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Hand, Michael

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Consent and mutuality in sex education

Michael Hand 

School of Education, University of
Birmingham, Edgbaston, Birmingham, UK

Correspondence

Professor Michael Hand, School of Education,
University of Birmingham, Edgbaston,
Birmingham B15 2TT, UK.
Email: m.hand@bham.ac.uk

Abstract

Sharon Lamb, Sam Gable and Doret de Ruyter have recently argued that sex education in schools should promote a more demanding standard for morally permissible sex than consent. On their view, pupils should be taught that morally permissible sex is not only consensual but also mutual, where mutuality requires participants in sex to 'try to know what is knowable' about each other. I argue here that, while Lamb et al. are right about the insufficiency of consent, the case for mutuality as a standard of moral permissibility cannot be sustained. Mutuality fares better as a standard of moral desirability, but even in this weaker form, it is too controversial to promote in schools.

KEYWORDS

consent, moral desirability, moral permissibility, mutuality, plain sex, sex education

In a rousing recent article, Sharon Lamb, Sam Gable and Doret de Ruyter argue that sex education in schools should promote a more demanding standard for morally permissible sex than consent (Lamb et al., 2021). They do not, of course, object to the idea that sex must be consensual: Their contention is that 'consent is a necessary component for ethical sex but not sufficient' (p. 273). They propose to supplement the standard of consent with the standard of *mutuality*. Sex is mutual when participants 'encounter the other with care and loving attention' (p. 271), when they 'see or try to know what is knowable about the person, and look attentively at the other for signs of discomfort, fear, pleasure, withdrawal, or ecstasy' (p. 274). The authors are 'hesitant' to suggest that non-mutual sex should be criminalised, 'given the limitations in the law and court proceedings to understand and represent the nuances of intimate sexual encounters' (p. 279), but they are forthright in declaring it morally impermissible and recommending that it be taught as such in schools. The impracticality of legal prohibition, they say,

does not mean that the state cannot take responsibility in ensuring that citizens realize that this is a better standard for ethical sex rather than consent. We suggest now that the state should do so and

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has this possibility through compulsory sex education with curricula that address sexual ethics. The standard of mutuality should be taught in all schools and the government should indeed demand or support this, even with checks to see if children have learned this standard. (p. 282)

The position staked out by Lamb et al. certainly has intuitive appeal. Indeed, their first substantive claim—that consent is insufficient for morally permissible sex—is not merely plausible but incontrovertibly true. And the idea that, in the domain of human sexual activity, what consent leaves out of the picture is care and loving attention has obvious resonance with the things many of us most value in our sexual relationships. Nevertheless, I think it is a mistake to regard non-mutual sex as morally impermissible, and a more serious mistake to teach it as such in schools. My aim in what follows is to explain why.

My discussion is divided into three sections. In the first, I address the insufficiency of consent: I argue that examples of morally impermissible consensual sex are easy to come by, but that the standards breached in these cases are just the familiar moral prohibitions on doing harm and breaking promises. In the second section, I assess the case for mutuality as a standard of moral permissibility and find it wanting: the attempt to prohibit non-mutual sex is unjustified in principle and unworkable in practice. Finally, I consider the possibility of casting mutuality in a weaker moral role than Lamb et al. intend, as a standard of desirability rather than permissibility. But I conclude that, even in this weakened form, schools have no mandate to promote the standard of mutuality in sex education.

THE INSUFFICIENCY OF CONSENT

The argument advanced by Lamb et al. for the insufficiency of consent is a little obscure. Their case seems to rest on the practical difficulties we sometimes encounter in our efforts to apply and enforce the standard. Is consent valid when given under the influence of alcohol? Must consent be given ‘enthusiastically’ and ‘reaffirmed throughout the encounter’ (p. 273)? How much pressure may be brought to bear on someone without invalidating their consent? These vexed questions prompt the authors to ask whether consent sets too low a bar for morally permissible sex: ‘the amount of clarification, context, and qualifications on what is valid consent, present in current consent campaigns, might suggest that more is needed for sex to be ethical’ (p. 273).

