Seduction, Rape, and Coercion

Sarah Conly

In *Tess of the d’Urbervilles*, the innocent Tess is the object of Alec d’Urberville’s dishonorable intentions. Alec uses every wile he can think of to seduce the poor and ignorant Tess, who works keeping hens in his mother’s house: he flatters her, he impresses her with a show of wealth, he gives help to her family to win her gratitude, and he reacts with irritation and indignation when she nonetheless continues to repulse his advances, causing her to feel shame at her own ingratitude and confusion as to what is right. Tess, anchored both by her own sense of virtue and her distrust of Alec’s character, continues to hold out until one fatal night when, through Alec’s machinations, they are lost together in a wood. At Tess’s insistence Alec leaves her to scout out the path home. When he returns, he finds her asleep under a tree. Hardy does not go into detail at this critical juncture. Rather, he reflects “why it was that upon this beautiful feminine tissue, sensitive as gossamer, and practically blank as snow as yet, there should have been traced such a coarse pattern as it was doomed to receive; why so often the coarse appropriates the finer thus, the wrong man the woman, the wrong woman the man, many thousand years of analytical philosophy have failed to explain to our sense of order.”

What we know from the subsequent chapters is that Tess becomes pregnant by Alec and that her life from this night forward is overshadowed by sorrow. Eventually, since Hardy is not one for halfway measures, sorrow turns to violence, and the loss of her virginity leads to Alec’s murder and Tess’s death on the gallows. Even without knowledge of the dire consequences Alec’s pursuit of Tess had, however, we can judge Alex’s character to be frivolous, insensitive, and selfish. The question here, however, is whether he is also a rapist.

We do not know what exactly went on under the tree. It is possible that Alec, given Tess’s physical vulnerability as she slept, took the opportunity to pin her down and forcibly have intercourse with her even

as she waked and struggled to throw him off. Or it is possible that, given Tess's fatigue and confusion, he used once more, and to greater effect, the words he had been using for the past months and was able at last to get her to agree to have sex with him. This is a question of fact—insofar as fictional narratives have facts—to which we cannot know the answer. The issue here, however, is whether it makes any difference. Tess hasn’t wanted to have sex with Alec and has refused him repeatedly. We have no reason to think that she has undergone a change of heart, even if she at this moment stops resisting. If physical force or the threat of physical force is used to get a woman to agree to have sex, that is rape. If psychological force is used, can that also be rape?  

I. VERBAL COERCION

What is at issue here? The question is about what is sometimes called verbal coercion, but the issue is not merely about the use of words rather than actual physical violence. Of course words alone can result in rape, if the words threaten physical violence. The issue here is distinct. Proponents of an expansion of our definition of rape argue that, just as physical force is a form of coercion which invalidates consent so that ensuing sex is rape, it is “verbal coercion” if a person agrees to have sex because of the use of words which cause or threaten to cause (only) emotional duress:

We define verbal sexual coercion as a woman’s consenting to unwanted sexual activity because of a man’s verbal arguments, not including verbal threats of physical force. Men use many types of verbal coercion to obtain sex: threatening to end the relationship or to find someone else to satisfy their sexual needs; telling a woman that her refusal to have sex was changing the way they felt about her; asserting that “everybody does it” or questioning the woman’s sexuality . . . making the woman feel guilty; . . . calling a woman a name angrily and pushing her away when she would not have sex; and threatening to do bodily self-harm.

The question is whether such pressure, if it results in a person having

2. There can be, as we will see, more than one sort of psychological force. It could be that Tess feels guilty for her resistance. It might be that Alec has refuted the arguments Tess uses to justify resistance so often that Tess is confused. It could be that Tess worries that Alec will discontinue his help to her impecunious family. It could be that, especially in her fatigue at the end of the day, Tess is just tired of saying no to Alec’s pleas. The question is whether any of these situations where she succumbs, without threat of violence, to the wishes of another, against the general thrust of her desires, can be considered rape. I am grateful here, and throughout the article, to Marcia Baron for her careful comments.

sex who would not otherwise have wanted to, is indeed coercive; that is, whether it is truly sufficiently harmful and sufficiently wrongful that we may say that the person who changes her mind as a result of such pressure has been raped. What if the motivation to have sex comes not from fear of physical violence but from fear of emotional harm? What if the force used to overcome a woman’s resistance is not physical force but emotional pressure? Can this be rape? The answer, I think, is that it may or may not be. Infliction of emotional harm can invalidate consent, and sex that arises as a result of this can thus be rape. Other emotional harms (even if perhaps more painful) can be consistent with valid consent. What we need to do is differentiate between the different circumstances of harm to understand when consent is and is not valid.

A. Coercion and Law

The proper understanding of consent, coercion, and rape has received a great deal of attention in law. There, rape has traditionally involved two elements: force on the part of the perpetrator and lack of consent on the part of the victim. Each of these requirements, as commonly stated in law, has drawn criticism by reformers who feel that they exclude certain cases of unwilling sex which ought to be considered rape. Some believe that the force requirement should be eliminated because what matters is simply whether or not a person consented to sex.4 Others are willing to maintain the force requirement but believe that our understanding of force should be broadened, that what counts as the sort of force which invalidates consent should not be limited to either physical force or explicit threats of physical force.

Both of these movements have in common that they underscore the importance of consent, and of the conditions of consent, as a determinant of whether rape occurred. We accept that whether or not consent was manifested is crucial and that “consent” when constrained by actual or threatened explicit or implicit violence is not valid consent. As attention turns from the issue of force to the issue of valid consent, whether or not there are conditions other than the threat of violence which would invalidate consent naturally becomes a more significant question.

Many feel that psychological pressure can be such an invalidating condition and that even the contemporary, revised legal definitions of rape are lacking inasmuch as they generally do not accept psychological pressure as potentially just as invalidating a kind of force as physical force. The spectrum of pressure we are discussing is that range within which one person tries to use great psychological pain to get another to have sex when that other person wouldn’t otherwise agree to it. Consider the

4. Susan Estrich (Real Rape [Cambridge, Mass.: Harvard University Press, 1987]) is an articulate proponent of this view.
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following (nonfictional) case, discussed by Susan Estrich: *State v. Lester* (1984) involves a father who committed incest with his daughter. “On both of the occasions in question the victim initially refused her father’s demand to take her clothes off and ‘do it.’ In both cases, she complied when the demand was repeated and she sensed that her father was becoming angry. The court held that the defendant could be convicted of incest, but not of rape.” The court said “in the instant case there is evidence that the acts of sexual intercourse between defendant and his fifteen-year-old daughter were against her will. There is no evidence, however, that defendant used either actual or constructive force to accomplish the acts with which he is charged.” Similarly, in *Commonwealth v. Mlinarich* (1985), a foster parent who threatened to send his foster child back to the detention center if she would not have sex with him was not found guilty of rape—even though the girl’s agreement to have sex was based solely on fear of the consequences if she were to decline—because he did not use, or threaten to use, physical force.

Of course, these examples concern minors, violated specifically by adults in a position of authority. Can adults find themselves in a situation of similar vulnerability? Estrich, again, argues that the same protections she (and others) are inclined to give to children might reasonably be extended to adults.

In the provisions of the Michigan statute relating to sexual conduct with those between the ages of thirteen and sixteen, one of the aggravating circumstances is that “the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.” No similar provision exists in the detailed definitions of force and coercion of adult women, and although these definitions are said to be nonexclusive, the omission of a category explicitly stated in another section seems a curious way of inviting courts to include it. The more logical explanation is that this form of coercion is punished only when used against young women; older women are assumed to be in a better position to ‘resist’ coercion by teachers or bosses than are younger women. That is very odd as a ‘feminist’ approach to law reform. One would think that a prime aim of feminist law reform would be to make clear that power and powerlessness, not simply age, lead to coercion and submission.

