: “Here my emphasis is on the idea that good sex is a joint activity, something done together” (Gardner 2018, 48).

In this sense, individuals do not merely act as separate agents, the “me” and the “you” but instead act as a collective “we”. Gardner writes: “The actions of the me and the you have to contribute constitutively to the actions of the we” (Gardner 2018, 56).

Additionally, Gardner argues that teamwork is characterized by intentionality. Participants of the team do not only act together but they act intentionally. This means that teamwork is not a reflex or a coincidence but something that is done on purpose or rather with intention. Gardner identifies two levels of intention that are crucial for teamwork:

Acting with mere commonality of purpose already requires the intentions of each participant to converge on a common goal while being ready to adjust to the adjusting contributions to that common goal of other participants. But for teamwork, we need

¹³ I will further elaborate on Gardner’s concept of good sex in the second part of this thesis. For now, this distinction is not crucial, which is why I may use “good sex” and “sex” interchangeably.

each participant to have a further intention on top of all that, namely the intention that *the team* be the one to achieve the common goal. (Gardner 2018, 53)

As this quote illustrates, the first intention involves sharing a common goal or purpose. In sex, Gardner argues, this goal is typically not singular, but the sex itself is often a key part of the involved individual's shared goal. He writes: "In good sex, the sex itself is normally at least part, if not the whole, of the collaborators' common goal" (Gardner 2018, 52, 53).

Additionally, Gardner argues that teamwork involves a second level of intention, which is the intention for the team to achieve a common goal *together*. What Gardner calls "team intention" is not merely one that all participants have individually, but one that they share *jointly*. In this sense, this intention is infinitely reflexive. Gardner describes it as follows:

Each intends that they do it together, that it be a joint pursuit and not just a pursuit in common, that the pleasure and satisfaction be achieved by each having the like intention that the pleasure and satisfaction be achieved by each having the like intention that the pleasure and satisfaction be achieved by each having the like intention... and so on. (Gardner 2018, 54)

Gardner suggests that this structure of doing something as a team contributes to making good sex symmetrical. In the sense that even though the specific actions of the participants may differ, the joint intention remains the same (Gardner 2018, 55).

Beyond shared intentionality, Gardner also highlights that good sex is spontaneous, wherein the participants act in high and mutual responsiveness (Gardner 2018, 53). While it remains unclear whether these elements are essential to teamwork in general or are simply his observations about sexual interactions, they play a crucial role in his critique of sexual consent, which will be explored later.

In conclusion, this overview of Gardner's argument that good sex is teamwork can be interpreted as a reference to the idea of sex as a joint action, although the author himself does not concretely reference any relevant theories or concepts. To further investigate this proposition, the next section will analyze certain key aspects of his argument in relation to established philosophical theories of joint action.

3.1.1 Shared Agency – Gilbert's Approach

In John Gardner's "The Opposite of Rape", one of his central ideas seems to be that sex as teamwork involves a kind of shared agency. He suggests that good sex requires not just two independent agents but a "collective agent", or a "plural subject", writing: "There have to be three agents in the room at least: the me, the you and the we" (Gardner 2018, 56). This notion can be further explored through Margaret Gilbert's influential theory of shared agency, as developed in her 1990 article "Walking Together: A Paradigmatic Social Phenomenon". Gilbert's framework offers valuable insights into Gardner's concept of sex as teamwork while also revealing critical differences that suggest why her theory may not fully align with Gardner's perspective.

As the title suggests, Gilbert's article uses the example of walking together to explain joint actions. While this activity may seem simple, Gilbert argues that it perfectly illustrates key aspects of acting together, making it an ideal paradigm for understanding joint action (Gilbert 1990, 1).

Gilbert claims that when two or more individuals walk together, they form what she calls a "plural subject". The participants in this joint action are not merely individuals acting in parallel. Instead, they constitute a new entity, a plural subject. This plural subject functions as a single entity composed of multiple individuals who are directed toward achieving a specific, shared goal, which must be jointly accepted (Gilbert 1990, 7).

Plural subjects are formed through what Gilbert refers to as the "pool of will". This concept captures how individuals offer their individual wills to a collective pool dedicated to achieving a shared goal. Gilbert explains:

When a goal has a plural subject, each of a number of persons (two or more) has, in effect, offered his will to be part of a pool of wills which is dedicated, as one, to that goal. [...] Thus, what is achieved is a binding together of a set of individual wills so as to constitute a single, 'plural will' dedicated to a particular goal. (Gilbert 1990, 7)

Through this process, a plural will is created, which then serves as the foundation of the plural subject. The individual wills of participants are bound together, and the group now acts with a single collective will directed to a specific goal (Gilbert 1990, 8).

The pooling of wills creates a joint commitment, which in turn generates mutual obligations and entitlements among the participants. Gilbert writes: “The character of each one’s commitment is then as follows: no one can release himself from the commitment; each is obligated to all the others for performance; each is (thus) entitled to performance from the rest” (Gilbert 1990, 7, 8).

For example, in the context of walking together, Gilbert explains: “As long as people are out on a walk together, they will understand that each has an *obligation* to do what he or she can to achieve the relevant goal. Moreover, each one is *entitled* to rebuke the other for failure to fulfill this obligation” (Gilbert 1990, 6).

In Gilbert’s theory of plural subjects, individuals are therefore not only working towards a joint goal, but they are also bound by mutual commitments that enforce their roles in achieving that specific goal.

As this short overview of Gilbert’s theory of shared agency demonstrates, there are significant overlaps between her theory and Gardner’s concept of sex as teamwork. Both theories emphasize that in acting together, there are not merely independent agents, but rather the participants create a new entity. Gardner argues that in good sex there are not just the “me” and the “you” but also a third shared agent, the “we” (Gardner 2018, 56). Referring to teamwork in general, Gardner further describes this phenomenon in his article “Reasons for Teamwork”:

When we speak of what we achieve or fail to achieve by this team effort the word ‘we’ refers to the team members *jointly*, not merely in common. Each makes his or her effort (in common with the others) and the product is a further effort made by a distinct agent, the team. The team, if you like, is something more than, or other than, the sum of its parts. (Gardner 2002, 10)

Gardner and Gilbert also align in their focus on shared goals. In sex as teamwork, Gardner describes how sexual partners share a specific common goal. However, he clarifies that most of the time, this common goal is the sex itself (Gardner 2018, 52, 53). This parallels Gilbert’s example of walking together, where she writes: “...each party has made it clear to the other that he is willing to *join forces* with the other in accepting the goal that they walk in one another’s company” (Gilbert 1990, 7).

Despite these relevant overlaps, there are critical differences between Gilbert's and Gardner's theories. One major distinction lies in the mechanisms by which joint actions are formed. Gilbert's pool of will emphasizes the merging of individual wills into a collective entity. Gardner, on the other hand, focuses on joint intentions as the basis for teamwork. From the analyzed literature, it remains unclear whether "wills" and "intentions" function as synonymous concepts. However, as I will show in the next chapter, Gardner argues that joint intentions are a specific type of intention that cannot be reduced to a mere sum of individual wills or intentions.

Another significant distinction between the two approaches is that for Gilbert, joint action is fundamentally grounded in joint commitments, which create mutual obligations and entitlements. Participants of a joint action are therefore bound to perform their roles and are entitled to expect others to fulfill their obligations. In contrast, Gardner emphasizes spontaneity and mutual responsiveness as essential features of good sex (Gardner 2002, 53).

Obligations and entitlements not only seem incompatible with Gardner's vision of good sex,¹⁴ since he describes sex as highly spontaneous and flexible, but they also likely contradict our intuitions about sex. Joint commitments, especially when they involve obligations and entitlements, seem out of place when describing sexual encounters. Such an idea would be quite harmful, as it would suggest that sex or specific sexual activities are, on the one hand, obligations that one must fulfill and, on the other hand, something to which one is entitled. This would imply that sex is not defined by its voluntariness. Individuals would be required to follow through with sexual activities without the possibility of ending them at will, as they would owe it to the other person. Rather than endorsing such a harmful view of sex, we should ensure that sex in general and specific sexual activities can change or end at any time.

In conclusion, while there are relevant overlaps between Gilbert's theory of plural subjects and Gardner's idea of sex as teamwork, key differences, particularly regarding the role of commitments, render her framework incompatible with Gardner's vision. Gilbert's emphasis

¹⁴ As I will show later in my discussion of Gardner's critique of sexual consent, Gilbert's framework introduces precisely the kind of structure that Gardner seeks to avoid. Interestingly, while Gilbert's ideas could serve as the foundation for a traditional account of sexual consent, in her article "Agreements, Coercion, and Obligation", she appears to argue against the concept of sexual consent altogether, suggesting that it fails to adequately distinguish sex from rape. She writes: "Surely the judgement of rape should focus on the presence and influence of coercion, not on whether there was acquiescence or some type of agreement" (Gilbert 1993, 703).

on joint commitment may be better suited for traditional accounts of joint actions but it conflicts with the spontaneity that Gardner associates with good sex. However, her insight into the creation of a plural subject provides a useful starting point for exploring Gardner's idea of sex as a joint action.

3.1.2 We-Intentions – Searle's Approach

While there are relevant overlaps in their idea of shared agency, Margaret Gilbert's theory of joint action does not fully satisfy as the theoretical foundation for John Gardner's concept of sex as teamwork.

Therefore, turning to another key aspect of Gardner's approach may be useful. In his concept of sex as teamwork, he highlights the importance of participants acting as a team with a joint intention toward a specific goal. He writes: "...for there to be a team effort there must be a team intention – not merely an intention that all have in common, but an intention that all have jointly..." (Gardner 2018, 54).

This idea of a joint intention closely aligns with philosophical discussions of "shared intentions" found in the broader literature on joint action. To further explore this concept, it is useful to turn to John Searle's 1990 article "Collective Intentions and Actions", where he introduces his theory of, we-intentions. Searle's framework offers important insight into Gardner's view of sex as teamwork while also revealing significant limitations.

In "Collective Intentions and Actions", Searle examines an intuition he holds about collective behavior. He writes: "The intuition is: Collective intentional behavior is a primitive phenomenon that cannot be analyzed as just the summation of individual intentional behavior; and collective intentions [...] are also primitive phenomena and cannot be analyzed in terms of individual intentions..." (Searle 1990, 401).

Searle illustrates this difference between collective intentional behavior and individual intentional behavior with the help of an example. Wherein intentional behavior is broadly understood as goal-oriented behavior in its widest sense.¹⁵ Imagine different individuals sitting

¹⁵ I will further examine Searle's exact definition of intention in the next chapter, as it is not relevant to the point I am making here.

in a park. Suddenly, it starts raining, and each independently runs to a shelter. This is not a case of joint action or, as Searle calls it, “collective intentional behavior”. However, if the same individuals were part of a choreographed dance performance in which running to a shelter was planned, their behavior would clearly constitute a collective intentional behavior (Searle 1990, 402, 403).

The key difference between the two cases, according to Searle, is that in the first scenario, each individual’s intention is independent and does not reference other individuals. In the second scenario, however, the intentions are inherently cooperative and interdependent (Searle 1990, 403). This distinction leads Searle to introduce the concept of “we-intentions”.

We-intentions, according to Searle, are a form of collective intentionality that cannot be reduced to individual intentions. He writes: “The reason that we-intentions cannot be reduced to I-intentions [...] can be stated quite generally. The notion of we-intention, of collective intentionality, implies the notion of *cooperation*” (Searle 1990, 406). In other words, cooperation is an essential element of we-intentions (collective intentionality), distinguishing them from I-intentions (individual intentionality).

