JUST SEX

A THEORY OF JUSTICE FOR THE SEXUAL SPHERE



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Abstract

There are inequalities in the sexual sphere. Some are desired. Others struggle to find a partner, let alone someone with whom they could share a home or a life. While these problems tend to be treated as private, they often have a social basis. The ways in which we organise our societies' major institutions have profound implications for our intimate lives. Liberal egalitarians typically demand a social environment where we can stand in relationships of equality with others and make genuinely valuable choices. Yet, they have not explored under what conditions the sexual sphere could be justified to all. In exploring this question, this thesis draws on sociology, epidemiology, and science and technology studies. It develops a contractualist theory of social justice on which institutions should be such that individuals are provided with the sexual bases of self-respect. This entails the realisation of three claims in the sexual sphere: to non-interference, equal standing, and choice improvement. The claim to non-interference is explicated by a principle on which people are not to be wrongfully interfered with. The claim to equal standing is explicated by a distributive principle of opportunities to develop 'sexual standing'. A person has sexual standing if some relevant others consider her a potential partner in a non-degrading way. The claim to choice improvement is explicated by a distributive principle of opportunities to follow 'sexual life plans': plans for some duration of a person's life involving reciprocal, non-degrading sexual relationships.

The thesis's extension of contractualism into the sexual sphere shows the importance of accounting for the effects of social norms on people's choices and the interests they have in being able to make valuable choices in the sexual sphere, which contractualists have hitherto neglected. The thesis develops its principles with the help of three empirical case studies: gender-selective migration to cities, PrEP rollout policy in HIV prevention, and online dating applications. Committed to a view of sex as bound up with what we owe to each other, this thesis combines queer and feminist theory with liberal principles to show that we can approach inequalities in intimate relationships as moral and political matters without moralising or interfering.

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INTRODUCTION

A long-standing debate in political philosophy concerns the status of the family as a crucial social institution in the basic structure (Rawls, 1993: 258; 1999: 64, 265, 447-8; Kearns, 1983; Okin, 1989: 89-110; Munoz-Dardé, 1998; 1999). In recent years, liberal egalitarians have further discussed the politics of intimacy. They have theorised what it would mean to bring about just social conditions for relationships between children and parents (Brighouse & Swift, 2014), between spouses (Brake, 2015; Chambers, 2017; Macedo, 2015), between parents (Schouten, 2019), between families (Olsaretti, 2021), and between caregivers (Bhandary, 2019; Gheaus, 2009; Robeyns, 2010). Additionally, T. M. Scanlon (2018; working paper) and others have argued that being someone whom others in one's society could consider eligible to become a family member by marriage is part of what it means to have social standing. However, liberal egalitarians have said less about what happens *before* individuals can become partners or form families. The basic structure's effects on people's opportunities to initiate and maintain intimate relationships remain vastly under-explored.[1]

Outside of liberal egalitarian political philosophy, the state of modern courtship is in full focus.[2] Indeed, the last decade has seen a public preoccupation with sexual relationships.[3] Thinkers have discussed who is responsible for the sexual sphere (Angel, 2021: 93-115), how we should

[1] There are important exceptions. For instance, Clare Chambers (2008: 197-199) discusses gender norms for sexual attractiveness, such as for example norms that require women to go through painful breast augmentation to be considered sexually attractive for men. In his doctoral thesis Kevin Mintz (2019) argues that sexual freedom should be conceived of as positive and negative liberties. Jeremy Waldron (1991: 41; 1988) mentions the effects of housing policy on unhoused people's chances to 'make love' and discusses how, for instance, marriage rights ensuring individuals' rights make it easier to have intimate relationships. Andrew Williams (2002) discusses how the existing expectations in the labour market condition people's opportunities for having romantic relationships.

[2] I refer to 'courtship' as a process in which individuals get to know each other to initiate a relationship that involves sex. I include modern dating (including the use of dating apps) as well as traditional arrangements for marriage matching.

[3] There is an old and ongoing debate regarding the status of the intimate sphere as a site of political struggle. See, (brown, 2019; Davis, 2019; Dalla Costa, 1975; Federici, 1975; Mac & Smith, 2018; Rosa, 2023).

understand sexual attraction (Kaplan & Illouz, 2022), and whether there is a right to sex (Srinivasan, 2021).

Analytical liberal political theory typically aims to capture the correct relationship between individual and community, responsibility, and choice, to balance predictability with freedom, and the joys of discovery with the burdens of accountability (List & Valentini, 2016: 525). When liberal philosophers have talked about justice concerning sex, they have often focused on consent. They have argued that what we owe each other in this realm is non-interference: to stay out of and tolerate other people's lives. Sex is in the 'private realm' in which people have the right to make their own decisions and where they are individually responsible for the outcome of those decisions. Outside the sexual sphere, liberalism typically makes wider demands of distributive justice based on principles of freedom and equality. However, liberals such as contractualists John Rawls (1977; 1993; 1999; 2001) and T. M. Scanlon (1998) refrain from applying their more expansive theories of social justice to this sphere, focusing instead on the claim to non-interference. In other words, there is an asymmetry between the liberal treatment of the sexual sphere and the liberal treatment of the rest of society.

In this thesis, I draw on feminist theory, social theory, queer theory, and empirical research from a range of social sciences to challenge these assumptions. I develop the first full liberal egalitarian theory of social justice for the sexual sphere, asking questions such as: What is the problem with inequalities in desirability? What do we owe each other in the sexual sphere? How can its practices be justified? The theory acknowledges the claim to non-interference that liberals have traditionally endorsed – it is a claim grounded in our interests to consent to sexual advances and interactions and in the observation that interference in the sexual sphere is particularly harmful. In addition to this, however, I argue that in the sexual sphere, we also have a claim to be on equal standing with

others and a claim to have our circumstances of choice improved. In sum, thus, we have three kinds of claims in the sexual sphere: non-interference, equal standing, and choice improvement.

