Bob is only willing to have sex with Alice if Alice is a natural blonde. Alice knows this. Alice is a natural brunette who has died her hair blonde. She wants to have sex with Bob. So Alice lies to Bob and tells him that she is a natural blonde. As a result, Bob has sex with Alice. Bob would not have had sex with Alice if he had known that she is not a natural blonde. Dora is only willing to have sex with Carl if Carl is a doctor. Carl knows this. Carl is a nurse and he wants to have sex with Dora. So Carl lies and tells Dora that he is a doctor. As a result, Dora has sex with Carl. Dora would not have had sex with Carl if she had known that he is not a doctor. Alice and Carl each deceive someone into having sex with them: Bob and Dora each agreed to have sex but they would not have done so had a deliberate deception not concealed a fact that they would have treated as a deal breaker. Most people will agree that deceiving a person into having sex in these kinds of cases is morally wrong. But how wrong is it?

One view is what Thomas Dougherty has referred to as the Lenient Thesis:¹

**Lenient Thesis:** 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.

According to the Lenient Thesis, what Alice and Carl do are wrong, but they are not seriously wrong. This seems to be the prevailing common-sense view of the matter. Absent any further details that might strike them as morally relevant, most people would probably respond to the cases of Alice and Carl by expressing at most a relatively mild form of disapproval.² In “Sex, Lies and Consent,” however, Dougherty argues that the Lenient Thesis is far too lenient. Instead, Dougherty maintains that we should accept what I will refer to as the Severe Thesis:
Severe Thesis: It is seriously 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.

According to the Severe Thesis, what Alice and Carl do is seriously wrong. I will argue here that Dougherty’s defense of the Severe Thesis should be rejected and that the Severe Thesis itself should be rejected, too. But I will not argue in favor of the Lenient Thesis. Instead, I will argue that the fundamental reason for rejecting Dougherty’s defense of the Severe Thesis provides a good reason for rejecting the Lenient Thesis as well and that it also provides the foundation for a kind of intermediate thesis that is superior to both. The goal of this paper, then, is not to reject Dougherty’s rejection of the Lenient Thesis. Rather, it is to develop a more defensible version of that rejection.

1. Dougherty’s argument for the Severe Thesis rests on two premises.³ The first maintains that it is seriously wrong to have sex with a person if that person has not granted morally valid consent to having sex. The second maintains that if a person is deceived into having sex, where this means that they agreed to have sex but would not have done so had a deliberate deception not concealed a fact that they would have treated as a deal breaker, then they do not grant morally valid consent to having sex. If both premises are true, then it is seriously wrong to deceive a person into having sex. We can outline Dougherty’s argument as follows:

P1: If A has sex with B and B does not give valid consent, then A’s act is seriously wrong
P2: B does not give valid consent to sex with A if B is deceived into having sex with A
C: It is seriously wrong for A to deceive B into having sex with A

If Dougherty’s argument is successful, then the Severe Thesis should be accepted and we should agree that what Alice and Carl do is seriously wrong.
Dougherty considers the argument’s second premise to be more controversial than the first, and it is the second premise that published responses to his article have thus far focused on. But I’m inclined to accept the second premise of Dougherty’s argument as fairly straightforward and will not challenge it here. In non-sexual contexts, after all, it seems uncontroversial that consent based on deception that conceals a deal breaker is not morally valid. If I sell you a used car after you make clear that you will only agree to buy if it has fewer than 20,000 miles on it, for example, and if you subsequently discover that I intentionally tampered with the odometer to disguise the fact that it actually had more miles on it than this, you would clearly be entitled to void the transaction on that basis. And the best explanation of why my deception would entitle you to void the transaction seems clearly to be that because of my deception, your consent to buy the car was not valid in the first place. This seems clear to me even if the tampering was very slight, disguising the fact that the car actually had 20,007 miles on it, for example, rather than 19,997 miles. I see no relevant difference between sexual contexts and non-sexual contexts that would make consent under such conditions invalid in non-sexual contexts yet somehow valid in sexual contexts. And so if a person agrees to have sex with someone only because of a deliberate deception that conceals a deal breaker, it seems clear to me that they do not grant morally valid consent to having sex. And this seems clear to me even if the deception conceals a deal breaker in the sexual context that is as trivial as the difference between a car that has 19,997 miles on it and an otherwise identical car that has 20,007 miles on it. Critics such as Liberto and Manson have successfully established that there is considerably more that would have to be said to fully vindicate the second premise of Dougherty’s argument, but I will not say any of what would have to be said to vindicate it here. I will simply assume, at least for the sake of the argument, that although Bob agrees to have sex with Alice, and although Dora agrees to have sex with Carl, they
do not grant morally valid consent to the acts in question because they were deceived into the agreements they made by the deliberate concealing of a fact that they would have considered to be a deal breaker.

What about the argument’s first premise? The first premise maintains that it is seriously wrong to have sex with a person without that person’s morally valid consent. Having sex with a person without that person’s morally valid consent will presumably strike most people as seriously wrong in the kinds of cases they are likely to think of when they are asked how wrong it is to have sex with someone without that person’s consent. But as Dougherty himself acknowledges, most people will not initially agree that what Alice and Carl do is seriously wrong, and this is so despite the fact that Alice and Carl, too, appear to have sex with a person without that person’s morally valid consent. What most people are instead likely to think about these cases is that what Alice and Carl do causes no significant harm, that this accounts for the fact that what Alice and Carl do is not seriously wrong, that having sex with a person without their morally valid consent typically does cause significant harm to that person, and that this is why doing so is typically, but not always, seriously wrong. Given these initial reactions that most people are likely to have to the acts of Alice and Carl, why should we accept the claim that having sex with a person without that person’s morally valid consent is always seriously wrong rather than the weaker claim that it is seriously wrong except in those cases, like those involving Alice and Carl, in which doing so causes no significant harm?

