

Chapter 16

SEXUAL MORALITY AND THE CONCEPT OF USING ANOTHER PERSON

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The central tenet of *conventional* sexual morality is that nonmarital sex is immoral. A somewhat less restrictive sexual ethic holds that *sex without love* is immoral. If neither of these positions is philosophically defensible, and I would contend that neither is, it does not follow that there are no substantive moral restrictions on human sexual interaction. Any human interaction, including sexual interaction, may be judged morally objectionable to the extent that it transgresses a justified moral rule or principle. The way to construct a detailed account of sexual morality, it would seem, is simply to work out the implications of relevant moral rules or principles in the area of human sexual interaction.

As one important step in the direction of such an account, I will attempt to work out the implications of an especially relevant moral principle, the principle that it is wrong for one person to use another person. However ambiguous the expression "using another person" may seem to be, there is a determinate and clearly specifiable sense according to which using another person is morally objectionable. Once this morally significant sense of "using another person" is identified and explicated, the concept of using another person can play an important role in the articulation of a defensible account of sexual morality.

I. The Morally Significant Sense of "Using Another Person"

Historically, the concept of using another person is associated with the ethical system of Immanuel Kant. According to a fundamental Kantian principle, it is morally wrong for A to use B *merely as a means* (to achieve A's ends). Kant's principle does not rule out A using B as a means, only A using B *merely as a means*, that is, in a way incompatible with respect for B as a person. In the ordinary course of life, it is surely unavoidable (and morally unproblematic) that each of us in numerous ways uses others as a means to achieve our various ends. A college teacher uses students as a means to achieve his or her livelihood. A college student uses instructors as a means of gaining knowledge and skills. Such human interactions, presumably based on the voluntary participation of the respective parties, are quite compatible with the idea of respect for persons. But respect for persons entails that each of us recognize the rightful authority of other persons (as rational beings) to conduct their individual lives as they see fit. We may legitimately recruit others to participate in the satisfaction of our personal ends, but they are used merely as a means whenever we undermine the voluntary or informed character of their consent to interact with us in some desired way. A coerces B at knife point to hand over \$200. A uses B merely as means. If A had requested of B a gift of \$200, leaving B free to determine whether or not to make the gift, A would have proceeded in a manner compatible with respect for B as a person. C deceptively rolls back the odometer of a car and thereby manipulates D's decision to buy the car. C uses D merely as a means.

On the basis of these considerations, I would suggest that the morally significant sense of "using another person" is best understood by reference to the notion of *voluntary informed consent*. More specifically, A immorally uses B if and only if A intentionally acts in a way that violates the requirement that B's involvement with A's ends be based on B's voluntary informed consent. If this account is correct, using another person (in the morally significant sense) can arise in at least two important ways: via *coercion*, which is antithetical to voluntary consent, and via *deception*, which undermines the informed character of voluntary consent.

The notion of voluntary informed consent is very prominent in the literature of biomedical ethics and is systematically related to the much emphasized notion of (patient) autonomy. We find in the famous words of Supreme Court Justice Cardozo a ringing affirmation of patient autonomy. "Every human being of adult years and sound mind has a right to determine what shall be done with his own body." Because respect for individual autonomy is an essential part of the respect for persons, if medical professionals (and biomedical researchers) are to interact with their patients (and research subjects) in an acceptable way, they must respect

individual autonomy. That is, they must respect the self-determination of the patient/subject, the individual's right to determine what shall be done with his or her body. This means that they must not act in a way that violates the requirement of voluntary informed consent. Medical procedures must not be performed without the consent of competent patients; research on human subjects must not be carried out without the consent of the subjects involved. Moreover, consent must be voluntary; coercion undermines individual autonomy. Consent must also be informed; lying or withholding relevant information undercuts rational decision making and thereby undermines individual autonomy.

To further illuminate the concept of using that has been proposed, I will consider in greater detail the matter of research involving human subjects. In the sphere of researcher-subject interaction, just as in the sphere of human sexual interaction, there is ample opportunity for immorally using another person. If a researcher is engaged in a study that involves human subjects, we may presume that the "end" of the researcher is the successful completion of the study. (The researcher may desire this particular end for any number of reasons: the speculative understanding it will provide, the technology it will make possible, the eventual benefit of humankind, increased status in the scientific community, a raise in pay, etc.) The work, let us presume, strictly requires the use (employment) of human research subjects. The researcher, however, immorally uses other people only if he or she intentionally acts in a way that violates the requirement that the participation of research subjects be based on their voluntary informed consent.