While no one has the same legal authority over a competent woman as

5. Ibid., pp. 167–68.
6. *Commonwealth v. Mlinarich* 498 A2d, Pennsylvania Superior Court 1985. This case is discussed in Stephen J. Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Cambridge University Press, 1998), pp. 80–81. Mlinarich was first found guilty of rape, but this decision was reversed by the appellate court on the grounds that Mlinarich has not used threats of force to elicit consent.
over a child, it may still be that individuals can exert authority of a sort which undercuts a person’s judgment about what she can and should do. It is not only minors who may lack maturity and confidence and who are sensitive to being manipulated by others. Given their role in society, women especially may be in a position of dependence and lack the necessary confidence to see what they should do or to act on that. Brenda Baker, for example, points to the stringent standards of consent in medical contexts, where we may assume that those agreeing to treatment are competent adults but where meticulous efforts are made to protect them from emotional pressure and momentary failures of will, and she suggests that this sheds light on what requirements should be for consent more generally. It is not unreasonable to think that, as we are sensitive to the politics of power in family contexts and medical contexts, so perhaps should we be in more general contexts in which sexual machinations can occur. The question, though, is what kind of nonphysical influence can be so great as to invalidate consent.

B. The Morality of Consent and Coercion

Opinions here vary radically. There are, of course, those who feel that the whole gender class system of the United States constitutes sufficient force on women to invalidate the possibility of their real consent. Others, while admitting the possibility of valid consent, believe that (again, perhaps because of the culture within which we live) it is extremely difficult for women to withstand external pressure to have sex and that we should consider it rape whenever a woman has sex where the willingness to have sex does not originate in her own desire. Yet others argue that what matters is how the woman feels—whether she feels coerced or violated by sex. More plausible, I think, are accounts which


10. See, e.g., Martha Chamallas, who gives as an example of coercion the teenage girl whose boyfriend threatens to stop seeing her unless they have sex. Although the girl agrees to have sex, Chamallas feels it is coercive because it is not a situation the girl would have initiated, and it is mutuality of desire, not consent, which is required for noncoercion (Martha Chamallas, “Consent, Equality, and the Legal Control of Sexual Conduct,” Southern California Law Review 61 [1988]: 777–862). Also widely influential is Lois Pineau’s “Date Rape: A Feminist Analysis” (Law and Philosophy 8 [1989]: 217–43). Pineau envisages a couple where the man is touching the woman as well as subjecting her to verbal pressure, including both using flattery and hostility, but it is the words (and the conventions of society), rather than the physical contact, that overwhelm her resistance.

11. This reflects the view of Catherine Mackinnon, who has long claimed that the law distorts the nature of rape by demarcating a small fraction of moral violations as criminal acts. The recognition of rape should not depend on anything so crude as the
stress not the situation of women in the culture (which, while no doubt relevant, does not seem to most women to render them incapable of consent) nor the feelings of the woman before or after the sex but the means used to bring sex about. Generally, in the assessment of a crime, be it a legal or a moral crime, we want to know what actually was done, not just how the people involved felt about it. This turns our attention to the means used to bring a reluctant person to having sex.

Here, too, there is controversy about what (if any) kind of emotional pressure should count as coercive. Campus behavior codes, freed from the evidentiary requirements of a court of law (and freed from the responsibility of sending the perpetrator to prison), have recently seen more prosecutions for what once would have been considered consensual sex, precisely because some have adopted standards of assault which include overbearing of the other’s will through emotional pressure. In such cases, the charge of rape seems to stem from the fact that, while the victims were not physically constrained to have sex, they were in some sense browbeaten into having intercourse they would not otherwise have chosen to have. Thus, it is argued, the sex was not truly voluntary. Even the widely accepted admonition that “No Means No” has been the subject of controversy for this reason: what follows from a woman’s saying “no” to sex? To proceed immediately to penetration would clearly be wrong, but what about trying to talk her into sex, to press with blandishments or tears, to harangue; in short, to refuse to give up? Opinion is divided: some feel that “no” means simply that you should not advance physically on someone who has told you to stop, but others feel that the spirit of the rule is violated by continuing to verbally press the issue after one person has stated her desire. Especially in the conditions in which such pressure is likely to occur (when it is late and we are tired and/or to some degree inebriated) the pursuit of the sexual goal in the face of opposition has seemed to some to con-

\[\text{threat of immediate physical harm: “Politically, I call it rape wherever a woman has sex and feels violated. . . . I think it’s fairly common, and increasingly known to be common, for men to seek sexual access to women in ways we find coercive and unwanted. On these occasions the amount and kind of force are only matters of degree. The problem is that rapes tend to be reported or prosecuted or sanctioned based on the force that was used; not based on how coercive it was and not based on how violated the woman feels” (Catherine Mackinnon, “A Rally against Rape,” in her Feminism Unmodified [Cambridge, Mass.: Harvard University Press, 1987], pp. 82–83). See, too, Stevi Jackson, “The Social Context of Rape: Sexual Scripts and Motivation,” in Rape and Society: Readings on the Problem of Sexual Assault, ed. Patricia Searles and Ronald J. Berger (Boulder, Colo.: Westview, 1998), pp. 16–26, who says “it may not be that rape is a forced seduction but that seduction is a subtler form of rape” (p. 20).}\]
stitute a force which, while not violent, nullifies consent in the same way physical force does.12

Proponents of such changes, and corresponding changes in the law, worry about the susceptibility of one person to certain sorts of psychological force brought to bear by another. The psychological forces brought to bear may be various and may be used singly, or as in Tess’s case, conjointly. The aggressor may implore and wheedle until the other feels guilt; he may tease her with jealousy, berate her for her coldness and immaturity, chastise her for the harm she does him, refute her reasoning when she tries to articulate her position, and subject her to a barrage of angry words. Ultimately she may find herself in a state of psychological exhaustion, feeling unable to resist in the face of what seems an implacable will. In these cases, it is argued, the woman has been forced against her will as surely as if the aggressor had used physical violence.

To some, then, the recognition of the potency of some sorts of speech, of the psychological pressure it can convey, is a long-delayed recognition of the true dynamics of (some, many, or all, depending on whom you talk to) sexual encounters. To others this sort of interpretation of a sexual encounter represents a deviation from good sense. It may be unjust in that it castigates as rapists those who simply are persuasive at getting what they want. It may also be harmful to those who concede to such pressure, in particular to women, since they are most often thought of as the victims of such verbal coercion. If we accept that (some) women are unable to withstand the psychological force brought to bear upon them, this makes them seem like less than autonomous agents. If these women had sex when they didn’t want to, why then did they have sex?13 Physical force or the threat of it makes

12. One well-known example of a college sexual offense policy which deviates greatly from the law is the Antioch College Sexual Offense policy. While the Antioch policy does not specifically address verbal coercion, it articulates two common concerns: first, it says that rape can occur even where there is no physical force or threat of physical force; second, it introduces a far more stringent standard of what real consent is than that in use in rape law. At Bates College, where I was teaching when writing this article, the description of rape in the sexual offense policy includes acts of intercourse which have been consented to because of emotional pressure. When asked, an administrator gave as an example of emotional pressure a person repeatedly telling his girlfriend he would break up with her if she would not have sex. See also an interesting exchange on the use of Pineau’s article “Date Rape: A Feminist Analysis” in the training of the student judicial board at Pomona College in its student paper, The Student Life, October 12 and November 2, 2001.

