

Lying for Sex:
Deception, Consent and What We Owe Each Other When We Have Sex
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Sex, Lies, and Consent: these topics, as covered by Tom Dougherty, lay the groundwork for a number of important philosophical conversations and are key aspects of larger ideas regarding morality and society. While Dougherty makes convincing arguments pertaining to the critical status of consent, his work requires further scrutiny. Specifically, Dougherty's stance on "morally valid consent" as well as his principles regarding the explicitness of deal breakers through communication is in need of adjustment. Dougherty claims deception can effectively moot the validity of consent within a sexual relationship. This argument is misoriented and wrong. Through this work, we will demonstrate that when deception and sex meet, the wrong manifests through the deception itself, not through any alteration in the status of consent. It will also be shown that the clear communication of so-called dealbreakers is a function of sex that is not only important but vital for the purposes of moral judgment regarding deception and lies.

Dougherty's Argument

In his paper *Sex, Lies, and Consent*, Tom Dougherty argues against the commonly held lenient thesis and focuses on the importance of morally valid consent and deal breakers. The lenient thesis reads: "It is only a minor wrong to deceive another person into sex by misleading her or him about certain personal features such as natural hair color, occupation, or romantic intentions" (Dougherty 718). Dougherty, however, disagrees with the implication that certain features of identity are trivial in this manner. His argument has two premises: 1. having sex without moral consent is a serious wrong and 2. deceiving another person to have sex is sex without morally valid consent. He, therefore, concludes that "deceiving another person into sex is morally wrong" (Dougherty 720). In premise two, Dougherty only refers to cases concerning a dealbreaker – "a feature of sexual encounter to which the other person's will is opposed" (Dougherty 719). So by deceptive sex, he means deceptively presenting a feature of one's own identity that, if the deception had not occurred, would result in the other person's unwillingness to have sex. This does not include deceptively presenting features that are not ultimate dealbreakers to the other partner. Lastly, Dougherty clarifies his principles to excuse those who are not fully aware of their partner's dealbreakers, and he will not question the validity of the deal breakers themselves (721).

The Root of the Wrong

The first disagreement we hold with Dougherty's argument centers around where the serious wrong, if there is a wrong, comes from in a case of lying for sex. In expanding his argument, Dougherty notes that "it is not the deception that is seriously wrong, but the sexual act" (Dougherty 720). However, it is precarious to center the serious wrong on the sexual act and lack of "morally valid consent," as it devalues many rape and sexual assault cases. Dougherty

briefly addresses this issue early in his essay, stating he will leave the ontological argument between defining all nonconsensual acts of sex as “rape” or not up to the reader. We, as readers, believe conflating all examples of deception for sex as rape is dangerous. While we understand that there *may* still be a serious wrong in deceiving another person to sleep with them, Dougherty’s blanket statement of all deception is too harsh. Dougherty attempts to redefine the concept of consent but, in doing so, moves the standard too far away from the seriousness of conventionally nonconsensual definitions. Within individual cases, numerous factors result in a variation in degrees of deception and the harm that follows.

In order to evaluate these varying degrees, we must first clarify two important factors: the type of deception and the motivations behind them. First, there is a pertinent distinction between lying, withholding the truth, and deception. Lying is an outright, spoken statement that is untrue. Withholding the truth is an avoidance of topics or scenarios that may require a subject to choose between lying or telling the truth. Deception is not an outright spoken lie, nor is it an avoidance of lying. A deception is an act that may lead another person to presume something false. These not-truth-telling actions present varying degrees of harm, requiring different evaluations. Next, the harm of each not-truth-telling action also varies depending on the intention behind it. For example, if a person dyes their hair blonde it very well may be deceiving, as they present as a natural blonde. However, their deception is most likely accidental or not intentional, as they might not even be aware they are deceiving others. If it was intentional, the intention is most likely not deception *for sex*. Still, if the deception was *for sex*, it may also be indirectly for sex, as the ultimate motivator might be to appear more attractive, which tangentially results in sex. As the awareness of deception increases and the ultimate motivation behind the deception becomes more directly for sex, the harm of the deception increases.

In addition to overlooking different aspects of deception, Dougherty also overlooks the different aspects of consent. Consenting to sex involves two things: consent to certain physical acts and consent to act with certain people. Therefore, violation of consent can occur by both breaching the agreed-upon acts and the agreed-upon participants. Suppose partner A explicitly lies about an aspect of their identity when partner B asks and informs them that it would be a dealbreaker. In that case, partner B has a *false* understanding of partner A. Person B consents to sexual intercourse with their confirmed idea of person A, so if they find out that person A is not who they say they are, this would be a violation of consent. We would consider *this* to be rape. However, if person B fails to communicate their dealbreaker, assumes that person A does not violate it, and chooses to have sexual intercourse, then they do not have a confirmed, false image of person A; they have an incomplete image of person A. If they later find out that their presumed image was wrong, this does not change who they actually consented to have sex with. They consented to take a risk in believing their assumption and to have sex with an incomplete, unconfirmed image of person A.

The Importance of Communication

Dougherty's ideals about "deal breakers" do hold merit, just in a more demanding way than he presently describes. It is true if someone actively deceives or lies as a means to circumvent a potential partner's dealbreakers, there is *something* wrong. There are, however, stipulations to that principle. Inherent to all, or at least all appropriate, sexual relationships is communication. Sexual relationships are uniquely intimate interactions; they are personal and operate through processes of trust. The concept and acceptedness of different sexual relationships have changed over time, and we have reached a point in society where common, even casual sexual exchanges are often unstigmatized and embraced. Some refer to this development as "hookup culture:" a reality that this paper will not morally examine. Sex is intimate, regardless of how well one knows the other individual(s). Through sex, people allow themselves to become vulnerable and establish implied degrees of trust. It is the case, however, when an individual makes a choice to forgo sufficient communication or relationship building within a particular sexual encounter that they are still accepting intimacy while opening themselves up to certain risks.

