



SEXUAL ETHICS

AN ANTHOLOGY

EDITED BY PATRICK D. HOPKINS

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Sexual Ethics: An Anthology

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Patrick D. Hopkins

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Preface: How This Book Is Organized and How to Use It

History of the Text

Sexual Ethics: An Anthology is an accessible and provocative collection of readings on conceptual, ethical, and policy issues about sex. Designed for students, teachers, and anyone interested in exploring one of the major moral topics of our times, this collection avoids jargon and obscurity in favor of clear, straightforward discussion, covering a wide array of cases from all sides. It is intended to provoke thought, generate discussion, and analytically clarify the definitions, arguments, assumptions, and options of our personal, public, and political treatment of sex.

Unlike many books, which make their way from author to publisher to classroom, this anthology made the trip the other way around. It started in a classroom and then made its way to the publishing house. Now it's coming full circle. Toward the end of the first decade of the 2000s, when I was revamping my department's offerings and putting several applied ethics courses into rotation, I decided to teach a stand-alone course on sexual ethics. Such a course made sense, seeing as how sex was a major moral issue in society, every bit as controversial and publicly debated as medicine, business, and the environment. I assumed, then, that there would be textbooks on sexual ethics, focused on practical problems and organized in the same ways the medical ethics, business ethics, engineering ethics, and environmental ethics books on my shelves were. To my surprise, I found none. There were excellent books on the philosophy of sex and while those included some applied moral and policy

articles, they focused mainly on conceptual, ontological, and epistemological issues. There were also quite a few books from particular sectarian perspectives whose aims were largely about doctrinal clarification or religious training. There were also various books on feminist theory and gender studies, which tended to center on conceptual, historical, and theoretical concerns, often using abstruse vocabulary. Finally, there were anthologies on very specific issues, such as entire books on sexual harassment law. While all useful for their purposes, these books did not address the needs of a wide-ranging, non-sectarian, accessible, applied ethics course. So, I created my own reader from the sizable literature on sexual ethics. When the class was a success, I decided to turn that reader into a book anyone could use. This is that book.

Purpose of the Text

Applied ethics courses have been popular on college campuses for years. Delving into subjects from medicine to business to law to technology to the environment, they tap into an interest and a need people have to talk about, think about, write about, and hopefully learn about issues that grip our moral consciousness as well as our legislatures. Somewhat surprisingly, given the popularity of medical, business, and environmental ethics, sexual ethics courses are less common even though society seems seized at times with debate over sex and sexuality. The public controversies over gay marriage, pornography, premarital sex, sexual harassment, and adultery, just to

name a few, have been as prominent and intense as those about abortion, healthcare costs, corporate misconduct, climate change, and endangered species. There could be several reasons why this is case. Perhaps it is because we are still embarrassed to talk about issues that feel as personal as sex, whether from a puritan inheritance or from a worry that others will think we must be talking about ourselves. Perhaps it is because the very act of talking about sex is sometimes part of a moral controversy itself – as with sexual harassment – and teachers worry that some discussions might be interpreted as inappropriate. Perhaps it is because sex is the area in which humans are both most literally and uncomfortably similar to animals – driven by the same powerful instinctual physical desires of beasts rutting in the field – and most anxiously and distancingly different from animals – driven to interpret, judge, and question those desires. Whatever the case, we seem to find it easier to talk about euthanasia than homosexuality in the classroom – although oddly, we seem to find much more talk about homosexuality in the media than euthanasia.

One way to address this asymmetry between public controversy and classroom discussion is to recognize that the passions and euphemisms and furor in public debates over sex should be taken seriously and can be discussed clearly, analytically, explicitly, and respectfully. A book that clearly labels sexual ethics as an academic and policy area worthy of focused, practical, attention can help with that.

Organization of the Text

This book is organized into three levels. The first level is a set of broad categories of concepts that shape various specific issues. For example, the concept of consent is crucial in analyzing the morality and legality of numerous sexual acts. Therefore, the broad category of consent and coercion is the rubric under which issues of sexual harassment, rape, and cognitive maturity are grouped. The second level is a set of applied framing questions that situate the broader conceptual problems with reference to specific issues. These questions do not exhaust the moral terrain but focus on the way the concepts work in real-world moral and legal decisions. For example, under the broad category of marriage and fidelity, one framing question asks whether purely online romances should count as adultery. The third level is the set of articles themselves, arguing for one conclusion over another, one judgment over another, and one policy over

another. For example, under the broad category of homosexuality and policy, and under the framing question of how we should assess attempts to change sexual orientation, one legal brief argues that “conversion therapy” should be criminalized as malpractice and another argues that it is justified by the right of the therapist to free speech.

With any text like this, the editor has a painful time selecting material. There are often so many good articles on a topic, sometimes only a few good articles on an important topic, and always far too many topics to cover at all. There are hard decisions then, as to what to cover and what to leave for another day. Inevitably, some readers will be disappointed that a topic or article important to them is left out. That is entirely understandable, but limitations of space preclude covering all that would be useful. In choosing the articles for this book, then, I had to decide what selection criteria would guide me. I chose topics I considered to be major issues, but “major” was interpreted in two ways. In one sense, “major” meant “amount of controversy in society.” Using that criterion, gay marriage had to be included since it has recently been a monumental cultural focus at the level of individual, city, state, nation, legislature, and supreme court. Interracial marriage, though controversial in its own time and important to look at for the history of sexual ethics, was left out because it currently engenders little public outcry. In another sense, however, “major” meant “getting at the conceptual heart of sexual ethics.” Using that criterion, the medical treatment of intersexed infants is included, even though it is a rare condition, and the moral analysis of pedophilia is included, even though there is hardly any public demand for decriminalizing sex with children.