Let us assume that in a particular case participation as a research subject involves some rather significant risks. Accordingly, the researcher finds that potential subjects are reluctant to volunteer. At this point, if an unscrupulous researcher is willing to resort to the immoral using of other people (to achieve his or her own ends), two manifest options are available—deception and coercion. By way of deception, the researcher might choose to lie about the risks involved. For example, potential subjects could be explicitly told that there are no significant risks associated with research participation. On the other hand, the researcher could simply withhold a full disclosure of risks. Whether pumped full of false information or simply deprived of relevant information, the potential subject is intentionally deceived in such a way as to be led to a decision that furthers the researcher's ends. In manipulating the decision making process of the potential subject in this way, the researcher is guilty of immorally using another person.

To explain how an unscrupulous researcher might immorally use another person via coercion, it is helpful to distinguish two basic forms of coercion.¹ "Occurrent" coercion involves the use of physical force. "Dispositional" coercion involves the threat of harm. If I am forcibly thrown

out of my office by an intruder, I am the victim of occurrent coercion. If, on the other hand, I leave my office because an intruder has threatened to shoot me if I do not leave, I am the victim of dispositional coercion. The victim of occurrence coercion literally has no choice in what happens. The victim of dispositional coercion, in contrast, does intentionally choose a certain course of action. However, one's choice, in the face of the threat of harm, is less than fully voluntary.

It is perhaps unlikely that even an unscrupulous researcher would resort to any very explicit measure of coercion. Deception, it seems, is less risky. Still, it is well known that Nazi medical experimenters ruthlessly employed coercion. By way of occurrence coercion, the Nazis literally forced great numbers of concentration camp victims to participate in experiments that entailed their own death or dismemberment. And if some concentration camp victims "volunteered" to participate in Nazi research to avoid even more unspeakable horrors, clearly we must consider them victims of dispositional coercion. The Nazi researchers, employing coercion, immorally used other human beings with a vengeance.

II. Deception and Sexual Morality

To this point, I have been concerned to identify and explicate the morally significant sense of "using another person." On the view proposed, A immorally uses B if and only if A intentionally acts in a way that violates the requirement that B's involvement with A's ends be based on B's voluntary informed consent. I will now apply this account to the area of human sexual interaction and explore its implications. For economy of expression in what follows, "using" (and its cognates) is to be understood as referring only to the morally significant sense.

If we presume a state of affairs in which A desires some form of sexual interaction with B, we can say that this desired form of sexual interaction with B is A's end. Thus A sexually *uses* B if and only if A intentionally acts in a way that violates the requirement that B's sexual interaction with A be based on B's voluntary informed consent. It seems clear then that A may sexually use B in at least two distinctive ways, (1) via coercion and (2) via deception. However, before proceeding to discuss deception and then the more problematic case of coercion, one important point must be made. In emphasizing the centrality of coercion and deception as mechanisms for the sexual using of another person, I have in mind sexual interaction with a fully competent adult partner. We should also want to say, I think, that sexual interaction with a child inescapably involves the sexual using of another person. Even if a child "consents" to sexual interaction, he or she is, strictly speaking, incapable of *informed* consent. It's a matter of being *incompetent* to give consent. Similarly, to

the extent that a mentally retarded person is rightly considered incompetent, sexual interaction with such a person amounts to the sexual using of that person, unless someone empowered to give "proxy consent" has done so. (In certain circumstances, sexual involvement might be in the best interests of a mentally retarded person.) We can also visualize the case of an otherwise fully competent adult temporarily disordered by drugs or alcohol. To the extent that such a person is rightly regarded as temporarily incompetent, winning his or her "consent" to sexual interaction could culminate in the sexual using of that person.

There are a host of clear cases in which one person sexually uses another precisely because the former employs deception in a way that undermines the informed character of the latter's consent to sexual interaction. Consider the example. One person, A, has decided, as a matter of personal prudence based on past experience, not to become sexually involved outside the confines of a loving relationship. Another person, B, strongly desires a sexual relationship with A but does not love A. B, aware of A's unwillingness to engage in sex without love, professes love for A, thereby hoping to win A's consent to a sexual relationship. B's ploy is successful; A consents. When the smoke clears and A becomes aware of B's deception, it would be both appropriate and natural for A to complain, "I've been used."

In the same vein, here are some other examples. (1) Mr. A is aware that Ms. B will consent to sexual involvement only on the understanding that in time the two will be married. Mr. A has no intention of marrying Ms. B but says that he will. (2) Ms. C has herpes and is well aware that Mr. D will never consent to sex if he knows of her condition. When asked by Mr. D, Ms. C denies that she has herpes. (3) Mr. E knows that Ms. F will not consent to sexual intercourse in the absence of responsible birth control measures. Mr. E tells Ms. F that he has had a vasectomy, which is not the case. (4) Ms. G knows that Mr. H would not consent to sexual involvement with a married woman. Ms. G is married but tells Mr. H that she is single. (5) Ms. I is well aware that Ms. J is interested in a stable lesbian relationship and will not consent to become sexually involved with someone who is bisexual. Ms. I tells Ms. J that she is exclusively homosexual, whereas the truth is that she is bisexual.