13. Of course, some will immediately answer this question by pointing to the inculcation of cultural mores, especially those which make women feel they have an obligation to have sex, as mentioned earlier in this article. Some of those who propose holding women entirely responsible for their choices in these conditions, however, seem to believe that pointing to the acceptance of cultural mores in explaining these actions again denigrates these women’s claim to autonomy. Perhaps the idea is that a truly autonomous being should be able to rise above cultural influence when it comes to decisions about sex.
sense of having sex against one’s will, it is thought, but absent physical force, how are we to make sense of someone who really doesn’t want to do? For some, accepting that psychological pressure could be a means to rape wrongly suggests that women are weak minded, prone to collapse under “emotional pressure” and to concede to the desires of the stronger-minded male.14 Tess was, by the standards of the time, an adult, self-supporting, of at least ordinary intelligence and experience. If she agrees to have sex, absent threats of physical violence, surely, it is argued, she bears responsibility for her choice.

This is a dilemma. It seems intuitively right to many (and certainly to me) that we should hold the delinquent fathers and foster fathers who threatened their children into sex responsible for being rapists and that the man who had intercourse with the eight-year-old girl was clearly forcing himself upon an innocent victim, whether or not he threatened to hit her if she wouldn’t have sex. Yet, it seems implausible to say that whenever someone gives into irrational suasion to have sex, or has sex only out of fear of displeasing someone she cares for, or out of a desire to please, a rape has occurred.

C. Deciding to Have Sex

The differing notions of choice and rape turn in part on different accounts of the psychology involved—on how the decision about having sex is made. One central issue seems to be whether or not the woman wanted to do what she did, but this is a complex question. What is it not to want to have sex? We are seldom univocal as to reasons for doing anything. A woman may want to have sex to express love, even if she is not physically aroused. Perhaps she is tired, but her husband is leaving for a two-week trip, and she wants to have sex to feel closer to him. Perhaps she even wants to do it just because he wants to do it. He has read a lot of feminist literature, however, and is a sensitive guy and won’t sulk or become angry if she doesn’t have sex; he just won’t feel as happy as he would if she did. She loves him, however, and wants him to feel loved. Even in the latter case, where his attitude contributes to her decision—where indeed, were it not for his desire she wouldn’t want to have sex—her having sex doesn’t plausibly seem to be rape, any more than my buying Girl Scout cookies only to avoid hurting the feelings of the little girl selling them means I’ve been robbed. Having a reason to oppose having sex as well as positive reasons to have sex doesn’t mean

14. See Katie Roiphe’s popular The Morning After: Sex, Fear, and Feminism on Campus (New York: Little, Brown, 1993). A more balanced assessment of widening the scope of what is considered rape may be found in Linda Lemoncheck’s “When Good Sex Turns Bad: Rethinking a Continuum Model of Sexual Violence against Women,” in Burgess-Jackson, ed., pp. 159–82.
that when she does have sex at another’s behest it must be rape. Similarly, however, we cannot say that if a woman had some positive motivation to have sex that means any ensuing sex must have been consensual. Anyone might have a desire to have sex (she was physically aroused, she wants to please the man she is in love with) and have lots of reasons not to have sex—she’s afraid of sexually transmitted diseases, she has contrary religious convictions, and so forth. Saying that she wanted to have sex in some ways does not determine whether the ensuing sex is consensual.

What seems to determine the question, then, is not simply whether or not the person had some desire to have or not have sex, or even whether the desire to have sex is a function of another person’s antecedent desire, but whether the motivation which decides her to have sex is a result of coercive pressure. If she weighs the religious conviction against her physical arousal and decides that all things considered, she prefers to have sex, she has not been raped. If she weighs her desire not to have sex against the threat of violence by a knife-wielding rapist and decides that, given the choice of sex or death, she, all things considered, prefers to have sex, she has been raped. If her desire to have sex is a result of coercive pressure, then the fact that she did what she wanted to do is neither here nor there, because the options from which she had to choose were illegitimately narrow. The question here, then, is when is psychological pressure coercive?

II. BUT WHAT IS COERCION?

We need to examine when the criteria we generally feel are required for coercion to be present are also present in cases of psychological pressure. None of these is seen as sufficient for coercion, but all are seen as necessary, and when psychological pressure doesn’t meet these criteria, it is not coercive.

Intent. One requirement for coercion is that the coercer is doing what he does intentionally. Accidentally doing something which causes another to decide to have sex with you can’t be considered coercive. The question of mens rea has long played a role in the legal determination of rape. While our discussion is not of what constitutes legal rape but of what constitutes rape from the moral perspective, it may still be held that there can be no wrongdoing unless there is a perpetrator who has acted with a blameworthy frame of mind. In the case of legal rape, the idea is that the perpetrator either knows that the woman has given no valid consent, or should have known, in that he would have known with a reasonable amount of perspicacity or concern. Can the person who has placed psychological pressure be in a sufficiently culpable frame of mind to be held a rapist when he has sex with someone who, without threat of violence, has said that she would, given the circumstances, prefer to have sex?

It seems possible. The culpable frame of mind required for the
legal designation of rape is not one where the perpetrator recognizes that he is morally or legally in the wrong. Rather, the perpetrator has simply to know that the victim did not consent or to be in a situation where he should have known. The fact that he may sincerely believe himself to be in the right (because the woman owed him sex, or whatever) does not excuse him. Similarly, while the person who places psychological pressure may believe himself to be in the right in having achieved the other's consent by threatening (mere) psychological pain, this does not suffice to excuse him from the charge of rape. If he knows that the other's consent was obtained only through the pressure he has brought to bear, he is aware of the relevant facts. The question is whether what he has done invalidates consent in the way physical force does, so that the ensuing sex is rape.

Choice. Some may argue that psychological pressure cannot be properly coercive because in typical cases of psychological pressure one has a choice of whether or not to yield, whereas in cases of physical force no such decision is possible. It is possible that, in some cases of psychological pressure, the victim of pressure is so demoralized as to literally lose the ability to choose—and this may be true in the incest cases described earlier—but we cannot assume that this is typical, at least among adults. More normally, in the case of psychological pressure, the victim is not forced to have sex, but rather chooses to have sex in order to prevent losing a relationship, to avoid an angry confrontation, or to avoid other pain. In cases of physical force, it is argued, no such choice is possible.

This looks like a distinction initially, but it does not reflect our modern beliefs about rape. While at one point in time it was true that, both culturally and legally, sex was only considered rape if the woman was literally physically overwhelmed such that she could not stop the assailant in any way, this narrow concept of rape is outmoded. A woman confronted with an armed rapist may yield to the mere threat of force, without our saying she consented to have sex. There is a sense, no doubt, in which she chooses to have sex when she chooses to have sex rather than to be beaten or killed. She was nonetheless raped because the choice is not free, and to say that the choice is not free is to say that she is placed under coercive pressure and made to choose between illegitimate options.15 Choice under psychological pressure might, then,

15. Here, and generally, I am following Alan Wertheimer’s account of coercion, as presented in Coercion (Princeton, N.J.: Princeton University Press, 1987). Wertheimer explicates and defends what he calls a two-pronged account of coercion, where for A’s threat to be to be coercive (1) A leaves B with no reasonable choice and (2) A’s proposal is wrongful, where the wrongfulness relies on more than just the fact that A leaves B no reasonable choice (pp. 30–31 ff.). One way in which A’s proposal can be wrongful is that it may be a proposal A has no right to make. Naturally, not everyone accepts this account
be equally unfree: the mere ability to choose the better of two alternatives doesn’t mean that there was insufficient force for sex to count as rape. That she can choose whether or not to have sex or suffer psychological harm does not in itself mean she has not been raped, any more than the fact that a woman might choose to have sex rather than be violently abused means she hasn’t been raped.