Instructional Benefits of the Text

Having been created in the classroom, for college and law students of all levels and all majors, this book has been deliberately designed to be as user-friendly as possible, always in reference to what makes a text most useful for students, teachers, or anyone who wants a clear direction of where to go and a clear explanation of what to expect. The goal has essentially been to create a ready-to-go course. The specific user-friendly design elements include:

- (a) *Categorization*: The book is divided into six broad categories that emphasize how conceptual issues shape debates (Consent, Marriage, Homosexuality, Transgender, Commerce, Paraphilia) with a short

introduction to the topic at the beginning of the section.

- (b) *Framing Questions*: Each major section of the book includes specific framing questions that address a major moral or policy issue, not to limit the issues but to show how various concepts are employed in real-world cases (e.g., How should we define rape? Should we legalize gay marriage? Should pornography be protected as free speech?).
- (c) *Introduction*: The book begins with a concise introductory chapter on concepts and definitions of sex, sexuality, and sexual ethics that brings theoretical issues into clear view, providing the philosophical and scientific background for discussing the readings and explicitly showing how these conceptual issues have direct practical application. For example, definitions of sex are not just intellectual puzzles – definitions legally determine whether or not rape has occurred and thus determine whether or not someone goes to prison. The chapter includes recent empirical research on how people define sex and sexuality and recent empirical research on the moral psychology of emotional reactions to sexual issues.
- (d) *Discussion Starters*: Each of the three sections in the introductory chapter (what is sex? what is sexuality? what is sexual ethics?) begins with 5 discussion starters, geared toward getting a class or group talking about issues and beginning to tease out conceptual and ethical elements of the issues. Instructors can use these starters early on in each section of the class to get students used to talking and to start fleshing out ideas.
- (e) *Decision Cases*: One of the most valuable elements of this book is the set of decision cases that follow

each of the three sections in the introductory chapter. Each of those sections conclude with 15 cases (45 cases altogether, almost all based on real-world events, including recent hot-topics) that call for in-depth philosophical analysis and making actual determinations about what should be done or how a person should be judged. Covering a wide variety of issues, the decision cases are perfect for class debate, for research topics, and for class presentations.

- (f) *Representativeness*: Every specific issue is addressed with both Pro and Con articles – sometimes in direct response to one another – showcasing areas of moral, conceptual, and empirical disagreement and exposing readers to multiple positions and arguments.
- (g) *Article Summaries*: Every article is immediately preceded by a short summary, indicating the topic, major points, argument structure, conclusion, and implications of the piece. This not only helps readers follow and understand but is immensely helpful for teachers planning courses – allowing them to determine which readings are best suited for a class without having to pre-read entire articles.
- (h) *Article Variety*: The book contains a variety of types of readings on sex and sexuality, including argumentative essays, court rulings in specific cases, legal briefs in active court proceedings, position statements from medical organizations, government commission reports, and government agency regulations. This coverage provides a useful array of the types of writing that are influential in sexual ethics debates and demonstrates how actual, practical decisions are often made.

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useful research and practical assistance and was admirably unflinching given the eyebrow-raising search terms he had to regularly enter into the college library databases.

My Sexual Ethics class of 2008 – the first time I had ever offered such a class – was the impetus for this project. They signed up for a provocatively titled course and, though there were inevitably giggles and periodic uncomfortable-seat-shifting at first, quickly showed that serious analytic thinking can be brought to bear on a set of issues that normally are both difficult to talk about openly but also grip the social and legal conscience of society. This book is dedicated to them.

P.D.H.
Jackson, Mississippi

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PART I

Introduction to Sex, Sexuality, and Sexual Ethics

Introduction

Thinking analytically about the subject matter of a book like this is both important and somewhat more complicated than might be expected. It's not unusual when people hear about sexual ethics that they think it all centers around debating the morality of some particular sexual act. Is it right or wrong? Should it be legal or illegal? Is it good for us or bad? But in many cases we need to back up a bit and ask this question: What is *it*? What is the *it* we are talking about? What makes the action we are going to debate a *sexual* act? Or more broadly, what is sex? This question is not just an intellectual puzzle. It's not just about "semantics." After all, "semantics" refers to what words mean and what we mean by the term "sex" has a huge practical impact on our lives, personally, morally, and legally. A romantic partner might tell you they are a virgin – and yet regularly engage in an act you consider sex but they don't. A friend might be charged with rape – but claim that they never went "all the way" so they never had sex in the first place. A boss might say something to you with a "sexual" innuendo, and then claim later it was totally innocent. How do we know?

Questions about sexuality can be convoluted as well and have just as important practical consequences. If the law says a person's unchangeable, biological characteristics cannot be the basis of discrimination, then it would be crucial to know whether a person's sexual orientation is genetic or not. If sexual discrimination means treating

someone unfairly because of their sex, is it possible to be sexually discriminated against by someone the same sex as you? How should we understand a person who appears to be a heterosexual man since they are anatomically male and attracted to women but who nonetheless claims to be a lesbian?

Once we have a better understanding of what we mean by sex and sexuality, then how do we go about making decisions – both moral and legal – about certain actions? Should we worry exclusively about the effects on society? Or not care about social effects at all? Is it entirely individual tastes? Or can individuals be culpably self-destructive and self-degrading? Are some sexual actions just wrong in themselves? Or does it all completely depend on whether or not actions hurt someone? If someone consents to something, is it okay even if they do get hurt?

The First Part of this book helps clarify these questions and sort through possible answers. Organized around the three following framework questions, it will help set the stage for analyzing the specific moral and legal issues to come.

Framing Questions

- *What is sex?*
- *What is sexuality?*
- *What is sexual ethics?*

What is Sex? What is Sexuality? What is Sexual Ethics?

