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Disciplinary Brief

SEXUAL VIOLENCE: LOVE, RECIPROCITY AND MUTUALITY IN LAW

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Introduction

The intelligibility of biblical law is derived from love, in that ‘love orients all moral direction in Scripture’, writes [Professor O’Donovan](#). [1] The love-command directs us to love fellow-creatures as an indirect way of loving the invisible God, the neighbour presenting us with a reflection of God’s claim to our love. But what is love and what is it to love our neighbour? Professor O’Donovan discusses a number of concepts as being important to the definition of love, notably norms of agency, reciprocity, and mutuality. In this Brief, my focus is on how these norms are relevant to sexual violence theory and law. I illustrate how law reform on the meaning of consent can be understood, from a Christian perspective, as aligning with an expansive understanding of the duty of neighbour-love.

Defining Love: Autonomy, Reciprocity and Mutuality

Professor O’Donovan begins with a working direction of love as *an affective and directive attention to a good*. But because the love-command makes *God and neighbour* the supreme object of love, the definition is extended:

love for God and neighbour is an *affective and directive attention to the good of persons*: God as divine person, the neighbour as “like ourselves”, possessing personal agency and self-determination.

Our neighbour is like us, made in the image of God, capable of agency (acting independently, making one’s own free choices) and self-determination (directing one’s life according to one’s values and desires): this is the language of human dignity. The image-bearing conception of humankind is central to many Western accounts of dignity as the foundational value of human rights law. [2] This is often related to a Kantian moral outlook: the intrinsic worth of persons requires treating people not as means to an end, but as ends in themselves, thereby respecting their autonomy (self-governing), agency, and personhood. [3] As explored below, autonomy and agency are also central in many accounts of the values at stake when it

comes to sexual violence law.

But Professor O'Donovan goes on to consider personal love as the experience of God 'through and in that other person'. Here we see love framed as an experience of reciprocity and mutuality. Also as explored below, norms of reciprocity and mutuality have been central to reform movements in sexual violence law. Specifically, in many jurisdictions which have pursued progressive law reform, consent has been redefined as something that must be communicated in order to have legal effect. This recognizes that sexual encounters should be predicated on mutual, reciprocal and respectful communication.

Agency, Autonomy and Dignity

Autonomy is often conceived of as the key value at stake when it comes to sexual violence, closely tied to the discourse of dignity. Historically, the harm of rape was framed as an affront to (white, landholding) *male* dignity and autonomy – by violating (trespassing on) another man's wife or unmarried daughter (property) without his consent, the rapist undermined the patriarch's authority, agency, dignity. In this conservative theory of rape, [4] women were not seen as autonomous, and their bodies were objectified as sites of a harm done *to men*. In time, a more liberal theory of rape emerged, which understands rape as an affront to the victim's autonomy and dignity. [5]

However, rape law continued to understand consent as an internal attitude, meaning it was valid in law and society to make *assumptions* and *inferences* about whether another person was willing to engage in sexual activity, even in the absence of that person communicating, by way of words or actions, their willingness. This validation of 'assumed consent' historically served men well, accommodating an interest in hazarding non-communicated sexual desire, and placing an onus on women to either resist and fight back or acquiesce (the "resistance requirement").

Crucially, 'assumed consent' aligns with the idea of atomistic, equally positioned individuals taking responsibility for asserting and protecting their own individual sexual autonomy by voicing non-consent. Assumed consent, then, is not necessarily in conflict with the value of autonomy. Rather, it works to put the onus of protecting autonomy on the individual, requiring that they correct, by way of resistance, any mistaken assumptions made about their state of mind. And if they fail to resist, but claim not to have (internally) consented, this in practice requires judges and juries to engage with the fine, perhaps impossible, distinction between non-consensual submission or acquiescence, and reluctant but willing consent. [6]

In sum, the norm of autonomy can lead to an undue focus on individual responsibility and, in the case of women, insufficient attention to the impact of patriarchal norms of aggression/acquiescence [7] on one's ability to act autonomously and with agency.

Mutuality and Reciprocity

I have elsewhere argued that by adopting an expansive sexual dignity framing of sexual violence law, the focus shifts to the repudiation of personhood that occurs when people's subjectivity, including their bodily integrity and autonomous choices and desires, is disrespected or disregarded. [8] By personhood, I mean the inherent moral worth of individuals as subjects rather than objects – beings capable of self-definition, agency and dignity. Subjectivity refers to the lived experience of that personhood: the capacity to feel, choose, and express one's desires, autonomy, and embodied selfhood. Dignity emphasises that everyone is entitled to equal respect for their personhood, including their desires and autonomy interests, and regardless of interpersonal differences in position and power. This supports the moral claim that people should act with due regard for equality and mutuality in sexual encounters, with a corresponding onus to actively ascertain and act according to the interests of others, rather than making self-serving assumptions. In other words, to respect the full personhood of others requires attending to their equal autonomy interests, in a way that aligns with norms of mutuality and reciprocity.