One reason we might accept the claim that having sex with a person without that person’s morally valid consent is always seriously wrong even if we think that what Alice and Carl do isn’t seriously wrong is this: we might think what Alice and Carl do isn’t seriously wrong because we might think the lies that Alice and Carl tell are too trivial to invalidate the consent given by Bob
and Dora. If we think Alice and Carl’s acts aren’t seriously wrong for this reason, then what we think about these cases won’t count as a problem for the first premise of Dougherty’s argument. This is because we won’t think the cases of Alice and Carl count as cases where someone has sex with a person without that person’s morally valid consent and yet does something that isn’t seriously wrong. But if that’s what we think about the cases of Alice and Carl, we will thereby deny the second premise of Dougherty’s argument, the claim that if a person is deceived into having sex then they have not given morally valid consent to having sex. So that strategy for reconciling the view that what Alice and Carl do isn’t seriously wrong with the claim made by the argument’s first premise is not available to Dougherty. Instead, the challenge for Dougherty is to justify the first premise of his argument without denying that the lies told by Alice and Carl invalidate the consent that is given in those cases and without ignoring the fact that most people, at least initially, will likely think that what Alice and Carl do is not seriously wrong.

Dougherty responds to this challenge by arguing that the first premise of his argument must be accepted in its unconditional form in order to best account for the judgments that virtually everyone will accept in two additional kinds of cases: cases of what he refers to as “egregious deception” and cases involving sex with someone who is unconscious. 6 Consider, for example, the cases of Impersonation and Deep Sleep. 7

**Impersonation**: Jane is married to Bill. Jane has a very strong desire to only have sex with Bill and she will not agree to have sex with anyone else. Bill is working late at the office. Jane has turned out the lights and gone to bed. Knowing all of this, Ted sneaks into Jane’s bedroom, says that he is Bill, and asks Jane if she would like to have sex with him. Believing that Ted is Bill, Jane agrees to have sex with Ted. Jane would not have agreed to have sex with him if she had known that he was Ted.

**Deep Sleep**: Jill is married to Jerry. Jill has a very strong desire to only have sex with Jerry and she will not agree to have sex with anyone else. Jill is in a deep sleep. Knowing all of this, Tim sneaks into her room and has sex with Jill while Jill is asleep.
Virtually everyone will agree that what Ted and Tim do in these cases is not just wrong, but seriously wrong.

One way we could try to account for our judgments in these cases would be to appeal to what Dougherty calls the Consent Explanation, which I will put as follows:

**Consent Explanation:** The lack of B’s valid consent is sufficient to make it seriously wrong for A to have sex with B.

A second way we could try to account for our judgments in these cases would be to appeal to what he calls the Harm Explanation, which I will put as follows:

**Harm Explanation:** The lack of B’s valid consent may be sufficient to make it a minor wrong for A to have sex with B, but in the absence of any other wrong-making features, significant harm to B is necessary to make it seriously wrong for A to have sex with B without B’s valid consent.

If the Consent Explanation is correct, then P1 of Dougherty’s argument is true. The Consent Explanation maintains that the lack of B’s valid consent is sufficient to make it seriously wrong for A to have sex with B. If this is true, then if A has sex with B and B does not give valid consent, A’s act is seriously wrong. But the Harm Explanation does not entail that P1 of Dougherty’s argument is true. Indeed, assuming there are cases in which a person has sex without giving valid consent but is not significantly harmed by doing so, the Harm Explanation entails that P1 is false. This is because P1 entails that the acts in such cases would be seriously wrong while the Harm Explanation entails that they would not be seriously wrong, at least in the absence of any other wrong-making features that might render them seriously wrong. Dougherty’s argument for P1 therefore ultimately rests on the claim that the Consent Explanation provides a better explanation than the Harm Explanation for the serious wrongs involved in cases like Impersonation and Deep Sleep. And the basis for this claim, in turn, is simple: it is clear that there is no valid consent involved in both cases, but it is not clear that there is significant harm involved in either of them.
Indeed, as Dougherty puts it, “there need be no harm involved” in such cases at all and yet “even when entirely harmless, sex with the unconscious and sex by means by [sic] egregious forms of deception are still seriously wrong.”

Since it is clear that the acts in Imposter and Deep Sleep are seriously wrong, and since the Consent Explanation can account for this judgment while the Harm Explanation cannot, we should accept the Consent Explanation rather than the Harm Explanation and thus accept P1 of Dougherty’s argument. Since consent based on deception that conceals a deal breaker is not valid in non-sexual contexts and since there is no relevant difference between sexual contexts and non-sexual contexts that would render consent based on such deception valid in sexual contexts given that it is invalid in non-sexual contexts, we should also accept P2 of Dougherty’s argument. Since P1 and P2 of Dougherty’s argument entail that the Severe Thesis is true, we should accept the Severe Thesis. And since the Severe Thesis entails that what Alice and Carl do is seriously wrong, we should accept that claim as well. The claim that what Alice and Carl do is seriously wrong will likely strike most people as initially implausible, but accepting that claim is the price we must pay to avoid being stuck with the even more implausible claim that what Ted and Tim do in Imposter and Deep Sleep is not seriously wrong. Or so Dougherty argues.

2.

The key to securing Dougherty’s argument is the claim that the Consent Explanation is superior to the Harm Explanation. The key to securing that claim is the claim that the Harm Explanation can’t account for the serious wrong done in cases like Imposter and Deep Sleep. And the key to securing that claim is the claim that there need be no significant harm involved in such cases. But why is Dougherty so confident that this foundational claim is true? The answer is that Dougherty assumes
that there can only be three kinds of harms: physical harms, experiential harms, and psychological harms. If Jane and Jill never find out what happened to them, they will incur no experiential or psychological harms, and since there is no reason to think they will suffer any physical harms, there is no reason to think they will be harmed at all. If these are the only ways in which a person can be harmed, then, Dougherty can simply stipulate that there is no physical harm involved in these two cases and his argument for the Consent Explanation, and thus for P1, will therefore seem secure.

But now consider the case of Larry.

Larry: Larry is feeling pretty good about how things are going for him. Although he is not aware of it, however, right now his wife is cheating on him, his friends are mocking him behind his back, his colleagues are secretly belittling his work, his beloved children are being made to suffer, and a peeping Tom is watching him get undressed. Larry has a strong desire that these things not be happening.