Searle explains that two or more individuals can share the same goal, meaning they can have the same I-intention, but this does not necessarily mean they have a collective intentionality, as they may lack an intention to cooperate in achieving that goal (Searle 1990, 406). He illustrates this distinction by comparing two examples. In the first, he considers a group of businessmen who all believe they can best help humanity by pursuing their own interests. As a result, each individual forms the I-intention to contribute to helping humanity without referencing others. Although they all share the same goal and, therefore, the same I-intention, they do not intend to cooperate to achieve it. Therefore, they do not form a we-intention and their behavior is not a case of collective intentional behavior (Searle 1990, 404, 405).

In contrast, Searle describes a scenario in which a member of a softball team loses a wallet. The other team members all want to help find it. They share the intention of reaching the goal of finding the wallet. However, unlike the businessmen, they also intend to cooperate in achieving this goal. Even if they decide that the most efficient way to search is for each person to cover a different area, resulting in them having different I-intentions, they are still

cooperating. Meaning that they still have a we-intention, which refers to them finding the wallet through cooperation (Searle 1990, 405).

At the same time, Searle explicitly distances himself from certain philosophical theories that suggest collective behavior is grounded in a group mind or collective unconscious. He insists: "...society consists entirely of individuals, there cannot be a group mind or group consciousness. All consciousness is in individual minds, in individual brains" (Searle 1990, 406).

Additionally, Searle highlights that collective intentionality presupposes a certain background. He writes: "Collective intentionality presupposes a Background sense of the other as a candidate for cooperative agency; that is, it presupposes a sense of others as more than mere conscious agents, indeed as actual or potential members of a cooperative activity" (Searle 1990, 414).

As this brief overview of Searle's theory of collective behavior shows, there are significant overlaps between Searle's "we-intentions" and Gardner's "joint intentions" in his concept of teamwork. Although Gardner introduces two levels of joint intentions, one referring to a common goal and the other to achieving that goal *as a team*, whereas Searle only emphasizes we-intentions, Searle's emphasis on cooperation as the main element of we-intentions suggests that we-intentions are, in fact, equivalent to what Gardner calls "team intentions".

Both frameworks emphasize that in joint action, individuals must intend to reach a goal together in a cooperative manner. However, it is important to note that it remains unclear whether "doing things together" in Gardner's framework necessarily implies doing them *cooperatively*. While Gardner acknowledges the relevance of cooperation to teamwork, he does not elaborate on how cooperation functions within his model (Gardner 2002, 10).

Both emphasize that there is a difference between individual actions and collective behavior. And both argue that this difference lies in the type of intentions involved. Searle, like Gardner, argues that in joint action, the intentions are shared jointly and that these intentions are not reducible in the sense that they are just the sum of individual intentions.

Additionally, Searle's argument that collective intentionality requires a specific background could possibly be integrated into Gardner's theory. Gardner implicitly acknowledges this background by suggesting that good sex requires participants to see each other as collaborators in a joint activity, rather than mere objects of gratification.

Despite these overlaps, there are also critical differences that render Searle's theory incompatible with Gardner's concept of sex as teamwork. The most significant issue lies in Searle's explicit rejection of the concept of a group mind or a shared agent, which is foundational to Gardner's theory. Gardner's use of a plural subject is inconsistent with Searle's insistence that all consciousness resides in individual minds. Searle explicitly states: "One tradition is willing to talk about group minds, the collective unconscious, and so on. I find this talk at best mysterious and at worst incoherent" (Searle 1990, 404). This contradiction makes it impossible for Searle's framework to fully support Gardner's idea of sex as teamwork.

In conclusion, while Searle's theory of we-intentions provides valuable insights into Gardner's "joint intentions" and highlights the role of cooperation, it ultimately conflicts with Gardner's concept of teamwork. The contradiction lies in Searle's rejection of shared agency, which is foundational to Gardner's "plural subject". Therefore, in the next chapter, I will explore an alternative theory that attempts to reconcile Searle's and Gilbert's theories, offering a potentially more fitting theoretical framework to Gardner's idea of sex as teamwork.

3.1.3 Sharing Intentions – Velleman's Approach

Since both Margaret Gilbert's and John Searle's theories of joint action overlap in relevant ways with John Gardner's idea of sex as teamwork, it is worth exploring an approach that attempts to reconcile these seemingly contradictory theories. David Velleman's 1997 article, "How to Share an Intention", provides such an attempt. Examining Velleman's approach may also help address gaps in Gardner's account that remain unexplored.

In "How to Share an Intention", Velleman investigates the philosophical challenges of forming and maintaining genuinely shared intentions among individuals. He criticizes existing accounts of shared intentions, including those of Michael Bratman, John Searle, and others, for failing to provide an adequate explanation of how intentions can be jointly held by multiple agents without appealing to a collective or plural subject. To address this issue, Velleman combines Gilbert's concept of the "pool of wills" with Searle's definition of intention as a mental representation.

Velleman agrees with Searle's understanding of intentions as self-referential mental states. According to Searle, an intention is a mental representation that motivates behavior by representing itself as causing that behavior. Velleman finds this definition useful for describing the discretionary nature of intentions, which he sees as central to shared agency. He writes:

Searle's theory of intention is appropriate to the task because it picks out the features that make intention an exercise of discretion, which is what seems so difficult to share. According to Searle, an effective intention is a mental representation that causes behavior by representing itself as causing it. (Velleman 1997, 36)

However, while accepting Searle's definition of intention, Velleman criticizes Searle for failing to explain how intentions can genuinely be shared. This is where Velleman turns to Gilbert's concept of the "pool of wills". For Velleman, Gilbert's framework provides a useful model for understanding how distinct individual wills can be unified into a single shared representation. He writes: "This joining of intentions occurs when two spoken decisions, each of which is logically and casually conditional on the other, combine to form one spoken decision in which the conditions have been discharged" (Velleman 1997, 47).

To illustrate, Velleman uses the example of two people agreeing to lift a sofa together. One person might say, "I'll lift the sofa if you will", and the other responds, "I will". This exchange, according to Velleman, forms a joint intention because it involves a shared exercise of discretion over a single issue (Velleman 1997, 48).

While Velleman's theory provides valuable insights into how shared intentions can be formed without resorting to the notion of plural subject, it also reveals key tensions with Gardner's idea of sex as teamwork. Gardner's concept relies heavily on the idea of a plural subject, an idea that Velleman explicitly resists. Velleman even suggests that Gilbert's notion of the plural subject may be nothing more than a convenient metaphor, writing: "The possibility therefore remains that Gilbert, too, is using talk of a plural subject as a mere *façon de parler*, a convenient way of summarizing facts about a collection of subjects who never actually mend" (Velleman 1997, 31). This position directly conflicts with Gardner's reliance on the plural subject, which he describes as central to teamwork (Gardner 2018, 56). Velleman's rejection of a plural subject creates a significant obstacle to using Velleman's framework as a theoretical foundation for Gardner's account.

Moreover, while Gardner may agree with Velleman's interpretation of Searle's definition of intentions as representations, it is unclear whether he would accept Gilbert's "pooling of will". This is so because, in Gilbert's theory, the pooling of wills is precisely how joint commitment is created, something that, as I have already discussed, is in tension with Gardner's emphasis on the spontaneity and flexibility of sex.

Finally, Velleman's focus on spoken or explicitly articulated intentions also clashes with Gardner's idea of sex as teamwork. Velleman insists: "In order to be jointly held, this representation will have to be public. That is, it will have to be an utterance, inscription, or depiction of some kind" (Velleman 1997, 38). As I will explain later in this thesis, this emphasis on explicit communication is reminiscent of performative consent, a concept Gardner criticizes. He writes: "I have already made clear that I regard this view about the invalidity of consent or (performative) agreement in sexual matters as an excessive restriction on sexual freedom" (Gardner 2018, 66).

In conclusion, while Velleman's theory offers a compelling way to reconcile aspects of Searle's and Gilbert's accounts of joint action, it ultimately fails to provide a suitable theoretical foundation for Gardner's idea of sex as teamwork. Velleman's rejection of plural subjects and his reliance on explicit communication are at odds with Gardner's vision of sex as a spontaneous and flexible act of teamwork. Nevertheless, Velleman's work highlights a gap in Gardner's theory regarding how intentions are genuinely shared. It remains unclear whether some of these aspects of Velleman's theory might still apply to Gardner's idea of sex as a joint action.

3.1.4 Mutual Responsiveness – Bratman's Approach

As I have shown, while David Velleman's theory resolves certain contradictions between Margaret Gilbert's and John Searle's account of joint action, it still does not resolve them in John Gardner's idea of sex as teamwork. This is why, in this chapter, I focus on another key feature of Gardner's theory, to further evaluate if this leads to a suitable theoretical background. Gardner writes: "...for such good sex is characterized by an ongoing like-mindedness and mutual responsiveness, of which teamwork is the ideal" (Gardner 2018, 66).

This emphasis on mutual responsiveness invites further exploration through Michael Bratman's joint action theory, as proposed in his 1992 article "Shared Cooperative Activity".

Bratman identifies three key criteria for joint action, or what he calls "shared cooperative activities" (SCA): (i) mutual responsiveness, meaning that participants are responsive to one another's intentions and actions; (ii) commitment to the joint activity, meaning that participants are committed to pursuing the joint activity as well as mutual responsiveness; and (iii) commitment to mutual support, meaning that participants are prepared to help one another fulfill their roles in the joint activity (Bratman 1992, 328).

While Bratman generally considers the first criterion straightforward, he emphasizes that it encompasses responsiveness both to intentions and to actions. Therefore, this criterion is twofold, as it concerns both an attitude and an action (Bratman 1992, 337).

The second criterion, the commitment to the joint activity, underscores Bratman's understanding of intentions as closely tied to planning. He writes: "But, as I have argued elsewhere, our conception of intention also significantly involves our conception of the roles of future-directed intentions as elements of partial plans" (Bratman 1992, 330). For Bratman, joint action requires participants not only to intend the joint activity but also to coordinate through what he calls the "meshing of subplans". He explains: "This suggests that in SCA each agent does not just intend that the group perform the [...] joint action. Rather, each agent intends as well that the group perform this joint action in accordance with subplans [...] that mesh" (Bratman 1992, 332).

Bratman illustrates this with the example of two people intending to paint a house together. Imagine one person wanting to paint it red and the other blue, with neither of them willing to compromise. Even if they both end up painting the house (one red and the other blue), this does not qualify as a shared cooperative activity because their subplans (painting the house red vs. painting the house blue) are incompatible. In Bratman's terms, the subplans fail to mesh (Bratman 1992, 331, 332).

Furthermore, Bratman insists that participants must be not coerced and have common knowledge of all these factors. He summarizes these conditions as follows: "SCA involves appropriately interlocking and reflexive systems of mutually uncoerced intentions concerning the joint activity" (Bratman 1992, 336).

The final criterion, commitment to mutual support, requires that participants actively support one another in the joint activity. Bratman explains: “For our J-ing to be a SCA there must be at least some cooperatively relevant circumstance in which I would be prepared to provide the necessary help” (Bratman 1992, 337).

As this short overview of Bratman’s theory of shared cooperative activity shows, there are clear overlaps with Gardner’s idea of sex as teamwork, particularly in their shared focus on mutual responsiveness. For both theorists, mutual responsiveness is central to understanding joint action. While Bratman emphasizes responsiveness to both intentions and actions, Gardner leans more toward responsiveness to actions. Gardner writes: “...the participants are highly responsive at every point to each other’s initiatives, then to each other’s response to those initiatives and so on” (Gardner 2018, 53).

However, while this difference in emphasis is not irreconcilable, there are deeper tensions between their approaches that make Bratman’s theory unsuitable as the theoretical foundation for Gardner’s view of sex as teamwork. The primary issue lies in Bratman’s focus on plans. Like Margaret Gilbert, Bratman views commitment as a central element of joint action, though his notion of commitment involves the coherence and interdependence of future-directed plans.