I will refer to the sexual sphere as the domain of people's lives and society, where people engage in relationships and interactions that typically involve sex. What we owe each other, in this sphere, is to realise the three claims. The thesis is structured around this argument, with chapters 1 and 2 focusing on the claim to non-interference, chapter 3 on the claim to equal standing, and chapters 4 and 5 on the claim to choice improvement. In chapter 6, I apply the theory to the case of dating apps in what I call the digital sexual sphere. Developing the argument allows me to gain new insights into the limits and benefits of contractualist reasoning, feminism and liberalism, and the politics of sex. In this introductory chapter, I provide a roadmap and set the stage for what follows.

The sexual sphere

Why should we turn our attention to the sexual sphere? Why are so many of our contemporaries doing so? Judging from the public debate, we seem to be living through times of great uncertainty about sex. To take just a few examples, rights and freedoms have been won alongside a furious backlash – as of April 2023, the ACLU (2023) is tracking nearly 500 'attacks on LGBTQ rights in U.S. state legislatures.' In the global north, women's sexual liberation has occurred while right-wing groups call for a return to conservative ideals. In supposedly liberal democracies, lawmakers want to control sex and reproduction (Roggeband & Krizsán, 2020).

While legal professionals are codifying the right to consent, there is no consensus about under what circumstances sex could be safe and good. Worldwide, oppressive social norms stand in the way of people's using protection and contraception even where it is legal and affordable and even in circumstances where the prevalence of HIV is high (UNAIDS, 2020). Pew Research Center

(2020) reports that 'nearly half of U.S. adults (47%) say dating is harder today for most people compared with 10 years ago', with women 'twice as likely as men to cite increased [physical and emotional] risk as a reason'.[4] At the same time, 'a majority of the overall public (65%) says the increased focus on sexual harassment and assault in the last few years has made it harder for men to know how to interact with someone they're on a date with' (Pew Research Center, 2020). Seventy-five per cent of Americans who are looking for a romantic relationship or casual dates say it is very or somewhat difficult to find a partner (Pew Research Center, 2020).

In the media, the dating app is pointed out as one of the major culprits. In a short time, this technology has become one of the most common avenues for meeting potential partners (Pew Research Center, 2023a; 2023b; Rosenfeld et al., 2019). It is, however, uncertain whether the introduction of dating apps has radically changed the sexual sphere or whether it merely shows us what this sphere was always like. For example, on the one hand, dating apps hardly invented racism; on the other hand, data indicate that certain features of these apps amplify racism (Conner, 2023; Callander et al., 2012). And while the existence of gender norms in the sexual sphere comes as no surprise, studies on dating app behaviour from European countries indicate that traditional roles of female chastity and male assertiveness persist in the digital world (Bergström, 2022: ch7; Berkowitz et al., 2021; Thompson, 2018). People objectify each other on apps, but the apps have not created objectification. I say more about this in chapter 6, where I explore the digital sexual sphere.

One thing is certain: dating apps provide data on millions of people's dating habits. Thus, one further potential explanation for why we suddenly seem preoccupied with the issues of the sexual sphere is that enough time has gone by since the birth of the dating app. These apps have generated

[4] 19 per cent say it has gotten easier, while a third say it is the same (Pew Research Center, 2020).

so many experiences and data that, at this moment, it is harder to dismiss, ignore or romanticise problems that were always there. For our purposes, this information is helpful. Amia Srinivasan (2021: 88) has written about sex that 'there is nothing so riven with politics and yet so inviolably personal. For better or worse, we must find a way to take sex on its own terms.' To bring the tools of analytical liberal political theories of social justice to the sexual sphere, to ask what it would mean for it to be just and to realise what we owe each other in it, we must first understand what this sphere is like.

Drawing on feminist theory and research on behaviours relating to sex and dating, I will highlight four major traits that characterise the sexual sphere.[5] First, we are vulnerable and have reason to want to be vulnerable in this sphere. This vulnerability is bound up with the intimacy that characterises many of its activities. When we show others psychologically and physically intimate parts of ourselves, as in sex, this makes us vulnerable. Second, there is a wide pluralism concerning life plans and conceptions of the good. Third, people have strong reasons to value having choices in this sphere. Fourth, there are inequalities: in risk of exposure to harm, desirability, and what we desire. People do not all have intimate relationships on the same terms.

In the construction of moral principles of social justice for the sexual sphere, my thesis draws on the fundamental commitments of two dominant theories in analytical moral and political philosophy: TM Scanlon's (1998) moral contractualism and John Rawls's political contractualism (1977; 1993; 1999; 2001). Scanlon's and Rawls's work on social justice is well known for its ambition to deal with vulnerabilities, pluralism, choice, and inequalities. This is a promising start. However, seeing as they have not applied their theories in the sexual sphere, more must be said about this choice of springboard. I do so after I provide a brief overview of the central argument.

[5] The list is not meant to be exhaustive, and I am open to there being other traits to consider.

An overview of the central argument

On a majority of conceptions of the good life, some form of relationship involving sex with others plays an essential role in individuals' lives and the organisation of society. In the thesis, I refer to *nesting* as a sexual relationship in which people share a home (Brown et al., 2023)[6], and to a *sexual relationship* as a relationship or interaction of a kind that typically involves sex. It is certainly possible to live a flourishing life without sex, intimacy, and nesting. Nevertheless, what Norman Daniels (1983: 508) calls the 'normal opportunity range': the array of "life-plans" reasonable persons … are likely to construct for themselves' in most societies arguably include some form of relationship of the kind that typically involves sex. For many people, whether they succeed in this area of life will affect their sense of themselves and their lives. Having opportunities to follow a *sexual life* plan and to become someone whom others want to pursue a sexual life plan with is something that we have strong reasons to want.

One of the significant contributions of the thesis is the argument that we have three kinds of claims on others concerning the sexual sphere. Specifically, we owe each other non-interference, equal standing, and choice improvement. Out of these claims, liberals have previously argued that the first kind applies in the sexual sphere. In chapter 1, I introduce and explain this claim of non-interference, which in the sexual sphere is explicated by a principle such that individuals should not be wrongfully coerced, harmed, disrespected, or not tolerated by the state or other people. In chapter 2, I show why, although necessary, non-interference is not sufficient as an approach to the sexual sphere.

