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“Next Time” Means “No”: Sexual Consent and the Structure of Refusals

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Abstract

This paper emphasizes a need to recognize sexual refusals both in public discourse and in the context of particular interactions. I draw on sociolinguistic work on the structure of refusals to illuminate a much-discussed case of alleged sexual violence as well as to inform how we ought to think and talk about sexual consent and refusal more generally. I argue on empirical and ideological grounds that we ought to impute the same significance to refusals uttered in sexual contexts as we do to those uttered in nonsexual contexts. Finally, I propose an amendment to the definition of affirmative consent that would put it in line with the conclusions drawn in the rest of the paper.

Keywords: sexual consent, refusal, #MeToo, sexual violence, affirmative consent

1. Introduction

As has been widely observed, two popular slogans calling for an end to sexual violence—“‘No’ means ‘no’” and “‘Yes’ means ‘yes’”—are helpful in some ways but misleading in others (see Harris 2018). The older “‘No’ means ‘no’” slogan emphasizes that if someone refuses sex, that is the end of the matter—to press forward despite a refusal would be sexual assault. In the mid-2000s, however, some feminists advocated for a change in sloganeering to reflect the necessity of *affirmative consent* (see Friedman and Valenti 2008). These feminists observed that sexual consent requires more than the absence of a refusal. In addition, it requires a “knowing, voluntary, and mutual decision among all participants to engage in sexual activity.”² Thus, “‘No’ means ‘no’” was deemed inadequate because mere lack of a

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² This verbiage is pulled from the SUNY (2020) definition of affirmative consent.

refusal does not entail a voluntary decision, and “‘Yes’ means ‘yes’” was proposed as a replacement.³ However, as “‘No’ means ‘no’” misfires for seeming to imply that lack of a “no” establishes consent, “‘Yes’ means ‘yes’” misfires for seeming to imply that agreement entails consent. Contrary to what the slogan suggests, a “yes” does not entail consent, because agreements can be *coerced*. Consider the notorious highwayman’s phrase, “Your money or your life.”⁴ If you hand over your wallet, you have not done so consensually and would be entitled to have it returned to you. Likewise, if somebody says, “I’ll grope you or I’ll kill you,” and you enthusiastically choose the former option, what follows is still a sexual assault. Of course, a slogan may sacrifice accuracy for pithiness, and while “‘Yes’ means ‘yes’” does not preclude coercion, the definitions of affirmative consent that the slogan advertises do insist that agreements to have sex be voluntary.

Compliance in response to an armed threat is clearly nonvoluntary. Likewise, even in the absence of a direct threat, compliance does not entail consent in cases where the power imbalances are so severe as to render voluntary agreement impossible.⁵ Controversies arise, however, over attempts to determine whether compliance is voluntary in cases where a person who is in principle capable of consenting to sex in a situation only acquiesces after repeated and insistent pressure from another party. A paradigm example of such a case was described in a 2018 Babe.net article reporting an account given by a woman using the pseudonym “Grace” about an evening spent with the comedian Aziz Ansari, which she described as “the worst experience with a man [she] ever had” (Way 2018). In short, Grace alleged that Ansari quickly initiated physical contact upon their return to his apartment after a date and didn’t let up even when she communicated both verbally and nonverbally that she would like things to slow down. By the time Grace left the apartment, they had engaged in oral-genital contact. However, Grace alleged that she was “not listened to and ignored” throughout her time there, and that “the last hour [during which she allegedly performed oral sex on Ansari] was so out of [her] hand [*sic*]” (Way 2018). Ansari, however, in a statement released after the publication of the article, claimed that the encounter was “by all indications, completely consensual” (Guglielmi and Petit 2018).

The alleged encounter (henceforth, “the Ansari case”) quickly became a flashpoint in discussion of the #MeToo movement and has since been referenced in

³ Somebody who is asleep or severely intoxicated, for example, may not vocally refuse contact, but neither are they capable of rendering consent.

⁴ Gorr (1986, 385) refers to this well-known line as a paradigm case of coercion.

⁵ Such as, for example, cases involving prison guards and inmates, police officers and those they have detained, human traffickers and trafficked persons, and many others.

a number of legal and philosophical works on sexual consent. Many subsequent purportedly feminist analyses of the case fall into one of two camps, which I will term the *antifragility camp* and the *situational-coercion camp*. The antifragility camp argues that characterizing women who don't assertively refuse unwanted sex as victims of sexual misconduct disempowers and infantilizes women. They claim that because Grace acquiesced to Ansari's advances, calling the case an instance of sexual violence implies that adult women are not sufficiently autonomous to refuse unwanted sex. Further, they claim, implicitly classifying this kind of case along with cases where power imbalances really *do* undermine the possibility of consent is damaging to the project of combatting “actual” sexual violence, since the false equivalence gives the opposition a brush with which to paint the entire movement as an absurd overcorrection that makes victims out of women who had easy outs and rapists out of men who aren't hypervigilantly cautious in how they initiate sex (Weiss 2018; Brawley 2018).⁶

The situational-coercion camp imbues greater significance to how sexist ideologies constrain the moves it is possible, reasonable, or comfortable to make in the course of a given interaction.⁷ For example, in “What is a Sexist Ideology? Or: Why Grace Didn't Leave,” Hilkje Charlotte Hänel (2018) argues that sexist ideology structures sexual negotiations between men and women in ways that make women vulnerable to sexual violence even from men who do not intend to violate their boundaries, and even in situations that they could theoretically disengage from. On Hänel's analysis, the resources Ansari possessed that night—that is, “[his] physical strength (even if he makes no use of it), the location of his apartment, his persistence, the distinct gender roles of Ansari and Grace, and so on”—along with sexist schemas, such as the idea that women are givers and men are takers (2018, 906; citing Manne 2018, 22), that men are sexually dominant while women are sexually submissive (2018, 906; citing MacKinnon 1987, 1989), and the rape myth that men are sexually entitled to women's bodies (2018, 906), help to explain both

⁶ See also Worthington (2020) for an analysis of the top comments on Weiss (2018), indicating that the majority wrote in support of what I am calling the antifragility line of argument.

