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PREVIEW RESPONSE

Beyond Consent: Sexual Flourishing and the Limits of Law



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In this preview, Professor VanderWeele defines flourishing as “the relative attainment of a state in which all aspects of a person’s life are good, including the contexts in which that person lives”. This is an overarching higher ideal, in that it is multidimensional across various aspects and contexts, encompassing both individual wellbeing and social conditions. My research speaks to the possibility for flourishing in the dimension of sex and sexuality.

Flourishing in the sexual context might be understood as a sex life that reflects meaningful agency, fulfilment, and a sense that personhood and dignity is mutually and reciprocally respected. This is not to suggest that in order to flourish, every sexual encounter must be equally pleasurable for all involved; flourishing is not incompatible with generosity, self-sacrifice, or compromise. But as an aspiration, the ideal of flourishing directs attention to conditions which are conducive to sexual fulfilment.

Law, of course, does not use flourishing as a legal test and nor should it – that would be a significant infringement on sexual autonomy. Instead, consent is (generally) the legal standard for permissible sex. However, consent is only a minimum threshold, in that (most) consensual sex is not legally wrongful. It does not tell us much about whether a sexual encounter or culture is conducive to flourishing. As feminist legal theorists have long pointed out, consent is an imperfect proxy for values such as wellbeing, dignity, equality (see, e.g., MacKinnon, *Women’s Lives, Men’s Laws*; West, *Sex Law and Consent*). Law’s focus on consent, which is well understood at a societal level, might limit the imagination in terms of a richer account of sexual justice and flourishing.

The idea of flourishing as connected to one’s context is also important; people may themselves have wonderful, satisfying sex lives while living in a broader culture shaped by objectification, exploitation, coercion, and distorted expectations of masculinity and femininity. Flourishing invites us to look beyond individual choices and experiences to consider the shaping of sexual ethics for the common good.

Citations

Catherine MacKinnon, *Women's Lives, Men's Laws* (Harvard University Press, Cambridge, 2005)

Robin West, "Sex, Law and Consent" in Franklin G Miller and Alan Wertheimer (Eds) *The Ethics of Consent* (Oxford University Press, New York, 2010).

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