Harm. For a choice to be coerced, however, it is necessary that the person doing the choosing has no reasonable choice between doing what the coercer wants and the bad option which the coercer has introduced. Not every threat constitutes coercion, because some threats don’t introduce harms great enough to affect my decision procedure. My neighbor can’t say he was coerced into supporting my bid for election because I told him I would make terribly unfriendly faces at him if he didn’t do so; while I shouldn’t be making faces at people who don’t support me, it’s not so bad that he can claim that he had no other option than to vote my way. Can psychological pain be sufficient to say that the person subjected to threats of psychological harm has no reasonable choice but to succumb to the will of the coercer?

Why not? Clearly, psychological pain can be extreme. A person might recover more quickly from a physical beating than an emotional break-up; indeed, it may be the emotional component of a beating that makes it so bad—the same amount of harm suffered from falling down the stairs would be far less traumatic. The picture the critic has here seems to be of someone who agrees to have sex to avoid some slight loss, say, so her boyfriend won’t break a date with her in order to go watch football, and such critics think not having a date just doesn’t seem so awful an option as to constrain a person’s choice. This is true: one may agree to have sex for foolish reasons, like wanting to brag to friends that her boyfriend has never left her alone on Saturday night. To say the choice to have sex for such slight goods should not count as coerced does not, however, show that psychological pressure generally can’t be coercive. The same slippery slope can occur with physical force. What if someone threatens that he will pinch the woman if she does not have sex with him? If she agrees, has she been coerced? Assuming that the woman has the normal capacity for pain, has no peculiar traumas associated with pinching, and so forth, then the threat of a slight pain would probably not count as coercive.

In particular, there are those who think coercion is a morally neutral term, so that to say an act is coercive is not to say that it is (even prima facie) morally wrong. Samuel Dubois Cook in “Coercion and Social Change,” in Coercion, ed. Roland Pennock and John Chapman (Chicago: Aldine Atherton, 1972), pp. 107–43, argues, e.g., that a legitimate government can rightfully coerce its citizens in some cases. For my purposes, this difference is simply one of word use. Those who think coercion is in itself a morally neutral term can look at the question I address as whether coercion in the case of sex is legitimate.

16. Again, I am following Wertheimer.
whatever the intent of the threatener, because being pinched is a reasonable option to choose over having sex with someone you don’t want to have sex with. If she concedes to his wishes, we will probably think she didn’t really mind having sex to begin with, even given the uncouthness of his advance. We won’t think she was raped.

The point is that, with both physical and psychological threats, there will be greater and lesser pains. Precisely what degree of pain constitutes coercive force will be difficult to say, but there is no reason to think that psychological pain cannot be awful, so awful that it makes unwanted sex the more reasonable option.  

**Legitimacy.** For an offer to be coercive, however, it must do more than constrain the options of the chooser. It must do this illegitimately. Whether or not I coerce my son in telling him he cannot go to the Rollerworld dance unless he does his homework depends on whether I have the right to control his activities in this particular way. Sometimes a pressure may be brought to bear to make someone do something that he or she doesn’t want to do and that pressure is entirely within the rights of the individual doing the pressuring. If I tell an employee I will fire him if he doesn’t do a better job, I may cause him great distress and overbear his will to play computer games at work, but I haven’t done anything wrong. If, on the other hand, I tell him that I will shoot him or even that I will ridicule his appearance around the office, then I have proffered a sanction which is not legitimate, even though my goal may be a reasonable one. Or, if I threaten to fire him, not because he is doing a bad job but because he refuses to enter the basketball pool, I extend my control into realms where I have no right of control. I have a right of sanction, but only in certain ways and only on certain grounds. There are ways we can bend others to our will and ways we can’t, and what these are seem to be determined by the nature of the specific relationship. Is it legitimate to pressure someone to have sex?

17. The degree of harm required to make the choice of sex the only reasonable one open to the victim is naturally an issue of debate. If a boss threatens to fire an employee if she does not have sex, some will argue that, while the use of power is clearly illegitimate here, the harm is not sufficient to say the woman has no reasonable choice. Those who agree with such a low estimate of harm will argue that this is rather merely sexual harassment. In the case of the young daughters threatened with the anger of their parent, I think such a harm is sufficiently great to make the pressure to have sex genuinely coercive, and the ensuing sex rape. It may also be that, in the case of children and parents, the children have less than a complete ability to judge the degree of harm the parent may be able to do them, since the parent’s authority interferes with their own ability to use their judgment. In such a case the pressure to have sex may be seen as not only coercive but also as what I call seductive, in that it interferes with the reasoning process of the victim. I discuss seduction in Sec. III.

18. This follows Wertheimer’s account.

19. We may assume here that not going to the dance would cause my son great pain.
This will depend on the kind of pressure brought to bear and the legitimate parameters of the relationship in which it is brought to bear.

Clearly, in some relationships it is not legitimate to pressure someone to have sex. The cases of the parents and the daughters, above, are ones where the authority of fatherhood does not extend into the realm of sex, and using it is clearly an abuse. Demands for sex in such relationships are illegitimate. In the realm of merely social relationships, though, where there is no personal or institutional authority being extended to a use beyond its justified parameters, the issue is not so clear. Can a person legitimately threaten to break off with someone if she refuses to have sex, intending that this threat will make her have sex where normally she would choose not to? Can he legitimately do this knowing that her pain at his prospective departure will be the determining factor in her decision to have sex with him? There are two cases: he threatens to break off because that is his sincere intent if no sex is included in the relationship and he feels he should let her know this. Or, he may threaten to break off, sincerely intending to leave this unsatisfactory relationship but also hoping that his threat will motivate her to have sex, even if her other desires not to have sex remain in place. That is, in the second case he hopes to manipulate her into doing what he wants. Reflection shows that, while the second of these may be less than admirable, neither case constitutes rape.

Clearly, as the boss may fire the employee, one person may break up with another. Clearly, as the boss may threaten the employee with firing in order to improve his performance, one may threaten the other person in a relationship with a break-up if things don’t improve. Can the specific area of improvement be sexual? It is not that a romantic partner has a duty, explicit or implicit, to provide sex, in the way that an employee does have a duty to do the work associated with the job. At the same time, the absence of this duty in a romantic relationship is a function of the fact that such relationships are open ended. Just as being in a relationship does not, per se, give one any duties, it is also the case that one can, without stepping out of bounds, make the relationship dependent on various conditions that suit one’s own needs. Often the things which are asked are those we are so familiar with we may think of them as simply constitutive of there being a relationship, but they may in fact be conditions set by one partner for another. Person A may say she wants Person B to communicate more if they are to stay together. Person B may insist that Person A remain faithful and that, without this condition being met, person B will leave. We don’t look upon these demands as being coercive, but rather as the sorts of conditions most people set on relationships, as a legitimate attempt to craft the relationship they want, even if that requires finding a different partner. This may be manipulative, in that the intent is to make someone
do something she wouldn’t otherwise want, but it seems manipulative in a way which we accept in dealing with others, where introducing systems of rewards and sanctions to get others to do what you want, in this less than ideal world, is sometimes necessary and often goes by the name of compromise. We may say that, if you will do the dishes, I will do the cooking; if you won’t do the dishes, I won’t do the cooking. It would be much nicer if we didn’t pressure one another to change behaviors, as it would be nicer if we never even wanted the other to change. In the real world, though, this happens, and we recognize that this sort of trade-off is an unfortunate need when people of different desires try to stay together. Relationships are founded on odd precepts, and if one of the partners is unilaterally responsible for making the continuance of the relationship conditional on the relationship including some particular activity, that is in itself legitimate.