But there is something fishy about this inference. The fact that a standard is sometimes difficult to apply is not usually construed as evidence that an additional standard is needed. It is more naturally construed as a reason for specifying the troublesome standard more tightly, or perhaps simply a reason for reminding ourselves of the messiness of moral life and the onus on moral agents to exercise judgement. Aside from anything else, adding a second moral standard to the mix does nothing to address the difficulties of applying the first one. The question of whether consent given under the influence of alcohol is valid does not disappear or become less pertinent merely by adding a requirement for loving attention. The problems of application Lamb et al. identify appear to have little bearing on the question of sufficiency.

Notwithstanding this worry, I agree with the authors that consent is insufficient for morally permissible sex. There are at least two types of unambiguously consensual sex that are deserving of moral condemnation. The first type is consensual sex in which one person intentionally or knowingly causes harm to another; the second type is consensual sex between people who have made vows of sexual fidelity to third parties. The former is wrong because we have a moral obligation not to cause people harm, even if they have consented to it. The latter is wrong because we have a moral obligation to keep our promises. At the very least, then, there are more necessary conditions for morally permissible sex than consent: sex is only permissible when (i) all participants give their consent, (ii) no participant is knowingly harmed and (iii) no non-participant is betrayed.

An objection to the prohibition on harmful consensual sex might be advanced on behalf of sadomasochists, on the grounds that inflicting or undergoing pain is integral to their sexual encounters and significantly heightens their pleasure. But this is to confuse harm with pain. To harm someone is to set back her interests by causing her injury, hardship or suffering, or by depriving her of goods, freedoms or opportunities to which she is entitled. Inflicting pain

on people often but not always causes them injury or suffering, so is often but not always morally wrong. Where participants in sadomasochistic sex invite pain, derive pleasure from it, and are not injured by the measures taken to inflict it, no harm is caused and no moral standard is violated.

By the same token, an objection to the prohibition on unfaithful consensual sex might be raised by those sympathetic to the situation of married couples who make vows of fidelity on their wedding day but subsequently choose to have an open marriage. In this case, though, while the extramarital sexual encounters are technically acts of infidelity, insofar as the marital vows have not been formally rescinded, it is plain that they do not constitute betrayals of trust. Whatever legal standing vows of fidelity may continue to have in an undissolved marriage, they no longer have moral standing once the couple has reached an informed and uncoerced agreement to disregard them. So couples in open marriages no more cast doubt on the standard of promise-keeping than sadomasochists do on the standard of harm-avoidance.

These considerations show that Lamb et al. are right to insist on the insufficiency of consent, and right too that consent is not the only moral standard sex educators should promote. Sex education in schools certainly has a moral dimension, and teachers should not hesitate to promote the standards of harm-avoidance and promise-keeping alongside the standard of consent. What remains to be seen, however, is whether there is anything to be said for the proposal that teachers should also promote the standard of mutuality.

THE CASE FOR MUTUALITY

Lamb et al. characterise the mutuality standard in a number of slightly different ways. Two have been mentioned already: sex is mutual when participants 'encounter the other with care and loving attention' (p. 271), and when they 'see or try to know what is knowable about the person, and look attentively at the other for signs of discomfort, fear, pleasure, withdrawal, or ecstasy' (p. 274). The authors also say that mutual sex does not require participants 'to care for the other person', but does involve 'caring *about* the other person'; and that it 'does not mean putting one's own needs aside', but does mean 'putting one's own needs and desires forward in a way that does not interfere with the appreciation of the other's needs, history, and experience' (p. 274). Mutuality requires 'that one look beyond consent to seek to understand the other person's intentions and psychological state' (p. 274) and that 'people understand other people, psychologically, and in their particular circumstances' (p. 275).

The basic idea is that, prior to having sex with someone, I am morally obliged to ensure not only that I have her consent, but that I have paid close enough attention to her, made a sufficiently strenuous effort to know what is knowable about her, to be confident that the sex she is consenting to is in her interests. By this standard, sex that is consensual but anonymous—the authors give the examples of 'glory holes' and 'hammock events' (p. 281)—is morally wrong, because participants in sex of this kind make no attempt to know what is knowable about each other. For the same reason, the mutuality standard rules out many sexual encounters in the category of 'college hookups', though here the authors allow for the possibility of hookups in which there is 'continuous sensitivity to the other' (p. 280).