This leads to a construction of consent as something that is inherently relational and communicative, rather than individual/solitary. Respect and regard for sexual dignity requires mutually ascertaining and communicating about consent. [9] As such, it is morally blameworthy to assume an internal attitude of consent in the absence of communication, regardless of whether one happens to assume correctly. This results in a construction of sexual violation (and related offences) in law that is grounded in the wrongfulness of disregarding autonomy by failing to communicate, also known as 'communicative' or 'affirmative consent'. [10] Put another way, communicative or affirmative consent requires that each party actively engage with the other's subjectivity—their desires, boundaries, and autonomy—through reciprocal communication, rather than relying on internal assumptions or silence.

The Spaces in Consent

For better or worse, consent is central to the theory and legal definition of sexual violation. In thinking critically about the meaning of consent, it is useful to have regard to underlying values. And in turn our discussion about underlying values of autonomy, mutuality and reciprocity can be viewed from a Christian perspective as relating to the meaning of love for one's neighbour. Is our understanding of love and dignity expansive enough to encompass not only autonomy but mutuality and reciprocity?

It has often been the case that the legal approach to consent has been too narrowly focused on autonomy. This leaves too much space for aggression, coercion and acquiescence. Love and consent can be construed more broadly. These sentiments are poignantly illustrated in the following excerpt from Tracey Slaughter's 'Deleted Scenes for Lovers': [11]

So I guess I have to call it consent. But I've been reading about consent lately and it seems to me when they made up the idea they left spaces for way too much pain, too much pressure. There's part of the word

that sounds okay and is all about feeling and thinking the same, about two bodies and minds just sharing themselves because, I don't know, they match, they touch, and their skins light up in some kind of agreement. But there's this other side of the word which doesn't sound right to me at all: to yield, it says, to acquiesce to what is done or proposed by another, to comply. There are ways in which that could still hurt. It sounds to me like there's stacks of ways you could get yourself thrashed black and blue under cover of that word.

Conclusion

In returning to O'Donovan's theology of love, we are reminded that love is not merely a sentiment but a directive force—one that orients moral reasoning and animates law with intelligibility and purpose. His emphasis on agency, reciprocity, and mutuality as essential to neighbour-love resonates deeply with contemporary efforts to reimagine sexual consent. The cross-disciplinary conversation between theology and law illuminates Christian thoughts on love and offers a theological grounding for legal norms that seek to honour the full personhood of others. In this way, the sovereignty of love becomes a moral imperative for reshaping law. It calls us to a justice that is not abstract or procedural, but deeply responsive to the dignity, desires and vulnerabilities of our neighbours.

References and Further Reading

Burgess-Jackson, Keith (1995) "Rape and persuasive definition" 25 *Canadian Journal of Philosophy* 415.

High, Anna (2022) "Sexual dignity and rape law" 33(2) *Yale Journal of Law & Feminism* 1.

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Pirini, Mihiata, & High, Anna (2021) "Dignity and mana in the 'Third Law' of Aotearoa New Zealand" 29(4) *New Zealand Universities Law Review* 623.

Wiener, Robin (1983) "Shifting the communication burden: A meaningful consent standard in rape" 6 *Harvard Women's Law Journal*, 6.

Endnotes

- [1] Professor O'Donovan's discussion of the duty of neighbour-love as orienting law reflects natural law theories of jurisprudence. Natural law posits inherent norms and principles derived from moral claims which underlie and inform human-made law. However, my response does not dwell on the natural law / positivism debate.
- [2] See generally Mihiata Pirini and Anna High "Dignity and mana in the 'Third Law' of Aotearoa New Zealand" (2021) 29(4) *New Zealand Universities Law Review* 623.
- [3] For discussion of the Judeo-Christian foundation of Kant's theory of human dignity, see Jeffrie G Murphy (1998) "The Concept-conception distinction" 9 *Philosophical Issues* 187.
- [4] See Keith Burgess-Jackson (1995) "Rape and persuasive definition" 25 *Canadian Journal of Philosophy* 415, 443-452 (setting out a typology of three theories of rape: conservative, liberal and radical).
- [5] See generally Anna High (2022) "Sexual dignity and rape law" 33(2) *Yale Journal of Law & Feminism* 1 at 8-9.
- [6] Anna High (2022) "Reluctant consent" *New Zealand Law Journal* 310.
- [7] See generally Ngaire Naffine (1994) "Erotic love in the law of rape" 57(1) *Modern Law Review* 10.
- [8] High above n 5.
- [9] Such claims about respect, mutuality, and consent as relational have been put forward in a number of iterations in scholarship and feminist jurisprudence. Perhaps most notably, Lois Pineau, in her seminal "Date rape" article, advocated for affirmative consent on the basis that the alternative – an 'aggressive contractual model' of sex in which women are obliged to either submit to unwanted sex or vigorously refuse – ignores mutuality, disrespecting the "dialectics of desire": Lois Pineau "Date rape: A feminist analysis" (1989) 8 *Law & Philosophy* 217. See also Robin D Wiener, "Shifting the communication burden: A meaningful consent standard in rape" (1983) 6 *Harvard Women's Law Journal* 143, 158-9 (arguing that a lack of awareness of a sexual partner's unwillingness, due to failure to communicate, "shows an absence of concern with the woman's wishes and feelings that is consistent with the objectification of women").
- [10] See generally Anna High (2023) "Comparing affirmative consent models: Confusion, substance and symbolism" 45(4) *Sydney Law Review* 467.
- [11] 'Consent' in Tracey Slaughter *Deleted Scenes for Lovers* (2016, Victoria University Press) 115.

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