Now, it is also true that, in relationships, one has obligations as well as rights. You owe more help to your partner than to a stranger and even more than to a friend. You also owe your partner more consideration for her pain, more attention, more consolation. Does this mean that, in a romance, there is, as well as the right to ask for sex, an obligation not to break up if this causes the other really great pain?20 It is not true generally that the threat of great pain is ipso facto coercive in the illegitimate sense I am using: we threaten people with painful jail sentences to get them to obey the law, and, assuming that the government is legitimate, the lawbreaking in question truly wrong, and so forth, this is regarded as within the rights of the society. The interesting question is whether in personal relationships in particular there are restraints on the harm you can threaten another with. Should this be the case, then it might be that, whereas you could threaten one person with a break-up if she refuses to have sex, you could not legitimately threaten a more vulnerable person who would be devastated by this, and if you did and if she had sex with you on that account, it would be rape.

This seems unlikely. We all have an obligation to avoid fortuitously causing pain to others and an even more stringent obligation to avoid fortuitously harming our romantic partners. However, a break-up over sex is not likely to be a trivial matter; if it were, one wouldn’t be threatening a break-up over it. Imagine a different case: your partner is an alcoholic, and his alcoholism is making you miserable. You have tried to help him, but nothing has succeeded. Can you leave, knowing that your departure may make him miserable and sink him even deeper into alcoholism? I think so. You probably, as a partner, have an obligation to try to help in certain ways, to talk to him about counseling, to drive

20. This question is prompted by an anonymous editor at Ethics, who suggests that threatening another with a great harm might in itself make an act coercive.
him to AA meetings if that is needed, to ask friends to look in on him. But you don’t have an obligation to stay in a relationship, as a romantic partner, when that is not working for you. It is not that the alcoholic is a bad person; he is an unfortunate person. But your obligation is not so great as to cause you to give up on a satisfactory romantic life. I think that this is true even if the person is a depressive person and in danger of suicide. Again, you, while his partner, will have done what you could to help him, and after leaving, you would take steps to try to ensure his safety and well-being, but being permanently tied to a depressive person may just not be constitutive of a good life for you, and you have no obligation to give up your own well-being in such a case. Thus, too, in the case of sex: you can make the demand that, for the relationship to continue it needs to be a sexual one, and if the partner refuses this condition, you have the right to exit.

Are such conditions always legitimate? No. As with employer-employee relationships, there are limits to what you may demand and limits to what sanctions you may threaten if even your legitimate demands are not met. Demands placed within a relationship should have reasonable bearing on the health of the relationship, and should not be inherently immoral, and sanctions offered for failure to meet even reasonable demands are limited. I am assuming, however, that engaging in sex, all things being equal, is not immoral and has reasonable bearing on the relationship, and thus that meeting its absence with discontinuing the relationship is, as argued above, a justified response.  

So, it does seem within a person’s rights to want sex to be a part of a romantic relationship and also within that person’s rights to tell the partner that, if there is no sex, he will decamp. This does amount to a demand, indeed a threat, insofar as the fear of losing the relationship is an incentive to have sex and the one intends this fear to motivate the other to have sex, just as the wife who says she’ll divorce if her husband is unfaithful again intends this fear to motivate him to change his ways. When you enter into a relationship, however, you lay yourself open to the possibility of being hurt in various ways. One is that the other person may tell you you’ll be dumped if you don’t change, and that may place you in a painful dilemma, that is, doing something you don’t want to do or losing the relationship. This can be true if you are asked to be faithful, and it can be true if you are asked to have sex. Just as the one person has the right to ask, the other has the right to decide not to do any of the things she is asked. But no one has the right to insist that a relationship cause no pain, and no one can claim to have been coerced just because the prospect of pain changes behavior.

21. Marcia Baron has influenced my views here on the parameters of demands that may be made within relationships.
III. DECIDING TO HAVE SEX, REDUX

Not every case of deciding to have sex is so clear, however. It would be nice if every person who decided to have sex weighed all the advantages and disadvantages of doing so, decided correctly which considerations have the most weight for her or him, and acted accordingly. In such cases we may say the person did what he or she wanted to do. What do we say, though, when we confront an agent whose actions do not accurately reflect her strongest desire? Many persons engage in sex in a way which they later regret, not just because of unforeseen consequences but because the act was, even at that time, contrary to their overall motivational structure; it was in some sense not what they truly wanted at the time. Some people have sex out of weakness of will.

We are all familiar with weakness, even if we don’t understand it. Often it depends on a proximate temptation—we stay on our diet until we go to a dinner party and lay eyes on the dark chocolate mousse with whipped cream. Sometimes it seems to be a function of inertia, for example, when we really do want to exercise but just can’t get up out of this chair. Other times it seems as if we are overcome with emotion, which causes us to act in ways at which later, standing over the prone body of the person who stole our parking place, we cringe. Whatever the occasion, the phenomenon is generally the same. Rather than doing what we think we should do, all things considered, or even what the preponderance of our desires might seem to dictate, we do the easy thing. The explanations of this, of course, are various. Is it that the deviant desire becomes momentarily stronger, despite the fact that acting on it does not reflect our more normal motivational patterns? Is it that we allow ourselves to make a cognitive error, either about the particular case or about our values in general, so that we tell ourselves that there is really no conflict between the tempting desire and our all-things-considered desires? So that we say whipped cream isn’t that fattening; or I swear I’ll go running tomorrow; or who cares if I’m fat, it’s just a sexist conspiracy to oppress me, and eating the mousse is an act of liberation? Whatever the causal mechanism, the result is that, when we look back on it, we kick ourselves for making a mistake. It’s not just that our action turned out to be a mistake in terms of what we wanted to achieve but that, even at the moment we did it, it wasn’t what we really wanted to do.

Not surprisingly, this happens frequently in the realm of sexuality, where on the one hand there is a strong motivation to engage in sexual activity and on the other hand there are many desires and values which mitigate against it. This in itself, however, may have nothing to do with coercion. Two people can weakly and mutually succumb to the lure of romance (or whatever) without their roles being that of victim and villain. While weakness is no doubt morally problematic in terms of each
person’s assessment of his or her own character, neither has anything to blame the other for, any more than the dieter can blame the whipped cream. The problem arises when one feels that one’s weakness has somehow been induced by another.

A. Seduction

Weakness induced by another is what we’ve come to know as seduction. In seduction, a person does not simply act weakly because she finds the prospect of sex overwhelmingly tempting; she is brought to this weakness by the interference of someone else. There are two ways this can happen: the victim of seduction can be brought to do something that she in many way likes but which she is trying to resist. She can be led to succumb to temptation so that desire overcomes conviction. Or, she may be importuned to do something that she is not attracted to, and distracted by grief or fear, she may give in, without fully rational consideration. It is this which might lead one to see seduction as a species of rape, because pressure is brought to bear on the woman to act in a way that runs counter not just to what she would not want without that pressure but also to what she really wants even given that pressure. This is the way in which Hardy describes Tess’s frame of mind: “She had never wholly cared for him, she did not at all care for him now. She had dreaded him, winced before him, succumbed to adroit advantages he took of her helplessness; then, temporarily blinded by his ardent manners, had been stirred to confused surrender awhile: had suddenly despised and disliked him, and had run away.”