The claim to be on equal standing with others is explicated in the sexual sphere by a sufficientarian principle of distribution of opportunities to develop what I call *sexual standing* in an adequate range

[6] For a background context of the concept's origins, see (Wilkinson, 2021).

of social settings. Sexual standing refers to a person being someone that some relevant others consider as a potential partner for a sexual relationship in a non-degrading way. In chapter 3, I introduce and develop this concept and the principle of which it is a part.

The claim to choice improvement is explicated in the sexual sphere by a sufficientarian principle on which we owe each other to provide opportunities to follow sexual life plans. In the thesis, I refer to a sexual life plan as a plan involving a non-degrading and reciprocal sexual relationship, for some time of a person's life. I say more about this novel sexual life plan concept in chapter 4. For now, note that sex and nesting play a role in the way we relate to ourselves and others. We have reasons to want opportunities to become able to choose the forms of sexual relationships that are right for us while being aware that there are other ways to have such relationships available to us.[7] Based on these reasons is our claim to improvement of our circumstances of choice. The principle constitutes part of a refinement of Scanlon's Value of Choice view that I present in chapters 4 and 5. I will say more about this in what follows. In chapter 6, I explore how my theory provides guidance in the case of dating apps.

I will argue that these principles are a part of the *sexual bases of self-respect*, which the contractualist and liberal egalitarian idea of the social bases of self-respect should include (e.g., Rawls, 1999: 386). The sexual bases of self-respect are the features of formal and informal institutions that provide individuals with opportunities to set and follow their sexual life plans and opportunities to develop sexual standing in the eyes of others without being wrongfully interfered with. It is important to note that the sexual bases of self-respect do not include the right to sex or sexual relationships *per se*. The state cannot guarantee anyone sex without risking interfering with other members of society. Further, as we will see, if a person has sex with someone whom she does not desire, this

[7] Compare, (Brighouse & Swift, 2014: 15).

does not amount to him having sexual standing in her eyes. Sex, when undesired, is not the same as sex when desired (Srinivasan, 2021: 87). Activities in the sexual sphere tend to be choice-dependent: 'possible or valuable only insofar as they flow from [one's] own, autonomous choices or judgments (Kolodny, 2023: 21).

As feminists have shown, what happens in our intimate relationships cannot easily be disconnected from what happens in political institutions (Federici, 1975; Hill Collins, 1990: 123; hooks, 1981; Okin, 1989: 110-133). This thesis argues that a society that neglects our claims to non-interference, equal standing, and choice improvement in the sexual sphere fails to provide what justice requires. In a social environment where people cannot find someone to share a home or have a sexual interaction or relationship with, they could have a complaint. As we will see, recommendations for what should be done to battle problems in this societal domain will vary. Often, they will involve changing social norms and practices. At times, I will argue for specific forms of policymaking. Often, we need material change through, for example, the reorganisation of labour markets and the redistribution of wealth and resources. Importantly, however, it is *not* the purpose of this thesis to justify extending the state's power into the literal bedroom (Compare, Brown, 1992). Incorporating the liberal insistence on non-interference, the point is instead to use the contractualist framework to clarify and justify our claims and obligations as individuals and as a society to provide the kind of wider social environment that allows people to make valuable choices relating to intimate relationships. Next, I will say more about how I use contractualism.

Contractualism

In the examination of issues relating to sex, it is necessary to take an approach that explores and seeks to explain both institutions and interpersonal relationships. The things we wish for in the sexual sphere are often of the nature that they should not be redistributed in a population; they

are inherently relational. We thus need a theory that focuses on relationships. And because exploring the sexual sphere entails attending to the role of social norms, we need a theory that can handle the terms on which we can agree, coordinate, and live together in society.[8]

As articulated by Scanlon, moral contractualism is a liberal egalitarian theory that presents morality as being about ways to justify oneself to others. It is about finding principles for interpersonal relationships that no one could reasonably reject. A person who follows such principles justifies herself to others. Contractualist principles are not like laws that can be spelt out like statements about what we can or cannot do. Instead, they are 'conclusions about the status of various kinds of reasons for action', leaving 'wide room for interpretation and judgment' (Scanlon, 1998: 199).

In exploring what we owe to each other concerning the sexual sphere, a realm primarily governed not by law and policy but by social norms, Scanlon's focus on interpersonal relationships is an appropriate place to start. To see this, consider that social norms are the informal rules that govern our behaviour, set expectations, enable us to hold each other accountable and give our actions meaning (Bicchieri, 2017: ch1; Brennan et al., 2013: ch1). Therefore, social norms matter to morality in several ways. First, they assign people different roles and, as such, affect what is possible for them to do and to ask of others and how costly it is. Second, social norms can make it easier or harder for people to live according to what we may call our higher moral ideals, principles that hold always and everywhere. In the spheres where intimate relationships occur, social norms prescribe what it is normal for partners, mothers, sisters, and so on to do and expect.

How, then, do social norms figure in contractualism? Scanlon's view of the relationship between moral principles and social norms is ambiguous. He sometimes refers to 'established practices' as

[8] See Katrina Forrester's (2019: 12) discussion of Rawlsian theory as focusing on finding 'fair rules of the game'.

something protected by our higher moral principles (Scanlon, 1998: ch8). However, it is not clear how contractualism understands the relationship between these practices and social norms. And it is not clear exactly how individuals should act when they are under pressure from social norms to do something harmful to themselves or others, or something that goes against higher moral principles for other reasons. Of course, this does not mean that it is impossible to think about how social norms fit into the contractualist framework.

When others are not living according to principles no one could reasonably reject, it becomes harder to see that being moral still is required of us. Therefore, even though there are certain things that we owe to each other that are not contingent on social norms, it is still the case that social norms that are in accordance with contractualist principles make it easier for us, both socially and psychologically, to fulfil the demands of morality. Social norms that prescribe something else make this more difficult. Consider the following example, which I expand on in chapter 5 on choice and social norms in relation to HIV prevention. Let us assume that there is a higher moral principle, such that there is a duty to look out for the sexual health of those with whom we have sex. Then, it is morally wrong for individuals not to do this, and such an act can be reasonably rejected regardless of what social norms apply. Nevertheless, it is still the case that in circumstances where there is a social norm such that sex partners should use protection in sexual interactions, it would be easier to fulfil the demands of the aforementioned moral duty. Why? Because the social norm, *qua* social norm, enables people to hold each other accountable to its demands. Through sanctions, the norm increases the cost of not protecting others so that it is higher than it would be in the absence of such a norm. In contrast, a social norm such that one should *not* use protection in sexual interactions makes it more costly, and therefore harder, to fulfil the moral duty to look out for others' sexual health. It does not remove the moral wrongness involved in failing to look after the sexual health of our partners, but it gives us reason also to change the social norm.