The justification Lamb et al. offer for the mutuality standard is that it affords participants in sex greater protection against harm than the consent standard alone. There is no doubt that people sometimes consent to sex that is not in their interests, and in some of these cases the sex is sufficiently contrary to their interests to qualify as a harm. If all sex were mutual as well as consensual, it is plausible to think that the incidence of such harms would be lower. The authors write:

There would be no difference between doing no harm and mutuality if we were to claim that in all cases in which sex is not mutual, or people do not encounter the other with loving attention, that the other person is harmed. That is not what we defend. Our point is that mutuality is required to prevent harm, for it is possible that without mutuality and loving attention the consenting other is harmed. (p. 276)

An obvious objection to this line of argument is that, if the aim is to prevent harm, it would make more sense to supplement consent with the standard of harm-avoidance than with the standard of mutuality. The obligation not to cause people harm should afford at least some protection against the sort of consensual but harmful sex Lamb et al. are worried about. To borrow an example from the authors' discussion of college hookups, if one knows that hooking up with a fellow student will do her significant reputational harm, one has an obligation to desist, or at least initiate a conversation about the risk of proceeding.

But it is not hard to see why Lamb et al. will be dissatisfied with this objection. The harm-avoidance standard, as usually understood, requires that we refrain from intentionally or knowingly causing people harm. If, at the time of negotiating a consensual sexual encounter, I neither intend harm nor have reason to think the encounter will result in harm, it would seem that I have discharged my moral duty. Yet, in some cases, my having no reason to think the encounter will result in harm is attributable simply to my ignorance of 'the other's needs, history and experience'. The standard of harm-avoidance does not require me to 'try to know what is knowable' about the people I have sex with, so it cannot convict me of wrongdoing when I unknowingly cause them harm.

This line of thought brings us back to the mutuality standard. If the harm-avoidance standard affords insufficient protection against consensual but harmful sex, because people sometimes know too little about their sexual partners to see how the sex might harm them, perhaps the problem can be solved by making close attention obligatory. Perhaps we can morally require that anyone intending to have sex first makes a serious effort 'to understand the other person's intentions and psychological state', and only proceeds if the investigation shows the sex to be in the other person's interests.

Let us concede that consensual sex can be harmful, even when no harm is intended or anticipated. Let us concede, too, that consensual, non-malicious sex is, other things being equal, less likely to be harmful when the participants know each other well. Does this amount to an adequate justification for endorsing and enforcing the mutuality standard? I contend that it does not, for two basic reasons.

First, moral prohibitions and requirements place significant constraints on our freedom. Such constraints are justified when occurrences of the things they prohibit, or non-occurrences of the things they require, are *typically* or *usually* bad for the people involved or affected. We endorse moral prohibitions on violence, deception and theft because it is *nearly always* bad for people to be injured, lied to or stolen from; we endorse moral requirements to treat others fairly and help those in need because, *in the great majority of cases*, it is bad for people to be treated unfairly or have their needs unmet. There are exceptions, to be sure. Every now and again a situation arises in which an act of deception or theft would be entirely harmless, perhaps even beneficial, to the parties involved. But most situations are not like this: lying and stealing are usually detrimental to the victims, and that is why we are prepared to hold ourselves and each other to standards of conduct that prohibit them.

Significant constraints on freedom are not justified when occurrences of the things they prohibit, or non-occurrences of the things they require, are *only occasionally* bad for the people involved or affected. We do not endorse a moral prohibition on contact sports, even though we know quite well that players will be injured from time to time, because many people enjoy playing football, rugby and hockey and occasional injuries are not reason enough to stop them. Nor do we endorse a moral requirement to stay sober, despite knowing that intoxicated people are more likely to be involved in accidents and altercations, because social drinking is a popular pastime and causes harm in only a small minority of cases. We are only justified in making forms of conduct impermissible or obligatory when they reliably and routinely cause or prevent harm.