Patrick D. Hopkins

Summary

This chapter summarizes the basic problems in defining the central terms in sexual ethics in three sections – What is sex? What is sexuality? What is sexual ethics? Each section begins with five discussion starters, which are useful for eliciting common positions and intuitions and for initially demonstrating some of the complexity of the concepts of sexual ethics. These starters are followed by analytic outlines of the issues and concepts important in discussions of sexual ethics. Each section ends with 15 decision cases (most of which are drawn from real-world examples, common college experiences, and court cases), which are useful for showing the practical consequences of the philosophical analysis of the concepts, for providing cases for debate, and for covering numerous contested contemporary issues that are not dealt with in depth in the following chapters.

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Section 1: What is Sex?

1.1 Discussion Starters

1. If your parents asked you if you had had sex yet, what do you think they would mean by that? How would you know how to answer? If a physician asked you when was the last time you were sexually active, what do you think the physician would mean by that? How would you know how to answer? If a police officer asked you if you had had sex with someone they were questioning, what do you think they would mean by that? How would you know how to answer? Do you think your definitions would match theirs? What are the different consequences of having different definitions in each of those cases?
2. What does it mean for a man and a woman to “go all the way”? What does it mean for a woman and a woman to “go all the way”? What does it mean for a man and man to “go all the way”? Are your answers consistent?
3. Sometimes people joke in response to being asked if they have had sex recently: Does having sex with myself count? But is this a joke? Is masturbating having sex with yourself? Or is having sex with yourself impossible? If masturbation is not considered sex, then why has it been looked down on in so many sexual ethics systems? If masturbation is sex, are you cheating on your spouse if you masturbate? If another person masturbated you, would that count as sex or not? Why would another person make the difference? Are your answers consistent?
4. Zorax is an extraterrestrial anthropologist who has been observing human behavior and is confused by this sex thing. Can you help him out? For example, Zorax has stealthily observed one situation where one human male started kissing another human male at a party and the two of them stumbled into a bathroom where one of them slid his finger into the other’s rectum and rubbed his prostate. In another situation at a similar party, one male put his finger inside another male’s rectum after the second male passed out drunk on his couch. In a third situation, one male physician put his finger inside another male’s rectum and felt his prostate during an annual medical exam. To Zorax, these are all instances of the same physical behavior but apparently some are sexual and some are not. He understands there are differences in consent here, but he wants to know about the sex distinctions. Can you explain this to Zorax?

He also wants to know if it would make a difference if the patient undergoing a physical experienced a pleasurable erotic sensation during the examination? And what if the physician was same man in the first party situation?

5. In discussing the problems of defining sex, several bloggers just say we should have a relativist position in which people define sex for themselves, claiming that no one definition is appropriate for everyone. For example:

- “Of course people have been arguing for years that we should get away from this need to define sex so specifically, but maybe seeing that other people do indeed engage in many activities that they consider sex . . . will help more people feel comfortable defining sex for themselves. Which is really how it should be – not a single definition that everyone uses but a personal one. Sex is whatever you want to do when you get physically intimate with another person.” (Pisaster, 2011).
- “I’d say that for me, at this point, I’d love to be able to define sex by simply saying “Sex could earnestly be absolutely anything for a given person.” (Corinna, 2018).
- “The short answer is that sex can mean many different things to many different people. There’s not one universal definition of sex but a variety of perspectives.” (GoAskAlice!, 2017).

But are these positions workable? If sex means whatever an individual wants, then what sense could we make of the claims that “sex requires consent” or “she is guilty of having sex with a minor” or “he could be charged with sexual harassment for asking for sexual favors” or “we should offer more sex education” or “she is a victim of sex trafficking” or any of a number of such statements?

1.2 The Problem of Definitions

Thinking analytically about the subject matter of a book on sexual ethics is both important and somewhat more complicated than might be expected. It’s not unusual when people hear about sexual ethics that they think it all centers around debating the morality of some particular sexual act. Is it right or wrong? Should it be legal or illegal? Is it good for us or bad? Is it something a good person would do or a bad person would do? Is it consensual or forced? Is it perverted or normal? But in many cases, we need to back up some and ask this question: What is it? What is the *it* we are talking about? What is sex?

Even asking that question can be imprecise. We could be asking a psychological question about the emotional importance of sex in human life. We could be asking a biological question about procreation and how reproductively dimorphic organisms generate offspring. We could be asking an anatomical question about how to distinguish bodies and genitalia. Although all these questions may come into play in the issues debated in this book, ethics is going to be about judging the morality of actions and their related intentions and motivations. *Sexual* ethics then will be about analyzing and judging the morality of actions classified as sexual. So, what makes an action a *sexual* act as distinguished from a *non-sexual* act? When can we correctly claim that sex occurred? Why use the term “sex” to describe some behaviors and not others? When we make laws about sex, what exactly are we covering?

We might start trying to understand these issues by looking up the term “sex” in a dictionary, focusing on the definitions not related to gender or anatomy but rather those about behavior. Wouldn’t that help? Here are a few dictionary examples:

- sexual activity, especially sexual intercourse (American Heritage Dictionary, 2016)
- (chiefly with reference to people) sexual activity, including specifically sexual intercourse (Oxford University Press, 2020)
- coitus (Vocabulary.com, nd.)
- physical activity between people involving the sexual organs (Cambridge University Press, 2021).
- physical activity in which people touch each other’s bodies, kiss each other, etc.: physical activity that is related to and often includes sexual intercourse; sexually motivated phenomena or behavior (Merriam-Webster, nd.-a)
- the activity in which people kiss and touch each other’s sexual organs, which may also include sexual intercourse (Macmillan Dictionary, 2009–2021).

Notice a few things about these definitions (these are just samples but look at a hundred dictionaries and you will find mostly similar entries).

First, they tend to be circular. Sex will be defined as sexual intercourse or sexual behavior or sexual activity or physical activity related to sexual intercourse. That’s not going to help. In looking to define sex, we are asking about what makes something sexual.