Gardner, by contrast, emphasizes spontaneity as a defining characteristic of good sex. He argues that sex as teamwork resembles jazz improvisation rather than a carefully planned orchestral performance. In jazz improvisation, Gardner explains, participants spontaneously respond to one another in the moment, drawing on a repertoire of possibilities rather than adhering to premeditated plans. He writes:

In the context of heterosexual penetrative sex, for example, it is the male and the female genitalia that are the principal instruments [...] and the musical repertoire, if you like, is the indefinite range of ways in which these instruments can be moved in relation to each other, gently or more energetically, with languor or with urgency, more or less percussively, at different angles and in different rhythms, and with different paths or cycles of movement, with the two partners varying next solo break and so forth. (Gardner 2018, 55)

This emphasis on spontaneity appears to be in tension with Bratman's reliance on planning and the meshing of subplans. While one might argue that spontaneity could still coexist with meshing subplans, since not all subplans need to be consciously articulated, Gardner's jazz metaphor suggests a rejection of planning altogether.

Nevertheless, this raises a critical question: Is sex truly free from plans and subplans? Social scripts, particularly in heterosexual contexts, often prescribe how sex unfolds, influencing participants' expectations and behaviors. This observation complicates Gardner's claim of pure spontaneity and warrants further investigation beyond this thesis.

For now, I conclude that while Bratman and Gardner share a focus on mutual responsiveness, especially in action, Bratman's emphasis on planning creates a fundamental tension with Gardner's focus on spontaneity. As a result, Bratman's theory of shared cooperative activity cannot serve as the theoretical foundation for Gardner's idea of sex as teamwork. In the following chapter, I will explore what these findings mean for conceptualizing sex as a joint action.

3.2 Preliminary Conclusion: Teamwork as a Joint Action?

In this first part of the thesis, I examined sex as a joint action by exploring John Gardner's concept of sex as teamwork and comparing it to established joint action theories. This chapter summarizes these findings and offers a preliminary conclusion before turning to the implications to the concept of sexual consent.

Figure 1 provides a visual representation of these findings. By comparing some of Gardner's key aspects, illustrated through central passages since he does not use any theoretical concepts, with influential joint action theories, such as those of Margaret Gilbert, John Searle, Michael Bratman, and David Velleman, the table highlights both similarities and differences. While notable overlaps exist, it also clearly demonstrates that none of these joint action theories can fully serve as a theoretical foundation for Gardner's idea of sex as teamwork.

Although none of the explored joint action theories, such as Gilbert's notion of plural subjects, Searle's we-intentions, and Bratman's shared cooperative activities fully support Gardner's idea of sex as teamwork, this does not exclude the possibility to conceptualize sex as a joint

action. Dismissing this idea entirely would be premature and unwarranted. While Gardner's use of joint action concepts is sometimes vague or even contradictory, his perspective remains intuitively compelling and warrants further exploration.

		Key Aspects of Gardner's Theory of Sex as Teamwork:			
		"There have to be three agents in the room at least: the me, the you and the we" (Gardner 2018, 56)	"...not merely an intention that all have in common, but an intention that all have jointly... " (Gardner 2018, 54)	"...for such good sex is characterized by an ongoing like-mindedness and mutual responsiveness ..." (Gardner 2018, 66)	"...they may still respond to each other's contributions spontaneously ..." (Gardner 2018, 55)
Possible Theoretical Frameworks:	Margaret Gilbert	Shared Agency		Unlikely	
	John Searle		We-Intentions	Unclear	
	David Velleman		In some form	Unclear	
	Michael Bratman			Mutual Responsiveness	

Figure 1: Table comparing Gardner's concept of sex as teamwork with possible theoretical frameworks. The green fields indicate concepts that appear in some form in Gardner's "The Opposite of Rape", while the red fields highlight contradictions between the ideas. "Unclear" means that the theoretical framework does not mention such an idea. Similarly, "Unlikely" suggests that the idea is not explicitly mentioned and that the content of the theory implies it does not support such a notion. "In some form" indicates that there are certain similarities, though not an exact match.

I argue that two key conclusions can be drawn from this analysis. First, as I have already indicated, Gardner's theory of sex as teamwork is significantly underdeveloped. He does not engage with existing joint action theories systematically, nor does he provide sufficient clarity and specificity in his arguments. For example, he simultaneously advocates for both a plural subject and for the sharing of intentions, creating an unresolved tension within his framework.

While I introduced David Velleman's theory as a potential way to bridge this gap, it ultimately fails to reconcile these contradictions in Gardner's account.

Second, this analysis highlights a broader limitation in joint action theories themselves. None of the major theories reviewed adequately address or encompass sex as a joint action. Not only do these theories generally overlook sexual activity as a domain for joint action analysis altogether, but they also struggle to explain activities that rely heavily on spontaneity and flexibility. These aspects of sex appear to conflict with core elements commonly associated with joint action, such as commitment and planning. As a result, it remains difficult to integrate sex, at least as Gardner envisions it, into existing frameworks.

From these findings, I conclude that both Gardner's theory and mainstream joint action theories fall short of conceptualizing sex as a joint action. Future research should aim to develop a joint action theory that better accounts for sexual activity, particularly one that engages with Gardner's emphasis on spontaneity and flexibility. A central question for such research would be whether spontaneity and flexibility are indeed as fundamental to sex as Gardner suggests and, if so, how they might coexist with the commitment and planning that typically characterize joint action.

Finally, while these theoretical gaps remain, they do not necessarily undermine the value of exploring sex as a joint action in the context of discussing sexual consent. For the purpose of this discussion, we can provisionally accept Gardner's idea of sex as a joint action, even while recognizing its limitations. The next part of this thesis will build on this foundation to examine what conceptualizing sex as a joint action implies for sexual consent.

4 Sexual Consent

As previously mentioned, John Gardner argues that once we accept his idea of sex as teamwork, traditional notions of sexual consent may no longer hold relevance. To fully evaluate Gardner's claim, it is essential first to situate his understanding of sexual consent within the current research debates.

Despite extensive discussions on sexual consent, fundamental questions about its nature, its definition, implications, and limitations often remain vague or even unanswered. Unpacking the concept of consent is not only essential to the aims of this thesis but also has far-reaching implications, particularly in efforts to address and prevent sexual violence. This is also why Clare Chambers, Brian David Earp, and Lori Watson highlight the potential role of philosophy in this discussion:

Among the most powerful effects of the #MeToo movement is a cultural shift from systematic disbelief and discrediting of victims/survivors to a stronger presumption of belief and support. Philosophy has much to contribute to this on-going cultural revolution. We need clarity concerning the nature of consent (including whether consent is an apt concept for thinking about what makes sex morally permissible, much less desirable or enjoyable),... (Chambers, Earp, and Watson 2022, 2)

Philosophy's role in this debate is not merely academic but has the potential to shape real-world norms and expectations. Manon Garcia identifies some of the most pressing questions that must be addressed to achieve such clarity:

What is consent? Is consent a legal issue? A moral one? Are we talking about the same thing when we talk about sexual consent and consent in general? To understand and evaluate the contemporary debates on consent in intimate relationships, these are the first questions to address. (Garcia 2023, 19)

From these statements, two key axes emerge in my analysis of sexual consent. The first axis represents the overarching framework within which sexual consent operates. Primarily, the concept of consent is used to delineate morally and legally between what is deemed permissible and non-permissible in sexual encounters. Additionally, some philosophers further argue that consent plays a role in evaluating sexual encounters beyond mere permissibility,

placing them on a spectrum from “good” to “bad”. In this view, permissibility and non-permissibility form the endpoints of the spectrum, while good and bad sexual interactions represent gradations within that continuum.

The second axis focuses on the substantive nature of sexual consent, essentially addressing the question: “What is sexual consent?” On one end, the traditional view defines consent as an agreement, with further debate over whether the agreement should be understood as a mental state or a performative act. On the other end, alternative conceptions of consent challenge the limitations of the traditional model, seeking to address its criticisms and shortcomings.

By exploring these axes, I will engage with key aspects of the public discourse on sexual consent and reflect on ongoing philosophical debates. Gaining a deeper understanding of these dimensions will provide a more nuanced perspective on Gardner’s idea of sex as a joint action and the criticisms of sexual consent that arise from it.

4.1 Permissible vs. Non-Permissible Sex

Most of the debates surrounding sexual consent are deeply intertwined with broader discussions on how to effectively reduce or eliminate sexual violence¹⁶ against women. According to the World Health Organization (WHO), one in three women worldwide has experienced either physical and/or sexual violence from an intimate partner or sexual violence from a non-partner, at some point in their lifetime (“Violence against Women” 2024). These statistics highlight the urgent need for comprehensive measures to combat such violence.

Of course, there are many ways to address or at least minimize sexual violence against women. The WHO has developed its so-called “RESPECT strategy”. This strategy emphasizes strengthening **R**elationship skills, **E**mpowering women, ensuring access to **S**ervices, reducing **P**overty, creating **E**abling environments, preventing abuse in **C**hildren and adolescents, and **T**ransforming societal attitudes, beliefs, and norms. However, the WHO also stresses the importance of legislation and policy, stating: “To achieve lasting change, it is important to enact

¹⁶ I will use the term “sexual violence”, “sexual assault”, and “rape” synonymously to refer to instances of unwanted or harmful sexual acts.

and enforce legislation and develop and implement policies that promote gender equality; allocate resources to prevention and response; and invest in women's rights organizations" ("Facts and Figures: Ending Violence against Women" 2024).

Legal measures are crucial in efforts to end violence against women. However, low prosecution and conviction rates often reflect gaps in existing legislation or insufficient definitions of sexual violence. Catherine MacKinnon highlights the ineffectiveness of sexual assault laws, writing: "The lack of effectiveness of the law of sexual assault is no doubt overdetermined, flowing from many causes" (MacKinnon 2016, 439). Some argue that this is why we need to adopt stricter laws based on consent, where the absence of consent alone constitutes sexual violence, regardless of additional conditions such as physical coercion or threats.

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) supports this view, stating: "Over 60% of countries still lack rape laws based on the principle of consent" ("Facts and Figures: Ending Violence against Women" 2024). According to these organizations, laws based on consent offer a broader criterion for prosecuting sexual violence, allowing for non-consensual sexual acts to be addressed even in the absence of physical force or explicit threats.

In the context of sexual violence, consent has thus emerged as a key criterion for distinguishing between permissible and non-permissible sexual acts, with the aim of more robustly protecting individuals from unwanted or harmful sexual acts. While permissibility is here primarily understood in legal terms, it also carries moral implications. In the sense of a general intertwinement of morality and law, which will not be further discussed in this thesis. In legal contexts, permissibility is strictly binary in the sense that sex is either sex or rape. Raja Halwani reflects this binary approach, stating: "Sexuality is either morally permissible or impermissible" (Halwani 2023).

However, some philosophers, such as Ann Cahill, argue that while rape and "ideal" sex are opposites, there is a spectrum between them (Cahill 2016, 743). This suggests that the quality of sex can be further evaluated apart from permissibility. I will explore this further in the next chapter.

In general, most philosophers in the field of sex and sexuality agree that non-consensual sex constitutes sexual violence and, as such, should not be permissible and, therefore, legally

condemned. They argue that consent is a necessary condition for sexual permissibility. This philosophical framework is reflected in laws prohibiting non-consensual sex. These laws are sometimes referred to as the “no means no” approach.

Many philosophers also support the idea that consent is not only necessary but sufficient for making sex permissible, implying that, provided informed and voluntary¹⁷ consent is present, no further conditions need to be met. Halwani summarizes this view: “X’s sexual activity with Y is morally permissible if, and only if, Y validly consents to the sexual activity” (Halwani 2023). This philosophical perspective aligns with legal shifts in many countries, particularly in Europe, where affirmative consent laws, so-called “yes means yes” approaches, have become central to the legal definition of sexual violence (Hedgecoe 2022).