⁷ The concept “situational coercion” was developed in Kim (2011) in order to explicate the abusive power dynamics that characterize many human trafficking cases. Specifically, Kim develops the concept in order to explain what causes trafficked workers to comply with abusive working conditions absent explicit threats of violence or deportation. An employer is culpable of situational coercion if they deliberately take advantage of the employee's vulnerabilities in a situation where they hold considerable power over the employee, even in cases where they do not directly threaten to make the employee worse off if they don't comply.

why Grace felt “unable to resist” Ansari’s advances (2018, 899) and why Ansari “did not pick up on [Grace’s] verbal and non-verbal clues of discomfort” (2018, 901). Thus, on Hänel’s account, sexist ideology leads to scenarios where women who could in theory have removed themselves from a situation may be less free to do so than may have initially appeared to be the case.

The situational-coercion camp agrees with the antifragility camp that adults of different genders are in principle capable of consensual sex but insists that in some situations, sexist ideologies enable men to be sexually violent to women even in the absence of intentional coercion or direct use of force (Hänel 2018; Filipovic 2018). A major point of disagreement between the camps is thus whether and to what degree situational power differentials like those present in the Ansari case should be viewed as meaningful constraints to women’s autonomy.⁸

In what follows I take on board the point that sexist and other ideologies influence sexual negotiations and behaviors in ways that tend to favor the interests of those whose continued power the ideologies support. But accepting this point leaves open how best to theorize the interplay of ideologies, sexual violence, and sexual consent in cases where power imbalances are significant but not so extreme as to vitiate the very possibility of consent. And, in my view, neither the situational-coercion camp nor the antifragility camp accurately characterizes the interplay of these factors in the Ansari case. The situational-coercion camp maintains that the encounter was sexually violent not because it was nonconsensual but because Ansari’s situational power exerted a coercive influence on Grace’s behavior. I argue instead that the alleged encounter was violent simply because it was nonconsensual, and it was nonconsensual because Grace repeatedly refused Ansari’s advances and Ansari did not heed those refusals.⁹

My argument proceeds as follows. Section 2 examines more closely the relationship between situational power imbalances and sexual violence in cases where consent is at least in principle possible. I conclude that situational power imbalances are not germane to understanding the fundamental violation alleged in

⁸ See Ferzan (2018) for a useful discussion of how possible ambiguities in the concept of coercion may have led to commentators on the Ansari case talking past one another.

⁹ My analysis thus compliments the one advanced by Price (2018), who describes having undergone a days-long period of unrelenting sexual pressure from a man and maintains that “every time he pushed, and re-asked a question that had already been answered, and begged, and complained, he was committing an assault. He just hadn’t gotten to the gratifying part of the assault yet.” Price characterizes Ansari’s alleged behavior as assault in virtue of its fitting this same pattern of a persistent failure to respect another person’s explicit refusals.

the Ansari case, which comes down to the fact that Grace persistently refused Ansari’s advances and Ansari did not heed those refusals. Section 3 further supports this view by examining the dialogue reported in the Babe.net article in light of empirical data on the linguistic structure of refusals and demonstrating that Grace’s alleged refusals fit linguistically normal patterns. Section 4 considers arguments that the prevalence of certain sexist ideologies complicates a straightforward inference from a speech pattern’s constituting a refusal in a nonsexual context to that same speech pattern’s constituting a refusal in a sexual context. I argue that there are empirical as well as ideological grounds to favor a model according to which refusals uttered in sexual contexts are akin to those uttered in nonsexual contexts. Finally, in section 5, I propose an amendment to the definition of affirmative consent that would put it in line with the conclusions drawn in the rest of the paper.

2. Situational Power and the Possibility of Consent

In order to assess the relationship between situational coercion and sexual violence in the Ansari case, it will be useful to compare it to a relevantly but not exactly similar case. In an infamous episode of *It’s Always Sunny in Philadelphia*, “Dennis” makes the case to “Mac” that women are more likely to say yes to sex when propositioned on a boat “because of the implication” that they might be thrown overboard if they refuse (Einhorn 2010).

Dennis: Think about it. She’s out in the middle of nowhere with some dude she barely knows. She looks around her, what does she see? Nothing but open ocean. “Oh, there’s nowhere for me to run, what am I gonna do, say no?”

Mac: Okay . . . that seems really dark though.

Dennis: No, no, it’s not dark. You’re misunderstanding me, bro.

Mac: I think I am.

Dennis: Yeah, you are. ‘Cause if the girl said no, then the answer obviously is no. The thing is that she’s not gonna say no, she’d never say no . . . because of the implication.

Mac: Now, you said that word “implication” a couple of times. What implication?

Dennis: The implication that things might go wrong for her if she refuses to sleep with me. Now, not that things are gonna go wrong for her, but she’s thinking that they will.