The proximity of the lure causes her to see it most vividly and to feel its attractions most poignantly, and this causes her to choose weakly, to give in to temptation. The important thing is that these appeals do not contribute to any rational decision-making process, but rather undercut it. The seducer does not allow the other time to collect herself, to think about what it really would be best to do. Thus, the circumstances may be as relevant as the content of the appeal in determining whether or not this is seduction: what in mid-afternoon over coffee in the student union might be a rational discussion about the desirability of including sex in the relationship may well be productive of an emotional maelstrom at 2:00 a.m. in the dark of his room. Were she in control of herself, she might resist, or she might, upon reflection, have a change of heart and decide that, if having sex is the only way to continue the relationship, then that is worth it. But in this circumstance reflection is not an option, and no exertion of self-control is forthcoming. She gives in, unable to resist the pressure of the moment, unable to act on the decision she would make if the circumstances of his demands did not induce weakness.

22. Hardy, p. 130.
Weakness and positive temptation. If a man consciously tries to undercut a woman's decision-making process by arousing emotion and is successful in this, is the ensuing sex rape? Consider, first, an analogous case, where the seduced is already attracted to whatever it is that she is trying to resist and where the seducer increases her desires while trying to undercut her appreciation of the reasons to resist. You go into a store, where your eye is caught by the attractive but expensive item you've always wanted but know to be a luxury you can't afford. As you stand contemplating it, you are approached by the High Pressure Salesman, who is paid by commission and who is not going to be dissuaded from trying to sell you this piece by considerations of your welfare. It's him against you, and he does everything he can to overcome your defenses. Well, not everything he can—he doesn't pull a gun and threaten you with death if you don't buy the item; he doesn't tell you that your safety or the security of your children is at stake. He doesn't use violence as a threat in any sense nor induce terror. Rather, he tries to subvert your reasoning process. When you tell him, weakening, that you can't afford the a. but e. item, he tells you that in the long run the item isn't really that expensive; if, for example, you calculate how much you will be paying per hour, the amount is negligible. He argues that, in certain cases, the item may even be construed as saving you money—you'll be using the a. but e. item so much that you won't spend on all those other less attractive items and, anyway, when it's time for resale you might well get rid of the a. but e. item for more than you paid for it. He astutely perceives whom you are likely to admire and tells you that this is the sort of item Michael Jordan/Hillary Rodham Clinton/Eminem is bound to have around the house. And most of all, whatever he says, he doesn't let you think. He looks for a point of vulnerability, a weakness through which he can corrupt the solid reasoning process with which you came in and convince you that what he wants is really what you want.

Would this work? It depends, of course, on the person. For one thing, you've got to be tempted by the a. but e. item to begin with and to have a sufficiently ingenuous character not to recognize that this is essentially an adversarial relationship. As with seduction, only some people are vulnerable to the pressure. But, as with seduction, some people are vulnerable, and they give in, only to rue an action which was expressive neither of their heartfelt desires nor their considered principles. This is bad. We look down on high pressure salesmen as being manipulative and self-interested. But while this is true, such a sales technique is not assault. The salesman does not rob you. He does not even misrepresent issues of fact. He aids you to pursue something you want by increasing your desire for it and decreasing your recognition of the reasons against it. This is like a person who wants you off your diet and wafts
fresh bread under your nose while telling you that just this once won’t hurt. It wouldn’t work if you weren’t enticed by the smell of fresh bread. It might not work if they weren’t also talking to you to reduce your resistance. Combining the two things, though, sometimes does work. In the realm of sexuality, it is like someone who increases the other’s already existing desire to have sex, perhaps by touch, perhaps by words, while trying to dispose of their reasons not to have sex.

Such a person is not admirable, but just as the high pressure salesman is not a robber and the bread-wafters is not guilty of assault by force-feeding, the seducer who persuades you to do something you are attracted to but might otherwise have been able to resist is not guilty of rape. If he touches you when you have told him to stop, he is guilty of assault, but if you don’t try to stop him from touching you and you let him talk to you about why it is okay to have sex, changing your mind is ultimately a decision for which you are responsible.

Weakness and negative sanctions. What if you are led to act weakly, though, not because of a positive attraction but because of a threat of emotional pain? And what if the other has induced this emotional pain just in order to subvert your thinking processes and get you to do what they want? This is not so much temptation as anxiety and as such it looks much more like coercion. Again, let us take a (putative) analogy which has been defused by avoiding sexual content. Let us imagine your sleazy Cousin Beau. Beau is a charming ne’er do well. He’s always had a kind word for you, his little cousin, and when you were young, he would take you for piggy-back rides when your more sober relatives engaged in boring conversations and imitate their irritable admonitions at the dinner table. Now, though, you are a young adult, with a good job and a disposable income, and Beau approaches you with dollar signs in his eyes. His proposition is vague but urgent—that you should invest your savings in a business opportunity directed by Beau himself. You are not so blinded by affection as to think that this looks like a golden opportunity, but you don’t know how to handle the situation. Beau has always been so funny and kind, and he looks so sincere, and the imagined prospect of your refusal seems to cut him, a member of your own family with whom you’ve enjoyed so many youthful hours, to the quick. If you had time you could think more clearly, but giving you time to think is just what he doesn’t want. He stresses his own suffering, hearkens back to the many times he’s helped you, and suggests that he can’t possibly feel the same in the future if you won’t do this little thing, which can’t possibly hurt you and which could help him so much. You feel guilty, you feel sorry, you feel Beau may turn against you if you fail him, and, most of all, you feel confused. The more Beau sees this, the harder he pushes. And, suppose that he is joined in the pursuit of your money by Cousin Flo. Flo has never been a buddy. She has spent both
your youths making you feel inferior for your poor sense of fashion, your inability to attract boyfriends, your ugly nose. As such things often happen, instead of rejecting Flo as unworthy of your attention, you tried all the harder to live up to her standards—after all, she was older, prettier, and obviously cooler. The one thing you want to do is avoid that sneer. When Cousin Flo castigates you for once again failing to make the grade by investing in this great opportunity, when she says she’d hoped that you would finally have caught up to her in taste and acumen and would thus take the cousins up on this proposition, you quail. You’ve been worn down by a youth of inferiority, and it’s as hard to muster the strength to withstand her judgment now as it was then.

Cousin Beau is a sleaze. Cousin Flo has a despicable character. But for all this, I don’t think we can say that they are thieves, nor even that they are extortionists. It isn’t that you haven’t reasonable alternatives to giving them money. It is rather that you don’t, as Beau gazes at you appealingly, or as Flo curls her lip, see your way clearly as to what your choice should be. The cousins have placed pressure of a sort an honorable person wouldn’t, and we evaluate their character accordingly, but they have not forced your compliance.

Nor have they gone beyond their rights. It is the nature of family relations that you may use your relationship to (try to) impose on other family members, at least up to a point. They are not trying to get their cousin to do something inherently evil, like the lover who asks her partner to kill to prove his love. Nor are they using institutional authority to try to bend her to their will. They are using the strength of family ties to their own ends, but one downside of having family is that they are allowed to do that. It gives them an advantage because we are vulnerable to our families, but that vulnerability is the price you pay for having an emotional relationship with your family, which on the whole we think is a good thing.