Second, some definitions, instead of being directly circular, will give synonyms, such as coitus. However,

when you look up the word coitus, you find “sexual intercourse, especially between a man and a woman.” (Dictionary.com, nd.). When you look up sexual intercourse, you find “sexual activity between two people; especially: sexual activity in which a man puts his penis into the vagina of a woman.” (Merriam-Webster, nd.-b). Now we’re back to circular – sex is coitus, coitus is sex. Even the male/female and penis/vagina wording is given as an example of sexual activity or intercourse particularly connoted by “coitus” – suggesting non-coital forms of sex.

Third, there are definitions that are more broadly behavioral, such as “physical activity between people involving the sexual organs or physical activity in which people touch, kiss, etc.” This is less circular and would help with some distinctions. These kinds of definitions could help us determine that an asteroid orbiting the sun is not an example of sex (since it doesn’t involve people or genitals) but it won’t always help us determine more specific things about people. “Activity between people involving the sexual organs” leaves us asking both what makes an organ sexual (are breasts? are fallopian tubes? are anuses? are mouths?) and whether any type of activity counts (is a vasectomy a sexual act since it involves physical activity touching sexual organs?). “Physical activity where people kiss, touch, etc.” probably needs no explication as to how unhelpfully broad it is.

Fourth, some definitions get more behaviorally specific, such as a man putting his penis into the vagina of a woman. That could be very helpful in making distinctions because it is much clearer. However, think about the way in which we use the term “sex” in language – which is all that dictionaries record in the first place. Do we use “sex” to describe anything other than penis-in-vagina? If we do, what makes those other activities sex?

Complicating the situation further, these formal dictionary definitions only cover the barest minimum of language dealing with sex. Think not only of formal synonyms for sex but the vast array of slang synonyms (if they are synonyms) for sex (if it is sex): hooked up, messed around, go all the way, third base, fornicate, got physical, were intimate, copulated, made love, screwed, slept together, made out, had relations, carnal knowledge, coupled, fooled around, mated, got some nookie, roll in the hay, hit the sheets, were in sexual union, experience sexual congress, consummated the relationship, bedded, bred, breed, lay together, lay down with, did it, do it, make it, shagged, fucked, got laid, got lucky, got busy, hit a home run, got some tail, got some ass, got some pussy, got some dick, took it up the ass, did the

horizontal tango, made babies, got nasty, got naughty, rooted, ravished, sexed up, did the nasty, got some, got down and dirty, humped, scored, banged, bumped uglies, nailed her/him, rode her/him, boned her/him, put the P in the V, pounded, got a dicking, buggered, got into some hanky-panky, one-night stand, bonked, bagged, blew, sucked, ate, had a romp, had a quickie, hopped in the sack, knew in the Biblical sense, shtupped, diddled, hit it, knocked boots, booty call, boffed, dipped the wick, fiddled the flower, hid the sausage, got a hot beef injection, made whoopee, skrog, spank the monkey, hid the cannoli, get some stankie on the hang down, got busy, did the deed, boink, going to the boneyard, made a deposit, balled, and got a bit of the old slap and tickle – just to mention some of the more contemporary ones. You could also add slang from earlier historical periods – make a beast with two backs, give her a green gown, shoot twixt wind and water, get your corn ground, grope for a trout in a peculiar river, get your ashes hauled, and ride a dragon upon St. George (Okrent, 2014; Thorpe, 2015). It seems that it is important in language (these are only English examples here but there are many, many slang terms for sex in most languages) to refer obliquely to sex. But are these in fact all referring to the same thing? Could you substitute “engaged in sex” for every one of them?

It is important to recognize that there is a difference between the terms we use to describe behavior and the behavior itself. There is a difference between the objective fact of what physical action occurred, the objective fact of what psychological state the agent was in when the physical action occurred, and the subjective choice of words used to describe the physical action. A penis entering a vagina to a distance of x either happened or didn’t. A vagina pressing against a mouth and tongue either happened or didn’t. A finger entering an anus to a distance of x either happened or didn’t. Behavioral events a , b , c , . . . either happened or didn’t. Whether we call those acts “sex” as a moral and forensic term is a more complicated social process, but the acts stand alone.

We can thus distinguish between behavior or action and the way that behavior is conceptualized or interpreted. In some contexts, the conceptualization and interpretation is the most important thing – for example, whether or not the action counts as ending virginity, or counts as a crime, or counts as a Title IX violation, or counts as adultery. In some contexts, the behavior or action is the most important thing and our social interpretations of the action are irrelevant – for example, whether or not an act provides a physical vector for HIV

transmission or whether or not the act could lead to pregnancy.

Depending on what you are interested in then, it is very important to ask the specific question you want answered. If you are a physician trying to determine the likelihood that someone may have been exposed to HIV, then what you really want to know is whether some specific body-fluid-exchanging actions occurred, not whether someone conceptualizes themselves as sexually active or not. This kind of issue was brought to light in a 2010 study on what sorts of behaviors people described as “having sex” (Sanders et al., 2010). The study (reported by the authors as the first of its kind) was published by researchers from the Kinsey Institute for Research in Sex, Gender, and Reproduction, and several other notable academic institutions. It had been known for some time that there were problems in surveys and polls that tried to investigate sexual behavior – memory error, self-reporting biases, and biased questions. However, not much attention had been paid to the basic question of what counted as “sex” itself. The authors decided to ask about specific behaviors. The stem question for the random phone survey (486 valid responders) was simply: “Would you say you ‘had sex’ with someone if the most intimate behaviour you engaged in was . . .” followed by 14 specific descriptions of behaviors. Respondents could simply answer “yes” or “no.” Behavioral descriptions included “You had oral contact with a partner’s genitals?,” “Penile–vaginal intercourse?,” “Penile–vaginal intercourse with no female orgasm?,” “Penile–anal intercourse, but very brief?,” and others. While the study revealed a number of very interesting results, for purposes here it is enough to point out just a few things: only about 50% of respondents considered the use of hands on genitals to be “sex”; only about 70% of respondents considered oral contact with genitals to be “sex”; about 5% of those polled thought whether or not a man ejaculated made a difference to whether penis–vagina intercourse was “sex”; 95% of people thought penis–vagina intercourse was “sex” but only 80% of people considered penis–anus intercourse “sex.” One hundred percent of males in the 18–29-year-old age group called penile–vaginal intercourse with a condom sex, but only 82% of men age 65 or older considered intercourse with a condom to be sex.