When we consider how social norms in this way structure our choices, it becomes clear that justice in the sexual sphere would involve bringing about a wider environment of trust and care, where opening oneself up is not the same as inviting harm or abuse. This is one reason for using contractualism for thinking about the sexual sphere – there is a need to find clear terms for its governance that no one could reasonably reject. If, for instance, the norms of the sexual sphere were such that people's normative and empirical expectations were that they should treat – and should be treated – with respect and recognition, then that would better enable individuals to be vulnerable even with relative strangers. This is important considering the historical movement of the decoupling of, as it were, sex and coupledom that has taken place since the 1950s (Bozon, 1991: 69-70, cited in Bergström, 2022: 93). Sexual interaction occupies a different space in the script of modern courtship than it has in traditional versions: in today's relationship script, sex happens much earlier and is, in fact, one of the things that establishes the connection, rather than something that can only happen once the relationship is firmly established (Illouz, 2019: 91; Bergström, 2022: 84-87). This is especially true in online dating, where the relationship can become sexual or intimate faster due to the parties' acquiring knowledge of each other's intent much faster than partners who meet at, for instance, work.[9]

What are the implications for political theory? It means that contractualism, focusing on general rules for behaviour, is useful even in this most intimate and personal of arenas. If the sexual sphere was ruled by contractualist principles, as in principles that no one could reasonably reject, people would be able to expect, in line with social norms, that others were not out to take advantage of them in this sphere.[10] To be sure, good social norms cannot eradicate all bad behaviour. However,

[9] I will discuss this issue in more detail in chapter 6.

[10] Compare discussion in Scanlon (1998: 203) about why our thinking about morality ought to be concerned with the general acceptance of principles: 'Our need for privacy, for example, is not met simply because, as a matter of fact, other people do not listen in on our phone calls and go through our personal files. In order to have the benefits of privacy we need to have assurance that this will not happen, and this is something that general acceptance of a principle can provide.'

the critical question is how society's structures – our institutions and norms – treat such instances. In sum, I will argue that it is not merely immoral actions that can be condemned, but also, sometimes, the social norms that enable them. Because they have power over individuals and because they alter the costs of living ethically, contractualists must pay attention to social norms. Doing this will make contractualism a more suitable tool for feminist aims.

Interestingly, although Scanlon brings contractualism into interpersonal relations, his theory has escaped feminist critique.[11] One major contribution of this thesis is the provision of the first comprehensive feminist critique and extension of Scanlonian contractualism.[12] The explanation for the lack of analyses on how Scanlon's contractualism deals with gender is likely not that feminists, after examination, have found it to be without flaws. More likely, it is due to their having turned their attention elsewhere; feminist liberals have focused on political theory as in what the state should do, and feminist moral philosophers have sought to develop an ethics that turns from justice to care, from principle to particularity (Jaggar & Tobin, 2013; Kittay, 1998; Pateman; 1988; Pateman & Mills, 2007; Benhabib, 1985). This lacuna is regrettable for at least three reasons. First, Scanlonian contractualism is immensely influential not only in moral philosophy, political philosophy, and bioethics. It is also used for making decisions by policymakers.[13] A feminist examination and development of Scanlon's work could have important implications for real people's lives. Second, as I have already touched upon, and as I will argue throughout this thesis, there are elements in contractualism that we can recover for feminism. Third, feminist insights are crucial to realising justice; a contractualism worth having is one that accommodates them.

[11] However, Jean Hampton (2002) and Ruth Sample (2002) both briefly discuss Scanlon in relation to Hampton's contractarian feminism.

[12] Chapter 5 builds on a paper published in *Politics, Philosophy and Economics*, in which I provide the first feminist critique of Scanlon's Value of Choice view and his idea of the generic reason (Kugelberg, 2021). An early version of this argument can be found in my master's dissertation (Kugelberg, 2018).

[13] See, for instance, (Statens offentliga utredningar, 2004: 225). In this Swedish government committee review of levels of political engagement in different socioeconomic groups, Scanlon's contractualism is discussed as an approach for understanding the role of the citizen.

Contractualists hold that we should find terms on which we can live together in society in relationships of equality, regardless of our differences. My contribution is to show that this involves terms that take seriously the sexual sphere. This argument is compatible with believing that our intimate interpersonal relationships cannot be understood solely with the help of principles.

What contractualists insist is that principles can act as a baseline for what can be claimed by and required of individuals who interact with each other. This allows us to have expectations and hold others accountable. Further, Scanlonian contractualism asks what someone in a particular position could reasonably *reject*, not reasonably accept. This means we can focus on something other than finding a complete specification of what justice or morality requires but instead can focus on identifying injustices (Wolff, 2015; Young, 1988). To say that a principle, policy, or social norm can be rejected means that an alternative policy or principle would do a better job than the one presently in place. Scanlon's theory also has the benefit of asking what people in a particular situation have *reason* to reject rather than what they do reject. This blocks principles from unfairly burdening people with altruistic preferences, which makes it helpful for feminist purposes; we run a lower risk of taking social-norms-influenced, adaptive preferences for granted.[14]

To motivate my focus on Scanlon's and Rawls's contractualisms, I will now provide methodological comparisons between Scanlon and Rawls and between Scanlon and Gerald Gaus (2010). Rawls provides a liberal contractualism aimed at describing and justifying a view of political institutions. Scanlon contractualism, by contrast, functions as a description and justification of social and interpersonal morality. Scanlon builds on Rawls, and Rawlsian commitments are incorporated deep into his theory.[15] While Rawls's framework is built to apply to what he calls the

[14] See (Khader, 2011; Srinivasan, 2020; Walsh, 2015) on adaptive preferences.
[15] Cohen (2008: 296) even argues that Scanlon's contractualism is a mere extension of Rawls's theory of justice.