It seems plausible to suppose that Larry’s life isn’t going as well for him as he thinks it’s going. Let’s assume this is true. If Larry’s life isn’t going as well for him as he thinks it’s going, then the acts that he is unaware of are making his life go worse for him than it would otherwise be going. Were it not for these acts, after all, his life would be going just as well for him as he thinks it’s going, which is better than it is actually going. And since it also seems plausible to say that if an act makes a person’s life go worse for them than it would otherwise go then the act harms that person, it seems plausible to say that Larry is being harmed by these acts. The case of Larry, in short, seems to show that an act can harm a person without causing any physical, experiential, or psychological harms. It can harm the person by frustrating a desire that the person has about their life. If we call a state a harmed state if it is a state that, when all else is equal, makes things worse for a person than they would otherwise be, and if we think of the objects of desires as states of affairs that can be represented as propositions that are either true or false, then we can put this
basic claim in terms of what I will call the *Desire Satisfaction Principle*, where $S$ is a subject, $t$ is a point in time, and $p$ is a proposition stating that a particular state of affairs concerning $S$’s life obtains at a particular time:

**Desire Satisfaction Principle**: $S$ is in a harmed state at $t$ if at $t$ $S$ desires that $p$ and $p$ is false.

The case of Larry seems to provide support for this principle.

Let’s now suppose that the Desire Satisfaction Principle is true. If the Desire Satisfaction Principle is true, then there is significant harm involved in the cases of *Imposter* and *Deep Sleep* after all. And if there is significant harm involved in those cases, then the Harm Explanation can account for the serious wrong involved in those cases just as easily as the Consent Explanation can. Jane has a strong desire that Ted not have sex with her and Jill has a strong desire that Tim not have sex with her. Because this is so, Ted’s act frustrates a strong desire that Jane has about her life and Tim’s act frustrates a strong desire that Jill has about her life. The Desire Satisfaction Principle therefore entails that Ted’s act significantly harms Jane and that Tim’s act significantly harms Jill. Since neither Jane nor Jill give valid consent to having sex in these cases, the Harm Explanation therefore entails that what Ted and Tim do in these cases is seriously wrong. Since the Harm Explanation can account for these judgments just as well as the Consent Explanation can, the cases of *Imposter* and *Deep Sleep* turn out to provide no support for favoring the Consent Explanation over the Harm Explanation. And since they turn out to provide no support for favoring the Consent Explanation over the Harm Explanation, they turn out to provide no support for the first premise of Dougherty’s argument for the Severe Thesis.¹²

I have argued so far that cases of the sort that Dougherty appeals to fail to support his claim that we should accept the first premise of his argument. This shows that his argument for the Severe Thesis is unsuccessful. But while I have shown that the Desire Satisfaction Principle
renders the Harm Explanation just as good as the Consent Explanation, I have not yet shown that it renders the Harm Explanation better than the Consent Explanation. And showing that it renders the Harm Explanation better than the Consent Explanation is necessary to undermine not just Dougherty’s defense of the Severe Thesis, but the Severe Thesis itself. To test the relative merits of the Harm Explanation and the Consent Explanation, we must consider cases in which the two explanations produce different results even if the Desire Satisfaction Principle is true and then consider which explanation we think produces the more plausible result. This is the same technique that Dougherty himself attempts to employ by appealing to cases like my Imposter and Deep Sleep. But because, as I have argued, the Desire Satisfaction Principle shows that both explanations actually produce the same results in those cases, we will need to appeal to a different kind of case, one in which even if we agree that you can harm a person by frustrating that person’s desires about their life the Harm Explanation and the Consent Explanation will truly produce different results.

Here is one such case.

**Time**: Mary has an early meeting tomorrow. Her husband Mark asks her if she would like to have sex with him before she goes to sleep. She says that she likes the idea very much but that she is slightly concerned about getting enough sleep and that she has lost track of the time. So she says she will have sex with him tonight if it is not yet 10:00 but that if it is 10:00 or later, her answer will be no because she has a slight preference to go to sleep at that point rather than to have sex with him before going to sleep. Mark looks at the clock and sees that it is 10:02. He lies to Mary and tells her that it is 9:57. Believing that it is 9:57, Mary agrees to have sex with Mark. She would not have agreed to have sex with Mark if she had known that it was 10:02.

The case of **Time** is a good one for testing the relative merits of the Harm Explanation and the Consent Explanation because unlike the cases of Impersonation and Deep Sleep, the two explanations really do produce different results in this case, at least on the assumption that the second premise of Dougherty’s argument is correct and that B does not give valid consent to sex
with A if B was deceived into having sex with A. And, of course, if the second premise of Dougherty’s argument is mistaken, then Dougherty’s argument should be rejected for that reason. Dougherty must agree that the consent to having sex that Mary gives is no more valid than the consent to sex that Jane and Jill give, that is, because in all three cases the people in question say yes to having sex with someone only because they have been deceived about something they would treat as a deal breaker and in all three cases they would have said no to having sex had they not been so deceived. So on the assumption that the second premise of Dougherty’s argument is correct, the Consent Explanation entails that what Mark does in Time is seriously wrong, just as it entails that what Ted and Tim do in the cases of Impersonation and Deep Sleep is seriously wrong.

But while Ted frustrates a very strong desire that Jane has not to have sex under her actual circumstances in Impersonation, and Tim frustrates a very strong desire that Jill has not to have sex under her actual circumstances in Deep Sleep, Mark does not frustrate a very strong desire that Mary has not to have sex under her actual circumstances in Time. Mary has just a very slight preference not to have sex with Mark given that it is actually 10:02 rather than 9:57. So while the Desire Satisfaction Principle entails that Ted significantly harms Jane and that Tim significantly harms Jill, it does not entail that Mark significantly harms Mary. If the Desire Satisfaction Principle is true, then, while the Harm Explanation entails that what Ted and Tim do in Impersonation and Deep Sleep is seriously wrong, it does not entail that what Mark does in Time is seriously wrong. This does not mean that the Harm Explanation entails that what Mark does in Time is not wrong at all. The Harm Explanation says in part that the lack of a person’s valid consent may be sufficient to make it a minor wrong to have sex with that person. But the absence of significant harm to Mary in the case of Time does mean that, unlike the Consent Explanation, the Harm Explanation does not entail that Mark’s act is seriously wrong while it does entail that
Ted’s and Tim’s acts are seriously wrong. And assuming there are no other wrong-making features present in the case, not only does the Harm Explanation not entail that what Mark does is seriously wrong, but it entails that what Mark does is not seriously wrong.