The consequences of these different definitions can be important. It could account for why significant numbers of patients with sexually transmitted diseases report that they have never had sex. It might mean that for 20% of respondents, gay cis-men are not capable of having sex since penis–vagina intercourse cannot happen and

penis–anus intercourse doesn’t count. It could explain why a “virgin” doesn’t consider herself to be lying even though she regularly has penile–anal intercourse. It could explain why a man who regularly has penile–anal intercourse with other men, but never has a penis inserted into his anus doesn’t consider himself gay or bisexual because he doesn’t have “sex” with other men. In short, it could account for a lot of confusing responses, medical issues, and identity pronouncements.

1.3 *Solutions to the Problem of Definitions*

Given the complications of defining sex, we might go one of two directions in trying to settle the issue. One option would be to say anything goes – let people define sex however they want, let there be lots of different definitions, and make it all purely subjective. While this may seem tempting at first, there is a very serious and probably fatal downside to going this way. Issues of sexual ethics (and the directly related issues of sexual laws) are not just personal issues – they are social and political issues involving interactions between people. They are part of a public discourse in which we have to rely on shared terminology to make real-world decisions. The issue of definitions is not just an intellectual puzzle or an observation about vocabulary. It can’t be dismissed by saying “it’s all just semantics” – after all, “semantics” refers to the meaning of words and what we mean by words has a huge practical impact on our lives, personally, morally, medically, and legally. If we are going to make any sense of common claims (whether you are for or against those claims) such as “there should be laws against sexual harassment” or “rape is sex without consent” or “gonorrhea is a sexually transmitted disease” or “he lied to her about having sex with another woman” then we cannot just say “everyone defines sex however they want.” We need to share definitions and we need to be clear on what those definitions are when we are in situations where clarity of meaning is important to making a decision.

A second option then would be to say let’s just stipulate a definition of sex. Let’s just decide, lay out the definition, and agree to that. This is a more promising direction to take because at least it satisfies the requirement that we have definitions to work with in making decisions that are socially and publicly consequential. This is also what we often actually do sometimes when we make laws or regulations or standards (though we also often assume we already have a shared definition of “sex” and don’t specify exactly what we mean). However, while the second option may be the direction we have to go, it

does not always settle the issues. Much of what is debated in society is what to include and what not to include under the term “sex.” If we already have principles and values regarding the morality of sex, there can be a drive to include more and more under the definition of sex in order to capture more and more under existing restrictions or protections. For example, if there is already a rule against sexual harassment, some people will be motivated to include more actions under the definition of sexual harassment in order to regulate those actions. An original meaning might have just meant *quid pro quo* sexual favors but later be expanded to include making any statements about a person’s sex that someone might perceive as offensive. The US Equal Employment Opportunity Commission, in fact, now explicitly states that “sexual harassment” does not need to be “sexual” in nature but can include making offensive gender-related comments. Sometimes this is referred to as “mission creep” or “definition creep,” referring to the continual expansion of what a term refers to past its original meaning.

There is an intellectual and emotional back-and-forth here with regard to definitions. We need definitions to help us make moral and legal judgments, but sometimes prior moral and emotional judgments will inform how we set up our definitions. Both moral judgments using definitions and moral judgments about definitions themselves must then be subject to critical scrutiny.

1.4 *Decision Cases*

1. *Is she a virgin?* Ashley is a senior in college who is engaged to be married soon after graduation. She has proudly told her fiancé, Brandon, that she is a virgin. However, you know for a fact that Ashley has had penis–anus intercourse many times with several different men on campus. You heard her talking once about how she only defines real sex as vagina–penis intercourse and her primary reason for anal intercourse has been to maintain her status as a virgin. Your friend Darius, who is gay, says Ashley is deceiving herself and her fiancé and that if anal intercourse doesn’t count as sex then he must be a virgin too and always will be. So, what would you argue? Is Ashley lying? Is she telling the truth? Is she misleading Brandon? Why hasn’t she told Brandon about what she has done? Does she define sex incorrectly? Does she have a suspect motivation for her definition? If Brandon asked you if Ashley has ever had sex with another man, what should you say? If he asked you if Ashley was an honest person, what should you say?