basic structure, Scanlon's is more flexible, making it easy to draw on to make judgments about social norms. In contrast to Rawls, Scanlon (1998: 190-191) does not use a device such as a 'veil of ignorance', behind which people agree on society's terms without knowledge about their particular interests and characteristics.[16] In her engagement with Rawls, Okin (1987: 65) argued that if the contractors behind the veil of ignorance did not know their sex or gender, his theory would have radical implications for justice. Such beings would want to set up society in a way that disadvantages neither men nor women.[17]

The creatures who reject principles for society, and interpersonal relationships, in Scanlon's (1998: 204) hypothetical contractualist procedure, are human beings motivated to find principles for the regulation of society. As such, they know their circumstances and are only slightly idealised versions of ordinary people. This has the benefit of making the contracting situation less abstract. However, the contractors are not epistemically prevented from privileging their own interests in the same way as they would have been behind the Rawlsian veil. In the Scanlonian contracting situation, individuals can appeal to their relationships and commitments as grounds for rejecting principles as long as they use generic reasons. Scanlon (1998: 203, 204–206) defines *generic* reasons as reasons that people in a particular standpoint would generally have, as informed by people's general experiences of life and 'commonly available information about what people have reason to want' (204).[18] I will not use the veil of ignorance but instead explore the idea of the generic reason. I argue that whether Scanlon's theory can give plausible recommendations for the sexual sphere comes down to how we interpret the *generic*. Is it what most people would agree on? Is it what actual people, in general, would find reasonable? People's general life experiences are formed by how social rules operate in their societies. Where there are oppressive sexist and racist norms,

[16] See also (Lister, 2023).
[17] Rawls took on board some, but not all, of Okin's critiques in his later works (see discussion in Abbey, 2011: 75-82), and the feminist liberal debate about Rawls and Rawlsianism goes on to this day.
[18] See discussion in Voorhoeve (2008) and Stemplowska (2013a).

what will people find reasonable? There is a risk that people growing up in a world where men's experiences are understood to count for more will underestimate the pain experienced by women and overestimate the validity of men's claims on resources and recognition (Srinivasan, 2020: 399; Young, 1989: 253).[19]

As Hill Collins (2000: 47; hooks, 1981; 2000) and TallBear (2018) argue, the general American definitions of, for example, the private and the public become less representative of black and indigenous experiences. In a society tainted by historical injustices, the public sense of right and wrong is likely to take the harm and disadvantage that minoritised people suffer less seriously and even justify it. And in societies structured by monogamous heterosexuality, people who do not conform to gendered expectations of being in a certain kind of relationship with a member of the opposite sex will not see their experiences represented in the dominant ideology (Foucault, 1980; 1985; 1986; Giddens, 1992; Lorde, 2019; Rich, 1980; Turner, 2021). There is a risk, too, that where people teach each other that it is wrong to think or talk about our interests in the sexual sphere, they will think about these interests as unable to ground generic reasons.

There is also a risk that existing social hierarchies will influence the idea of the generally reasonable. In that case, we may worry that contractualism's moral methodology will reinforce unequal or even unjust social arrangements in its ignorance of claims made from standpoints the majority generally are prejudiced against or do not know much about (Jaggar & Tobin, 2013). Therefore, we must clarify that even though not generally held, reasons put forward from marginalised standpoints can be generic reasons. I say more about this in what follows, especially in section 5.5.

[19] See, for instance, Marxist feminist work on labour movement ignorance of women's housework, resulting in definitions of 'work', 'vacation', and 'strike' being determined by men's experience. As Dalla Costa (1975: 73 see also Federici, 1975) argues, 'when half the working population is at home in the kitchens, while the others are on strike, it's not a general strike'.

Now, contrast the idea of the generic reason with the methods employed in Gaus's (2010) liberal theory of public justification. Like Scanlon's, his view makes recommendations for institutions and interpersonal relations. Unlike Scanlon and Rawls, Gaus (2010: 42, 414) discusses social norms directly and could therefore have been a suitable candidate for my exploration of social norms in the intimate spheres. However, as I argue elsewhere (Kugelberg & Kugelberg, 2022), certain features of his theory entail that even gravely inegalitarian social norms would pass Gaus's (2010: 303, 313-4) test, making them publicly justified and morally acceptable. Gaus evaluates social norms not against higher moral principles but against a baseline where no norm governs the area that the norm in question now governs. This leads Gaus (2010: 425-7) to inappropriately favour the status quo (Kugelberg & Kugelberg, 2022: 9). In contrast, Scanlon's and Rawls's theories can provide a position from within the theory, from where we can criticise inegalitarian norms. We can appeal to generic reasons and 'what we owe to each other' generally when we point out why a specific social norm should be rejected. In this sense, Scanlon's theory is appropriate because of its flexibility and direct applicability to interpersonal relations.

In sum, I do not in this thesis endorse Scanlon's or Rawls's contractualisms as viable feminist tools in their original forms. Nor am I providing a Scanlonian or Rawlsian theory for the sexual sphere. Instead, I am using Scanlon's and Rawls's work as a starting point to begin thinking about constructing principles for the sexual sphere. Doing this requires me to highlight important areas where contractualism suffers from underdevelopment. The project aims to provide the necessary clarifications and refinements needed to enable contractualism to make recommendations in the sexual sphere and, by extension, other non-public spheres. Out of the list of contract theories available, Scanlon's and Rawls's frameworks is the best place to start doing this work.

The thesis, thus, is situated in analytic moral philosophy, feminist theory, and liberal political theory. It contributes to the literature on contractualism but should also interest readers well-

versed in work on gender oppression and the politics of sex, intimacy, and nesting. They might care for contractualism only insofar as it can help us understand these phenomena and ask new questions about them (compare, Schouten 2019: ch1). Engaging contractualism in the intimate spheres will certainly make us better understand how contractualist reasoning ought to be carried out. I believe that it *also* provides a helpful way to understand important moral and political aspects of our intimate relationships. Importantly, I hope to show that it provides a way to justify urgent moral and political change. In the next sections, I provide clarifications regarding specific concepts.