If one person's consent to sex is predicated on false beliefs that have been intentionally and deceptively inculcated by one's sexual partner in an effort to win the former's consent, the resulting sexual interaction involves one person sexually using another. In each of the above cases, one person explicitly *lies* to another. False information is intentionally conveyed to win consent to sexual interaction, and the end result is the sexual using of another person.

As noted earlier, however, lying is not the only form of deception. Under certain circumstances, the simple withholding of information can be

considered a form of deception. Accordingly, it is possible to sexually use another person not only by (deceptively) lying about relevant facts but also by (deceptively) not disclosing relevant facts. If A has good reason to believe that B would refuse to consent to sexual interaction should B become aware of certain factual information, and if A withholds disclosure of this information in order to enhance the possibility of gaining B's consent, then, if B does consent, A sexually uses B via deception. One example will suffice. Suppose that Mr. A meets Ms. B in a singles bar. Mr. A realizes immediately that Ms. B is the sister of Ms. C, a woman that Mr. A has been sexually involved with for a long time. Mr. A, knowing that it is very unlikely that Ms. B will consent to sexual interaction if she becomes aware of Mr. A's involvement with her sister, decides not to disclose this information. If Ms. B eventually consents to sexual interaction, since her consent is the product of Mr. A's deception, it is rightly thought that she has been sexually used by him.

III. Coercion and Sexual Morality

We have considered the case of deception. The present task is to consider the more difficult case of coercion. Whereas deception functions to undermine the *informed* character of voluntary consent (to sexual interaction), coercion either obliterates consent entirely (the case of occurrent coercion) or undermines the voluntariness of consent (the case of dispositional coercion).

Forcible rape is the most conspicuous, and most brutal, way of sexually using another person via coercion.² Forcible rape may involve either occurrent coercion or dispositional coercion. A man who rapes a woman by the employment of sheer physical force, by simply overpowering her, employs occurrent coercion. There is literally no sexual *interaction* in such a case; only the rapist performs an action. In no sense does the woman consent to or participate in sexual activity. She has no choice in what takes place, or rather, physical force results in her choice being simply beside the point. The employment of occurrent coercion for the purpose of rape "objectifies" the victim in the strongest sense of that term. She is treated like a physical object. One does not interact with physical objects; one acts upon them. In a perfectly ordinary (not the morally significant) sense of the term, we "use" physical objects. But when the victim of rape is treated as if she were a physical object, there we have one of the most vivid examples of the immoral using of another person.

Frequently, forcible rape involves not occurrent coercion (or not *only* occurrent coercion) but dispositional coercion.³ In dispositional coercion, the relevant factor is not physical force but the threat of harm. The rapist threatens his victim with immediate and serious bod-

ily harm. For example, a man threatens to kill or beat a woman if she resists his sexual demands. She "consents," that is, she submits to his demands. He may demand only passive participation (simply not struggling against him) or he may demand some measure of active participation. Rape that employs dispositional coercion is surely just as wrong as rape that employs occurrent coercion, but there is a notable difference in the mechanism by which the rapist uses his victim in the two cases. With occurrent coercion, the victim's consent is entirely bypassed. With dispositional coercion, the victim's consent is not bypassed. It is coerced. Dispositional coercion undermines the *voluntariness* of consent. The rapist, by employing the threat of immediate and serious bodily harm, may succeed in bending the victim's will. He may gain the victim's "consent." But he uses another person precisely because consent is coerced.

The relevance of occurrent coercion is limited to the case of forcible rape. Dispositional coercion, a notion that also plays an indispensable role in an overall account of forcible rape, now becomes our central concern. Although the threat of immediate and serious bodily harm stands out as the most brutal way of coercing consent to sexual interaction, we must not neglect the employment of other kinds of threats to this same end. There are numerous ways in which one person can effectively harm, and thus effectively threaten, another. Accordingly, for example, consent to sexual interaction might be coerced by threatening to damage someone's reputation. If a person consents to sexual interaction to avoid a threatened harm, then that person has been sexually used (via dispositional coercion). In the face of a threat, of course, it remains possible that a person will refuse to comply with another's sexual demands. It is probably best to describe this sort of situation as a case not of coercion, which entails the *successful* use of threats to gain compliance, but of *attempted* coercion. Of course, the moral fault of an individual emerges with the *attempt* to coerce. A person who attempts murder is morally blameworthy even if the attempt fails. The same is true for someone who fails in an effort to coerce consent to sexual interaction.