Despite the widespread acceptance of consent as a necessary criterion for permissible sex, there are significant criticisms of the idea that consent is a sufficient criterion for permissible sex. Many question whether consensual sex is automatically permissible. Their criticism seems to mostly focus on the question of how we can actually “validly consent”.

A part of the public and philosophical discourse argues that consent is hard to define and that identifying it in practice can be even more challenging. This is a serious issue since laws rely on clear, unambiguous concepts that must be applicable in legal practice.

Some critics go further, questioning whether individuals can truly validly consent. Feminist scholars, for example, argue that systemic power imbalances hinder genuine consent. Women and marginalized groups may struggle to fully and freely consent due to structural inequalities that prevent them from expressing what they truly want. Additionally, individuals with cognitive disabilities may have difficulty consenting, as they may struggle to communicate their desires clearly (Halwani 2023).

This discussion illustrates both the complexity and multifaceted nature of the debates on sexual consent. It also highlights the need for a clear definition of consent that accounts for its practical application and limitations. However, before examining this question in depth, I will first introduce another framework wherein consent is being discussed.

¹⁷ The adjectives used to further describe consent vary across different countries. Manon Garcia argues that this variation demonstrates the polysemic nature of consent, in the sense that it means multiple things and that it is too ambiguous to stand alone as a clear concept (Garcia 2023, 24).

4.2 Good vs. Bad Sex

As I have already indicated, beyond the role of consent in distinguishing permissible from non-permissible sex and thus contributing to the fight against sexual violence, philosophers are also interested in how consent intersects with broader evaluations of “good” and “bad” sex.

In everyday life, when people think about good or bad sex, they often draw from personal experiences. In the subjective considerations, a variety of individual aspects can play a role. For instance, some may consider good sex as intertwined with love or passion, while others may associate good sex with the presence of pain. However, in philosophical discourse good and bad sex can be assessed according to several distinct criteria. As Raja Halwani explains: “‘Good sex’ and ‘bad sex’ can refer to pleasurable as well as to morally, aesthetically, practically and legally good or bad sex and to natural and unnatural sex” (Halwani 2023).

Beyond moral considerations, sex can also be aesthetically good or bad, according to common aesthetic principles. Sex can be judged practically or pragmatically as good or bad, for instance, when unprotected sex risks unintended consequences like pregnancy or sexually transmitted infections (STIs). Another example is when private sexual details damage a public figure’s career upon becoming public. Lastly, sex can be assessed based on pleasure, whether it is enjoyable or unsatisfying (Halwani 2023).

The morality of sex has historically been evaluated through various parameters. Some views emphasize marriage as a moral context for sex, while others restrict moral sex to procreative purposes, thereby excluding homosexual acts. However, such assessments have often caused harm, particularly to minorities and marginalized groups of people. Such groups have been stigmatized and discriminated against under the argument that their sex is immoral. This is, for example, the case in debates over same-sex marriage. For years and still today in many countries, homosexual couples have been prohibited from marrying, with the argument that their sex is unnatural because it does not serve a reproductive purpose (Maihofer 2014, 322). Given this history, it is crucial to approach discussions of sexual morality with caution and sensitivity.

One way of minimizing harm is to limit moral judgment to the question of consent. In the sense of treating consent as the sole parameter. Under this perspective, moral judgments focus solely on distinguishing permissible from non-permissible sex. Yet, while this perspective has

its benefits, it raises serious challenges. It's not entirely plausible to reduce all moral evaluations to questions of consent alone. Although most would agree that morally good sex cannot be non-consensual, there are cases in which consensual sex may still be morally problematic (Halwani 2023).

For instance, consider a scenario in which two or more people engage in consensual sex while cheating on their respective partners in a monogamous relationship. Many would argue that, while this sex is consensual, it might still be morally wrong. While most people would intuitively agree that this sex is morally bad, they would likely not argue that it also should be legally impermissible.

This example illustrates that moral evaluations of good and bad sex exist on a spectrum between the extremes of non-permissible and permissible sex. However, it is important to note that permissible sex itself is not a fixed endpoint but rather a spectrum, with ideal sex at one extreme. Non-permissible sex, on the other hand, represents a more definitive category, though it also forms a spectrum, with rape likely representing the worst possible case.

Ann Cahill further refines this spectrum by introducing two relevant categories. "Indifferent sex", which refers to morally neutral sex that lacks the qualities of ideal sex, and "unjust sex", which is morally problematic but still falls within the bounds of permissibility (Cahill 2016, 748). For instance, indifferent sex might involve a casual encounter that is consensual but lacks emotional connection, while unjust sex might describe situations in which one party consents due to social pressure or lack of alternatives rather than genuine desire. For example, consider a woman consenting to sex with her husband because she is financially dependent on him and fears that he might leave her.

Unsurprisingly, it is exactly this category of "unjust sex" that is especially compelling to feminist thinkers, as it highlights the influence of structural oppression on consent. I will further elaborate on this in the third part of the thesis. It also raises critical questions about what it truly means to consent. Can we say that the woman who is financially dependent on her husband genuinely consents if she says "yes" to having sex with him even if she does not do so out of desire?

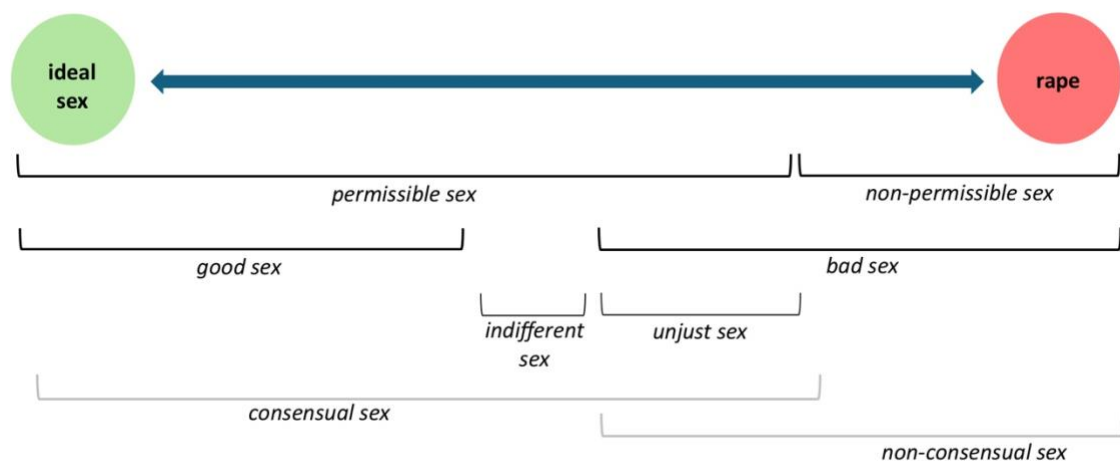


Figure 2: Spectrum of sex and rape. Three relevant distinctions are made: one addressing the permissibility of sex and rape, another examining the quality of sex, highlighting relevant subcategories, and the third exploring the possible role of sexual consent.

This question is highlighted in Figure 2: Spectrum of sex and rape, which summarizes the findings from this chapter and the one before. It presents a possible spectrum of sex and rape, emphasizing the possibilities and limitations of the concept of sexual consent in current discussions. It shows that most philosophers agree that consent plays a key role in assessing the morality of sex, and nearly all concur that non-consensual sex is impermissible. Some go further, asserting that consensual sex is, by definition, permissible. However, consent itself can be complex and nuanced. Cahill, for instance, describes cases of “unjust sex”, in which individuals might go along with sexual acts due to a lack of awareness or inability to refuse, rather than genuine consent (Cahill 2016, 748).

This highlights the centrality of defining consent. Depending on how we interpret consent, the woman saying “yes” to her husband could either be seen as consenting, or given her financial dependence and lack of desire, their sex could be seen as non-consensual. This raises a significant question that warrants further exploration in the next section: What does it actually mean to consent?

4.3 Contractual View – Consent as an Agreement

To understand the traditional view of sexual consent, it is helpful to first examine the concept's origins. Consent is not exclusive to the sexual sphere, rather it has its roots in the domain of law, particularly in contract law. In this context, consent operates as an agreement between parties, creating a binding contract that establishes reciprocal obligations. Obligation herein refers to one or more individuals (debtors) being required to provide specific goods or services to others (creditors) (Garcia 2023, 21).

A common but here very simplified example of contractual consent is the act of renting an apartment. In this agreement, the tenant consents to pay rent, follow property rules, and maintain the apartment in good condition. In return, the landlord consents to grant the tenant exclusive access to live in the property for a defined period. Through this mutual consent, reciprocal obligations are established. The tenant gains the right to occupy the apartment but also assumes the duty to pay rent and uphold the property's condition. Conversely, the landlord has the right to receive rent and the duty to respect the tenant's privacy and occupancy.

Consent is also foundational in the political sphere, especially within social contract theories. These theories seek to answer the problem of political obligation. This is one of the most central tasks in political philosophy and refers to the difficulty of explaining the legitimacy of authority and the basis of citizens' duties toward the state.

Social contract theorists argue that political obligation is grounded in consent. According to this view, individuals are only obligated to obey the law because they have consented to it. This consent is conceptualized through a hypothetical social contract, which stands as the origin of the state. Within this contract, reciprocal obligations are formed between individuals and the state. Citizens consent to the duty of following the law, paying taxes, and contributing to social welfare while, in return, they get protected by the state. The state assumes the duty of protecting the citizens' rights, upholding justice, and providing essential services. In return, the state is legitimized and given its authority over individuals (Garcia 2023, 22, 23) .

In both legal and political frameworks, consent legitimizes power dynamics by defining what each party is authorized and obligated to do. Whether in contract law or social contract theory,

consent acts as a transformative force, establishing binding commitments and recognizing authority.

In intimate relationships, consent initially emerged as a legal concept primarily related to marriage, which was historically treated as a form of contract.¹⁸ Consent was necessary to establish the union, analogous to the role of consent in other forms of contract law. In this framework, marriage authorized various reciprocal rights and duties between spouses (Garcia 2023, 23).

However, applying this contractual view of consent to sexual contexts introduces complexities. Although the traditional view of sexual consent borrows from legal and political frameworks, it differs from contracts in the usual sense. Most people would find it counterintuitive to establish obligations through consenting to sex. Unlike in legal contracts, obligations in sexual contexts may feel out of place, as sex is often seen as rooted in mutual spontaneity. If sex were approached as a contractual duty, it would imply that obligations exist that must be fulfilled even if one partner changes their mind mid-act. This would be morally problematic.

That being said, some sexual practices, like BDSM, incorporate contractual to define and enforce boundaries, often using safe words and formal agreements. While these agreements, often resemble legal contracts in their language, they lack legal enforceability, and participants retain the right to terminate the activity at any time (Garcia 2023, 66–69).

A key difference between sexual consent and contractual consent is that rather than creating new obligations, sexual consent seems to release people from obligations that otherwise would be owed to other people (Raty 2022, 74, 75). Let's illustrate this with an example from a non-sexual context. Normally, I am not permitted to take my friend Noah's car. It would even have legal consequences if I did. However, if Noah consents to lend me her car, the act of taking it suddenly becomes legally permissible. A similar mechanism applies to sexual consent. In this sense, consent, or rather sexual consent functions like permission. Or as Manon Garcia writes: "...to consent is to give *somebody* one's agreement on something..." (Garcia 2023, 20).

This demonstrates that while sexual consent differs from its contractual origin, it still retains its transformative function. It grants permission to an act that would otherwise be

¹⁸ Keeping in mind that marital rape was only recognized by the European Court of Human Rights in 1995, with some countries criminalizing it as late as 2006 (such as France) (Virgili 2021).

impermissible. Following this, consent is not only a necessary but also a sufficient condition for permissible sex. Raja Halwani encapsulates this notion, writing: “Consent’s being morally transformative means that it changes an action’s moral status from impermissible to permissible” (Halwani 2023). Sexual consent, therefore, alters the normative landscape, making certain sexual acts permissible through the act of giving consent.