Dennis’s lines in this scene demonstrate that he is aware of the kinds of implicitly threatening power imbalances to which feminist theorists of sexual violence call our

attention.¹⁰ Indeed, his analysis of the scenario of propositioning a woman for sex on a boat is structurally similar to Hänel's analysis of the features of sexist ideology at play in the Ansari case. Hänel posited that Ansari derived a threatening form of structural power from his physical strength, from their location in his apartment, and from the distinct gender roles of Ansari and Grace. Likewise, Dennis observes that the mere fact of being stranded on a boat with a man, given the background awareness that men can be prone to violence when their sexual demands are not met, would incline a woman to acquiesce to sex out of fear. Of course, Dennis doesn't stop at merely observing the possibility of situational coercion. Instead, he states an intention to *leverage* the coercive features of the situation in order to secure a woman's agreement to sex.

A few key differences between the scenario Dennis describes (henceforth, "the Dennis case") and the Ansari case help to clarify debates about the relationship between situational coercion and sexual violence. For one, Dennis explicitly intends to leverage the power imbalances present in his situation in order to get what he wants, whereas we can't presume to know whether Ansari consciously or intentionally leveraged any power imbalances, or whether he was even aware of the features of the situation that may have registered as coercive to Grace.¹¹ The question of intent is not just legally but morally relevant: Dennis's intent to leverage a coercive situation is condemnably predatory. But this assessment of his intentions does not directly entail anything about the status of any particular sex act he might engage in. To understand the ways in which character assessments, power differentials, and assessments of particular encounters can come apart, consider four possible versions of the Dennis case.

Version 1 (leveraging present and necessary): Dennis recognizes that Janet might reasonably fear murder at sea if she refuses sex on a boat, and he consciously leverages this in order to make it more likely that she will agree to sex if propositioned. (That is, he deliberately chooses to initiate sex while they're out on open water, rather than while they're docked, for this specific reason.) Dennis initiates sex while at sea, and Janet reciprocates his advances, despite not actually wanting to. She only reciprocates out of fear she will be murdered if she refuses. Had he initiated sex while they were docked, she would have refused and left the boat.

¹⁰ See Gavey's (2019, 129–135) discussion of the pressures that can be generated by discourses on the "insistent" male sex drive.

¹¹ See Hänel's (2018, 913–914) argument that sexist ideology tends to "mask" the true nature of sexually violent encounters from both parties and that this could explain why Ansari may have been sexually violent without realizing it.

Version 2 (leveraging present but not necessary): Dennis recognizes that Janet might reasonably fear murder at sea if she refuses sex on a boat, and he consciously leverages this in order to make it more likely that she will agree to sex if propositioned. (That is, he deliberately chooses to initiate sex while they’re out on open water, rather than while they’re docked, for this specific reason.) Dennis initiates sex while at sea, and Janet happily reciprocates his advances. She had already intended to have sex with Dennis and was very excited to do so. She would have had sex with him that day no matter where or when he initiated.

Version 3 (situational coercion but no leveraging): Dennis has not given any thought to whether being propositioned for sex at sea could be a fearsome prospect to Janet. He had thought he would likely initiate sex at some point that day but put no prior thought into when and where it might happen. But he finds it romantic on the open water, so he initiates sex there. Janet reciprocates his advances, despite not actually wanting to. She only reciprocates out of fear she will be murdered if she refuses. Had he initiated sex while they were docked, she would have refused, and left the boat.

Version 4 (situational coercion inefficacious): Dennis has not given any thought to whether being propositioned for sex at sea could be a fearsome prospect to Janet. He had thought he would likely initiate sex at some point that day but put no prior thought into when and where it might happen. But he finds it romantic on the open water, so he initiates sex there. Janet happily reciprocates his advances. She had already intended to have sex with Dennis and was very excited to do so. She would have had sex with him that day no matter where or when he initiated.

Which, if any, of these versions of the Dennis case describe sexual assault? We want more information before answering, such as descriptions of the manner in which Dennis initiated sexual contact and the character of Janet’s verbal and bodily response to Dennis’s initiation. For the sake of isolating questions about the relevance of situational power imbalances, then, let us stipulate that Dennis and Janet’s observable behavior is identical in all four versions of the case: Dennis doesn’t overtly pressure Janet, and Janet immediately and seemingly enthusiastically reciprocates his advances.¹²

¹²Of course, the versions of the case where Janet only had sex out of fear would not likely play out this way. If somebody is having sex only out of fear, they are likely to respond differently than if they had engaged out of enthusiastic desire. Thus, some

With this stipulation in place we can observe without much controversy that version 4 describes a consensual encounter.¹³ But what of the other three, which are behaviorally equivalent? Members of the antifragility camp would likely insist that all four scenarios are straightforwardly consensual. Because Dennis did not actively threaten Jane, and because the situation is not so coercive as to undermine the very possibility of consent, Jane's fears of "the implication" do not nullify her behavioral demonstrations of consent.¹⁴ And Dennis's intentions in the first two scenarios, however predatory, do not automatically render the sex he initiated nonconsensual. This position is not unreasonable. However, antifragility feminists often go on to add claims such as "Jane should have adamantly refused the unwanted sex," or "Calling any of the first three cases sexual violence is harmful to all, because it classes what any reasonable party could easily have mistaken for a

might argue that the Dennis in the third version of the case ought to have recognized that his Janet was unenthusiastic and ceased the sexual contact. However, enthusiasm can be faked. Janet may find herself suddenly so terrified of Dennis that she worries about how he might respond to even so much as hesitancy on her part. She may worry that even a minor blow to his ego could be disastrous for her, and thus intentionally perform enthusiasm and happiness until the point where she can safely escape.