Consider now each of the following cases:

Case 1 Mr. Supervisor makes a series of increasingly less subtle sexual overtures to Ms. Employee. These advances are consistently and firmly rejected by Ms. Employee. Eventually, Mr. Supervisor makes it clear that the granting of "sexual favors" is a condition of her continued employment.

Case 2 Ms. Debtor borrowed a substantial sum of money from Mr. Creditor, on the understanding that she would pay it back within one year. In the meantime, Ms. Debtor has become sexually attracted to Mr. Creditor, but he does not share her interest. At the end of the one-year period, Mr. Creditor asks Ms. Debtor to return the money. She says she

will be happy to return the money so long as he consents to sexual interaction with her.

Case 3 Mr. Theatregoer has two tickets to the most talked-about play of the season. He is introduced to a woman whom he finds sexually attractive and who shares his interest in the theater. In the course of their conversation, she expresses disappointment that the play everyone is talking about is sold out; she would love to see it. At this point, Mr. Theatregoer suggests that she be his guest at the theater. "Oh, by the way," he says, "I always expect sex from my dates."

Case 4 Ms. Jetsetter is planning a trip to Europe. She has been trying for some time to develop a sexual relationship with a man who has shown little interest in her. She knows, however, that he has always wanted to go to Europe and that it is only lack of money that has deterred him. Ms. Jetsetter proposes that he come along as her traveling companion, all expenses paid, on the express understanding that sex is part of the arrangement.

Cases 1 and 2 involve attempts to sexually use another person whereas cases 3 and 4 do not. To see why this is so, it is essential to introduce a distinction between two kinds of proposals, viz., the distinction between *threats* and *offers*.⁴ The logical form of a threat differs from the logical form of an offer in the following way. Threat: "If you *do not* do what I am proposing you do, I will bring about an *undesirable consequence* for you." Offer: "If you *do* what I am proposing you do, I will bring about a *desirable consequence* for you." The person who makes a threat attempts to gain compliance by attaching an undesirable consequence to the alternative of noncompliance. This person attempts to *coerce* consent. The person who makes an offer attempts to gain compliance by attaching a desirable consequence to the alternative of compliance. This person attempts not to coerce but to *induce* consent.

Since threats are morally problematic in a way that offers are not, it is not uncommon for threats to be advanced in the language of offers. Threats are represented as if they were offers. An armed assailant might say, "I'm going to make you an *offer*. If you give me your money, I will allow you to go on living." Though this proposal on the surface has the logical form of an offer, it is in reality a threat. The underlying sense of the proposal is this: "If you do not give me your money, I will kill you." If, in a given case, it is initially unclear whether a certain proposal is to count as a threat or an offer, ask the following question. Does the proposal in question have the effect of making a person *worse off upon non-compliance*? The recipient of an offer, upon noncompliance, is *not worse off* than he or she was before the offer. In contrast, the recipient of a threat, upon noncompliance, is *worse off* than he or she was before the threat. Since the "offer" of our armed assailant has the effect, upon non-compliance, of rendering its recipient worse off (relative to the pre-

proposal situation of the recipient), the recipient is faced with a threat, not an offer.

The most obvious way for a coercer to attach an undesirable consequence to the path of noncompliance is by threatening to render the victim of coercion materially worse off than he or she has heretofore been. Thus a person is threatened with loss of life, bodily injury, damage to property, damage to reputation, etc. It is important to realize, however, that a person can also be effectively coerced by being threatened with the withholding of something (in some cases, what we would call a "benefit") to which the person is entitled. Suppose that A is mired in quicksand and is slowly but surely approaching death. When B happens along, A cries out to B for assistance. All B need do is throw A a rope. B is quite willing to accommodate A, "provided you pay me \$100,000 over the next ten years." Is B making A an offer? Hardly! B, we must presume, stands under a moral obligation to come to the aid of a person in serious distress, at least when such assistance entails no significant risk, sacrifice of time, etc. A is entitled to B's assistance. Thus, in reality, B attaches an undesirable consequence to A's noncompliance with the proposal that A pay B \$100,000. A is undoubtedly better off that B has happened along, but A is not rendered better off *by B's proposal*. Before B's proposal, A legitimately expected assistance from B, "no strings attached." In attaching a very unwelcome string, B's proposal effectively renders A worse off. What B proposes, then, is not an offer of assistance. Rather, B threatens A with the withholding of something (assistance) that A is entitled to have from B.