Are these analogous to seduction? They have in common that they feature people who coax, cajole, wheedle, importune, harangue, berate, and browbeat another into doing their bidding. Certainly there are differences. Strangely, women may be more vulnerable when it comes to giving up their bodies than to giving up money. On the one hand, we recognize the body to be the locus of autonomy, not to be interfered with, but on the other hand we romanticize a man’s pursuit of a hesitant woman in a way that may make a woman feel unnaturally cold, inferior, and guilty if she doesn’t yield to his passion. Furthermore, the use of the body by another can be much more of a loss than the loss of money; few things hit as close to home as having one’s very body taken over by another. But the fact that seduction is worse than having money wormed out of you, just as rape is worse than theft, doesn’t mean the analogy is

23. Remember what an insult it has been for a woman to be called “frigid.”
not apt. The point is that the difference between seduction and rape is the same as finagled money loss and robbery. The seducer tries to suborn the person’s thought process just the way Cousin Beau does. The thief and the rapist don’t try to undercut the victim’s ability to decide what she should do: they don’t need to, because they present her with a choice—her money or her life, sex or being beaten—that she can make quite rationally.

The question, then, is not so much whether a person is acting weakly or fully in accordance with her own judgment, or whether she is acting in a way she would not were it not for the pressures of another, rather than acting uniquely on her own desires. The question is whether these pressures placed on her, and which may make her decide against her own most considered desires, are placed on her appropriately.24

But, one might ask, can it ever be proper to place pressure on adults to do what they really don’t want to do, either by increasing a desire they are trying to fight or by diminishing or outweighing a desire which is really in accord with their overall motivational structure?

B. Persuasion

Having started with a Victorian moral crisis, let us use a Regency one to provide further insight into what is and should be considered permissible within human relations. In *Persuasion*, the heroine, Anne, has, as the title underscores, had her life changed through the persuasion of another. She fell in love with a young man who was honorable, sincere, hard working, and faithful. By the standards of the times, though, he was not a good match: she was a baronet’s daughter, and he was a young naval officer without any fortune, and she was persuaded by a family friend, one who had raised her like a daughter, to break her engagement. “Lady Russell, whom she had always loved and relied on, could not, with such steadiness of opinion, and such tenderness of manner, be continually advising her in vain. She was persuaded to believe the engagement a wrong thing.”25 It is clear that Jane Austen thinks that Anne made the wrong decision. Captain Wentworth is truly honorable,

24. Schulhofer has argued that the key issue is whether or not the woman decided autonomously. The problem, he says, is to identify what the boundary is between “autonomy and compulsion, free choice and coerced consent” (p. 92). Thus, for him, the focus of law should not be on force but on whether a meaningful choice was made (p. 102). Fully autonomous choice he defines as requiring “mental capacity, awareness of the available options, adequate information, and freedom from outside interference with the process of choice” (p. 111). My position is that it is not so much the internal state of mind that matters as the conditions under which external pressures have been brought to bear. It is part of normal human interaction that people will try to befuddle and confuse people to do what they want, and if the means they use to achieve that end are within their rights, they have not acted coercively, even if the victim of such persuasion is less than autonomous in Schulhofer’s sense.

and furthermore goes on to make a fortune, while Anne languishes in loneliness and self-criticism. Her submission to another’s wishes leads to eight years of estrangement and suffering before she and Captain Wentworth end up together at last. But while the decision itself was incorrect, Austen does not blame Anne for having been persuaded: she has, after all, known Lady Russell her whole life and Captain Wentworth only a few short months. To underscore that Anne displays the right sort of character, even while having made a wrong decision, Austen contrasts Anne with the forthright Louisa Musgrove. Louisa has engaged Captain Wentworth in a number of conversations (painfully within Anne’s hearing) on the value of firmness of character when faced with opposition, and Captain Wentworth has applauded her determination to be steadfast in holding her own way. Then, on a trip to Lyme, retribution falls. Louisa has insisted that Captain Wentworth “jump” her down the steep flight of stairs from the higher part of the stone walkway to a lower: “He advised her against it, thought the jar was too great; but no, he reasoned and talked in vain; she smiled and said ‘I am determined I will’: he put out his hands, she was too precipitate by half a second, she fell on the pavement on the Lower Cobb, and was taken up lifeless!”

In point of fact Louisa is not dead but has suffered a serious head injury, which alters her permanently: “Anne wondered whether it ever occurred to him now, to question the justness of his own previous opinion as to the universal felicity and advantage of firmness of character; and whether it might not strike him that, like all other qualities of mind, it should have its proportions and limits. She thought it could scarcely escape him to feel, that a persuadable temper might sometimes be as much in favour of happiness as a very resolute character.”

While Anne’s moralizing may seem repressive, Austen’s point is clear: if we are to be persuadable, we will be sometimes persuaded to do the wrong thing but sometimes to do the right thing. And, it is the nature of a reasonable human being to be persuadable, even though persuadability may lead to a lessening or a suspension of one’s own reasoning abilities at a given moment. If it is true that Louisa should be persuaded by Captain Wentworth, how more true it is that we should be open to persuasion by those we love, as Anne is by Lady Russell, or as men and women may be persuaded by the person they love romantically. It seems that letting another person dominate you more than pure reason would allow is part of the nature of love. It is not reason, after all, that makes us love others but some irrational influence that leads us to love the one we do, where another who sees the same person is left indifferent. Love does not reliably let us gauge the value of the beloved’s opinions, and

26. Ibid., p. 94.
27. Ibid., p. 100.
we all recognize this: this is why we discount lovers’ opinions of their lovers’ merit or the merits of their lovers’ ideas. And it is natural that we do use this power to persuade our lovers or those who are attached to us. There is nothing inherently immoral in this: we may think we are persuading them to do what is for their own good, as Lady Russell does Anne, or we may try to get them to do what we know they don’t want but we do, like choosing a ski vacation instead of going to the Caribbean, but this is part of the inescapable nature of human interaction.

When it comes to sex, there is no doubt that, in some cases, the lover who tries to sell sex to his reluctant partner truly thinks that she will be better off once she sees how great sex with him is. In others, the effort is surely not so disinterested, but it is again within the normal scope of relationships that we try to persuade others to do what we want and that that persuasion is not purely rational. We need perhaps a more general recognition of the fact that, when it comes to sex, the two parties involved may have a conflict of interests and that cultural stereotypes and ideologies have been invented which try to hide this fact. We cannot assume that even the most romantic of encounters is not at heart adversarial. But adversarial interests may not make an action immoral. It is often fair enough that we want different things and that we try to get the other person to do what we want.

And where such actions are immoral, where we go beyond the normal degree of dishonesty or manipulation implicit in human relationships, the resulting intercourse may not be rape. It is not rape if the person asking for sex stays within what he has a right to ask for. This is not to say that there are conditions where one has a right to have sex even if the other person does not consent: there aren’t. Rather, one has a right to ask for the other’s consent and to try to persuade the other to give consent as long as one does this within legitimate parameters: the other should be a competent adult, capable of making a decision; sanctions should only be those one has a right to impose, like ending the relationship, not violence; there should be no use of authority derived from extraneous positions (as father, employer, etc.). No one has a right to control our bodies or to touch us when we do not want to be touched, but it is a part of our lives as moral agents that people close to us have the right to talk to us about things we may not.

28. Just as culture has veiled the conflict of interest which may rise within romantic encounters, it has perhaps exaggerated the danger to women from strangers. The idea that predators lie in wait for women has been used to convince women that they need protectors, which, in turn, may make them more vulnerable to the men whom they see as close to them: boyfriends, family members, even dates. See Susan Griffin’s seminal “Rape: The All American Crime,” first published in Ramparts (10 [September 1971]: 23–36), and Claudia Card’s “Rape as a Terrorist Institution,” in Violence, Terrorism, and Justice, ed. R. G. Frey and Christopher W. Morris (Cambridge: Cambridge University Press, 1991), pp. 296–319.
want to hear, even when that means they are being downright nasty. We can go away if we want and not see the person any more but, if we want to be involved in a relationship, we cannot reasonably insist that we never hear anything we don’t want to hear. It is part of our life as moral agents that we need to learn to negotiate through others’ desires.