¹³ Kukla (2018) argues that sexual-ethics discourse has suffered from its single-minded focus on the concepts of consent and refusal. She maintains that consent is not sufficient for ethical sex, and that ethical sexual negotiation incorporates speech acts additional to those which grant and refuse consent—in addition, for example, sexual negotiation can be used to establish desires, make sexual offers, set limits, and establish exit conditions for sexual activity. As such, sexual negotiation is a fundamental tool of sexual autonomy: it enables a kind of agency and fulfillment that we can only fully theorize when we take into account the totality of its functions. I wholeheartedly agree that consent is not sufficient for ethical sex and that other important norms of sexual discourse and activity are woefully undertheorized. However, I hope to make the modest case in this essay that there is more to understand about the nature of sexual refusal than has been widely accepted, with the hope that the arguments here will support the baseline project of ending sexual violence even if they don't speak to the equally important project of theorizing the conditions under which sex is ethical and fulfilling rather than merely consensual. See also Gavey (2019, 129–131) for a compelling argument that ethical sex requires more than consent.

¹⁴ Some situations involve power imbalances so significant as to vitiate the possibility of sexual consent, and in those cases the inference from behavioral demonstrations of consent to actual consent fails (see footnote 5 for examples).

consensual encounter as an instance of sexual violence, which leads to unfairly castigating innocent men as rapists and offensively characterizing merely unassertive women as victims.”¹⁵

Neither of these addendums follows, however, even on the assumption that all four acts are consensual. The first depends on insisting that Jane should have fully trusted that there would be no violent consequences to her refusal, and, as even Dennis understands, that is not the world we live in. The second is a thesis about the harm of making certain statements about instances of consensual but unwanted sex, and, in order to assess its truth, we need to consider more than the status of the act *vis a vis* consent. For example, we need to examine the relationship between sexual consent and sexual violence with an eye to the possibility that an encounter may be consensual and yet violent. Thus, members of the situational-coercion camp could take on board the claim that all four acts are consensual but argue that at least some versions of the Dennis case are nonetheless sexually violent.

The Ansari case, however, is violent for a different reason, as we can see by slightly reimagining the Dennis case. Recall that we stipulated that Dennis does not pressure Janet in any of the four versions of the Dennis case, and that Janet does not resist Dennis’s advances, even in the versions where she only reciprocates out of fear. But let us remove that stipulation and imagine a variation of the case in which Janet does not immediately and enthusiastically reciprocate Dennis’s advances. Instead, she politely declines by saying something like, “I like you, but I prefer to take things slow. Maybe next time. For now, let’s just enjoy the boat ride.” She is afraid to upset him without the possibility of an easy escape but nevertheless expresses her disinterest in case she is wrong to fear what he might do. Now suppose that, rather than leave her alone after these remarks, Dennis reinitiates his advances by following her around the boat, kissing and groping her, and continually requesting that she perform oral sex on him despite her repeated attempts at de-escalation. Suppose too that this behavior makes Dennis and the situation even more menacing to her, and so after about an hour she acquiesces to oral sex.

¹⁵ See Weiss’s (2018) remarks that “if he pressures you to do something you don’t want to do, use a four-letter word, stand up on your two legs and walk out his door,” and that “the insidious attempt by some women to criminalize awkward, gross and entitled sex takes women back to the days of smelling salts and fainting couches.” And Brawley’s (2018) statement that “we cannot indiscriminately start destroying careers over *consensual* sexual activity, which based on her account is what this case appears to be. When we do that, we trivialize the brave victims who are coming forward about actual sex crimes.” See also many of the comments cited in Worthington (2020).

Dennis's behavior in this version of the case is akin to how Grace alleged Ansari behaved in his apartment. Thus, we can assume that the antifragility camp would claim that no sexual violence occurred in this scenario, while the situational-coercion camp would maintain that sexual violence did occur. However, the situational-coercion camp's analysis of the nature of that violence does not adequately account for the profound distinction between scenarios in which Janet unhesitatingly reciprocates Dennis's advances and those in which she explicitly refuses them.¹⁶ My own view is that the ideologically generated power imbalances present in these scenarios are fruitful theoretical subjects in their own right but are red herrings *vis a vis* the nature of the violence that transpired in the Ansari case. I maintain that the alleged encounter was violent simply because it was nonconsensual, and it was nonconsensual simply because Ansari did not heed Grace's refusals. Thus, my analysis subtly but meaningfully differs from Hänel's—whereas Hänel (2018, 902) argues that the power differentials in such cases make the less powerful “[feel] unable to refuse” the advances of those to whom ideologies encourage us to cater, I argue that Grace did indeed repeatedly refuse Ansari's advances, and in order to combat sexist ideology and empower those most victimized by it, we must insist that such refusals be recognized both in public discourse and in the context of particular sexual negotiations. I further this analysis in the next section by examining the dialogue reported in the Babe.net article in light of empirical data on the linguistic structure of refusals.