The traditional view of consent has faced significant criticism. Catherine MacKinnon for example, argues that structural oppression makes it impossible for women and marginalized groups to truly consent (MacKinnon 2016). Jonathan Jenkins Ichikawa offers a less radical critique, suggesting that consent presupposes that the intended action is “at someone else’s behest” (Ichikawa 2020, 1). Ellie Anderson echoes Ichikawa’s concern, arguing that traditional views of consent reduce it to permission for one person to act upon another (Anderson 2022). I will explore these critiques further later on in the thesis.

Some philosophers propose that further distinguishing between an agreement as a mental state and an agreement as a performative act could help address these issues and provide greater clarity on the traditional concept of sexual consent.

4.3.1 Mental State vs. Performative Act

Even when setting aside other issues with conceptualizing sexual consent as an agreement, a fundamental ambiguity remains regarding what it means to “agree”. Manon Garcia explains this distinction, stating: “Moreover, consent can refer either to the agreement itself (to the mental state of giving assent to something) or to the manifestation of the agreement (for instance, shaking hands to seal a deal)” (Garcia 2023, 24). This ambiguity is not exclusive to sexuality but is inherent to the concept of agreement itself. Therefore, it becomes particularly relevant when thinking about the traditional view of sexual consent.

At the core, agreeing to something can imply two different things. Either an internal mental state or an external performative act. Garcia highlights this dual nature of agreement by referencing Jean Carbonnier, who distinguishes between an “agreement of will” and a “manifestation of will” (Garcia 2023, 24).

Philosophers who argue that consent is a mental state adhere to what is known as the “mental”, “subjective” or “attitudinal view” (Schnüriger 2018, 22). In this view, agreeing refers to an individual’s personal, internal approval of a specific action. It is an individual’s specific attitude towards something. This type of agreement is not expressed in any way. It is, therefore, referred to as a specific mental state within the individual. In the context of sexual consent, this internal form of agreement could theoretically satisfy the requirements for consent, as it signals a genuine willingness. However, because it remains unexpressed, it is hard to tell when someone is in this state of consent.

Others adopt the so-called “performative act view” or short “performative view”. It is based on the speech act theory of John L. Austin. In which the core idea is that performative speech acts do not only describe something but actively bring it into being. For example, when a priest declares, “I now pronounce you husband and wife”, he does not describe a preexisting state but rather he performs the act of marriage. Some philosophers think that consent functions, similarly, agreeing or consenting is not merely a description of a mental state but an action that establishes a new social reality. Consent in this sense can be given verbally (e.g., saying “I agree” or “yes”) or non-verbally (e.g., nodding, smiling, or shaking hands) (Schnüriger 2018, 25). In a sexual context, this aspect of agreement is particularly complex, as non-verbal cues can be subtle, culturally variable, and ambiguous.¹⁹ This complexity is reflected in the growing body of research from various fields examining how consent is successfully communicated.

Some scholars argue for hybrid views that combine these two views. However, Hubert Schnüriger suggests that such a third distinction seldomly makes sense, as the performative act view already incorporates aspects of a hybrid form. In the sense that many proponents of performative consent acknowledge the presence of an underlying mental state, describing it as the intention to agree (Schnüriger 2018, 26) . This is probably also why Manon Garcia writes: “Thus in legal contexts, consent is both a mental state that an individual can have regarding a

¹⁹ Furthermore, individuals may express agreement to something they do not genuinely agree with due to various external pressures, such as coercion, cultural expectations, or adaptive preferences. Martha Nussbaum defines adaptive preferences as those: “...in which individuals adjust their desire to the way of life they know” (Nussbaum 2000, 136). She further explains that these preferences are shaped by injustice, oppression, and ignorance (Nussbaum 2000, 114). I will further examine this issue in greater detail in the chapter on the feminist critique of sexual consent.

decision they make and a social phenomenon of reaching agreement with someone” (Garcia 2023, 24, 25)

4.4 Alternative Views – Consent as a Conversation, Consent as Feeling-with

Due to the challenges associated with the traditional concept of consent, multiple thinkers have sought to introduce alternative conceptions. In this chapter, I will briefly outline two prominent types of alternative theories to demonstrate that, beyond the traditional view discussed earlier, multiple other approaches exist.

The first alternative concept of consent is described by Manon Garcia in her 2023 book “The Joy of Consent”. Garcia argues for a new definition of consent because she believes that the traditional conception “does not allow us to make a clear distinction between sex and rape, and the liberal intuitions at its foundations are part of the ‘cultural scaffolding of rape’” (Garcia 2023, 186). She also critiques the traditional understanding of consent, which centers on surrendering one’s right to physical integrity, as failing to reflect the lived experience of fulfilling sexual relationships (Garcia 2023, 194).

To address these shortcomings, Garcia proposes the conception of sexual consent as a “conversation”. This approach explicitly rejects the notion of sexual consent as “negotiation”, a view proposed by others such as Michelle Anderson. Garcia argues that conceptualizing consent as negotiation evokes an adversarial dynamic. She writes: “Negotiation puts one in mind of sexuality as a battlefield – the model in which each person maximizes their individual pleasure, even at the expense of the other” (Garcia 2023, 203).

Instead, Garcia envisions sexual partners engaging in an ongoing conversation (Garcia 2023, 201). This dialogue involves what might bring pleasure to both oneself and one’s partner while remaining mindful of potential power imbalances. Regarding heterosexual sexual relations, she writes: “Therefore, in most circumstances, men have a greater responsibility in fostering the conditions for an egalitarian sexual conversation” (Garcia 2023, 188). This includes creating a safe space where women feel comfortable expressing rejection without fear of repercussions.

Garcia suggests that fostering this view of sexual consent is best achieved through education rather than legislative changes. She advocates for promoting positive examples of consent in popular culture, such as films and series, and incorporating discussions of consent into traditional sex education curricula (Garcia 2023, 215).

The second alternative perspective resembles the approach outlined by Ellie Anderson in her 2022 article “A Phenomenological Approach to Sexual Consent”. Anderson draws on the phenomenology of Maurice Merleau-Ponty, Ann Cahill, and Linda Martín Alcoff to argue that sexual consent should be understood as “feeling with” one’s sexual partner or partners. Wherein Anderson understands phenomenology as an approach that begins with direct descriptions of lived experience, writing, “...understanding essences requires beginning with direct descriptions of existence” (Anderson 2022, 8).

Anderson critiques traditional accounts of sexual consent on two main grounds. First, she follows feminist perspectives in arguing that sexual consent reinforces patriarchal social scripts and is inherently asymmetric. Second, she adds that the traditional account of consent fails to reflect real-world experiences. She particularly highlights the lack of attention to the “embodied and intersubjective dimension of sex” (Anderson 2022, 5). According to Anderson, this oversight stems from viewing the human as a “homo economicus”, treating the body as property and consent as permission to use that property (Anderson 2022, 6).

In contrast, Anderson introduces the concept of consent as feeling-with, derived from the etymological origin of the word “consentire”. She explains: “In the erotic domain, as we will explore below, feeling-with involves recognizing self and others as embodied subjects of desire for one another and for sharing an erotic experience” (Anderson 2022, 14). While acknowledging that sexual partners have distinct experiences and that ambiguity remains, she argues that viewing consent as feeling-with brings this ambiguity to the forefront without treating it as a hindrance to sexual experience (Anderson 2022, 18).

Like Garcia’s approach, Anderson’s conception emphasizes the importance of recognizing power structures, particularly patriarchy. She writes, “Feeling-with another person requires recognizing one’s own positionality in power differentials” (Anderson 2022, 19).

As this brief introduction to Garcia’s and Anderson’s theories demonstrates, the traditional account of sexual consent has faced significant criticism, leading to the development of

alternative conceptions. Although different in their specifics, both authors recognize the relevance of power structures as an important influence on sexual consent. I will revisit this aspect in the third part of the thesis.

4.5 Gardner's View – Consent as Giving Permission

Having gained an understanding of the current research landscape on sexual consent, we can now turn back to John Gardner's article "The Opposite of Rape". Considering his ideas within what I have just drawn out will help clarify Gardner's specific critique of sexual consent within his concept of sex as a joint action.

As the title of the article itself indicates, Gardner argues that good sex (or rather ideal sex) and rape are not merely distinct phenomena but opposites on the same spectrum. He posits that one can define rape only by understanding good sex and vice versa. Gardner's position challenges traditional accounts of rape by shifting the focus toward developing a theory of good sex. Unlike theorists who are primarily concerned with the permissibility of specific acts, Gardner seeks to extend the conversation by developing a positive framework for sex, one that aims to define good or even ideal sex. While acknowledging, however, that ideal sex may never be fully realized: "So, in the dimension I will be exploring, good sex is, perhaps, never quite perfectly good sex" (Gardner 2018, 50). This suggests that Gardner views ideal sex as an aspirational concept, one that can be approached but not necessarily achieved.

In referring to Nicola Lacey, Gardner emphasizes that a better understanding of the spectrum of good and bad sex can provide insight into what forms of sex should be considered permissible or impermissible. He writes: "At the very least, I will aim to persuade you that an interest in the law of rape, in the wider regulation of sex and in the associated policy issues cannot but draw you into reflecting on what Lacey calls your 'positive conception' of sex" (Gardner 2018, 50).

While acknowledging the relevance of a positive conception of sex in legal and policy discussions on permissibility, Gardner explicitly states that he does not intend to morally evaluate sex. However, this raises a significant difficulty. If he does not offer a moral conception

of good sex, it remains unclear how a non-moral framework can inform legal definitions of permissible or non-permissible sex. I will return to this problem in chapter 5.3.

Instead, Gardner assesses the quality of sex in a different sense, writing:

You might well find me likening good sex, in the relevant dimension, to good ensemble playing by musicians, good ballroom dancing and good circus acrobatics, all of which may be undertaken immorally (eg to distract a robbery, to perpetrate a tax fraud or to prop up a dictatorship) (Gardner 2018, 51).

By drawing these comparisons, he highlights that sex can be evaluated using multiple non-moral criteria. He further states: “Here my emphasis is on the idea that good sex is a joint activity, something done together. This is just one aspect of good sex, but it is the aspect that most directly challenges the centrality of consent” (Gardner 2018, 48). By choosing this focus, Gardner deliberately leaves many other aspects of good sex unexamined.

Having established the framework of Gardner’s analyses, we can now further explore his definition of sexual consent. Gardner’s view largely aligns with the traditional definition of consent. He explicitly references contractual forms of consent, drawing examples from dry cleaning and medical procedures such as dentistry (Gardner 2018, 59, 60). By doing so, he emphasizes that consent transforms the normative landscape by expanding an individual’s agency. Gardner stresses that consent authorizes actions that would otherwise be impermissible, writing:

The power to consent is a power to affect what other people can do to, on, or in place of the consenter. A’s consent given to B is a way of waiving certain duties that B might otherwise owe to A, authorising certain breaches of those duties by B without waiving them or conferring powers upon B to alter A’s normative position (or to alter C’s normative position in a way that would otherwise fall to A). It is all about what B gets to do, not about what A gets to do (Gardner 2018, 57).

As this passage demonstrates, Gardner especially stresses that consent is necessary in defining what a person B gets to do to a person A. Consent, therefore, always acts as *permission to do something to someone*.

By conceptualizing consent in this way, Gardner adopts a traditional view of consent as an agreement or permission. His emphasis on consent as an authorization for someone to do something to another person further highlights its performative nature. His focus, therefore, remains on the performative dimension of agreement. Gardner even states that considering consent as a mental state rather than a performative act would alter his argument significantly (Gardner 2018, 64). He, therefore, seems to accept that teamwork entails a continuous form of mutual agreement.