Dougherty understands the weight of sex, but he is wrong to presume *unspoken* deal breakers have the power to create serious moral wrongs because he disregards the role clear communication plays within sexual situations and fails to account for degrees of mutually agreed risk-taking. If an individual holds particular dealbreakers, they have an obligation to make that deal breaker known and obvious to the partner in the encounter. Unless one makes their dealbreaker known *as* a dealbreaker and clear to their potential sexual partner, they cannot allege any serious wrong if their partner(s) violate it by having sex. If one keeps their dealbreaker shrouded, ambiguous, or unspoken, they accept the risk that their deal breaker may be broken through any encounter. If person X, for example, will not have sex with someone who is a Scientologist, they are obliged to ask potential partners if they are, in fact, Scientologists. If X makes a choice not to ask, X tacitly agrees to a degree of risk (in this instance that one may very well be a Scientologist), which scales to their degree of seriousness regarding the dealbreaker. An aspect of the risk here is the inherent chance of deception. Without any prompt, a partner may choose not to share the fact they are a Scientologist, and they certainly are not obligated to do so. Every individual is entitled to a degree of privacy and confidentiality regarding their private life and personal details. Additionally, It is impractical to require individuals to share possible deal breakers with every potential partner they meet, as there is an abundance of possibilities. Concurrently, an individual may have an inclination that others will not want to have sex with them if they are a Scientologist, but they still have the right to withhold that information. Therefore, person X has a responsibility to make it clear: I will not have sex with a Scientologist. The moral weight (being in the moral right or wrong) is then transferred to the potential partner, who can either tell the truth, lie, or choose not to answer.

Suppose X assumes that their potential partner is not a Scientologist, chooses to act on that assumption without confirming whether it is correct, engages in sexual contact, and later learns that they are a Scientologist. In that case, the responsibility of the violation of the dealbreaker falls on X, not their partner. Even if their partner has an inclination that X will not

sleep with them if they are a Scientologist, and the partner avoids the topic and the two end up engaging in sexual contact, it is still X's responsibility to make clear that they will not sleep with Scientologists. Now, Suppose X makes their dealbreaker known and the partner confirms that they violate said dealbreaker. In that case, X has to make a choice to either stand by their dealbreaker or voluntarily abandon it. If the partner declines to speak to their entanglement with X's dealbreaker, X also has to make a choice to either risk violating it or walk away. However, if the partner *lies* in response to X's stipulation the deception becomes a serious moral wrong.

Serious and Minor Wrongs

We have now arrived at the conversation about routine deception versus explicit lies based on a known dealbreaker. As previously stated, the intentionality surrounding deception is key. Partner X may hold a certain dealbreaker, but they open themselves up to certain risks if they fail to make it clear to their potential partner. One may have a feeling another has a certain dealbreaker and choose to avoid that area of conversation; this could be a minor wrong, but it is not a serious moral problem, as Dougherty would claim. Deception or avoidance is not the same thing as outright lying. Equating explicitly lying with withholding the truth places reliance on human beings' faulty, unreliable assumption-making skills. Deal Breakers are complicated and nuanced; it would be overly demanding for everyone to attempt to parse out every potential dealbreaker. In this regard, potential partners of person X have a degree of plausible deniability. One may well assume another person has a certain dealbreaker, but that deal breaker was never vocalized, and therefore, there is no way to concretely know the validity of the assumption nor the seriousness of the dealbreaker. Through acts of avoidance in order to gain sex, actors participate in generalized discretion, not personalized deception.

Modern society has a pervasive culture of casual sexual encounters. In many regards, this culture means the moral weight is dependent on who has the ability to take risks. If X has a dealbreaker, they are in control of a certain risk in every encounter they have. Potential partners of X have no prior knowledge of X's dealbreaker, and in many instances, they may not care about said dealbreaker. Hookup culture reflects a marketplace of lies where honesty is rarely rewarded. There is commonly a feeling of mutually understood passive dishonesty. If X holds a deal breaker that is sincerely decisive, the responsibility sits squarely on them to remove themselves from this arena of misinformation and minor wrong hoods. In a society that is not overly concerned with commonplace, minor lies every actor is largely responsible for their own protection. Given the context in which casual sexual encounters take place, it would be wholly undeserved to group casual deception as a serious moral wrong. Only when the lie is personalized and tailored as a means to avoid a known deal breaker is there an elevation to the status of a serious moral wrong. In that way, the responsibility for risk management and moral care is transferred to the risk holder. In the case that someone does disclose their dealbreakers and is still given a lie in response the deception is well above that which is commonly accepted and expected. It is in those cases that lying is explicitly for the purpose of taking advantage of

the other individual even when presented with another's unambiguous standards. Through those actions bodily autonomy and, yes, consent have been violated.

Conclusion

Dougherty fails to account for the nuances of deception and consent, resulting in a faulty misunderstanding of where and when lying for sex is a *serious* moral wrong. Dougherty states that deceiving another person about a dealbreaker for sex violates moral consent; however, this only occurs when the partner with a dealbreaker clearly communicates their preference, and their potential partner explicitly lies about it for sex. In doing so, Dougherty wrongly equates all deceptive sex that violates dealbreakers with rape. However, unlike rape, the risk of sexual encounters with dealbreakers falls on the holder themselves, so they, therefore, hold the responsibility of clarifying their situation.