So unlike Imposter and Deep Sleep, the case of Time really does produce one result when applied to the Consent Explanation and a different result when applied to the Harm Explanation and thus provides a good test case for assessing the relative merits of the two explanations. Which explanation does the case ultimately favor? That depends on which result seems more plausible. I suspect that the reaction that most people will have to the case of Time is that while what Mark does is wrong, it is a relatively minor wrong and not a serious wrong in the way that the acts of Ted and Tim are seriously wrong. I suspect that most people would be shocked and appalled if they learned that one of their friends had done what Ted does in Impersonation or what Tim does in Deep Sleep, for example, but that they would experience at most a relatively mild feeling of disapproval if they learned that one of their friends had done what Mark does in Time. If this is so, then the case of Time favors the Harm Explanation over the Consent Explanation. Both explanations produce the intuitively correct result in the cases of Impersonation and Deep Sleep, but the Harm Explanation also produces the intuitively correct result in the case of Time while the Consent Explanation produces the intuitively incorrect result.

Let’s now return to the cases in which Alice deceives Bob into having sex with her by lying about the natural color of her hair and Carl deceives Dora into having sex with him by lying about his job. If we accept the Consent Explanation, as Dougherty claims we should, we must conclude that what Alice and Carl do is seriously wrong. As Dougherty himself acknowledges, most people will find these results counterintuitive. What if we instead accept the Harm Explanation? Does this mean that we must accept the Lenient Thesis and conclude that what Alice and Carl do is only
a minor wrong? It does not. If we accept the Harm Explanation, then we should accept neither the Severe Thesis that is entailed by the Consent Explanation nor the Lenient Thesis that is the only alternative to the Severe Thesis that Dougherty considers. Instead, we should accept an intermediate view on which whether it is a minor or serious wrong to deceive another person into sex by misleading them about such personal features as natural hair color, occupation, or romantic intentions depends on the strength of the desire that the people in question have that the sex in question not take place given the actual facts of the situation. If we accept the Harm Explanation rather than the Consent Explanation, that is, we should conclude that whether Alice’s and Carl’s acts are seriously wrong depends on the strength of the desires that Bob and Dora have not to have the sex in question take place given the actual facts of their situations. I suspect that the results of applying this analysis to these cases will strike most people as more plausible than the results entailed by either the Severe Thesis or the Lenient Thesis. If I am correct about that, this provides an additional reason to favor the Harm Explanation over the Consent Explanation.

Suppose first that Bob has an extremely strong aversion to having sex with anyone who is not a natural blonde. Some vegetarians, for example, are apparently appalled by the thought of having sex with a non-vegetarian. To them, doing so would be nothing short of an abomination that in some way implicates them in the practice of eating meat. Suppose that Bob’s aversion to sex with non-blondes is this powerful. I will refer to this as the zealot version of the case. The Desire Satisfaction Principle entails that Alice’s deceiving Bob into having sex with her significantly harms Bob in this version of the case because it frustrates a very strong desire that Bob has about who he has sex with. If we accept the Desire Satisfaction Principle, then the Harm Explanation would therefore entail that Alice’s act is seriously wrong in this version of the case,
just as it would entail that it would be seriously wrong for a non-vegetarian to lie about his diet in order to deceive a similarly zealous vegetarian into having sex with him.

But now suppose instead that Bob’s aversion to having sex with non-blondes is an extremely mild one. Some people, for example, have just a very slight preference for vegetarian food. They will choose the meatless option over the meat option when both are readily available and equally tasty, but they won’t drive further, or pay more, or eat less tasty food, in order to avoid eating meat. Suppose that Bob’s aversion to having sex with non-blondes is like this. He would never choose to have sex with a non-blonde if he instead had the opportunity to have sex with a natural blonde whom he considered to be in all other respects equally desirable, but he has had sex with non-blondes in the past in cases where doing so was his only option for having sex that he thought would be desirable and he would certainly be open to doing so again. To ensure that Alice’s non-blondeness remains a deal breaker for Bob even though he only has a very mild preference for blondes over non-blondes in this version of the case, let’s suppose that right now Alice and Ann would each like to have sex with Bob, that Bob can only have sex with one of them, that Bob likes and is attracted to both of them, that if both were natural blondes he would have a slight preference to have sex with Alice but that if he were given the knowledge that Ann is a natural blonde and Alice is not, he would instead have a slight preference to have sex with Ann. Under these circumstances, Alice lies to Bob and tells him that she is a natural blonde and, as a result, he has sex with Alice. Had Alice not lied about this fact, Bob would not have had sex with Alice and would instead have had sex with Ann because he would have had a slight preference for having sex with Ann rather than Alice had he known that Ann but not Alice is a natural blonde. I will refer to this as the slight preference version of the case.
The Desire Satisfaction Principle does not entail that Alice’s deceiving Bob into having sex with her significantly harms Bob in the slight preference version of the case because Alice’s act only frustrates a very mild preference that Bob has about not having sex with Alice if she is not a natural blonde in this version of the case. As in the case of Time, this does not mean that the Harm Explanation entails that Alice’s act is not wrong at all in this version of the case. Alice’s act involves having sex with Bob without Bob’s having given valid consent and according to the Harm Explanation this can still be enough to make Alice’s act a minor wrong. So just as the Harm Explanation can account for the judgment that it was a minor wrong for Mark to lie to Mary about what time it was before they had sex, it can account for the judgment that it is a minor wrong for Alice to lie to Bob about the natural color of her hair in the slight preference version of this case. And we could presumably devise zealot and slight preference versions of the case of Carl and Dora that would produce the same results in those cases.

The Consent Explanation entails that we must accept the verdict of the Severe Thesis: what Alice and Carl do are seriously wrong in both the zealot and slight preference versions of those cases. The Lenient Thesis entails that what Alice and Carl do are just minor wrongs in both versions of these cases. I suspect that both of these results will strike most people as quite implausible. The Harm Explanation, by contrast, entails that what Alice and Carl do are seriously wrong in the zealot versions of the cases and minor wrongs in the slight preference versions of those cases. It entails, that is, that what Alice and Carl do is seriously wrong when what they do involves significant harm to Bob and Dora and a minor wrong when what they do involves a relatively trivial amount of harm to them. We could put this result yet another way by saying that the Harm Explanation justifies what I will call the Intermediate Thesis.