Since threats have the effect of rendering a person worse off upon non-compliance, it is ordinarily the case that a person does not welcome (indeed, despises) them. Offers, on the other hand, are ordinarily welcome to a person. Since an offer provides no penalty for noncompliance with a proposal but only an inducement for compliance, there is *in principle* only potential advantage in being confronted with an offer. In real life, of course, there are numerous reasons why a person may be less than enthusiastic about being presented with an offer. Enduring the presentation of trivial offers does not warrant the necessary time and energy expenditures. Offers can be both annoying and offensive; certainly this is true of some sexual offers. A person might also be unsettled by an offer that confronts him or her with a difficult decision. All this, however, is compatible with the fact that an offer is fundamentally welcome to a rational person in the sense that the *content* of an offer necessarily widens the field of opportunity and thus provides, in principle, only potential advantage.

With the distinction between threats and offers clearly in view, it now becomes clear why cases 1 and 2 do indeed involve attempts to sexually use another person whereas cases 3 and 4 do not. Cases 1 and 2 embody threats, whereas cases 3 and 4 embody offers. In case 1, Mr. Su-

pervisor proposes sexual interaction with Ms. Employee and, in an effort to gain compliance, threatens her with the loss of her job. Mr. Supervisor thereby attaches an undesirable consequence to one of Ms. Employee's alternatives, the path of noncompliance. Typical of the threat situation, Mr. Supervisor's proposal has the effect of rendering Ms. Employee worse off upon noncompliance. Mr. Supervisor is attempting via (dispositional) coercion to sexually use Ms. Employee. The situation in case 2 is similar. Ms. Debtor, as *she* might be inclined to say, "offers" to pay Mr. Creditor the money she owes him *if* he consents to sexual interaction with her. In reality, Mrs. Debtor is threatening Mr. Creditor, attempting to coerce his consent to sexual interaction, attempting to sexually use him. Though Mr. Creditor is not now in possession of the money Ms. Debtor owes him, he is *entitled* to receive it from her at this time. She threatens to deprive him of something to which he is entitled. Clearly, her proposal has the effect of rendering him worse off upon noncompliance. Before her proposal, he had the legitimate expectation, "no strings attached," of receiving the money in question.

Cases 3 and 4 embody offers; neither involves an attempt to sexually use another person. Mr. Theatregoer simply provides an inducement for the woman he has just met to accept his proposal of sexual interaction. He offers her the opportunity to see the play that everyone is talking about. In attaching a desirable consequence to the alternative of compliance, Mr. Theatregoer in no way threatens or attempts to coerce his potential companion. Typical of the offer situation, his proposal does not have the effect of rendering her worse off upon noncompliance. She now has a new opportunity; if she chooses to forgo this opportunity, she is no worse off. The situation in case 4 is similar. Ms. Jetsetter provides an inducement for a man that she is interested in to accept her proposal of sexual involvement. She offers him the opportunity to see Europe, without expense, as her traveling companion. Before Ms. Jetsetter's proposal, he had no prospect of a European trip. If he chooses to reject her proposal, he is no worse off than he has heretofore been. Ms. Jetsetter's proposal embodies an offer, not a threat. She cannot be accused of attempting to sexually use her potential traveling companion.

Consider now two further cases, 5 and 6, each of which develops in the following way. Professor Highstatus, a man of high academic accomplishment, is sexually attracted to a student in one of his classes. He is very anxious to secure her consent to sexual interaction. Ms. Student, confused and unsettled by his sexual advances, has begun to practice "avoidance behavior." To the extent that it is possible, she goes out her way to avoid him.

Case 5 Professor Highstatus tells Ms. Student that, though her work

is such as to entitle her to a grade of B in the class, she will be assigned a D unless she consents to sexual interaction.

Case 6 Professor Highstatus tells Ms. Student that, though her work is such as to entitle her to a grade of B, she will be assigned an A if she consents to sexual interaction.

It is clear that case 5 involves an attempt to sexually use another person. Case 6, however, at least at face value, does not. In case 5, Professor Highstatus *threatens* to deprive Ms. Student of the grade she deserves. In case 6, he *offers* to assign her a grade that is higher than she deserves. In case 5, Ms. Student would be worse off upon noncompliance with Professor Highstatus' proposal. In case 6, she would not be worse off upon noncompliance with his proposal. In saying that case 6 does not involve an attempt to sexually use another person, it is not being asserted that Professor Highstatus is acting in a morally legitimate fashion. In offering a student a higher grade than she deserves, he is guilty of abusing his institutional authority. He is under an obligation to assign the grades that students earn, as defined by the relevant course standards. In case 6, Professor Highstatus is undoubtedly acting in a morally reprehensible way, but in contrast to case 5, where it is fair to say that he both abuses his institutional authority *and* attempts to sexually use another person, we can plausibly say that in case 6 his moral failure is limited to abuse of his institutional authority.