2. *Did he commit adultery?* Hector and Alina are a married couple with a 3-year old daughter. Hector works a solid 9–5 job and on his off time regularly plays a character on a massive multiplayer online role-playing fantasy game. As his character, he begins a relationship with another player. He chats a lot with her. They go on quests together. They share intimate feelings. Eventually, they begin describing their sexual fantasies to each other and write in detail what they (as their characters) would do with each other. She tells him (in character) that she loves him and Hector (in character) says the same to her. They spend on average between 1 and 2 hours a day interacting with each other. They have never met in real life or had any conversation except through the game. Eventually, Hector's character pops the question and they decide to get married at a castle. They invite other characters from the game to the ceremony. Meanwhile, Alina has been getting increasingly frustrated and angry about how much time Hector spends on the game. One night, when Hector is reading a bedtime story to their daughter, Alina logs in to the game as Hector and reads some of the archived exchanges with his in-game wife. She gets furious and hurt, accuses him of cheating on her, and tells him she can't believe he would do this to her. Hector says it's not him, it's his character, it's all online, and it's nothing like cheating. So, what would you argue here? Did Hector cheat? Is Alina's anger justified? Is her hurt justified? Does she have grounds for divorce? Can Hector be a good husband while carrying on the online relationship?
3. *Was he raped?* Carla and Mark have been dating for six months and have a very active sex life. One sex game they have enjoyed includes Carla blindfolding Mark, leading him around, and then touching, sucking, and edging his penis until he orgasms. One night, Carla decides it would be exciting to try something with Mark she has seen in porn. She blindfolds him as usual, goes through the usual foreplay and teasing, but then unknown to Mark, a gay friend of hers named Joel quietly comes into the room and sucks Mark instead of her, while she makes the usual sounds to trick Mark into thinking it is her. When Mark orgasms, Carla pulls off the blindfold to surprise him, saying what she just saw was so hot. Mark, however, is furious and horrified. He says she is sick and he could charge her and Joel with sexual assault. Carla tells him he is overreacting and just needs to lighten up. Joel gets angry too and says the only reason Mark is upset is because it was a man and if it had been a woman, he wouldn't be acting this way and he certainly wouldn't think of it as sexual assault. Joel also says that if Mark thinks he was raped then he'll have to admit that in the future he has had sex with a man. Mark says he did not do any such thing. Carla says that doesn't make any sense. How should you analyze this situation? Did Mark have sex with a man? Was Mark raped? If so, by whom – Carla or Joel or both? If Carla and Mark had done this before with another woman and Mark was not upset, does that change anything? What would that say about Mark's character? What does it say about Carla's character that she would do this? What does it say about Joel's?
4. *Did she hire a prostitute?* Charlotte has a medical condition called pelvic floor dysfunction that causes serious pain during sexual intercourse. She has seen a physical therapist for several months who has been treating her with a medically recognized treatment called intravaginal massage and this has helped quite a bit. However, her insurance has run out and she needs more therapy. Having heard about a massage parlor where the employees actually bring clients to orgasm for extra money, Charlotte makes an appointment, explains her situation to the masseuse and pays her to do the intravaginal massage. Charlotte does not experience orgasms during these sessions, but it is pleasurable to further release the tight muscles and it costs far, far less than seeing a physical therapist without insurance. One day, during her appointment, the massage parlor is raided by the police and she is arrested. She argues that she was not paying for sex but instead therapy. The police don't believe her but say if that was true, then she might be charged with soliciting someone to practice medicine without a license. If you were Charlotte's lawyer, what argument would you make to defend her against charges of soliciting prostitution? If you were a prosecutor, what argument would you make that she had broken prostitution laws?
5. *Did he lie about having sex?* In 1998, US President Bill Clinton was impeached (only the second president at that time to be so) and brought to trial in the Senate on charges of perjury and obstruction of justice. The charges were connected to a 1994 sexual harassment lawsuit filed against him by former Arkansas state employee Paula Jones related to his

time as Arkansas' governor. Trying to show a pattern of inappropriate sexual behavior with women, Jones' lawyers put Monica Lewinsky (a former intern who had told a friend she had had a "sexual relationship" with the president) on their witness list. Jones' attorneys asked the presiding judge to approve a formal definition of "sexual relations," of which the judge approved only the first part – a narrow description of sexual relations as "contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of a person with an intent to arouse or gratify the sexual desire of any person" (The Washington Post Company, 1998). In his deposition, Clinton stated that he never had "sexual relations" with Lewinsky. That statement was the ground for the perjury charge. However, Clinton's legal team argued that the approved definition did not include certain actions, thus he did not lie, thus there was no perjury. The indirect claim here seemed to be that even if Lewinsky had performed oral sex on Clinton, the deposition question asked if *he* had sexual relations with her, not if *she* had sexual relations with him. The definition of sex the judge approved made it possible that she could have had sexual relations with him and yet he not have had sexual relations with her (notice "mouth" is not in the definition, so putting a mouth on a penis falls under the sex definition because it counts as contacting genitalia but putting a penis on a mouth does not) (Lacayo, 1998; Tiersma, 2004). So, did Clinton perjure himself? How would you judge Clinton's character as a result of him making this argument?

6. *Did they make child pornography?* In 2011, MTV began airing a show titled *Skins* about the drug- and sex-related activities of teenagers. Following its British original, the show hired actors ranging in age from 15 to 19. The show depicted numerous scenes of suggestive poses, exposed breasts, heavy foreplay, and in one case a naked 17-year-old (whose constant erections were an ongoing joke in the show) running down the street (Stelter, 2011). The Parents Television Council asked the Justice Department to investigate whether the program violated federal child pornography laws, which define child pornography (in section 2256 of Title 18, US Code) as "any visual depiction of sexually explicit conduct involving a minor (someone under 18 years of age)." The law elaborates by stating "the legal definition of sexually explicit conduct

does not require that an image depict a child engaging in sexual activity. A picture of a naked child may constitute illegal child pornography if it is sufficiently sexually suggestive" (US Department of Justice, 2020). The show was canceled before a second season. Do the actions of the minor actors in this show meet the standard of "sexually explicit conduct"? Could MTV have been charged with producing child pornography? Should MTV have been charged? Regardless of the legal issues, was MTV doing something good, bad, useful, or shameful by producing this program? Were the actors doing something good, bad, useful, or shameful in participating in it? Should there even be such a law? When, if ever, should adults intervene in minors' sexual activities?