**Intermediate Thesis:** How wrong it is to deceive another person into sex by misleading her or him about certain personal features such as natural hair color, occupation, or romantic
intentions depends on how much harm results for the person who is so deceived: the more harmful the act is, the more seriously wrong it is.

I suspect that the results of accepting some version of this Intermediate Thesis\textsuperscript{13} will strike most people as considerably more plausible than the results of accepting either the Lenient Thesis or the Severe Thesis. If that is correct, then consideration of both the zealot and the slight preference versions of cases like that of Alice and Carl provides an additional reason to reject the Consent Explanation and to accept the Harm Explanation. If the Desire Satisfaction Principle is true, then, Dougherty’s argument for the Severe Thesis should be rejected along with the Severe Thesis itself, the Lenient Thesis should also be rejected, and we should instead accept the Intermediate Thesis. In some cases, it is seriously 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, in some cases it is a minor wrong, and in some cases it is more serious than a minor wrong but less serious than a serious wrong. How wrong it is depends on how harmful it is.

3.

The objection that I have raised against Dougherty’s argument here depends on the claim that we should accept the Desire Satisfaction Principle. So one way that a defender of Dougherty’s argument could respond would be by giving a reason to reject that principle. Dougherty’s defense of the Severe Thesis does not provide such a reason but that does not mean that such a reason could not be given. There are, however, two reasons to think that this will not prove to be a promising line of response for a defender of the Severe Thesis.

First, the case of Larry generates a strong presumption against Dougherty’s assumption that an act can harm a person only if it causes physical, experiential, or psychological harms, and the presumption can be made even stronger by appealing to Nozick’s famous case of the
experience machine. Imagine a device that can simulate all of the experiences that a person might hope to have over the course of a life so perfectly that the person hooked up to it genuinely believes that the experiences are real. Robert, for example, thinks that he is making all his dreams come true: making great friends, marrying a wonderful man and raising a lovely family of thriving children with him, succeeding at an important and challenging job, climbing mountains, helping others, making scientific breakthroughs, and much more. But he is actually spending his entire life hooked up to a machine, completely isolated from the rest of the world and simply thinking that all of these things are happening. And now ask yourself: if you were given the opportunity to permanently connect yourself to this machine, if you knew that once you were connected to it you would forget that you were connected to it and would think that you were still inhabiting the real world and successfully doing many of the things you most want to do, and if you wanted to make the choice that would make your life go best for you, would you choose to connect yourself to the machine? Assume for the sake of the example that your life in the real world feels quite good to you and will continue to feel quite good to you but that your life connected to the experience machine would feel somewhat better. Most people who encounter this kind of example seem to be strongly inclined to reject this offer. This seems to show that most people are strongly inclined to believe that a person’s life can go worse for them than they think it is going for reasons that have nothing to do with their incurring physical, experiential, or psychological harms. In order to talk us into the more restricted view of well-being that Dougherty’s argument presupposes, then, a defender of the Severe Thesis would have to find a way to convince us that we would be better off being plugged into the experience machine in this case. And that seems, at least to me, to be a tall order.
But there is a second and more fundamental problem with this first line of response to my objection to Dougherty’s argument. For suppose that a defender of the Severe Thesis identifies a decisive objection to the Desire Satisfaction Principle and in doing so conclusively demonstrates that an act really cannot harm a person if it does not have some negative impact on them physically, experientially, or psychologically. If such an objection can be identified, it will provide a sufficient reason to reject my objection to Dougherty’s argument as I have to this point formulated it. But on reflection, it should be clear that the claim that frustrating a person’s strong desires about their life significantly harms them is not essential to the substance of the objection that I have raised against Dougherty’s argument. All that matters is the claim that the fact that an act would frustrate a person’s strong desires about their life can be enough to make the act seriously wrong. I have put that claim in terms of the serious wrongfulness of significantly harming people without their consent because the claim about harm made by the Desire Satisfaction Principle strikes me as considerably more plausible than its denial, but if the Desire Satisfaction Principle proves to be mistaken, I can simply reformulate my objection in terms that restrict the scope of harm in just the way that Dougherty’s argument requires its scope to be restricted, and the objection will still go through.

So suppose for the sake of the argument that to harm a person means to make them worse off physically, experientially, or psychologically and that as a result of this, frustrating a desire that a person has about their life does not harm them in cases where they never find out that the desire was frustrated. In that case, we can simply replace the Harm Explanation with what I will call the Harm or Desire Frustration Explanation:

Harm or Desire Frustration Explanation: The lack of B’s valid consent may be sufficient to make it a minor wrong for A to have sex with B, but significant harm to B or frustration of B’s strong desires about their life is necessary in order for it to be seriously wrong
My objection to Dougherty’s argument can be restated in terms of this principle and the objection will no longer depend on the claim that the Desire Satisfaction Principle is true. Put in these terms, my objection to Dougherty’s argument would read as follows: The Harm or Desire Frustration Explanation and the Consent Explanation each produce the intuitively correct result in the cases of Imposter and Deep Sleep and in the zealot versions of the cases involving Alice and Carl. But the Consent Explanation yields intuitively implausible results in the case of Time and in the slight preference versions of the cases involving Alice and Carl while the Harm or Desire Frustration Explanation produces intuitively plausible results in those cases. The Harm or Desire Frustration Explanation is therefore superior to the Consent Explanation. And since the Harm or Desire Frustration Explanation justifies the Intermediate Thesis rather than the Severe Thesis, we should accept the former thesis and reject the latter. The claim that the Desire Satisfaction Principle is false does nothing to change the fact that the acts in these cases frustrate people’s strong desires about their lives even if we agree that doing so doesn’t count as harming them, and so the Harm or Desire Frustration Explanation has the same implications that the Harm Explanation would have if the Desire Satisfaction Principle were true. Even if the Desire Satisfaction Principle turns out to be false, then, my objection to Dougherty’s argument can still be sustained by appealing to the parallel claims about the Harm or Desire Frustration Explanation.