Sex and nesting

There is reason to differentiate between sex and nesting. In our societies, monogamous nesting relationships have traditionally been seen as important social units in many conceptions of the good. Sex outside of marriage has been sanctioned, and married individuals have received benefits. Against this background, some might believe that it is plausible that nesting opportunities are included in what we owe each other and that opportunities for other kinds of sexual relationships, in contrast, could be nice to have but not something we owe each other in the strict sense.

However, it would seem inappropriate to give nesting a superior role in a liberal theory. Firstly, this way of organising sexual relationships is not universal. Secondly, even those who hope to nest, rather than have other types of interactions typically involving sex, still have reason to want to have opportunities to be someone others can be attracted to for some sexual relationship – opportunities for developing general sexual standing. To see this, consider that people have reasons for wanting to be able to choose partners themselves.[20] To be able to nest, one will often

[20] Most US and UK people now in relationships met online, via friends, or at work (Pew Research Center, 2020; Yougov, 2020).

need to be a person that some relevant others could at least consider having sex with.[21] Thus, it is fair to hypothesise that even people interested only in long-term nesting have a second-order interest in having opportunities to become a person some potential partner would find sexually interesting.

Many kinds of sex do not come with nesting. And there are those who do not care about opportunities to become someone with whom others could want to nest. Therefore, there is a third reason why we should not prioritise nesting over other kinds of sexual relationships. Even though we are used to hearing that sex between people who do not know each other well or who do not nest is 'casual sex', choosing a 'casual sex' life plan does not amount to being casual about sex. One can be serious about one's casual sex. So-called casual sex can be part of a sexual life plan that we do not have any more reason to dismiss than we have reason to dismiss the life plan to get involved in a marriage. There are instances of casual sex, as well as marriage, where people are mistreated. Individuals may, for instance, treat partners or potential partners disrespectfully or use them merely for status elevation, sexual satisfaction, care interests, or cleaning needs. We have reasons to object to this kind of behaviour. But note that it is to the wrongful behaviour – the disrespecting, using, or harming – rather than the marriage lifestyle or the casual sex life plan we object.[22]

I will argue that the provision of opportunities to develop sexual standing and opportunities to follow sexual life plans should be made a salient factor in the evaluation of a society's formal and informal institutions. But note this does not entail making sex more salient for everyone in their

[21] How and why we get attracted to a particular person is, and will perhaps always be, a mystery to some extent (see discussion in (Soble, 1989; 2008: ch3). While it is not necessarily about being explicitly sexual, it is fair to say that one typically needs somehow to attract the sexual attention of the potential partner.

[22] Feminists (Chambers, 2017; Firestone, 1970) and queer theorists (Calhoun, 2000) have argued that there are reasons to object to marriage based in what they see as its inherent sexist and heterosexist oppressiveness find it to be objectionable because inherently heterosexist.

personal lives, or making society more 'sexualised' (Hatton & Trautner, 2011; Gill, 2012a; 2012b; Graff et al., 2013). This could, in fact, undermine the sexual bases of self-respect.[23] In cultures that overemphasise sex, this overemphasis increases the stakes of the sexual sphere relative to other aspects of people's lives. Indeed, empirical research indicates that in conditions where general sexual attractiveness and (certain) sexual relationships are given grave importance, they can become increasingly necessary as prerequisites for achievements that fall under social standing (Harper, 2000; Hamermesh, 2011; Requena, 2017; Roseneil et al., 2020). This is a reason for taking the sexual sphere very seriously while emphasising that the best remedies to the issues people identify within it are not always sexual sphere specific.

Even people who do not care about sex in their own lives can see that social restrictions on sex and nesting, including social norms that restrict us from opportunities in the sexual sphere, can have detrimental consequences for the individuals who lack these opportunities and society as a whole. The sexual sphere is one in which social and moral authorities historically have paradoxically been both inappropriately absent and inappropriately present. Absent in their ignorance of injustices and despair. Present in their enforcement of unjust social structures and interpersonal abuses (Giddens, 1992; Rich, 1980; Rubin, 1984).

People involved in nesting sometimes also share finances, have pets, or raise children together. However, such features are not constitutive of the concept. And it is, of course, possible to do these things with people with whom one does not have a sexual relationship. For example, we may think of forms of communal living, siblings choosing to share a house, or friends raising their mutual children in the same apartment. Here I use nesting to refer to sexual relationships. Being

[23] Compare, Scanlon's (2019: 7) worry that the exaggerated interests that 'American culture' has in 'sex, and of being sexually attractive' 'distorts the relations that individuals can have with those toward whom their sexual interests are directed, and often leads them to treat these people in ways that are morally wrong,' and 'leads to a huge waste of time and effort'.

free to create and form other kinds of 'nests' is no doubt included in what we owe to each other; it is arguably part of what it means to have a claim to non-interference, which, as we saw, liberals endorse.[24] The theory I develop in this thesis is likely applicable to non-sexual relationships and other non-public spheres. However, I cannot show this here and thus leave it aside. Next, I consider how I attend to the issue of responsibility in the sexual sphere.

Responsibility

How we view the claims people make in the sexual sphere will depend on our approach to choice and responsibility for choices. In mainstream political philosophy, it is often believed that if a person has chosen an outcome under a principle or policy, this affects what others owe her (Stemplowska, 2013b; Wolff, 1998). It is assumed that an individual's having had a choice makes him responsible for the outcome of that choice, in the sense that others could ask him: if you wanted another outcome, why didn't you choose differently?[25] We know that responsibility must be carefully balanced against other values. In this thesis, I argue that in this process, we must recognise how social norms profoundly shape not only our choices. Social norms also shape our opportunity sets and ability to choose among opportunities in these sets.[26]

In developing and clarifying concepts, we have reason to pay attention to how such concepts are used outside of academic disciplines (Forrester, 2019: 223-224; Frazer, 1999: 151; Phillips, 2021: ch2). Concerning responsibility, we should ask how responsibility and appeals to responsibility operate in practice. What do we talk about when we talk about responsibility? What do policymakers talk about when they do so? What about lawmakers? And corporations?[27] One way