7. *What were they doing?* In 2015, hackers broke into the Ashley Madison website – a site that billed users for helping them set up adulterous affairs. Once things had settled down from the release of users' names, the company revealed that they had used tens of thousands of "fembots" or small computer programs that pretended to be human women in order to make it look like more women were using the site and to help draw in male customers (Pagliery, 2016). Most men had no idea they were chatting with programs. Some stories described these men as believing they were having online affairs when actually they were just alone, talking to code. Do the sexually explicit conversations men had with these programs count as infidelity or even as "conversations" at all? Were they cheating on their wives if no one else was there? How do the motives and beliefs and intentions of the men play into moral judgments of their activities? Can there be honorable motivations in paying for such a site?
8. *Did she commit adultery?* In 2003 in New Hampshire, David Branchflower filed for divorce on the grounds of irreconcilable differences. Later, however, he amended his petition, arguing that that his wife had been engaged in a continuous adulterous affair with another woman – Robin Mayer. Mayer asked the court to dismiss the amended petition, arguing that a homosexual relationship with a person married to someone else cannot constitute adultery under New Hampshire law. The trial court disagreed and allowed the petition, but Mayer appealed. The New Hampshire Supreme Court took up the case. Although the relevant statute allowed for adultery as a ground for divorce, it did

not define adultery. The justices, therefore, in an attempt to apply the “plain and ordinary meaning” of the term, looked to Webster’s Third New International Dictionary, which defined adultery as “voluntary sexual intercourse” between a married person and someone other than their spouse. Then, they looked to the definition of “sexual intercourse” which was described as “coitus.” Then, they looked to the definition of “coitus,” which was itself described as “insertion of the penis into the vagina.” Given these definitions, the court ruled that two women cannot engage in sexual intercourse and thus could not commit adultery with each other (and so the women won their case). In the majority’s opinion, any other standard used (such as the dissenting opinion’s “intimate sexual activity”) “would permit a hundred different judges and masters to decide just what individual acts are so sexually intimate as to meet the definition” (*Branchflower v. Branchflower*, 2003). Did the court decide rightly? Does a principle of respecting LGBTQ sexuality require treating the women’s activities as genuine adultery?

9. *Are you masturbating?* A technology company creates a new type of wearable tech – a haptic data suit. The suit reproduces the same kinds of sensations of touch and feeling and pressure that a person would experience if they were actually in physical contact with an object, even though they are not. This lets whoever wears the suit engage in remote operations that feel just like the real thing. Although marketed at first for activities like gaming, remote surgery, remote music performances, simulated computer keyboard use, testing the feel of new clothing, and test-driving a new car, the technology instantly starts getting used for “virtual sex.” But this opens up a big set of questions. If you have virtual sex with another person, but, of course, are only being touched by the suit, are you really having sex? Are you being masturbated by someone? If you use a sex program rather than interact with another person are you being masturbated by a machine? Can you have sex with a machine? Is masturbation itself questionable? Is it a perversion of something that is supposed to be shared with another person? What is the motivation for having sex without getting close to another person? What other questions can you come up with and how would you answer them?
10. *Is it adultery if she can’t get pregnant?* In many cultures and legal systems, adultery is grounds for

divorce (or criminal charges) and can affect alimony, child custody, and inheritance. Adultery has usually been understood to mean voluntary sexual intercourse between a married person and someone he or she is not married to. In one famous Canadian case, however, a judge ruled that the essence of adultery was introducing the possibility of having a child outside the marriage – so, even artificial insemination by donor with no sexual intercourse would count as adultery. “The fact that it has been held that anything short of actual sexual intercourse . . . does not constitute adultery, really tends to strengthen my view that it is not the moral turpitude that is involved, but the invasion of the reproductive function . . . Sexual intercourse is adulterous because in the case of the woman it involves the possibility of introducing into the family of the husband a false strain of blood. Any act on the part of the wife which does that would, therefore, be adulterous” (*Orford v. Orford*, 1921). This position seems to be held by a number of people who grew up before the birth control pill was common. In one 2010 study, nearly 20% of men over the age of 65 said that using a condom meant penile–vaginal intercourse did not count as sex (Sanders et al., 2010). More recently, in 2020, a man in the UK was sentenced to four years in prison for rape because he poked holes in a condom he used for sex. Although the sexual act itself was consensual, using a sabotaged condom was ruled to be rape and the judge was quoted as saying the man was fortunate that the woman did not get pregnant (Greenway, 2020). So, how important is potential procreation to defining sex and adultery? Is the key element of the wrongness of adultery not “moral turpitude” but reproductive lies? If a married woman secretly stopped using birth control, would that count as raping her husband, to parallel the UK case? If she used sperm from a donor (without any intercourse) to impregnate herself without her husband knowing about it, is she guilty of a kind of adultery? Could he divorce her on the grounds of adultery? If not adultery, then what marital violation did she commit? What exactly is morally objectionable about adultery?

11. *Is this a case of rape?* In 2012, the US Department of Justice changed the definition of rape for purposes of the Uniform Crime Reporting system. Rape was previously defined as “The carnal knowledge of a female forcibly and against her will.” The

new definition says rape is “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” This new broadened definition allowed for the concept of male rape victims and object rape. Now consider this situation: A man grabs a woman in a parking garage. He drags her into a van, ties her hands, tapes her mouth, holds her down, and vaginally penetrates her with a bottle. After several minutes, he pushes her out of the van and drives away. Did the man rape the woman? Yes, according to the criminal reporting definition. However, notice that the man did not have sex with the woman, in the sense that any of his sex organs were involved. So, it appears that either rape no longer has to involve sex (rape is penetration, not “sex”) or that sex can be asymmetrical (with one person having sex and the other person not – the woman experienced forced sex but the perpetrator did not have sex at all). Also, consider a variation of the situation in which the man did not use a bottle to penetrate the woman’s vagina, but instead used a dildo to forcibly, involuntarily penetrate the woman’s mouth. Did the man rape the woman? No, according to the criminal reporting definition. Oral penetration only counts as rape if a sex organ is used. If he had used his penis, then it would be rape. So, it appears that the penis is important for oral penetration rape, but not for vaginal or anal penetration rape. Why? Are these good definitions? What do we really want from rape laws in the first place? What are we trying to achieve?