In order to undermine this reformulated version of my objection to Dougherty’s argument, the defender of the Severe Thesis would have to claim not only that frustrating a person’s desires about their life does not harm that person but also that the fact that an act would frustrate a person’s desires about their life does not generate a moral reason against doing the act. And defending this claim seems to me an even more difficult task than refuting the Desire Satisfaction Principle. Even if you think that a person being secretly observed by a peeping Tom is not strictly speaking being
harmed, for example, it’s still likely that you’ll agree that the fact that they have a strong desire not to be secretly observed generates a strong moral reason against doing what the peeping Tom is doing. None of this is to say that a successful response to my objection to Dougherty’s argument along these lines could not be developed. But it does, I think, provide reasons to be skeptical about the prospects.

In addition to appealing to the Desire Satisfaction Principle, the original version of my objection to Dougherty’s argument also appeals to the claim that there are cases in which the Consent Explanation produces intuitively incorrect results while the Harm Explanation produces intuitively correct results. So a second way that a defender of the Severe Thesis might respond to my argument would be to try to produce cases in which the Consent Explanation produces intuitively correct results while the Harm Explanation produces intuitively incorrect results. If there are enough such cases, or if the implications of the Harm Explanation seem to be especially counterintuitive in such cases as there are, then the balance of considerations as a whole might still favor the Consent Explanation over the Harm Explanation despite the fact that the Harm Explanation fares better than the Consent Explanation in terms of the cases that I have discussed to this point. I cannot consider all of the possible cases that might be offered by such a critic, of course, but I will consider examples here of what strike me as the two most likely kinds of candidate.

The first kind of case arises from the fact that there can be instances in which a person does not simply give invalid consent to an action but positively gives valid dissent to it. In these kinds of cases, it may well seem plausible to suppose that proceeding with the action in question would be seriously wrong, and not just a minor wrong, even in cases in which the act would produce at most a minor amount of harm to the person who positively dissented to it. The Consent
Explanation would easily be able to account for such judgments since any case in which a person gives valid dissent to an act is a case in which they have not given valid consent to it and since the Consent Explanation maintains that the absence of valid consent is sufficient to make the act in question seriously wrong. But since the acts in such cases would by stipulation involve at most a minor amount of harm to the person in question, it would seem that the Harm Explanation could not account for such judgements. Assuming that this result would strike us as strongly counterintuitive, such cases could provide a powerful reason to favor the Consent Explanation over the Harm Explanation.

We can try to construct a relevant test case involving positive dissent by producing a variation on the story involving Mary and Mark in which Mary simply says no. So consider the case of **No**.

**No:** Mary has an early meeting tomorrow. Her husband Mark asks her if she would like to have sex with him before she goes to sleep. She says that she likes the idea very much but that she is slightly concerned about getting enough sleep and that she has lost track of the time. So she says she will have sex with him tonight if it is not yet 10:00 but that if it is 10:00 or later, her answer will be no because she has a slight preference to go to sleep at that point rather than to have sex before going to sleep. Mary looks at the clock and sees that it is 10:02. Since she has a slight preference to go to sleep at that point rather than have sex with Mark, she says no. Mark does not take no for an answer, however, and forces Mary to have sex with him.

As it stands, of course, it is difficult, and perhaps impossible, to imagine that Mary would not suffer a significant amount of physical, experiential or psychological harm from Mark’s act in this case. And assuming that she would suffer such harm, then the Harm Explanation would account for the judgment that Mark’s act in the case of **No** is seriously wrong just as the Consent Explanation would account for this judgment. In addition, the objection that I raised against Dougherty’s argument appealed to the claim that the Desire Satisfaction Principle is true, and even if we think we can clearly imagine a version of the case in which Mark’s act does not cause Mary...
any significant physical, experiential or psychological harm, it is still difficult, and again perhaps impossible, to imagine that Mary would not have a strong desire that Mark not force her to have sex with him. Even if Mary has just the mildest preference not to engage in an act of voluntary sex because it’s a bit after 10:00, that is, she would presumably still have an extremely strong desire not to be forced to have sex at that point, or at any other point. And as long as she had that very strong desire, the Harm Explanation would still account for the judgment that Mark’s act was seriously wrong because frustrating that desire would be enough to make Mark’s act cause significant harm to Mary even if it inflicted no physical, experiential or psychological harm on her.

In order to construct a case involving positive dissent that might be used to try to pose a problem for the Harm Explanation, then, we would have to be confident that we can really picture a version of the case in which Mark’s forcing Mary to have sex with him causes Mary no significant physical, experiential or psychological harm and in which Mary has only a very weak desire that Mark not force her to have sex with him after she says no. I’m skeptical about the prospects for clearly picturing such a case. But let’s suppose that you are confident that you are clearly picturing such a case and that when you do picture the case, you retain your high degree of confidence that Mark’s act is seriously wrong and not just a minor wrong. Even if all of this is so, the case still poses no problem for the Harm Explanation. This is because the Harm Explanation says only that the absence of valid consent is not, by itself, sufficient to make an act seriously wrong in cases where there is not significant harm. It does not insist that nothing else could make an act that causes no significant harm seriously wrong. It does not say, for example, that the fact that an act would break a promise, or would violate a just and reasonable law, or would involve the use or threat of physical force, cannot suffice to make an act seriously wrong even in the
absence of significant harm. It says only that the mere absence of valid consent by itself cannot do this. The Harm Explanation would entail that Mark’s act is not seriously wrong in the case of No, then, only if it were committed to the further claim that there is no relevant difference between doing something that a person had consented to, though invalidly, and forcing a person to do something in the face of their validly dissenting to it. But the Harm Explanation is not committed to this further claim. And so cases such as No cannot provide a good reason to reject the Harm Explanation. In any realistic version of the case, Mark’s forcing Mary to have sex with him will cause significant harm to Mary and even if we think we can clearly picture a version of the case in which it does not cause such harm, the Harm Explanation would still not entail that Mark’s act is not seriously wrong.