Consensual, non-malicious sex between participants who know little or nothing about each other can be harmful, but it is not typically or usually harmful. Large numbers of people engage in casual and anonymous sex, occasionally or often, with great enthusiasm and without adverse effects. Casual sex, like contact sports and social drinking, is not bad for the people involved or affected on a sufficiently regular basis for moral prohibition to be warranted. That is the first basic reason for the inadequacy of the case for mutuality.

The second reason is that mutuality is just too imprecise to serve as a standard of moral permissibility. Subscription to standards of moral permissibility, I have argued elsewhere, is universally enlisting and penalty-endorsing: that is to

say, the subscriber wants and expects everyone to comply with them and supports penalties for non-compliance (Hand, 2018). If we are to hold ourselves and each other to standards of this kind, it must be relatively straightforward, at least most of the time, to identify instances of compliance and non-compliance. We must know when our own conduct falls short so we can try to make amends and endeavour to do better in the future, and we must know when the conduct of others falls short so we can penalise or rebuke them.

The problem with the standard of mutuality is that it is very difficult indeed, both for participants in sex and for anyone trying to assess their conduct, to determine whether or not the standard has been met. Perhaps things are reasonably clear at the two ends of the spectrum: fully anonymous, 'glory hole' sex is non-mutual and sex in the context of a committed, long-term relationship is mutual. But sex at every other point on the spectrum is dauntingly hard to assess. And rather a lot of human sexual encounters lie somewhere between the two extremes.

Consider again the various formulations of the standard Lamb et al. offer. Sex is mutual, they say, when participants 'try to know what is knowable about the person' (p. 274). But how much effort must be expended here, and with what degree of success? How much knowledge must be acquired before one can have confidence that sex someone has consented to is really in her interests? Presumably one need not have learned *everything* that is knowable about her: it is doubtful that even people in committed, long-term relationships achieve that. Maybe the authors have in mind a subset of knowable things relevant to decisions about sex—but how is this subset to be delimited? The example of knowing that 'the person one is about to have sex with will be mocked by the entire dorm the next day' (p. 280) suggests that the subset includes a fairly wide range of biographical and contextual information, some of which may not be readily available even to the person herself.

In another formulation, mutuality 'requires that people understand other people, psychologically, and in their particular circumstances' (p. 275). Again, the bar seems very high here. I would be hesitant to say of any of my acquaintances, even those closest to me, that I understand them psychologically. We might qualify the demand to lower the bar a little: a *rudimentary* or *everyday* psychological understanding, perhaps. But that still leaves unanswered the question of how it is to be decided, by either participants or third parties, that a sufficient depth of psychological understanding has been reached.

The problem appears less acute if mutuality requires only that participants in sex 'look attentively at the other for signs of discomfort, fear, pleasure, withdrawal, or ecstasy' (p. 274). Indeed, some version of the requirement to attend to the other during sex is obviously implied by the standard of consent: participants in sex must pay at least enough attention to satisfy themselves of each other's ongoing willingness to participate. Still, this expanded version of the requirement is troublingly vague. How is attentiveness to be quantified and how much is needed? How many signs of discomfort or ecstasy can be missed before a verdict of inattentiveness is passed? In any case, if the mutuality standard is supposed to yield confidence that sex someone has consented to is really in her interests, it is clear that attentiveness during sex cannot do the heavy lifting. The real work must be done by the acquisition of biographical knowledge and psychological understanding in advance of the decision to proceed.

For these two reasons, then, the case for the mutuality standard of morally permissible sex must be deemed unsuccessful. Non-mutual sex is not typically or usually bad for the people involved or affected, so prohibiting it would be an unjustified constraint on freedom. And the imprecision of the standard—the difficulty of determining when it has or has not been met—makes it too blunt a tool for the moral regulation of conduct.

MUTUALITY AS A STANDARD OF MORAL DESIRABILITY

We should not regard non-mutual sex as morally impermissible, and we certainly should not teach it as such in schools. But there is another possibility we might consider. Perhaps non-mutual sex is, if not morally impermissible, then at least morally suboptimal. If there is no justification for punishing or condemning non-mutual sex, there may yet be a justification for praising and encouraging mutual sex. Does mutuality fare any better as a standard of moral desirability?