3. The Ansari Case and the Structure of Refusals

In their article “Just Say No? The Use of Conversation Analysis in Developing a Feminist Perspective on Sexual Refusal,” psychologist Celia Kitzinger and social scientist Hannah Frith (1999) offer a sociolinguistic analysis of refusals generally in order to provide background context for analyzing sexual refusals specifically. They observe that “both men and women have a sophisticated ability to convey and to comprehend refusals, including refusals which do not include the word ‘no,’” and conclude that “male claims not to have ‘understood’ refusals which conform to culturally normative patterns can only be heard as self-interested justifications for coercive behavior” (Kitzinger and Frith 1999, 295).

In support of these claims, they cite numerous studies analyzing the structure of nonsexual refusals in everyday conversation, establishing that acceptances of invitations (offers, proposals, etc.) usually do involve “just saying yes,” and doing so without hesitation. Refusals of invitations, however, generally do not involve “just saying no,” and typically involve hedging or hesitation of some kind

¹⁶ As I clarify in footnotes 5 and 14, this distinction is only significant in scenarios where consent is in principle possible.

(1999, 300–301). As such, refusals tend to incorporate some of the following features:

- (i) delays, e.g. pauses and hesitations . . . ;
- (ii) prefaces (also referred to as ‘hedges’) e.g. use of markers like ‘uh’ or ‘well’ . . . ;
- (iii) palliatives, e.g. appreciations, apologies, token agreements etc. which serve to alleviate the pain caused by the refusal; compliments such as ‘it’d be great’ or ‘that’s awfully sweet of you’ are both examples of palliatives. *Other possible palliatives would include accompanying a refusal with a delayed acceptance (‘not today, but tomorrow’) [emphasis mine] . . . ; and/or*
- (iv) accounts, i.e. explanations/justifications/excuses for why the invitation is not being accepted such as a prior engagement or commitment. (301)

The fact that refusals are typically indirect might lead one to wonder whether refusals are generally less likely to receive uptake than acceptances. There is strong evidence, however, that refusals do receive uptake in nonsexual contexts, even when they are hesitant and hedged—that is, they receive uptake when they are structured in the manner typical to refusals. Indeed, even so-called “weak acceptances” (such as a half-hearted “yeah” given after a pause) can successfully communicate refusals. Thus, Kitzinger and Frith conclude that “[because] young women are communicating [in sexual contexts] in ways which are usually understood to mean refusal in other contexts . . . it is not the adequacy of their communication that should be questioned, but rather their male partners’ claims not to understand that these women are refusing sex. . . . [These men] are claiming not to understand perfectly normal conversational interaction, and to be ignorant of the ways of expressing refusal which they themselves routinely use in other areas of their lives” (1999, 309–310).

The studies cited in Kitzinger and Frith (1999) help to substantiate Grace’s own analysis of what transpired that night. Grace’s considered view at the time of the Babe.net interview was that Ansari had sexually assaulted her and that she was “not listened to and ignored.” Thus, her own assessment of the encounter runs counter not only to the analysis put forward by the antifragility camp but also to the analysis offered by the situational-coercion camp.¹⁷ My own analysis concurs with

¹⁷ Filipovic’s (2018) discussion of the Ansari case, for example, posits that “women are so strongly socialized to put others’ comfort ahead of our own that even when we are furiously uncomfortable, it feels paralyzing to assert ourselves.” This may be

Grace's assessment. As I will argue, Grace's alleged refusals fit linguistically normal patterns. Thus, Ansari's alleged physical contact following those refusals violated her explicitly stated boundaries, and his claim afterward that the encounter was "by all indications completely consensual" was false, however sincerely he may have believed it.

The dialogue reported in the Babe.net article indicates that Grace verbally refused sexual contact at least four times.¹⁸ First, she said, "Whoa, let's relax for a sec, let's chill" when Ansari reached for a condom shortly after they began kissing. And, while Ansari did cease in that moment from attempting to initiate penetrative sex, he continued to kiss her and go down on her without pause, and then asked her to reciprocate, which she briefly did (Way 2018). I would argue that this first refusal should be understood as a call to pause all sexual contact, not simply as a refusal of penetrative sex. Note that she doesn't say, "Let's just keep kissing for a while," or "Let's just do other stuff for now." She says, "Let's relax for a sec, let's chill." People say that sort of thing when they want to step back and get their bearings, not when they want to continue—let alone escalate—whatever is currently happening.

The second refusal came shortly after, when she replied, "Next time," when he asked where she wanted to have (penetrative) sex. He said, "Oh, you mean the second date?" She replied, "Oh, yeah, sure," and he said, "Well, if I poured you another glass of wine now, would it count as our second date?" and poured out a glass and handed it to her (Way 2018). Grace's "next time" exemplifies the palliative mode of expressing refusal with a delayed acceptance. And the joke Ansari allegedly made afterward communicated that he did not take this refusal seriously and would continue to pressure her for sex despite having understood that she'd verbally refused it.

Shortly after this exchange, Grace excused herself to go to the bathroom and stayed there a while to collect herself. When she emerged, Ansari asked if she was okay. She replied: "I don't want to feel forced because then I'll hate you, and I'd rather not hate you" (Way 2018). This third refusal fits the model of a refusal accompanied by a justification/excuse for why the invitation is not being accepted. Ansari's reply was, "Oh, of course, it's only fun if we're both having fun," and he suggested they chill on the couch. They moved to that area; Ansari sat on the couch and Grace sat on the floor next to him. He then told her to turn around. When she did, as she told Babe.net, "he sat back and pointed to his penis and motioned for me

true, but, as I will argue, it is important to emphasize that Grace asserted herself quite clearly.