A second way to generate a possible problem for the Harm Explanation restricts our focus to cases involving the absence of valid consent rather than the presence of valid dissent and does so by taking the cases of Imposter and Deep Sleep and changing them so that they continue to involve an absence of valid consent but no longer involve a frustration of strong desires. In such versions of these cases, the Consent Explanation will continue to entail that the acts in question are seriously wrong but since the Desire Satisfaction Principle will no longer entail that the acts involve significant harm, the Harm Explanation will no longer entail that they are seriously wrong. If the acts in these modified versions of the cases continue to strike most people as seriously wrong, then this will count as evidence in favor of the Consent Explanation over the Harm Explanation. This alternative route to developing potential problem cases for the Harm Explanation is certainly worth examining, but I believe that in the end its results will either prove inconclusive or, if anything, will provide still further support for the Harm Explanation over the Consent Explanation.
Let’s begin by devising a relevant variation on the original case of Impersonation. So consider what I will call Impersonation 2.

Impersonation 2: Jane is in a polyandrous relationship with Bill and Ted. She enjoys having sex with each of them equally. Because she had sex with Ted last night and has a slight preference to alternate between the two of them, she has a slight preference to have sex with Bill tonight rather than with Ted. Bill is working late at the office. Jane has turned out the lights and gone to bed. Knowing all of this, Ted sneaks into Jane’s bedroom, says that he is Bill, and asks Jane if she would like to have sex with him. Jane agrees to have sex with Ted. She would not have agreed if she had known that he was Ted. Even though she loves Ted and enjoys having sex with him, she would instead have acted on her slight preference to wait for Bill to get home and have sex with Bill instead.

As in the original version of Impersonator, Jane does not give valid consent to having sex with Ted in Impersonator 2. Unlike the original Impersonator case, though, Jane has only a mild preference not to have sex with Ted in Impersonator 2. While the Consent Explanation continues to entail that Ted’s act is seriously wrong in the second version of the case, then, the Harm Explanation does not. Given that Jane has a strong desire not to have sex with Ted in the first version of the case but just a weak preference not to do so in the second version, the Harm Explanation entails that Ted’s act is seriously wrong in the first version of the case but just a minor wrong in the revised version. Does this result cause a problem for the proponent of the Harm Explanation?

It seems to me that it does not. I suspect that many people will agree with the judgment yielded by the Harm Explanation in this case. While they would be shocked and appalled to learn that a friend of theirs had done what Ted does in the original Impersonator case, they would experience at most a relatively mild feeling of disapproval if they learned that their friend had done what Ted does in Impersonator 2. If I am correct about this, then changing the Impersonator case to one in which the Harm Explanation diverges from the Consent Explanation actually provides yet further support for the Harm Explanation over the Consent Explanation. But even if I am
wrong to suspect that many people will agree that Ted’s act is not seriously wrong in this revised version of the case, it strikes me as unlikely that they will find it sufficiently clear that Ted’s act really is seriously wrong. At most, they may find that they do not have a strong reaction to the case one way or the other. And if that is so, then while the case will fail to provide additional support for the Harm Explanation, it will still fail to yield a compelling objection to it.

I suspect that the same result will occur if we devise a relevant variation on the original case of Deep Sleep. Doing so is somewhat more complicated because we need to build into the story the fact that Jill has only a slight preference that Tim not have sex with her and a way for Tim to be made aware of this fact. Borrowing some elements from the case of Time, we can do this by considering what I will call Deep Sleep 2.

**Deep Sleep 2**: Jill is a deep sleeper. In the past, she has sometimes told her husband, Tim, that it is fine with her if he has sex with her while she is asleep and he has sometimes taken her up on her offer. Jill is completely unconscious when this happens and has no recollections of it after the fact. But it sometimes causes her to sleep just a little bit less well for a while. Jill is about to fall asleep and she has an early meeting tomorrow morning. Tim asks if she minds if he has sex with her after she falls asleep. She says she would be fine with that if it is not yet 10:00 but that if it is 10:00 or later, her answer would be no because she has a slight preference to get slightly better sleep. Tim looks at the clock and sees that it is 10:02. He lies to Jill and tells her that it is 9:57. Believing that it is 9:57, Jill agrees to let Tim have sex with her after she falls asleep. She would not have agreed to this if she had known that it was 10:02. Ted then has sex with Jill after she falls asleep.

As in the original version of Deep Sleep, Jill does not give valid consent to Tim’s having sex with her while she is asleep in Deep Sleep 2. Unlike the original Deep Sleep case, though, in which Jill has a strong desire not to have sex with Tim, Jill has only a mild preference that Tim not have sex with her after she falls asleep in Deep Sleep 2 because it is a few minutes after 10:00 rather than a few minutes before 10:00. While the Consent Explanation continues to entail that Tim’s act is seriously wrong in the second version of the case, then, the Harm Explanation does not. Given that Jill has a strong desire that Tim not have sex with her after she falls asleep in the version of
the case in which she is married to Jerry and only wants to have sex with Jerry but that Jill has only a weak preference that Tim not have sex with her after she falls asleep in the version of the case in which Tim is her husband and it is a few minutes after 10:00 rather than a few minutes before 10:00, the Harm Explanation entails that Tim’s act is seriously wrong in the first version of the case but just a minor wrong in the revised version. Does this result cause a problem for the proponent of the Harm Explanation?

It seems to me, as it seemed in the case of the revised version of Impersonator, that it does not. I suspect that many people will agree with the judgment yielded by the Harm Explanation in this revised version of the Deep Sleep case. While they would be shocked and appalled to learn that a friend of theirs had done what Tim does in the original Deep Sleep case, they would experience at most a relatively mild feeling of disapproval if they learned that their friend had done what Tim does in Deep Sleep 2. If I am correct about this, then changing the Deep Sleep case to one in which the Harm Explanation diverges from the Consent Explanation actually strengthens the case for the Harm Explanation over the Consent Explanation, just as it seemed to me to do in the case of the modified version of Impersonator. And even if I am wrong to suspect that many people will agree that Tim’s act is not seriously wrong in this second version of the case, it strikes me as unlikely that they will find it sufficiently clear that Tim’s act really is seriously wrong in that case. At most, they may find that they do not have a strong reaction to the case one way or the other. And if that is so, then while the case will fail to provide additional support for the Harm Explanation, it will again fail to yield a compelling objection to it.