The distinction between permissibility and desirability is explicitly recognised by Lamb et al. They write:

Ethically good sex refers both to that which is morally right (morally compulsory), which can be contrasted with being morally wrong, and morally good (morally desirable), which can be contrasted with morally objectionable. Acting against standards that fall under the first but not the second is subject to moral punishment; living up to the standards of what is morally good is praised while it is simply expected that one keeps the standards of what is regarded as morally right. (p. 272)

The authors argue unambiguously for the strong claim that mutual sex is right or compulsory and not just good or desirable. Nevertheless, given the failure of that argument, it is at least worth asking whether something of their view can be salvaged by retreating to the weaker claim.

The two basic objections to mutuality as a standard of moral permissibility advanced in the previous section have considerably less force against mutuality as a standard of desirability. The difficulty of justifying significant constraints on freedom is avoided, because a prohibition on non-mutual sex is off the table. And the problem of imprecision is at least partially addressed by reconceptualising mutuality as an ideal to be pursued rather than a requirement to be met. It is no longer necessary to specify just how much biographical information must be accumulated, or what depth of psychological understanding must be reached, to cross the threshold of mutuality; instead, people are to be praised for such efforts as they make to know what is knowable about their sexual partners, with the most strenuous efforts accorded the most lavish praise.

Moreover, there is no doubt that a great many seemingly reasonable people do in fact subscribe to the view that sex between people who care about each other and know each other well is morally preferable to sex between people who are barely acquainted. Their thought is not that anonymous or casual sex is wrong or deserving of punishment, but simply that sex in a committed relationship is better, other things being equal, for everyone involved and affected. As a standard of desirability rather than permissibility, mutuality has both popular support and intuitive appeal.

There are various possible objections to the idea that subscription to mutuality as a standard of moral desirability is, in fact, reasonable. However, I do not propose to pursue those objections here. I will simply concede the reasonableness of the desirability standard of mutuality. I will assume that there is enough to be said in favour of the standard for it to be counted among the moral options open to reasonable people in a plural society. The points I want to make are these: first, that the desirability standard of mutuality is, though reasonable, nevertheless *controversial*; and second, that controversial desirability standards ought not to be promoted in schools.

When I say that mutuality is controversial, I do not mean just that people disagree about it. I mean rather that there are rational grounds for disagreement about it. Mutuality is such that 'contrary views can be held on it without those views being contrary to reason' (Dearden, 1981, p. 38). In other words, I am using the term 'controversial' in the *epistemic* sense, not the *behavioural* sense (for more on this, see Hand, 2007, 2008).

My contention is that it is not contrary to reason to hold that mutual and non-mutual sex are morally indistinguishable. On what I will call, following Alan Goldman (1977), the plain sex view, sex is not the sort of activity it ever makes sense to describe as morally praiseworthy. There is, to be sure, little to admire about the sex acts associated with glory holes and hammock events; but there is equally little to admire about the sex acts of married couples or those who are deeply in love. The idea that consensual sexual encounters can be ranked on a scale of moral goodness, from the merely permissible to the highly commendable, is, on the plain sex view, just rather odd.

Goldman argues that 'sexual desire is desire for contact with another person's body and for the pleasure which such contact produces' and that 'sexual activity is activity which tends to fulfil such desire' (p. 268). That is to say, 'the goal of sexual desire and activity is the physical contact itself' (p. 268): Any other goals we might hope to further by means of sexual activity are 'extraneous' (p. 269). And neither our desires for the bodies of others nor the consensual activities by which we satisfy them are well described as morally good or bad. Goldman writes:

To the question of what morality might be implied by my analysis, the answer is that there are no moral implications whatever. Any analysis of sex which imputes a moral character to sex acts in themselves is wrong for that reason. There is no morality intrinsic to sex, although general moral rules apply to the treatment of others in sex acts as they apply to all human relations. (p. 280)

Sex is morally wrong when a participant does not consent, when a participant is intentionally harmed, or when a non-participant is betrayed. But that is true of all cooperative human activities. Business transactions are also morally wrong when one of those conditions is satisfied. There is nothing in the nature of sex itself that we can subject to moral appraisal, or that might allow us to order sexual encounters by moral worth. In this respect, Goldman suggests, sex is very different from love:

Sex affords us a paradigm of pleasure, but not a cornerstone of value. For most of us it is not only a needed outlet for desire but also the most enjoyable form of recreation we know. Its value is nevertheless easily mistaken by being confused with that of love, when it is taken as essentially an expression of that emotion. Although intense, the pleasures of sex are brief and repetitive rather than cumulative... The briefness of these pleasures... relegates them to the periphery of most rational plans for the good life. By contrast, love typically develops over a long term relation; while its pleasures may be less intense and physical, they are of more cumulative value. The importance of love to the individual may well be central in a rational system of value. (p. 283)

On the plain sex view, it is loving relationships, not sexual encounters, that invite moral evaluation, that we can assess as more or less praiseworthy, admirable or conducive to human flourishing. The fact that some sex takes place in the context of admirable loving relationships does not confer special value on it or make it somehow more worthwhile than the sex that takes place in other contexts. It is all just sex, just the activity of satisfying desires for contact with the bodies of others, an everyday human pleasure whose varieties the moralist cannot sensibly grade or rank.

Goldman's suspicion is that those inclined to view some sexual encounters as more valuable than others are in thrall to 'the Platonic-Christian moral tradition', which is contemptuous of 'the animal or purely physical element of humans' (p. 279). Sex is only respectable, in this tradition, when it is 'oriented towards reproduction' (p. 272), 'an expression of love or affection between the partners' (p. 272), or 'a means of interpersonal communication' (p. 275). It must be about something more than the satisfaction of sexual desire: 'The love and communication analyses seek refinement or intellectualization of the desire; plain physical sex becomes vulgar, and too straightforward sexual encounters without an aura of respectable cerebral communicative content are to be avoided' (p. 279). We would do well, Goldman thinks, to shake off the yoke of the Platonic-Christian tradition, to distinguish clearly between love and sex, and to recognise that there is nothing vulgar or contemptible about our bodily desires.

More would need to be said to show that the plain sex view is correct. But I hope to have said enough to make clear that the view is rationally credible, that it represents a plausible alternative to the idea that non-mutual sex is morally inferior to mutual sex. The mutuality standard of moral desirability may well be a defensible option for reasonable people in an open society, but so too is the plain sex view. And in these circumstances, schools have no mandate to favour one option over the other.

The reason for this is simple: the remit of schools is to educate pupils, not indoctrinate them. Educating is compatible with persuading when the beliefs or values in question enjoy the support of decisive evidence or argument. The moral standards of consent, harm-avoidance and promise-keeping are robustly justified, so schools can and should persuade pupils to subscribe to those standards by acquainting them with the relevant justifications. But educating is flatly incompatible with persuading when the beliefs or values in question are controversial. The arguments for mutuality as a standard of moral desirability are far from being decisive. It may be reasonable to think that non-mutual sex is morally inferior to mutual sex, but it is equally reasonable to think that sexual encounters cannot be ordered by moral worth, so schools are duty-bound to lay out the arguments on each side as impartially as possible. To do otherwise,

to use means other than the force of rational argument to persuade pupils to subscribe to the standard of mutuality, would be to lapse into indoctrination.

CONCLUSION

I conclude that there is no justification for promoting either the permissibility or the desirability standard of mutuality in schools. The permissibility standard should be rejected outright because it imposes an unwarranted constraint on freedom and because it is too difficult to say when the standard has been met. The desirability standard has more going for it, but is nevertheless epistemically controversial and therefore not a standard to which subscription can be cultivated by educational means.

This is not to say that Lamb et al. are wrong to be worried about 'a discourse of sexual ethics confined to the question of consent' (p. 274). It may be true that classroom discussions of sexual ethics are, at present, too narrowly focused on the standard of consent. If so, there is a strong case for widening the scope of sex education curricula to attend to the ways in which consensual sex can still be morally impermissible. But the additional moral constraints pupils should be encouraged to recognise are the standards of harm-avoidance and promise-keeping, not the standard of mutuality.

ORCID

Michael Hand  <https://orcid.org/0000-0002-1643-8213>

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