IV. LAW

Does this latitude in permissibility suggest that nonviolent demands for sex never violate rights? No. Certainly there are cases where people do misuse authority or do offer illegitimate sanctions in a way which invalidates consent obtained in this way. This brings us to the realm of law. It is not that every violation of a right is reflected in law, because constraints of cost and practicability (standards of evidence, enforceability, etc.) make it unreasonable to legislate all such infractions. Still, law tends to reflect our beliefs about what we have a right to do to one another and what we don’t. One thing that seems clear through the study of rape law is that it does not mirror law in analogous areas. Stephen Schulhofer has addressed well, and at length, the way in which rape law deviates from other areas of law in ways which act to the detriment of rape victims. For example, take the case where a high school principal told a student he would not allow her to graduate if she did not have sex with him.\(^29\) If he had threatened to withhold his permission unless she paid him an amount in money, he would have been guilty of extortion, but given that he asked for sex, he was not in violation of law. Clearly this is wrong. The principal had no right to demand sex from a student, and he had no right to use his authority as an administrator to get sex. Extortion needs to be recognized when the good extorted is sex, just as much as when it is money.\(^30\) Similarly, the fathers who threatened their (foster and biological) daughters with punishments derived from their authority as fathers had no right to use that right to obtain sex from their children. We can, of course, differentiate kinds of rape (as we do to some degree now) and distinguish rape through extortion from violent rape, or indeed, make these gradations and their attached punishments as fine tuned as seems appropriate. We recognize property theft of many sorts: embezzlement, blackmail, extortion, and fraud are all distinct offenses in the realm of property. What if someone threatens to show nude pictures of a woman if she refuses to have sex with him? It would be pertinent to consider under what circumstances this would be considered criminal if the good to be extorted were money, not sex. We have not assumed that any

\(^{29}\) This is *State v. Thompson* (792P.2d 1103 [Mont. 1990]), a case which occurred in Montana, not in the distant past but, shockingly, in 1988.

\(^{30}\) Schulhofer discusses this in *Unwanted Sex*, and I agree with his conclusions.
transaction which is not armed robbery is consensual. The same should
hold for the realm of sex. We need, thus, to extend our recognition of
what constitutes a nonconsensual sex act.31

Nonetheless, the limits of what counts as coercion should be rec-
ognized whatever the good demanded may be. It seems to me that
boyfriends and girlfriends, or husbands and wives, can demand expen-
sive birthday presents, and threaten to leave if they don’t get the big
screen television or in-house yoga studio they crave. Such people are
spoiled and shallow, but they are not guilty of extortion. The issue is
not so much the type of good that is demanded, but whether the person
has a right to demand it and a right to sanction the failure to meet the
demand in the particular way he threatens to sanction it. It is true that
law needs to be expanded to recognize sexual coercion in areas where
it already recognizes monetary coercion; on the other hand, college
conduct codes which describe as rape a case where a man successfully
gets his girlfriend to have sex by threatening that otherwise he will break
up with her seem to violate the rights of the student who does the
demanding, rather than protect the rights of the student who has to
make the unpleasant choice.32 Assuming that the student being pres-
sured is legally competent, negotiating such demands is part of nego-
tiating interpersonal relationships.

V. CONCLUSION

We need to expand our conceptual framework and our terminology so
that we can capture greater differences than we typically do. There is
a cultural tradition which has divided sexual intercourse into either
morally unacceptable rape or morally acceptable nonrape. The truth is
that there are many finer distinctions which we need to recognize and
to which we need to develop a sensitivity. We do this in other areas,
where we recognize actions of deceit, hurtfulness, and damage which
are not the worst of transgressions and yet which are not morally neutral.
We know generally that there is a difference between actions which (a)
infringe others’ rights (say, stealing), (b) don’t infringe others’ rights
but are nonetheless wrong (like failing to give to someone in need),
(c) are not wrong but which nonetheless evince bad character (giving
to the needy but only to feel your own superiority), and (d) are none
of these yet may nonetheless be regrettable for their repercussions. What
we need to understand is that sex is at least as complex as other areas
of human interaction and has just as many varieties of wrong as well as

31. Since I have mentioned Schulhofer, I should note that (as I understand it) he does
not accept as fully an economic model of sexual exchange as I am promoting here.
32. See n. 20.
of good, and as we have been accustomed to differentiate within other areas of human interaction so should we here.

To subsume all areas of sexual wrong under the heading of rape does a disservice to all concerned. It hurts those whose laudable goal is just to show that sex can be dark and hurtful; they lose credibility when they are perceived as exaggerating, and their perfectly appropriate criticisms of sexual practice may be dismissed. It is bad for those who are the aggressors in any sexual situation, who may feel that, as long as they have not committed rape, their actions are morally neutral: they need to learn that actions outside of rape can be despicable and to cultivate awareness as to which are and which are not morally acceptable forms of suasion. To call all sexual wrongdoing rape also does a disservice to those who have suffered the absolute terror of violent assault and whose suffering can’t, I think, be compared to that of the person who has reluctantly agreed to have sex to avoid emotional distress. This may be a case where analytical philosophy, with its conceptual distinctions and semantic precision, can indeed explain something to our sense of order and can actually be useful.  

33. What about alcohol? Many campus sexual offense codes have taken alcohol as invalidating consent because one’s judgment under the influence of alcohol is faulty. Thus, even though the initiator of a sexual action may obtain the consent of the other person, if that second person is drunk, the initiator is still taken to have committed rape (if intercourse occurs) or sexual assault. This strikes me as wrong in most cases. Take a case where both parties have been drinking (commonly the case in campus sex). For one thing, it may well be difficult to define who the initiator is. (Many of these codes, I suspect, assume that the male must be the initiator, but this is outdated, if it was ever true.) More significantly, these codes are inconsistent in their assignment of responsibility. As these standards work now, the initiator is held responsible for initiating sex, even though he was drunk, and the other party is not held responsible for consenting, because she was drunk. This presents an obvious asymmetry. If drunkenness mitigates responsibility for actions, it seems fair that just as her consent is invalidated, he should not be held responsible for his action, given his condition. Or, if he is held responsible for what he did while drunk, so should she, and she should have to accept responsibility for her drunken acquiescence. The latter strikes me as most plausible. We hold people responsible for what they do while driving drunk, even though we know they would never have chosen to go through the stop sign if sober and that their judgment under alcohol was impaired. The normal rationale for this is that they chose to get drunk, knowing that this would impair their judgment, and thus they are responsible for the consequences of that initial choice. This seems equally valid for those who choose to get drunk and then have sex; having chosen to get drunk, they cannot disavow responsibility for consenting to have sex. Thus, it is not just to accuse the initiator of rape if the drunken party has given consent. There are, naturally, some exceptions to this: if the drunken party is unconscious, she is not able to consent, and sex would be rape. If the initiator has forced the drunken party to get drunk, then we cannot say she chose to get drunk, and the person forcing the alcohol upon her holds all responsibility. And those already existing limitations on the validity of consent would naturally apply here: age, mental impairment, etc. Generally, though, codes which say that the mere fact of a person’s drunkenness makes the other party guilty of rape when sex occurs substitute popular politics for justice.