There remains, however, a suspicion that case 6 might after all embody an attempt to sexually use another person. There is no question that the literal content of what Professor Highstatus conveys to Ms. Student has the logical form of an offer and not a threat. Still, is it not the case that Ms. Student may very well feel threatened? Professor Highstatus, in an effort to secure consent to sexual interaction, has announced that he will assign Ms. Student a higher grade than she deserves. Can she really turn him down without substantial risk? Is he not likely to retaliate? If she spurns him, will he not lower her grade or otherwise make it harder for her to succeed in her academic program? He does, after all, have power over her. Will he use it to her detriment? Surely he is not above abusing his institutional authority to achieve his ends; this much is abundantly clear from his willingness to assign a grade higher than a student deserves.

Is Professor Highstatus naive to the threat that Ms. Student may find implicit in the situation? Perhaps. In such a case, if Ms. Student reluctantly consents to sexual interaction, we may be inclined to say that he has *unwittingly* used her. More likely, Professor Highstatus is well aware of the way in which Ms. Student will perceive his proposal. He knows that threats need not be verbally expressed. Indeed, it may even be the case that he consciously exploits his underground reputation. "Everyone knows what happens to the women who reject Professor Highstatus's lit-

le offers." To the extent, then, that Professor Highstatus intends to convey a threat in case 6, he is attempting via coercion to sexually use another person.

Many researchers "have pointed out the fact that the possibility of sanctions for noncooperation is implicit in all sexual advances across authority lines, as between teacher and student."⁵ I do not think that this consideration should lead us to the conclusion that a person with an academic appointment is obliged in all circumstances to refrain from attempting to initiate sexual involvement with one of his or her students. Still, since even "good faith" sexual advances may be ambiguous in the eyes of a student, it is an interesting question what precautions an instructor must take to avoid unwittingly coercing a student to consent to sexual interaction.

Much of what has been said about the professor/student relationship in an academic setting can be applied as well to the supervisor/subordinate relationship in an employment setting. A manager who functions within an organizational structure is required to evaluate fairly his or her subordinates according to relevant corporate or institutional standards. An unscrupulous manager, willing to abuse his or her institutional authority in an effort to win the consent of a subordinate to sexual interaction, can advance threats and/or offers related to the managerial task of employee evaluation. An employee whose job performance is entirely satisfactory can be threatened with an unsatisfactory performance rating, perhaps leading to termination. An employee whose job performance is excellent can be threatened with an unfair evaluation, designed to bar the employee from recognition, merit pay, consideration for promotion, etc. Such threats, when made in an effort to coerce employee consent to sexual interaction, clearly embody the attempt to sexually use another person. On the other hand, the manager who (abusing his or her institutional authority) offers to provide an employee with an inflated evaluation as an inducement for consent to sexual interaction does not, at face value, attempt to sexually use another person. Of course, all of the qualifications introduced in the discussion of case 6 above are applicable here as well.

IV. The Idea of a Coercive Offer

In section III, I have sketched an overall account of sexually using another person *via coercion*. In this section, I will consider the need for modifications or extensions of the suggested account. As before, certain case studies will serve as points of departure.

Case 7 Ms. Starlet, a glamorous, wealthy, and highly successful model, wants nothing more than to become a movie superstar. Mr.

Moviemogul, a famous producer, is very taken with Ms. Starlet's beauty. He invites her to come to his office for a screen test. After the screen test, Mr. Moviemogul tells Ms. Starlet that he is prepared to make her a star, on the condition that she agree to sexual involvement with him. Ms. Starlet finds Mr. Moviemogul personally repugnant; she is not at all sexually attracted to him. With great reluctance, she agrees to his proposal.

Has Mr. Moviemogul sexually used Ms. Starlet? No. He has made her an offer that she has accepted, however reluctantly. The situation would be quite different if it were plausible to believe that she was, before acceptance of his proposal, *entitled* to his efforts to make her a star. Then we could read case 7 as amounting to his threatening to deprive her of something to which she was entitled. But what conceivable grounds could be found for the claim that Mr. Moviemogul, before Ms. Starlet's acceptance of his proposal, is under an obligation to make her a star? He does not threaten her; he makes her an offer. Even if there are other good grounds for morally condemning his action, it is a mistake to think that he is guilty of coercing consent.