[24] Perhaps we also owe each other to provide material grounds to improve people's opportunities to do this. I discuss related issues in chapter 4 on the claim to choice improvement.
[25] See Scanlon's (1998: 258–259) discussion of this 'forfeiture view' and (Stemplowska, 2009).
[26] I refer to 'opportunity sets' as sets of 'all feasible (mutually exclusive) options, from which the agent can have any option by simply choosing to have it' (Barberà et al., 2004: 924).
[27] In chapter 6, I explore how dating app corporations handle these responsibility issues.

that notions of responsibility have been used is to justify non-egalitarian policies and arrangements (Forrester, 2019: 221-231; Steger & Roy, 2010). Consider the last fifty years' overall trend of deregulation and privatisation of the public and non-public spheres (Cordelli, 2022; Forrester, 2019: ch7). This liberalisation — together with rapid technological change and other global shifts — has given us a heightened sense of uncertainty (Rosa, 2013: ch3). For example, the liberalisation of rules in labour and housing markets contributed to the erosion of stability for many people, who now do not know where they will live or how they will make a living (Birnbaum, 2021: 187; Standing, 2011; Wolff & de Shalit, 2007).

At the same time as societies liberalised in this way, there developed a culture of responsibility privatisation; even though everyone knows that it is very hard for most people to single-handedly obtain, let alone create such things as housing and employment, there is a sense that finding a home and a job is up to the individual (Rosa, 2023; Young, 2011). The popular discourse often understands this privatisation of responsibility as part of a 'neoliberal ideology' (Menand, 2023). The idea is that when individuals fail because of great societal shifts, their failures are instead attributed to their own bad choices and insufficient efforts (Brown, 2019; Smith, 2019; Fukuyama, 2022).[28]

Even though the 'neoliberals' in political practice often attempted to preserve the traditional family (Jackson, 2019), the western sexual sphere has been the subject of far-reaching liberalisation of laws and norms (Giddens, 1992: ch1). Women are no longer expected to 'save themselves' for a future marriage partner, and while chastity norms still exist, they are not as harshly enforced. Following civil rights movements and feminist and queer struggle, the 20th century saw widespread

[28] 'Neoliberalism' is a contested term that tends to be used for many different (unwanted) phenomena (however, see Vallier, 2021). This thesis is not about neoliberalism, and I will not discuss its various meanings at length. I use the term here to somewhat situate the philosophical debates in the context of the real world, to show that what I am discussing in this thesis is widely discussed and felt in the public discourse.

reform and removal of some laws regulating divorce, adultery, and sex between unmarried people and people of different ethnic backgrounds, as well as sex and nesting between people of the same sex. In many parts of the world, people are allowed to choose with whom they nest (Green, 2014b).

On a general level, there has been sexual liberalisation – Illouz & Kaplan (2022: 24-32) argue that 'sexual freedom has become a central principle of modern western society and one of the most striking legacies of the Enlightenment'. Therefore, we may wonder how we should think about choice and responsibility in the sexual sphere. The situation of this sphere is connected to that of other spheres. As sexual citizenship scholarship has shown (Bell & Binnie, 2000; Monro & Richardson, 2014; Richardson, 2018; Vallocchi, 2017), its state depends on, for example, housing and labour markets, technological shifts, and the healthcare sector. To take one example, which I discuss in chapters 2, 3, and 4, the structural changes in the global economy that have, in tandem with measures to pull back state services, brought about great shifts in rural labour markets globally, contributing to a pattern of gendered migration to cities from rural areas where men are offered opportunities for work while women move to cities to find jobs. In his final book, Pierre Bourdieu (2007) describes one such case: returning to his rural hometown of Béarn, he observes how young male farmers stay to look after the land they inherit while their sisters have left to marry urban men, or cannot wait to get going (compare, discussion in Bergström, 2022: 131-133). A contributing factor in making urban areas more attractive for women has been their tendency for weaker social control and less rigid gender norms (Chant, 2011). As Bourdieu (2008: 183) puts it 'being quicker than men to adopt urban models and ideals, [young women] are reluctant to marry a peasant who offers them exactly what they want to escape from (among other things, the authority of the parents-in-law 'who will not let go')'. Countries today see a surplus of men in the countryside experiencing a sense of being left behind. Out of those who stay, many men are alone, lose their self-respect, suffer depression, and even turn to abuse or self-harm (European

parliament, 2019; Zhou & Hesketh, 2017; Autor et al., 2019; Brooks et al., 2022; Chant, 2011; Edlund, 2005; Johansson, 2016; Leibert, 2016; Kaberis & Koutsouris, 2012: 88; Wiest et al., 2013).

Is this a problem of justice? If so, how should we respond to it? Communitarians blame freedom itself; they argue that a benefit of 'traditional' social norms is that they make clear that what happens to the family is the responsibility not only of its members, but of the entire 'community'.[29] And according to the story told about norms, men are responsible for women, and the community is responsible for ensuring they do the right thing.[30] On this ideal, courtship is a collective activity, not something that the relevant individuals carry out themselves. The implication of this communitarian picture, as Frazer (1999: 160) points out, is that women who leave or do not wish to fulfil traditional gender norms are 'destroyers of community' – they are the ones assigned responsibility for realising the communitarian imagination.

On the view I present in the thesis, it would be unacceptable to force women to stay in the countryside despite its lack of opportunities or to distribute urban women among rural men. However, the solution also cannot be to resort to the idea that the sexual sphere, judging from the immense supply of self-help guides for dating and sex, has been influenced by: that individuals' failures are to be explained solely by their bad choices.[31] When we consider how our social environment structures our opportunity sets and influences what we choose – even in the sexual sphere – we realise that it is inappropriate to insist that individuals are solely responsible for how

[29] For feminists critiques of the communitarian appeal to family, tradition, and community, see (Frazer, 1999; Okin, 1989: 41-73).

[30] See, for instance, Khader's (2018: 105) critical discussion of the role of male guardianship in headship complementarianism.

[31] Indeed, the 'ethic of self-responsibility' as sociologist Marie Bergström (2022: 75, see also Bandinelli & Gandini, 2022: 2; Rosa, 2023: 60; Weigel, 2017) calls it, applies in the sexual sphere, where she finds it to prescribe that individuals are proactive: 'instead of passively waiting, women and men are encouraged to take control of their lives, notably by signing up to a dating platform', something I will discuss in chapter 6.

their romantic lives turn out. I will now make a few remarks about the scope of the thesis before discussing some methodological considerations.