Considering cases that involve positive dissent rather than merely an absence of valid consent and considering variations on the cases of Impersonation and Deep Sleep strike me as the most natural ways of trying to challenge my defense of the Harm Explanation by appealing to our
reactions to further cases. I have tried to show that appeal to such cases fails to undermine that defense and in some instances may actually strengthen it even further. Rejecting the Desire Satisfaction Principle strikes me as the other natural way to try to undermine my defense of the Harm Explanation. I have tried to show that rejecting that principle is a taller order than it may initially seem and that even if the principle is rejected, my objection to Dougherty’s argument can still go through by appealing to the claim that it is seriously wrong to frustrate the strong desires a person has about their life without their consent even if doing so is not considered to be a way of harming them. There are presumably other kinds of cases that can be appealed to and other kinds of objections that can be raised against the response to Dougherty’s account that I have developed here, but I hope to have said enough at least to establish a strong presumption in favor of the Harm Explanation over the Consent Explanation and thus in favor of the Intermediate Thesis over both the Severe Thesis and the Lenient Thesis.

4.

Tom Dougherty’s “Sex, Lies, and Consent” is one of the best pieces of applied normative philosophy that I have encountered in the past few years. It is original and carefully argued and its bold call that we reject the Lenient Thesis strikes me as innovative, highly important, and ultimately sound. Indeed, it is because criticizing Dougherty’s argument runs the risk of appearing to come to the defense of those who think that it is never more than a minor wrong to deceive someone into having sex as long as doing so causes the person no significant physical, experiential, or psychological harm that I initially found myself somewhat reluctant to aim any criticism at Dougherty’s paper at all. While I believe that the Intermediate Thesis that I have defended here is more defensible than the Severe Thesis that Dougherty endorses, it may well be that agreeing to
reject the Lenient Thesis is more important than deciding which alternative we should adopt in its place. And if attempting to undermine Dougherty’s argument runs the risk of seeming to provide cover for a complacent acceptance of the Lenient Thesis, then that may well provide a good reason to leave Dougherty’s argument as it stands and to look elsewhere for philosophical debates to enter.

In the end, though, I have come to the conclusion that such evasion is misguided. The best way to bring down the Lenient Thesis is to provide the strongest and most credible case against it. If my criticisms of Dougherty’s argument here have been sound, then attempting to defend the Severe Thesis prevents us from developing the strongest and most credible case against the Lenient Thesis. For that reason, while I believe that Dougherty’s case against the Lenient Thesis has made a significant contribution to the debate on an important subject, I also believe that he has made a significant mistake in attempting to defend the Severe Thesis in its place and that it is important to recognize that it is a significant mistake.¹⁵

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² It is less clear that this is so in the case of deception about one’s romantic intentions and so I will focus here exclusively on the first two kinds of cases that Dougherty refers to.

³ Dougherty (2013: 720).

⁴ Dougherty (2013: 722).


⁶ Strictly speaking, what I present in this paper as Dougherty’s argument in defense of the first premise is really the second of two arguments that he offers in defense of that premise. If my objection to this argument succeeds, however, it will also succeed as an objection to his other
argument. This is because the other argument appeals to the claim that how wrong it is to violate a particular right is a function of the importance to us of the right not being violated (2013: 723-24) and because the response developed below appeals to judgments about cases where it is not particularly important to a person that a given sexual act not occur. If, as I argue below, cases where it is not particularly important to a person that a given sexual act not occur show that Dougherty has not offered the best explanation of the serious wrongness of having sex with someone who is unconscious or having sex with someone when “egregious deception” is involved, then this will at the same time show that the rights violations that occur in cases where it is not particularly important to a person that a given sexual act not occur are not seriously wrong.

7 These cases are based on examples Dougherty appeals to (2013: 724).

8 Dougherty (2013: 724-25).

9 Dougherty (2013: 725).

10 Dougherty (2013: 726).

11 “[I]f someone intends the Harm Explanation to be an alternative to the Consent Explanation, then the relevant harm cannot simply be the harm of having unwilling sex. Instead, one would have to point to harms like physical harms, experiential harms, and ensuing psychological harms” Dougherty (2013: 725). Strictly speaking, Dougherty says that if the Harm Explanation is to serve as a genuine alternative to the Consent Explanation it must appeal to harms “like” physical, experiential, and psychological harms. So strictly speaking he does not literally assume that these are the only three kinds of harm that there are. But he does not explain what it would mean for another kind of harm to be “like” these three and the only reason he gives for thinking that there is no harm in cases like Impersonation and Deep Sleep is that there is (or need be) no physical, experiential, or psychological harm. So although he does not literally endorse the assumption here, the assumption is needed in order for his argument as presented to be sound. The claim that there is no harm in such cases follows from the claim that there is no physical, experiential, or psychological harm in such cases, after all, only if these are the only kinds of harm that there are.

12 It might be objected that the Desire Satisfaction Principle enables the Harm Explanation to produce the same results as the Consent Explanation only by rendering the lack of valid consent itself a significant harm. And if that is so, then there will be significant harm in every case in which there is not valid consent, the Harm Explanation will produce the same results as the Consent Explanation in all cases, and it will therefore prove unable to avoid entailing the Severe Thesis. But the claim that frustrating a person’s strong desire about their life significantly harms them is not the same as the claim that doing something to them without their consent significantly harms them. A person might refuse to consent to an act even though they have only a mild preference that the act not take place. In such cases, the act would be done without their valid consent but the combination of the Desire Satisfaction Principle and the Harm Explanation would not entail that the act significantly harmed them. Because of this, using the Desire Satisfaction Principle to enable the Harm Explanation to produce the same results as the Consent Explanation does not render the lack of valid consent itself a significant harm and, as I argue below, does not entail the Severe Thesis.
In formulating the Intermediate Thesis here, I have set aside a number of potentially important distinctions. There is a difference, for example, between saying that how wrong an act is depends on how much harm actually results from the act and saying that it depends on how much harm could reasonably be expected to result from it. The difference between harm that is intended and harm that is (merely) foreseen might also turn out to be relevant, as might the difference between harm that is caused and harm that is (merely) allowed. And a paternalist might well maintain that seriously harming someone in the short term is justified as long as it benefits (or is reasonably expected to benefit) them more in the long term while a non-paternalist would deny this. The reader should simply interpret the Intermediate Thesis in light of whatever they take the most reasonable account of these distinctions to be. My claim is that, when they do so, the result will be that by their own lights the Intermediate Thesis will prove more defensible than either the Lenient Thesis or the Severe Thesis.


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