But some would assert that Mr. Moviemogul's offer, on the grounds that it confronts Ms. Starlet with an overwhelming inducement, is simply an example of a *coercive offer*. The more general claim at issue is that offers are coercive precisely inasmuch as they are extremely enticing or seductive. Though there is an important reality associated with the notion of a coercive offer, a reality that must shortly be confronted, we ought not embrace the view that an offer is coercive merely because it is extremely enticing or seductive. Virginia Held is a leading proponent of the view under attack here. She writes:

A person unable to spurn an offer may act as unwillingly as a person unable to resist a threat. Consider the distinction between rape and seduction. In one case constraint and threat are operative, in the other inducement and offer. If the degree of inducement is set high enough in the case of seduction, there may seem to be little difference in the extent of coercion involved. In both cases, persons may act against their own wills.⁶

Certainly a rape victim who acquiesces at knife point is forced to act *against her will*. Does Ms. Starlet, however, act against her will? We have said that she consents "with great reluctance" to sexual involvement, but she does not act against her will. She *wants* very much to be a movie star. I might want very much to be thin. She regrets having to become sexually involved with Mr. Moviemogul as a means of achieving what she wants. I might regret very much having to go on a diet to lose weight. If we say that Ms. Starlet acts against her will in case 7, then we must say that I am acting against my will in embracing "with great reluctance" the diet I despise.

A more important line of argument against Held's view can be advanced on the basis of the widely accepted notion that there is a moral presumption against coercion. Held herself embraces this notion and very effectively clarifies it:

... although coercion is not always wrong (quite obviously: one coerces the small child not to run across the highway, or the murderer to drop his weapon), there is a presumption against it. . . . This has the standing of a fundamental moral principle. . . .

What can be concluded at the moral level is that we have a *prima facie* obligation not to employ coercion.⁷ [all italics hers]

But it would seem that acceptance of the moral presumption against coercion is not compatible with the view that offers become coercive precisely inasmuch as they become extremely enticing or seductive. Suppose you are my neighbor and regularly spend your Saturday afternoon on the golf course. Suppose also that you are a skilled gardener. I am anxious to convince you to do some gardening work for me and it must be done this Saturday. I offer you \$100, \$200, \$300, . . . in an effort to make it worth your while to sacrifice your recreation and undertake my gardening. At some point, my proposal becomes very enticing. If my proposal were becoming coercive, surely our moral sense would be aroused.

Though it is surely not true that the extremely enticing character of an offer is sufficient to make it coercive, we need not reach the conclusion that no sense can be made out of the notion of a coercive offer. Indeed, there is an important social reality that the notion of a coercive offer appears to capture, and insight into this reality can be gained by simply taking note of the sort of case that most draws us to the language of "coercive offer." Is it not a case in which the recipient of an offer is in circumstances of genuine need, and acceptance of the offer seems to present the only realistic possibility for alleviating the need? Assuming that this sort of case is the heart of the matter, it seems that we cannot avoid introducing some sort of distinction between *genuine needs* and *mere wants*. Though the philosophical difficulties involved in drawing this distinction are not insignificant, I nevertheless claim that we will not achieve any clarity about the notion of a coercive offer, at least in this context, except in reference to it. Whatever puzzlement we may feel with regard to the host of borderline cases that can be advanced, it is nevertheless true, for example, that I *genuinely need* food and that I *merely want* a backyard tennis court. In the same spirit, I think it can be acknowledged by all that Ms. Starlet, though she *wants* very much to be a star, does not in any relevant sense *need* to be a star. Accordingly, there is little plausibility in thinking that Mr. Moviemogul makes her a coercive offer. The following case, in contrast, can more plausibly be thought to embody a coercive offer.

Case 8 Mr. Troubled is a young widower who is raising his three children. He lives in a small town and believes that it is important for him to stay there so that his children continue to have the emotional support of other family members. But economic times are tough. Mr. Troubled has been laid off from his job and has not been able to find another. His unemployment benefits have ceased and his relatives are in no position to help him financially. If he is unable to come up with the money for his mortgage payments, he will lose his rather modest house. Ms. Opportunistic lives in the same town. Since shortly after the death of Mr. Troubled's wife, she has consistently made sexual overtures in his direction. Mr. Troubled, for his part, does not care for Ms. Opportunistic and has made it clear to her that he is not interested in sexual involvement with her. She, however, is well aware of his present difficulties. To win his consent to a sexual affair, Ms. Opportunistic offers to make mortgage payments for Mr. Troubled on a continuing basis.

Is Ms. Opportunistic attempting to sexually use Mr. Troubled? The correct answer is yes, even though we must first accept the conclusion that her proposal embodies an offer and not a threat. If Ms. Opportunistic were threatening Mr. Troubled, her proposal would have the effect of rendering him worse off upon noncompliance. But this is not the case. If he rejects her proposal, his situation will not worsen; he will simply remain, as before, in circumstances of extreme need. It might be objected at this point that Ms. Opportunistic does in fact threaten Mr. Troubled. She threatens to deprive him of something to which he is entitled, namely, the alleviation of a genuine need. But this approach is defensible only if, before acceptance of her proposal, he is entitled to have his needs alleviated *by her*. And whatever Mr. Troubled and his children are entitled to from their society as a whole—they are perhaps slipping through the "social safety net"—it cannot be plausibly maintained that Mr. Troubled is entitled to have his mortgage payments made *by Ms. Opportunistic*.