¹⁸ I focus on Grace's alleged verbal refusals, but her alleged nonverbal refusals also bear mentioning—e.g., moving away from him, going cold, removing her hand from his genitalia after he placed it there, etc.

to go down on him. And I did. I think I just felt really pressured. It was literally the most unexpected thing I thought would happen at that moment because I told him I was uncomfortable.” He then pulled her up on the couch, kissed her again, and said, “It doesn’t look like you hate me” (Way 2018).

The fourth refusal was an explicit “no”; when he led her to a nearby mirror and attempted to initiate penetrative sex. After she refused this, he suggested they return to the couch, and put on an episode of *Seinfeld*. He allegedly began kissing her again and attempted to undo her pants. She turned away and said, “You guys are all the same.” He asked, “What do you mean?” but when she turned to him to answer he began kissing her again. At that point, she got up, went to her phone, and said she would call herself a car. He kissed her again, and she pulled away. He then said he would call her a car, which he did. On the way home, Grace said it hit her just how violated she felt by the encounter. As she put it, “That last hour was so out of my hand [*sic*]” (Way 2018).

It might be argued—indeed, it has been posited by some media discussions of the incident—that while Grace did not consent to penetrative sex, she did consent to oral sex (see Reed and Fritts 2018). After all, her first two verbal refusals were offered while Ansari was attempting to escalate from kissing/groping to penetrative sex. However, I would argue that kissing and oral sex were also within the scope of these refusals. As suggested earlier, Grace’s saying “Let’s relax for a sec, let’s chill” scans as a request to deescalate the encounter, not to continue it. Recall also Ansari’s own alleged words later in the evening after Grace had told him that she did not want to feel forced, because then she might hate him. Shortly after she said that, he requested that she go down on him, which she did. Afterward, he said, “Doesn’t look like you hate me,” which implies that he understood oral sex to be within the scope of actions that Grace didn’t want to feel forced into, and thus, within the scope of what she was refusing.

Once we understand that refusals are typically expressed indirectly, we can see that Ansari’s alleged actions that night violate the “‘No’ means ‘no’” model of consent. If somebody refuses sexual contact and you persist in touching and groping them, you have violated their explicit sexual boundaries—that is, you have sexually assaulted them.

Some argued that Grace ought not to have engaged in oral sex if she didn’t want to, and since Ansari didn’t directly threaten her in any way, her performance of oral sex entailed that she consented to it (Reed and Fritts 2018; Weiss 2018; Brawley 2018). However, the inference from compliance to consent is weakened once we recognize that Grace’s sexual boundaries were violated from the moment her first refusal was unheeded. Because that violation transpired within moments of their arrival at his apartment, and was soon followed by others, she was in a position of both being continually subject to unwanted advances and having to contend with

repeated sexual violation for most of her time there. Thus, it should not surprise us that she felt “stunned and shocked,” and didn’t act in the way her desires would perhaps have inclined her to act had she not been repeatedly assaulted—that is, why she didn’t leave, and instead complied with his requests for oral sex (see Price 2018). While the question of why she complied has important implications for how we ought to understand and empathetically respond to the behaviors of victims of sexual violence in a rape culture, it is not crucial to assessing the question whether Grace was sexually assaulted. And I have argued that, if the encounter transpired as alleged, the answer to that question is straightforwardly yes.

4. Two Models of Sexual Refusals

I have argued that Grace repeatedly refused sexual contact in the Ansari case, and Ansari did not heed those refusals. In my view, this is the fundamental violation that occurred in that case, and its nature can be understood without reference to the power imbalances generated by sexist ideologies. Indeed, the encounter would have been equally violating if Grace had ignored Ansari’s refusals in a similar manner.¹⁹ Those who emphasize the relationship between sexual violence and sexist ideology might agree with me on that point but maintain that sexist ideologies explain *why* Grace’s refusal was ignored. I would not disagree. Indeed, sexist ideologies would likely also factor into explanations of why women sometimes ignore men’s sexual refusals.²⁰ However, some theorists maintain that refusals are not just ignored as a consequence of sexist ideology but are actually *unutterable*. Rae Langton (1993), for instance, argues that certain kinds of pornography, when sufficiently pervasive and authoritative, might render it impossible for women to refuse sex in certain contexts despite their sincere attempts to do so.²¹

¹⁹ Gavey (2019, 181–201) questions the view that the nature of a sexual violation can be held fixed if the genders are reversed. However, her argument depends on the view that situational power differences are essential to acts of rape. I have argued that while these power imbalances may explain gendered differences in typical behavior surrounding sexual boundary violations, sexual boundary violations are instances of sexual assault regardless of the genders of the perpetrator and victim.

²⁰ For example, the schema that men are always urgently sexually aroused, which is an aspect of the rape myth that women have an obligation to cater to men’s insistent sexual arousal, might lead a woman to believe that a man’s sincere refusals can’t possibly be genuine.

²¹ See also Hornsby and Langton (1998) and Mikkola (2011) for further development and defense of this position.

Langton supports this view by noting that pornography is often legally defended as a form of speech and analyzing the possible functions pornography might perform as speech. As J. L. Austin observed, utterances of speech are used not only to convey information but to perform actions. For example, saying “I name this boat Drusilla” while smashing a bottle of champagne on its bow is an act of naming. More nefariously, utterances can function as acts of subordination and silencing. For example, if a legislator with the necessary power utters, “Women are no longer allowed to vote,” then that speech subordinates women. Langton argues that it is at least possible that pornography is speech that subordinates women, insofar as it depicts women as being sexually available at the will of men and is sufficiently authoritative in the domain of sexuality that men internalize this conception of women’s sexual availability and take it as normative in their sexual encounters (1993, 300–314).