To conclude, Gardner's critique on consent operates within the framework of defining good or ideal sex as a qualitative, non-moral construct. His conception of consent follows a traditional view that emphasizes its performative role, particularly in its ability to change the normative landscape by construing consent as permission. Keeping this in mind, we can now explore the specific challenges Gardner identifies within the traditional framework.

5 Consent and Joint Action

Through my previous analysis of John Gardner's "The Opposite of Rape", I have explored some key debates in joint action theory and reviewed significant discussions surrounding sexual consent. In the first part of this thesis, I argued that sex can indeed be conceptualized using concepts from joint action theory. However, as described in chapter 3.2 I noted theoretical gaps. Currently, no fully developed framework within joint action theory conceptualizes sex as a joint action.

Despite this lack of a comprehensive framework for sex, I maintain the premise that sex can function as a joint action. This theoretical shortcoming, I argue, reflects limitations within joint action theory and Gardner's theory of sex as teamwork rather than evidence that sex itself is not a joint action. This position is supported by the ways in which concepts from joint action theory help articulate various aspects of sexual encounters.

In the second part, I positioned Gardner's idea of sexual consent within some of the relevant debates in the field, to conclude that he refers to a specific conception of consent. Gardner argues that consent is to be understood as permission for someone to do something to someone else. This aligns with the traditional view of sexual consent, which emphasizes its role in authorizing actions that would otherwise be impermissible.

To address the central question of the implications of sex as a joint action for the concept of sexual consent, I now turn to the intersection of these two fields, analyzing sexual consent through the lens of sex as a joint action. What changes in our understanding of sexual consent once we accept that good sex is, in fact, teamwork? In this third part of the thesis, I will demonstrate that thinking of sex as a joint action not only deepens our understanding of sex itself but also sheds new light on our concept of sexual consent. These insights have the potential to contribute meaningfully to the broader discussion on sexual consent by offering a new perspective.

To do so, I will first examine Gardner's position before critically questioning his view by proposing an alternative approach.

5.1 Consent and Asymmetry – Gardner’s Critique

In his article “The Opposite of Rape” John Gardner argues that the concept of good sex as teamwork challenges the centrality of sexual consent. He contends that sexual consent and teamwork are, to some extent, conceptually incompatible because the notion of consent presupposes an inherent asymmetrical dynamic.

Gardner demonstrates that the general concept of consent, even outside the sexual context, is inherently asymmetrical. This is so because he conceptualizes consent as a form of permission-giving that enables one person to do something to another. In this framework, consent always distinguishes between an active and a passive party. The active party receives permission and is thereby allowed to perform a specific act, while the passive party grants permission and is the one affected by the act.

To illustrate this dynamic, Gardner uses the example of consenting to medical procedures. Here, consent changes what one person (e.g., a doctor) can do to another (e.g., a patient). By consenting, the patient authorizes actions that would otherwise be impermissible, placing themselves in a passive role and the doctor in an active one. Gardner writes: “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” (Gardner 2018, 58).

As this example demonstrates, there is an imbalance in both activity and agency. While the agent’s range of permissible actions is expanded through consent, the patient’s agency is diminished within the specific domain of consent. Gardner elaborates: “One person’s consent to generalize, extends another person’s latitude or competence in agency, and relative to that agency, the consenter thereby makes herself more or less a patient; he or she is the one who suffers it to be done rather than the one who does it” (Gardner 2018, 58).

Gardner applies this analysis to sexual consent. According to him, doing so results in a conflict with his conception of sex as teamwork. As I have previously explained, for Gardner, good sex is characterized as an act done *together* rather than done *to* one another. According to Gardner teamwork, presupposes symmetry between participants. In contrast, sexual consent, as Gardner conceptualizes it, presupposes asymmetry. He writes: “...consent presupposes an asymmetry in activity, a doer and a sufferer. It presupposes, in that respect, bad sex” (Gardner 2018, 48).

Thus, Gardner concludes that sexual consent and sex as teamwork cannot both at the same time serve as criteria for good sex, as they contradict each other. One presupposes symmetry, while the other is inherently asymmetric, one is about doing things together, the other about doing things to each other. For Gardner, sexual consent is thus incompatible with the symmetrical dynamic of teamwork. He ultimately concludes: “Here I am advancing the more explosive proposition that, when the sexual going is good, consent is also unnecessary” (Gardner 2018, 60).

Although Gardner is clear about his criticism of consent as a criterion for good sex, he does not consider if it may still be a necessary condition for permissible sex. Nevertheless, Gardner agrees with the perspective of most theorists that nonconsensual sex is not permissible. He writes: “Most people, me included, think that when a sexual partner says ‘enough’, that’s enough” (Gardner 2018, 64).

5.2 Sex as Being Gendered – Feminist Critique

Beyond the conceptual contradiction between sex as teamwork and sexual consent, Gardner extends his critique by addressing a broader feminist concern. He argues that the asymmetry inherent in the concept of sexual consent not only conflicts with the idea of good sex as teamwork but also reinforces traditional gender stereotypes.

Gardner argues that sexual consent, as traditionally understood, not only perpetuates a patient-agent dynamic but that this dynamic is deeply rooted in heteropatriarchal structures.²⁰ He, therefore, asserts that this dynamic is not neutral but gendered, with men taking on the active role of requesting consent or asking for permission and women being positioned as passive responders giving consent or granting permission. Gardner writes: “Our cultural preoccupation with sexual consent is a preoccupation with women whose consent is called for, and men as those to whom the consent is to be given. As thus imagined, sex is something in the respect of which men are active and women are passive” (Gardner 2018, 69).

²⁰ Heteropatriarchy is hereby understood as a hierarchical society or culture in which cisgender men and heterosexuality are dominant and privileged. It is based on the interconnected nature of oppression related to gender (i.e., sexism) and sexuality (i.e., heterosexism) (Everett et al. 2022, 90).

This dynamic is particularly problematic because it not only frames men as initiators and women as responders but also because it reflects and perpetuates an imbalance in agency. Gardner argues that sexual consent extends the agency of the person requesting consent while diminishing the agency of the person granting it. He concludes: "... I suggest that the policy objective of protecting women's sexual autonomy by empowering them to grant or refuse consent comes at the surprising price that we continue to portray women as lacking in full sexual agency" (Gardner 2018, 48).

Interestingly, this critique aligns Gardner's argument with broader feminist criticisms of sexual consent that do not rely on the framework of sex as a joint action. Catherine MacKinnon, for instance, has famously argued against the concept of sexual consent, emphasizing that in a patriarchal society, women and minorities can never truthfully consent. In her 2016 article "Rape Redefined", she writes: "In both law and scholarship, lack of consent – the widely adopted element of sexual assault that make sex be rape – ignores the inequality of the sexes as context for, as well as potential content in, sexual interactions" (MacKinnon 2016, 439, 440).

Considering these arguments rejecting consent seems to be the only rational solution to these problems. However, some thinkers have argued that an alternative approach is possible.

5.3 Rejecting Consent?

Because of the conceptual and structural issues inherent in sexual consent, specifically its asymmetry and gendered nature, John Gardner explicitly rejects it as a criterion for good sex. In "The Opposite of Rape", however, Gardner does not entirely dismiss the idea that a form of agreement might play a role in good sex. He suggests:

Similarly, we could think of teamwork as necessarily consensual if we shift our attention from consent (performative) to something more like *consensus* (cognitive). If we allow these shifts, we can restore our faith in the idea that all acceptable sexual activity needs to be either consensual or agreed in some sense... (Gardner 2018, 64)

While Gardner appears to acknowledge that a mental consensus might be necessary for good sex, he rejects redefining sexual consent along these lines. He argues that such a redefinition would create an inconsistency within the broader concept of consent, which must remain

uniform across sexual and non-sexual contexts, particularly given its legal function. Gardner writes:

One wonders how those who place such demanding restrictions on (valid) consent can possibly interact with their doctors, lawyers, electricians, taxi drivers, decorators, auto mechanics, hairstylists, dentists, bank tellers, dry cleaners and many others whose everyday interactions with them call for their consent. (Gardner 2018, 59)

Despite Gardner's detailed and, at first glance, convincing critique, his conclusion that consent is unnecessary for good sex has met significant criticism. In the following, I consider two notable objections from Karamvir Chadha and Tom Dougherty, who both directly engage with Gardner's arguments while offering compelling counterpoints.

In "Sexual Consent and Having Sex Together" from 2020 Chadha explicitly refers to and criticizes Gardner's article "The Opposite of Rape". Interestingly, Chadha also agrees with some of Gardner's main findings, such as his idea of sex as a joint action. However, he challenges Gardner's conclusion that sexual consent should be rejected.

Chadha argues that joint action does not mean that individuals are only engaging *with* one another, rather, joint actions are often composed of individual acts. These individual acts then require consent. He writes: "But these joint actions – these things we do together – are partly constituted by actions that each of us does individually" (Chadha 2020, 627, 628).

He illustrates this by using the example of dancing tango. While dancing tango together is a joint action, it still consists of many individual actions, such as Amelia placing her hands on Bert's shoulder and Bert his hand on Amelia's waist. These actions require consent (Chadha 2020, 628).

Similarly, in ideal sex, while there may not be a need to consent to the joint action of having sex together, each individual must still consent to specific individual actions performed by their partner towards the other person. Chadha concludes: "Individuals engaging in ideal sex need not consent to the joint action of having sex together. Instead, each must consent to the individual actions of their partner – the things their partner does *to* them – that partly constitute their joint action of having sex together" (Chadha 2020, 628).

Beyond this metaphysical argument, Chadha also presents a moral argument against Gardner's conclusion. Chadha argues that it is unconvincing that sex as a joint action makes sex morally good or at least permissible without sexual consent. Instead, he proposes that in these cases, the individuals actually do consent. He goes on to propose a new definition of sexual consent that fits within this framework and therefore is able to explain why individuals actually consent to sex as teamwork (Chadha 2020, 630–41). I will discuss a similar solution in the following chapter.

Before doing so, I quickly introduce a similar objection from Tom Dougherty. In "Sexual Consent Without Passivity" from 2021, Dougherty also criticizes Gardner's conclusion of rejecting sexual consent by explicitly referring to Chadha.

Dougherty criticizes Gardner on two levels. The first seems to be especially interesting because Dougherty targets Gardner's methodological claim. Dougherty finds tension in Gardner's argument. While Gardner claims to describe good sex in a non-moral way, he simultaneously suggests that this description informs moral and legal judgment. Dougherty challenges this connection, writing: "I will respond that Gardner does not offer us a valid argument that appeals to the goodness of sexual joint activity. Instead of focusing on what constitutes good sex, I propose we theorize directly about which encounters are permissible and which are not" (Dougherty 2021, 29).

In a similar matter, Dougherty also criticizes Gardner's argument that sexual consent in policies reinforces sexist presuppositions about women's passivity. He writes: "It is not credible that whichever way we frame sexual offense policy, this policy will portray women as passive" (Dougherty 2021, 39).

Substantively, Dougherty agrees with Chadha's argument that joint actions still contain individual actions that require consent, but he adds his own perspective on the so-called Passive Consent Thesis. Dougherty explains:

Passive Consent Thesis: If A gives consent to B in a sexual encounter, then A is passive and B is active in the encounter. (Dougherty 2021, 28)

Dougherty rejects this thesis, arguing that while a person may be passive in one action, they can simultaneously be active in another, preserving reciprocity in sexual agency.

Dougherty as well as Chadha concludes by proposing a redefinition of sexual consent that aligns with Gardner's idea of sex as teamwork. Dougherty argues: "Since joint sexual activity is among the encounters that are permissible, this would mean developing a conception of consent that allows for there to be reciprocal sexual agency on the part of consenting adults" (Dougherty 2021, 42).

These objections highlight significant issues with Gardner's rejection of sexual consent. Interestingly, both Chadha and Dougherty accept Gardner's premise that sex can be conceptualized as teamwork or joint action. This not only reinforces the plausibility of Gardner's starting point but also affirms the intuition, explored earlier in this thesis, that sex can indeed be understood through the lens of joint action theory. However, both critics argue that consent remains a necessary part of ideal sexual encounters and advocate for redefining the concept to address Gardner's idea without rejecting the concept altogether.