Yet, though she does not threaten him, she is attempting to sexually use him. How can this conclusion be reconciled with our overall account of sexually using another person? First of all, I want to suggest that nothing hangs on whether or not we decide to call Ms. Opportunistic's offer "coercive." More important than the label "coercive offer" is an appreciation of the social reality that inclines us to consider the label appropriate. The label most forcefully asserts itself when we reflect on what Mr. Troubled is likely to say after accepting the offer. "I really had no choice." "I didn't want to accept her offer but what could I do? I have my children to think about." Both Mr. Troubled and Ms. Starlet (in our previous case) *reluctantly* consented to sexual interaction, but I think it can be agreed that Ms. Starlet had a choice in a way that Mr. Troubled did not. Mr. Troubled's choice was *severely constrained by his needs*, whereas Ms. Starlet's was not. As for Ms. Op-

portunistic, it seems that we might describe her approach as in some sense exploiting or taking advantage of Mr. Troubled's desperate situation. It is not so much, as we would say in the case of threats, that she coerces him or his consent, but rather that she achieves her aim of winning consent by taking advantage of the fact that he is already "under coercion," that is, his choice is severely constrained by his need. If we choose to describe what has taken place as a "coercive offer," we should remember that Mr. Troubled is "coerced" (constrained) by his own need or perhaps by preexisting factors in his situation rather than by Ms. Opportunistic or her offer.

Since it is not quite right to say that Ms. Opportunistic is attempting to coerce Mr. Troubled, even if we are prepared to embrace the label "coercive offer," we cannot simply say, as we would say in the case of threats, that she is attempting to sexually use him *via coercion*. The proper account of the way in which Ms. Opportunistic attempts to sexually use Mr. Troubled is somewhat different. Let us say simply that she attempts to sexually use him *by taking advantage of his desperate situation*. The sense behind this distinctive way of sexually using someone is that a person's choice situation can sometimes be subject to such severe prior constraints that the possibility of *voluntary* consent to sexual interaction is precluded. A advances an offer calculated to gain B's reluctant consent to sexual interaction by confronting B, who has no apparent way of alleviating a genuine need, with an opportunity to do so, but makes this opportunity contingent upon consent to sexual interaction. In such a case, should we not say simply that B's need, when coupled with a lack of viable alternatives, results in B being incapable of *voluntarily* accepting A's offer? Thus A, in making an offer which B "cannot refuse," although not coercing B, nevertheless does intentionally act in a way that violates the requirement that B's sexual interaction with A be based upon B's voluntary informed consent. Thus A sexually uses B.

The central claim of this paper is that A sexually uses B if and only if A intentionally acts in a way that violates the requirement that B's sexual interaction with A be based on B's voluntary informed consent. Clearly, deception and coercion are important mechanisms whereby sexual using takes place. But consideration of case 8 has led us to the identification of yet another mechanism. In summary, then, limiting attention to cases of sexual interaction with a fully competent adult partner, A can sexually use B not only (1) by deceiving B or (2) by coercing B but also (3) by taking advantage of B's desperate situation.

NOTES

1. I follow here an account of coercion developed by Michael D. Bayles in "A Concept of Coercion," in J. Roland Pennock and John W. Chapman, eds., *Coercion: Nomos XIV* (Chicago: Aldine-Atherton, 1972), pp. 16-29.

2. Statutory rape, sexual relations with a person under the legal age of consent, can also be construed as the sexual using of another person. In contrast to forcible rape, however, statutory rape need not involve coercion. The victim of statutory rape may freely "consent" to sexual interaction but, at least in the eyes of the law, is deemed incompetent to consent.

3. A man wrestles a woman to the ground. She is the victim of occurrent coercion. He threatens to beat her unless she submits to his sexual demands. Now she becomes the victim of dispositional coercion.

4. My account of this distinction largely derives from Robert Nozick, "Coercion," in Sidney Morgenbesser, Patrick Suppes, and Morton White, eds., *Philosophy, Science, and Method* (New York: St. Martin's Press, 1969), pp. 440-72, and from Michael D. Bayles, "Coercive Offers and Public Benefits," *The Personalist* 55, no. 2 (Spring 1974), 139-44.

5. The National Advisory Council on Women's Educational Programs, *Sexual Harassment: A Report on the Sexual Harassment of Students* (August 1980), p. 12.

6. Virginia Held, "Coercion and Coercive Offers," in *Coercion: Nomos XIV*, p. 58.

7. *Ibid.*, pp. 61, 62.