In addition to subordinating women, Langton argues, pornography might also silence them by effecting the *illocutionary disablement* of their sexual refusals. Illocutionary disablement occurs when a person intends their utterance to be a certain kind of act, but something about the situational context or their authority within that context blocks the intended act from occurring. For example, if a would-be groom says “I do” at a wedding ceremony, but unbeknownst to him, the person conducting the ceremony is not an ordained minister, the utterance does not count as an act of marrying. Or if an actor intends to warn of a real fire just offstage, but there is a fake fire onstage visible to the audience, the actor’s utterance may fail to count as a warning (1993, 315–317).

Langton suggests that pornography might illocutionarily disable women’s attempts at sexual refusals, and that this phenomenon could explain why sexual assault is so widespread. As in the case of the actor’s attempt to warn of the fire, a woman might intend to refuse by explicitly saying no to sex, but widespread social exposure to pornography might render her refusal unsuccessful. Langton argues:

Pornography might legitimate rape, and thus silence refusal, by simply leav[ing] no space for the refusal move in its depictions of sex. In pornography of this kind there would be all kinds of locutions the women depicted could use to make the consent move. “Yes” is one such locution. “No” is just another. Here the refusal move is not itself eroticized as in the pornography considered earlier: it is absent altogether. Consent is the only thing a woman can do with her words in this game. Someone learning the rules of the game from this kind of pornography might not even recognize an attempted refusal. “Coming from her, I took it as consent,” he might say. Refusal would be made unspeakable for a woman in that context. (324)

Thus, Langton suggests that pornography might be so authoritative as to alter the conversational norms in sexual contexts so that a woman's "no" can't actually mean "no," even when she intends it to. Call this the *failed-refusal* model.

Kitzinger and Frith's (1999) analysis of refusals suggests an alternative, which we might call the *unheeded-refusal* model. On the unheeded-refusal model, sexual assault after a refusal is best explained by the fact that the refusal has not been heeded, even though it is structurally similar to refusals that would easily be understood as such in other contexts. The question *why* a particular refusal was not heeded would need to be assessed with attention to the particular details of the case, and sexist ideologies will likely factor into explanations of cases where men and women fail to heed one another's refusals.²² Each of these models, then, has the resources to explain what happens when men don't heed women's attempted refusals in sexual contexts.²³

Indeed, the failed-refusal model could also explain what transpired in the Ansari case. Perhaps Ansari's exposure to pornography, or his immersion in sexist ideology, positioned Grace's attempted refusals to misfire. Someone who supports the failed-refusal model could argue that, while Grace's attempted refusals would have successfully registered as refusals in nonsexual contexts, in the sexual context they were illocutionarily disabled. Someone in Ansari's position, on this model, may have genuinely been incapable of registering them as the refusals that they were intended to be.

²² Thus, accounts of sexist ideologies such as those advanced in Hänel (2018) and in Gavey (2019) could work in tandem with the unheeded-refusal model to explain cases where women's refusals are unheeded by men.

²³ A third model, which this paper won't delve into, we might call the *token-refusal* model. The token-refusal model is elaborated in Husak and Thomas (1992). Citing a study Muehlenhard and Hollabaugh (1988) that finds that 39 percent of Texas female college undergrads reported that they had said no in situations where they actually wanted sex, Husak and Thomas (1992) argue that men might reasonably interpret a "no" as a "yes" in sexual contexts insofar as it is conventional for women to utter token refusals. Muehlenhard and Rodgers (1998), however, conclude that the use of token refusals is not widespread, and cast doubt on the prevalence data reported in previous studies. I would imagine the deployment of token refusals has only decreased in frequency since 1998, and, in any case, agree with Husak and Thomas (1992, 124) that it is for the best if convention mandates an affirmative duty to ensure that consent has been freely and sincerely given. Indeed, this paper attempts to further the establishment of such a convention.

I have argued that the reported evidence suggests that Ansari did indeed understand Grace’s refusals as refusals.²⁴ However, not all cases of sexual assault contain verbal evidence that the perpetrator understood that the victim had intended to refuse. Nonetheless, follow-up studies to Kitzinger and Frith’s (1999) analysis have shown that men are capable of understanding refusals that do not contain the word “no” in specifically sexual contexts, and, further, are able to recognize even very subtle nonverbal refusals in those same contexts (O’Byrne, Rapley, and Hansen 2006). Thus, there is mounting evidence against the view that sexual assaults in cases involving polite refusals are best explained in terms of miscommunication (see Beres 2010).

Additionally, there are pragmatic and ideological reasons to favor the unheeded-refusal model over the failed-refusal model. Proponents of the failed-refusal model have done the important work of explaining how sexist ideology naturalizes the objectification of women and wrongfully excuses the violation of our boundaries. Proponents of the unheeded-refusal model need not deny these important observations. Indeed, the crux of my argument in favor of the unheeded-refusal model is that its widespread acceptance would go further toward dismantling sexist ideologies than would acceptance of the failed-refusal model. The failed-refusal model suggests that in order to ensure that women’s refusals are expressible, we need to either banish speech that silences women’s refusals, or undercut the authority of that speech via further speech, such as feminist or queer pornography or large-scale public campaigns emphasizing the importance of respecting women’s sexual boundaries (Langton 1993, 330).