5.4 Redefining Consent

The objections raised by Karamvir Chadha and Tom Dougherty demonstrate that accepting the view of good sex as teamwork or as a joint action does not necessarily require rejecting sexual consent, either morally or legally. Instead, both authors advocate for a redefinition of sexual consent that aligns with Gardner's framework.

To build on their critiques, let us revisit Gardner's main argument, which Chadha outlines as follows:

- (1) *Ideal Sex Premise*. If sex is ideal, then it is something two people do together.
- (2) *Joint Action Premise*. If two people do something together, then consent is unnecessary.
- (3) *No Consent Thesis*. Therefore, if sex is ideal, then consent is unnecessary. (Chadha 2020, 621)

As argued in the first part of this thesis, there are compelling reasons to accept the first premise, that sex can indeed be understood as a joint action. This view is shared by both Chadha and Dougherty. However, the second premise presents significant difficulties. While

Chadha and Dougherty provide strong arguments against this premise, I propose an additional critique by examining the underlying structure of the argument more closely.

Chadha dissects the Joint Action Premise of Gardner's main argument as follows:

- (1) *Conceptual Premise*. Consent is necessary only if one person does something to the other.
- (2) *Metaphysical Premise*. If two people do something together, then neither of them does anything to the other.
- (3) *Conclusion*. Therefore, if two people do something together, then consent is unnecessary. [Joint Action Premise of Main Argument.] (Chadha 2020, 627).

While Chadha and Dougherty focus their criticisms on the second premise, I want to draw attention to the Conceptual Premise. Gardner's reliance on this premise assumes a definition of sexual consent as permission, which I have analyzed extensively in the second part of this thesis.

Interestingly, though Chadha accepts the Conceptual Premise, he also hints towards some criticism when he writes: "While many theorists accept the Conceptual Premise few, if any, explicitly acknowledge that it is not a claim about how 'consent' is used in ordinary language. In ordinary language, the word 'consent' is used to pick out several distinct moral phenomena" (Chadha 2020, 625). This observation underscores what I have argued earlier: there is no single, universally accepted definition of sexual consent that applies across public discourse, private sexual interactions, and legal contexts.

Even within legal contexts, the definition of consent is unclear. The contractual origins of consent fail to convincingly address sexual contexts because they establish obligations, which do not align with how we normally proceed with sexual interactions. Therefore, I argue against Gardner when he attempts to equate sexual consent with the legal framework used in dentistry or dry-cleaning, writing: "Consensual dentistry or dry-cleaning can be mediocre, dreadful or even wrongful, and so can consensual sex" (Gardner 2018, 59). This analogy is unpersuasive since consent in these services is contractual, creating specific duties and rights for the parties involved, whereas sexual consent primarily functions as releasing someone from certain obligations rather than creating them.

The distinction becomes even clearer when we consider Gardner's rejection of redefining sexual consent. He argues that differentiating sexual consent from other forms of consent would create unnecessary complexity, yet, as I have demonstrated, sexual consent is already distinct in several ways from its legal counterparts.

I do not claim that sexual consent and other forms of consent are substantively different, but I argue that it is incorrect to assume a single universally applied definition. Despite these disagreements, Gardner and I share common ground in thinking that sex as teamwork can function as a starting point to rethink sexual consent. This shared perspective provides a foundation for my proposed redefinition of sexual consent, which I outline in the following chapter.

5.4.1 Symmetrical Consent

Having argued for a redefinition of sexual consent, we must now discuss what such a redefinition would need to consider to successfully fit within Gardner's framework of good sex as teamwork or rather as a joint action. First and foremost, such a definition must avoid the problems Gardner identifies. Namely, it cannot be asymmetrical, either in action or in agency, nor should it perpetuate sexist stereotypes of women as passive in sexual encounters. Furthermore, a redefinition must also align with the broader idea of good sex as something done together, as well as characterized by spontaneity and flexibility.

In this chapter, I propose certain approaches that could contribute to such a redefinition. However, it is important to note that this is only an attempt and by no means a fully developed theory. Rather, I argue that these approaches demonstrate how the discussion on sexual consent can benefit from the view of sex as a joint action.

As I have previously shown, although Gardner rejects the traditional concept of sexual consent, he is sympathetic to the idea that consent might take on the form of an ongoing "consensus" (Gardner 2018, 64). In this sense, consent is not to a one-time performance at a specific moment t but rather an ongoing agreement. Consent, therefore, is to be understood as what I have before described as a mental state within the individual. Or said differently an attitude that underlies the individual's actions.

Not only is Gardner open to such a definition of sexual consent, but I argue that sexual consent, in some form, is inherent to his framework. While he does not explicitly state this, I believe it follows naturally from his argument. As I have explained, Gardner describes that teamwork involves two levels of intention. The first is the intention to share a common goal (Gardner 2018, 53). One could argue that this already implies a form of “being in agreement”, as having a common goal typically entails some level of agreement to reach this goal somehow.

However, it is precisely the *how* of achieving this goal that is particularly interesting. Here, the second level of intention becomes relevant. As I have discussed, Gardner argues that for sex to be teamwork, there must be an additional intention beyond the shared goal, namely the intention that: “...*the team* be the one to achieve the common goal” (Gardner 2018, 53). This, I argue, encapsulates a more profound understanding of sexual consent. Consent, in this sense, is not just about being in agreement to reach a particular goal (e.g., engaging in sex), but also about agreeing on how this goal is pursued, specifically, by acting as a team. This is further reinforced by the fact that this second intention is not merely shared but infinitely reflexive. Thus, sexual consent becomes something inherently directed toward the other person. It is not merely being in agreement within an individual but something that directly relates to someone else, as *being in agreement with*.

Such a redefinition of consent aligns with Gardner’s framework of good sex as a joint action, without introducing asymmetry or restricting the spontaneity or flexibility of sexual encounters. However, upon further consideration of Gardner’s critique of traditional consent, I wonder whether this is sufficient. A redefinition of sexual consent must ensure symmetry in both action and agency. But does conceptualizing consent as a mental state truly achieve this?

I argue that this critique also points towards a performative side of sexual consent. However, not in the traditional sense associated with John L. Austin’s speech act theory, but rather in the sense of *expressing* this agreement in a way that is legible to the other person.

In the following, I will consider an approach to how this performative side of consent could look like. To do so I take a step back and ask: what does symmetry in action look like? The Cambridge Dictionary offers two definitions of symmetrical. The first states: “having two parts that match exactly, either when one half is like an image of the other half in the mirror, or when one part can take the place of another if it is turned 90° or 180°” (“Symmetrical” 2025).

This definition is not particularly relevant in a sexual context. While some sexual actions may align in such a perfectly mirrored way, such as two people leaning in to kiss at the same time or simultaneously asking for permission to touch the other's genitalia, this level of symmetry is rare in real-world experiences.

The second definition describes symmetrical as: "involving actions or parts that are similar or balanced in some way" ("Symmetrical" 2025). This interpretation is far more applicable to sex. However, it remains vague: What does it mean for actions or parts to be "similar" or "balanced"?

To gain insight into what this type of symmetry might look like in sexual interactions, Simon Magnusson and Melisa Stevanovic's article "Sexual Consent as an Interactional Achievement: Overcoming Ambiguities and Social Vulnerabilities in the Initiations of Sexual Activities" provides valuable insights. While their approach is not philosophical, their findings contribute significantly to redefining consent in a symmetrical way, especially because they analyze concrete examples from films and TV series. This practical perspective is often missing in philosophical debates and is therefore particularly useful here.

In their paper, Magnusson and Stevanovic employ conversation analysis, which they describe as: "It is essentially about analyzing repeated patterns in how utterances and embodied behaviors are used to construct actions and how these in turn are organized into sequences of initiating and responsive actions" (Magnusson and Stevanovic 2023, 69). Using this framework, they analyzed 80 scenes from popular TV series or movies between 2018 and 2020, focusing on the initiation of sexual activity. Their research centered on two key questions:

- (1) What are the interactional practices by which the initiation of sexual activity is presented as consensual?
- (2) How are verbal and embodied resources used to achieve consent across sequences of interaction? (Magnusson and Stevanovic 2023, 72)

Magnusson and Stevanovic's analysis suggests that consent is best achieved through synchronous embodied behavior rather than sequential verbal initiation, also referred to as verbal turn exchange initiation. They compare two examples to illustrate this distinction.

The first example comes from a scene in the series "Lucifer". The authors describe:

Instead of moving further apart and actually ending the encounter, they move toward each other in a temporally synchronous manner [...]. The initiation of the movement [...] is synchronously fine-tuned and when being in each other's arms also the kissing is started simultaneously. (Magnusson and Stevanovic 2023, 75)

In contrast, the second example, from the movie "Unpregnant", involves a verbal request, which the authors describe in the following way:

When verbally asking for consent to kiss Bailey, Kira is met with silence and no embodied response [...]. Bailey starts accounting for her lack of action [...] but is interrupted by Kira apologizing ('we don't have to', line 5). Bailey, however, makes apparent that the problem is not her unwillingness to kiss but her inexperience and nervousness of being bad at it. (Magnusson and Stevanovic 2023, 76, 77)

Magnusson and Stevanovic argue that the second example demonstrates two relevant vulnerabilities inherent in verbal consent: (1) the risk of rejection and (2) the pressure on the recipient to meet the proposer's expectations. Synchronous conduct, on the other hand, allows for "an even distribution of vulnerabilities between the participants" (Magnusson and Stevanovic 2023, 77).

Magnusson and Stevanovic further distinguish between two forms of sequential initiation: "slow probing" and "trusting first". They prefer slow probing, as illustrated in the following scene from the series "Snowpiercer". The original scene is quite long therefore, I will only quote one specific passage:

However, this subsequent physical approaching toward Josie [...] renders sexual suggestivity to what might otherwise come across as a rude rejection of a topic for discussion. Josie goes along with this playful ambiguity: after a display of compliance [...], she takes a step toward Andre [...] and says 'you pick a topic then' [...]. Andre responds by wetting his lips with his tongue and leaning in towards Josie's face. (Magnusson and Stevanovic 2023, 81)

By contrast, the trusting first approach, exemplified in a scene from the series "Sex Education", carries greater risks. Magnusson and Stevanovic describe:

Ola, however, lets go of Otis's hand, after which he finishes the path himself, put his hand on her breast, and squeezes it repeatedly [...]. Only after Otis has already engaged in this more advanced sexual activity does he ask for Ola's consent (*is this okay*, [...]). When positively affirmed, the squeezing increases [...] and the kissing continues. (Magnusson and Stevanovic 2023, 83)

As this scene shows "trusting first" though, successful in this instance, runs the risk of posing the question too late when the action has already begun.

Magnusson and Stevanovic conclude that synchronous initiation is the optimal way to achieve consent, though they acknowledge it is an idealized and often unrealistic standard. They also emphasize the importance of embracing consent's ambiguity, writing: "...it is precisely by appreciating and 'taking seriously' the notion of ambiguity that sexual consent may be most likely achieved" (Magnusson and Stevanovic 2023, 86).

These findings help us conceptualize what symmetrical consent in an expressive sense might look like. Several key takeaways emerge from Magnusson and Stevanovic's analysis. The scene from "Lucifer" demonstrates how synchronous establishing of nonverbal consent is preferable, not only because it avoids the vulnerabilities of sequential verbal consent but also because it is somewhat symmetrical in action. In the scene, both protagonists move toward each other and start kissing simultaneously. Their actions mirror each other, meaning both perform the same action at the same time.

By contrast, the scene in "Unpregnant" highlights the asymmetry inherent in verbal consent, where one person asks, and the other must respond.