12. *Did she have sex, but didn't know it?* Julie, a 17-year-old mentally disabled girl lives in a residential institution run by the state. She has been told by one of the night employees that needs to have “physical therapy” – a term she is familiar with from treatments during the day helping her deal with a congenital spinal curvature. The employee comes to her room each night and put his fingers in her vagina, stimulating her to orgasm, which she enjoys. Although Julie is familiar with the idea that sex is “a penis in a vagina that makes babies,” she doesn’t think of this as sex and only thinks of it as fun physical therapy. Is Julie having sex but doesn’t know she is? Is Julie being harmed? Disrespected? Used? Helped? Forced? What makes the night employee’s actions objectionable? If someone were to find out what was happening and put a stop to it

and decided to explain to Julie what happened, what should they say to explain what was actually happening instead of physical therapy?

13. *Did he think he had sex, but didn't?* On the animated Fox television series *Family Guy* (Season 5, episode 1), Peter (an adult male with limited intelligence) goes to see his family physician for a flu vaccine. Dr. Hartman realizes from looking at Peter’s medical record that he has never had a prostate examination, which is recommended for a man his age. The doctor tells Peter he needs to have a prostate exam and Peter agrees to it, not knowing what it means. When the doctor inserts his finger, Peter freaks out. He feels sexually violated, says he had no idea that’s what a prostate exam was and shows signs of traumatic stress. When he tells his wife that he was raped, she mocks him for being idiotic. Peter then becomes more and more upset and finally takes Dr. Hartman to court for sexual assault. Although intended to be farcical, does Peter have a case? If he didn’t know what a prostate exam was and subjectively experienced it as rape, was it rape? Or, as his wife seems to think, is he intellectually responsible for knowing the difference?
14. *Were you sexually harassed?* Sexual harassment is a crime. The US Equal Employment Opportunity Commission states that sexual harassment can include “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex . . . it is illegal to harass a woman by making offensive comments about women in general . . . the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious” (U.S. Equal Employment Opportunity Commission, nd.). What counts as “sexual,” of a “sexual nature,” or “offensive” is not agreed on, however. A 2017 national poll showed, for instance, that while most people agreed that “intentionally groping or kissing without consent” was sexual harassment, 80% of women said intentional touching of *any* sort without consent was sexual harassment, 50% of minorities said hugging without consent was sexual harassment, and 56% of minority women said unwanted compliments about their appearance was sexual harassment. As for what did not count as sexual harassment, 44% of respondents said telling dirty jokes did not count, and nearly 20% of

millennials (people born between 1982 and 2004) said sending nude selfies to someone did not count (Kahn, 2017; Huang and Kahn, nd.). So, literally, Alan could tell Kara her new dress really looks great on her and Kara could believe she has been sexually harassed. Kara, on the other hand, could send nude photos of herself to Alan and not believe she was sexually harassing him. How do you know when sexual harassment has happened? Does the attitude or motivation matter?

15. *Did I have sex?* On various forums and advice sites, people post questions asking about whether or not some experience they recently had counts as sex. Sometimes they are just curious. Sometimes they are disagreeing with someone else. Sometimes it is important to them because they want to be able to say they are still a virgin. Sometimes it is important to them to keep track of the number of people they have had sex with, to fit their idea of whether they are a slut or a stud. Here are a few real examples (typos and misspellings left in). How should their questions be answered? How should the motivations for their questions be judged?

- (i) so first off my boyfriend and i have never had sex. okay two nights ago my boyfriend and i were messing around on the couch (like he was rubbing himself on me but not going in) and he kind of slipped and went in maybe an inch or so but not all the way and he quickly pulled out without thrusting or anything. but i dont know if i can call it sex because by deffinition sex is when a penis is put in to a vigina although i would think there would have to be more to it then that. so my question is did my boyfriend and i have sex? do i have to count him now? does he have to count me? (Anonymous, 2011).
- (ii) Well awhile ago before I was with my boyfriend, I was fooling around with this guy. I told him point blank no full on sex, not unless we were in a relationship. Well we were messing around and I think he put his penis in me or the tip like once or he at least tried to since I felt a little pressure but I pushed him back and said NO. If anything it was at the most one thrust, but I wasn't sure since this guy was not at all well endowed I don't think it would have been considered sex but it really bothers me since I have already set a strict limit on the number of

people I would sleep with in my life and it really bothers me. I want to make sure this wouldn't have been considered sex. Thanks! (Average Joe, 2012).

- (iii) Does it count as having sex if you dont come? I was having it last night but i had too much alcohol so i couldnt come . . . it sucked so bad and was embarrassing . . . (Fozzy13, 2009).
- (iv) does it count as sex if you put yer dick in only ONCE and dont go back in at all cuz of lack of condom? Ive wondered this for many years and would tell me exactly when I technically lost my virginity or not (Jester78, 2009).
- (v) A few weeks ago some friends and I were discussing the recent date of a male member of the group. He said that he did not have sex on his date. But, after he described the encounter (in which both he and his partner had an orgasm, but did not have intercourse) one of our friends disagreed with him and argued that sex did occur. So who's right? (Muise, 2011).

Section 2: What is Sexuality?

2.1 Discussion Starters

1. How would you describe the difference between sexual behavior, sexual identity, sexual attraction, and emotional attraction? To what extent do these phenomena tend to match up? To what extent do they tend to conflict?
2. You have a girlfriend or a boyfriend you have been together with for a while. You are very much in love. You plan to get married. Suddenly, because of something they could not control (a magic spell, a science fiction scenario accident), they change sex. Would you stay in a sexual and romantic relationship with them? Would you still get married? If yes, does that mean sexual anatomy is not important and anyone could fall in love with anyone? If no, does that mean you are sexist or homophobic or heterophobic, or does it just mean that sexual anatomy is important in relationships? What does your answer mean?
3. Sometimes anthropologists claim that some cultures have "third genders" (or more). Famously, these include the Two-Spirits of North America, the Hijra