The unheeded-refusal model, on the other hand, affirms that women are more successful than it is often acknowledged at communicating our sexual boundaries. It maintains that we do not need to defang the pernicious influence of sexist ideology in order to insist that such refusals are genuine and ought to be heeded. Instead, we must recognize a universal obligation to put our understanding of how refusals are communicated to work even in contexts where we would prefer not to receive one.

The failed-refusal model accords individual men and women relatively little power to ensure nonviolent sexual interactions.²⁵ Indeed, some critics of the model have worried it might entail that sexual contact following a failed refusal cannot accurately be characterized as assault, since the contact in question was not actually refused (Bird 2002; Jacobson 1995). Mikkola (2011) defends the failed-refusal model from this objection by noting that the absence of a refusal does not entail the

²⁴ By reference to his alleged statement, “It doesn’t look like you hate me.”

²⁵ Hesni (2018, 951–952) also argues that the failed-refusal model harmfully strips victims of sexual assault of agency.

presence of consent. Thus, even if we say there was no refusal in such cases, we cannot draw the further conclusion that the cases were consensual, since they may have failed to achieve the standard of affirmative consent (Mikkola 2011, 431–432). However, my analysis of the Ansari case calls this defense of the failed-refusal model into question. I have argued that the Ansari case describes nonconsensual sex specifically because Grace’s refusals were unheeded; the fact that Ansari didn’t heed Grace’s refusals explains why subsequent acts that, in other contexts, may have been consensual—for example, her performing oral sex on him after he indicated that he would like for her to do so—were in fact nonconsensual. To put the point more abstractly, Mikkola is correct to note that the lack of a refusal doesn’t entail consent. However, the presence of a refusal does entail nonconsent. And if we deny that refusals are expressible by women because of certain sexist ideologies, then we lose the ability to point to cases of sincerely expressed but unheeded refusals as straightforward instances of sexual assault.²⁶

The unheeded-refusal model, on the other hand, accords the power to state boundaries and the responsibility to respect them to all parties capable of engaging in consensual sexual encounters. And, when it comes to refusals, “Maybe next time” is as clearly stated as “No.”

5. Conclusion: Sexual Refusal and Affirmative Consent

The unheeded-refusal model insists that refusals fitting linguistically normative patterns be heeded in sexual contexts, and that when they are not heeded, a sexual assault has occurred. In order to incorporate this model into definitions of affirmative consent, I suggest adding the following condition to such definitions: “If any sexual contact has been refused, then sexual contact must wholly cease unless voluntarily reinitiated by the person(s) who last refused contact.”²⁷ This addition would have at least three benefits. First, when properly followed, it would prevent cases of sexual violence such as that which allegedly transpired between

²⁶ Mikkola would perhaps respond that proponents of the failed-refusal model could insist that sexual contact following an *attempted* refusal be classified as sexual assault, even when that refusal fails (see Mikkola 2011, 432–434). Presumably, however, this would only be justifiable in cases where the attempted refusal is expressed in line with behaviorally typical expressions of refusal, and so the justification for classifying such cases as sexual assault would at bottom be the fact that the person did express refusal.

²⁷ Price (2018) proposes a similar standard of conduct: “If the person you’re spending time with says no, you stop. If they don’t help you to “move things along” (i.e., if they don’t advance the sexual encounter), you slow down, don’t advance, or stop.”

Grace and Ansari. If Ansari had acted in accordance with this condition, he would have ceased physical contact after Grace’s initial request to “relax for a sec,” and not reinitiated contact. Second, it leaves open the possibility of willingly changing one’s mind about choosing to engage in sexual activity, since the person who initially refused contact is free to reinitiate and/or initiate a different form of activity. Thus, the condition respects the sexual agency of persons who might be vulnerable to sexual assault, while also protecting them against sexual boundary violations. Third, it provides a clear behavioral criterion for ascertaining when such a change of mind has occurred in one’s partner, so that the person who had initially been refused could trust that the other was a willing participant and not simply complying out of shock in the aftermath of a boundary violation.

Of course, this third benefit will only be seen as such by those who sincerely prioritize not violating sexual boundaries. And sadly, most perpetrators of sexual assault do not have that concern at the forefront of their minds. Their reasons for not prioritizing their partner’s sexual boundaries can be more or less vicious. Someone like Dennis in the original Dennis case, for example, who deliberately hopes to leverage any available situational power in order to procure compliance to sex that the other party may not actually want, is unlikely to care about his partner’s sexual boundaries so much as he cares about putting her in a situation where she feels unfree to express them. In more mundane but equally harmful cases, however, perpetrators may not have explicitly predatory intent but nevertheless may not specifically care about or prioritize understanding the desires or boundaries of their partner. Instead, their sole focus may simply be getting the sexual contact they desire. And while they would cease if confronted with a firm and direct refusal, they will persistently attempt to escalate sexual contact in the absence of such a protest, and perhaps attempt to reinitiate contact even after a direct refusal has been given.

The preceding discussion is offered with the hope of mitigating this somewhat less intentionally predatory kind of sexual violence. If the positions argued for in this paper are widely accepted, then those who don’t actually care about their partner’s desires and boundaries will be rendered less believable when pleading ignorance to having committed sexual assault, and those who do actually care about respecting their partner’s desires and boundaries will have some empirically informed and explicit guidance on how to do so.

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