However, this does not mean verbal consent should be dismissed altogether. Instead, it should involve a turn-by-turn dynamic, as seen in the scene of "Sex Education", where both partners actively engage in asking for and giving consent. Though I agree with Magnusson and Stevanovic that slow probing is preferred over trusting first the example also shows "turn-by-turn" verbal consent. After the previously quoted part, the scene continues as follows:

After that, Ola launches an analogous reciprocal action: she moves her hand from Otis's back head to his crotch [...] and then squeezes it [...], to which Otis responds with a groan [...]. Then Ola asks for consent with a heavily breathy voice (*i(h)s tha(h)t*

o(h)ka(h)y, [...]) which is followed by Otis nodding and providing a verbal confirmation.
(Magnusson and Stevanovic 2023, 83)

Even though Ola is asking for consent *after* initiating the action, this example still demonstrates symmetry in action. In the sense that Otis asks for consent then Ola does the same. When both people engage in a reciprocal dynamic, it is much more symmetrical than the example from “Unpregnant”. The reciprocity fosters symmetry in action.

In conclusion, symmetrical consent in action is best achieved through synchronous embodied actions or turn-by-turn verbal exchanges. Actions that lead to a dead end, such as when the other person does not respond to a verbal question or shows no embodied reaction, should be understood as non-consent unless made unmistakably clear otherwise.

Interestingly, recent legal changes seem to implicitly shift toward a more symmetrical view of consent. In Switzerland, a new law introduced in the summer of 2024 covers cases where victims of sexual assault or rape experience “freezing”, which is a shock-induced paralysis, where the affected person cannot move or speak. This law recognizes freezing as a refusal of consent, alongside explicit verbal refusals and discomfort expressed through body language (“Neues Sexualstrafrecht Ab 1. Juli 2024” 2024). This acknowledgment of non-verbal indications reflects a move towards a view of consent that is more symmetrical, at least in action.

An even more compelling example is Sweden’s 2018 legislation on “negligent rape”. This law differentiates between rape and negligent rape, the latter covering cases where there is no voluntariness, even without force or violence. Lisa Wallin, Sara Uhnöo, Åsa Wettergren, and Moa Bladini explain: “Following UN recommendations, the new legislation defines voluntariness broadly as an active voluntary participation that is communicated, either through word or deed or in some other way” (Wallin et al. 2021, 4). This emphasis on active participation suggests an implicit acknowledgment of symmetrical consent, shifting away from passive acquiescence.

These legal changes could serve as a starting point for thinking about how legislation might better incorporate the idea of sex as a joint action and consent as symmetrical in action. However, they are not without flaws, as they still fail to address what Gardner refers to as symmetry in agency.

Although Magnusson and Stevanovic's article offers valuable insights regarding symmetry in action, it leaves the problem of asymmetry in agency unexplored. Since this is a complex discussion, I will only focus on one key aspect.

First, we must clarify what agency entails. According to the Cambridge Dictionary, agency is defined as "the ability to take action or to choose what action to take" ("agency" 2025). While this is a simplified definition that could be further developed, it is sufficient for answering the proposed question in this thesis. Based on this definition, symmetrical consent in agency requires that all parties involved have an equal ability to consent or to refuse consent.

Hereby, defining symmetry is less challenging than defining symmetry in action. While it may be unrealistic for two people to act in precisely the same way, it is more reasonable to claim that two individuals can possess comparable or nearly identical abilities to make decisions. Thus, symmetrical consent in agency requires all participants to have equal ability to either grant or withhold consent.

However, numerous factors can restrict or impair an individual's ability to consent or refuse consent. These factors can either influence the mental or performative aspects of sexual consent. In other words, a person's ability to consent can be restricted either internally (on a mental level) or externally (in terms of their ability to express this mental state). While various factors can hinder the ability to consent, I will focus specifically on power structures that prevent genuine consent. This issue is particularly relevant considering Gardner's critique that consent often reinforces patriarchal stereotypes.

One of the most prominent voices discussing the impact of power structures on consent is Catherine MacKinnon. She argues that: "...when power is unequal, consent to sex is unlikely to be meaningful, or it becomes impossible to tell" (MacKinnon 2016, 463). According to MacKinnon, in patriarchal systems, women and marginalized groups often lack the ability to genuinely consent. Even if they appear to consent, the authenticity of their consent is difficult to determine.

MacKinnon hereby identifies two forms of oppression that seem to align exactly with the two aspects of sexual consent, the mental and the performative aspects. The first involves direct coercion, whether physical or psychological. This form mostly hinders the ability to consent in a performative way, while it often does not directly affect consent as a mental state. The

second, more insidious mechanism according to MacKinnon is the formation of adaptive preferences, which are desires shaped by oppressive conditions to fit within patriarchal structures. MacKinnon explains: “So long as A’s power over or relative to B, i.e. their inequality, is kept out of the picture, including in constructing B’s options or even desires...” (MacKinnon 2016, 442). This means that power structures do not just influence how people express consent but also what they want to consent to in the first place. It follows that achieving symmetrical consent in agency, at least in heterosexual relationships, is impossible under current patriarchal structures since desires are shaped by oppression.

MacKinnon’s second point should not be understood in black-and-white terms, but rather as a highly complex and ambiguous issue. The difficulty of determining genuine consent is well illustrated in Kristen Roupenian’s short story “Cat Person”, published in 2017 in *The New Yorker*.

The protagonist, Margot, is a 20-year-old college student who meets Robert, a much older man, as she works at a movie theater. Their initial interaction consists of flirtatious texting, but when they finally go out on a date, Margot feels uncomfortable and even questions whether she is safe. Despite these doubts, she still consents to having sex with him, not because she truly wants to, but because she somehow feels obligated to do so (Roupenian 2017).

This fictional story is particularly compelling because it does not depict an individual exception, rather, it reflects a common experience for many women, including my own and those of my friends. Women often consent to sex, not necessarily because they genuinely desire it, but because of social pressure and internalized expectations.

While MacKinnon’s insights are crucial for understanding how hierarchical structures affect consent, I disagree with her conclusion that we should therefore abandon the concept of consent altogether. Simply dismissing women’s and marginalized groups’ autonomy is not a productive solution. Instead, we should seek ways to minimize these structural problems and promote genuine consent. This is a task far beyond the scope of this thesis, but acknowledging this problem is the first necessary step.

Additionally, I agree with Manon Garcia and Ellie Anderson, who emphasize the responsibility of men and other privileged groups to reflect on their power positions and actively create spaces where authentic consent is possible. This includes fostering environments where

adaptive preferences are less likely to develop. To combat adaptive preferences, I support Garcia's call for improved sex education and a more realistic portrayal of sex and consent in popular culture, such as films and TV series.

One could argue that this symmetry in agency is already implicitly present within Gardner's idea as well. For instance, one might argue that for a person to accept another as a member of a team, they must respect the other person as an equal partner. This would mean that genuine teamwork requires that both partners are on the same level, thereby fostering symmetry in agency. However, Gardner does not explicitly address this issue, and any such claims would be purely speculative.

In conclusion, in this chapter, I have explored how sexual consent can be understood as a part of sex as a joint action or teamwork. I demonstrated that according to Gardner's theory, consent should be first and foremost understood as a mental state that signifies being in agreement with. This is insofar not only intriguing for the discussion on sexual consent but also relevant to the broader discussion on joint action.

Further, I have also argued that Gardner's framework points toward a performative or at least expressive aspects of sexual consent. I demonstrated that sexual consent, when understood as symmetrical in action, is best characterized by synchronous embodied exchanges or turn-by-turn verbal interactions.

Finally, I examined what it means for sexual consent to be symmetrical in agency, emphasizing the necessity of acknowledging power structures in both personal experience and public and legal debates. I argued that those in privileged positions have a responsibility to create safe spaces for genuine consent.

These approaches fit within Gardner's framework of sex as teamwork, as they address the problem of asymmetry while preserving the spontaneity or flexibility of sexual encounters. In this sense, they serve not just as a criterion for permissible sex, but also for morally good sex. Most discussions on sexual consent center on legal permissibility, but I argue, following Gardner, that a clear vision of what constitutes good or ideal consent can help us better identify impermissible consent or problematic sexual encounters. This requires accepting Gardner's idea of sex as teamwork not merely as he proposes as a description of good sex in a non-moral sense but also as a normative, moral concept.

6 Conclusion

In the movies I grew up with, the most interesting part always seemed to be missing. In the classic romance “Notting Hill” for example, the two protagonists finally kiss one night, he undresses her, and then, just like that, it’s the next morning, and they wake up in the same bed. But what happens in between? It seems to me that not only were the filmmakers of these movies quite secretive about it, but so were the philosophers of the past.

In this thesis, I sought to shed some light on this missing piece by addressing the topic of sex as a joint action and exploring its implication for the concept of sexual consent. To do so, I posed the following research question:

What are the implications of viewing sexual activity as a joint action for the legal and moral understanding of sexual consent?

I aimed to challenge John Gardner’s claim in his article “The Opposite of Rape” that viewing sex as teamwork necessarily leads to a rejection of sexual consent.

To answer this question, the first part of this thesis focused on Gardner’s idea of good sex as teamwork. By comparing key aspects of Gardner’s argument to prominent joint action theories, I drew two important conclusions. On one hand, I identified a lack of theoretical grounding in Gardner’s approach, exposing both underdeveloped ideas and possible contradictions. On the other hand, I highlighted a gap in joint action theory itself, namely its failure to account for the flexibility and spontaneity of sex. I concluded that although none of the existing theories of joint action could fully support the idea of sex as teamwork, Gardner draws on concepts of this field.

The second part of this thesis examined the complexities of the sexual consent debate, which is often reduced to a narrow focus on legal permissibility. To highlight this complexity, I mapped the discussion along two axes, one concerning the function of sexual consent and the other addressing its content. This analysis revealed that there is no singular definition of sexual consent, rather, its meaning is highly dependent on its use. I demonstrated that Gardner’s critique targets a specific, traditional conception of sexual consent as permission to do something to someone.

In the third part, I questioned Gardner's conclusion that sexual consent should be rejected altogether. Instead, I proposed a redefinition of sexual consent that aligns with the idea of sex as a joint action. My proposal focused on two key aspects. First, I argued that a form of consent, understood as *being in agreement with*, is already embedded in Gardner's framework. Second, I challenged whether this was sufficient to meet the ideal Gardner implicitly sets out. As a response, I introduced a performative, or rather expressive, aspect of consent, which must be symmetrical in action.

As this summary shows, thinking about sex as a joint action is not merely an abstract theoretical exercise. On the contrary, it has real and significant implications for how we understand sexual consent. Rather than following Gardner in rejecting consent, I argue that we should learn from his critique. Rethinking sex and consent in this way not only fills in the missing scenes from romantic movies but also helps us challenge harmful representations of sex and consent in mainstream pornography, where male activity and female passivity are often taken for granted.

If sex is truly to be teamwork, then consent must be an ongoing, mutual process, an active being in agreement with the other person involved. Moreover, this discussion highlights the necessity of a foundation of equality to prevent patriarchal structures from distorting our understanding and practice of consent. This ambitious goal cannot be achieved solely by this thesis, but I have demonstrated that thinking about sex as teamwork brings us one step closer.

Some may object that my proposal has little relevance for legal discussion. However, as I have shown, recent legal developments suggest a shift, albeit an implicit one, toward recognizing the importance of active participation. I argue that the idea of sex as a joint action could further contribute to legal frameworks in helping us refine our understanding of sexual permissibility.

Lastly, I would like to mention that while this thesis has provided answers to some key questions, it has also raised further issues that warrant deeper exploration. One particularly pressing area for future research, grounded in this thesis, is the role of spontaneity and flexibility in joint action theory. Addressing this gap would not only refine our understanding of sex as a joint action but also offer new insights into the evolving discussion on sexual consent.

7 Bibliography

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