Scope

I am not able to provide a complete discussion of sex and reproduction, understood as the generation of new children. Even though the majority of sex is not reproductive, sex and nesting are deeply intertwined with reproduction. Societies' views of reproduction inform and motivate their approaches to sex and nesting. For the sexual bases of self-respect to be realised, individuals should have opportunities to pursue sexual life plans that involve safely carrying and giving birth to children safely. However, for the most part, I have chosen to bracket questions of what we owe children, parents, and co-parents.

In the liberal egalitarian literature on justice and feminism, reproduction is slightly less neglected than sex. As mentioned, Harry Brighouse and Adam Swift (2014) have discussed the kind of relationships we have reason to want with our children and parents. Serena Olsaretti (2021; 2022) discusses what we owe parents and explores the family as a site of reproduction of injustices between families standing in the way of realising justice. Véronique Munoz-Dardé (1999) has shown that we might have Rawlsian reasons to abolish the family. Further, Elizabeth Brake (2015), Harry Brighouse and Adam Swift (2014), Clare Chambers (2017), Munoz-Dardé (1998), and Gina Schouten (2019) have discussed justice between the members of the family. Chiara Cordelli (2015a; 2015b) has discussed friendships and other relationships as resources. I am indebted to these theorists, but perhaps owe most to Susan Moller Okin's (1979; 1987; 1989; 1990; 2004) work on gender and justice. As we will see, the idea of exploring Scanlon's moral contractualism to tackle interpersonal as well as political challenges in the sexual sphere is inspired by her methodological recruitment of mainstream theorists for feminist aims.

The theory I develop in this thesis has the resources to tackle questions at the intersection of the sexual sphere and other domains, but it does not answer all of them. Feminist liberals have interrogated the boundary between the sexual sphere and the labour market through their examinations of sex work, pornography, and gestational labour.[32] Whereas my ideas build on insights about sex and justice developed in liberal feminist and other feminist literature, especially in chapters 1 and 2, where I explore the claim to non-interference, I will not be able to discuss these issues directly, except for some brief comments in section 2.5 and in the concluding chapter of the thesis.

In sum, liberal political philosophers have written about justice in the heterosexual couple, between forms of relationships, in the family, and between families. They have written about justice and sexual markets, as in wage labour markets involving the sexual and reproductive organs. However, the sexual 'market' as the place where people find potential partners for non-monetary sexual relationships remains under-explored in liberal egalitarianism.[33] My thesis, being about what we owe to others in relation to this realm, hopefully fills this gap in the literature.

Methodology

The ambitious aim of this thesis is to start a new subfield of liberal egalitarian political philosophy, concerned with how best to interpret liberal egalitarian justice in the context of the sexual sphere. Even though the thesis title is 'Just Sex', sex is often about more than just or merely sex. Noting that sex also rarely is just, in the other sense of the word, I ask what it would mean to put sex

[32] See, for instance, (Anderson, 1993; Satz, 1995; Phillips, 2011; Nussbaum, 1999; Mintz, 2014; 2022). So, of course, have other feminists such as, for instance, (Carter, 2000; Mac & Smith, 2018; Lewis, 2019; Willis, 2012: 3-14).
[33] Although, see Bedi (2019: 124–125), who briefly suggests the possibility of seeing opportunities for intimacy as part of the Rawslian primary goods, and O'Shea (2020), who discusses the uneven distribution of sexual desire in a Youngian structural injustice framework.

under the demands of liberal egalitarian justice. The thesis provides one possible answer to this question. In this sense, the title references just emissions theory (Caney, 2012), just war theory (Lazar, 2017), and other subfields exploring how specific spheres of human activity can be just.

Apart from this ambition for the future field of 'just sex theory', there are three relevant philosophical fields worth mentioning when situating the project in the literature. Firstly, the liberal egalitarian literature about justice outside the 'basic structure'. Secondly, the literature on feminism in social theory, political theory, and moral philosophy. Thirdly, the political-philosophical part of the literature on what tends to be called the philosophy of sex and love.

Additionally, my project draws on literatures found outside philosophy, in sociology, sexology, and social psychology. These disciplines have come further than political theory in terms of identifying philosophically and politically pressing queries about the relationship between sex and the social and political conditions of societies, and between sex and individuals' sense of themselves. In chapter 5, where I use empirical research to explore the claim to choice improvement in the context of PrEP rollout in HIV prevention policy in the presence of gender norms, I will also use work in epidemiology, sociology, and on social norms in philosophy of social science. The project thus contributes to the literature within analytic liberal theory that explores how social norms operate and can be used to further moral or political ideals.[34] In chapter 6, where I present a case study on dating apps and the digital sexual sphere, I will draw on computer science and science and technology studies, and intervene in the literature on digital ethics as well as the younger literature on the political theory of digital technology. In chapters 5 and 6, thus, I am also contributing to the growing methodological literature on how to incorporate empirical research into philosophy and political theory (Wolff, 2018).

[34] See, for instance, (Anderson, 2000; Billingham & Parr, 2020a; 2020b; Chambers, 2008; Cohen, 1997; Mason, 2000; 2021; McTernan, 2014).

Bringing the philosophical tools of normative theorising to the scene set by these interdisciplinary literatures allows me to go beyond investigation into, or social critique of, particular cases or societal trends (compare, Khader, 2018: 13). It makes possible analytical precision and a generalisation about what the sexual sphere should and should not be, and what claims, interests and obligations people have on society concerning sex, normatively speaking. Specifically, I draw on empirical research of phenomena in the real world, which I idealise into examples to develop my arguments. I arrive at my arguments by reflective equilibrium: going back and forth between the theory and observations in the real world, adjusting the theory to make it more accurate and useful (Shelby, 2013: 151; see also Rawls, 1999: 18-19, 42-5, 507-8). This choice is informed by the considerations that motivate the thesis as a project: a commitment to making moral theory more attentive to what people experience in their real lives. Methodologically, my thesis thus shares features with Serene Khader's (2011; 2018) work on transnational feminism and Tommie Shelby's (2007) work on the 'dark ghetto'.

Informed by Rawls's (1999: 25) observation that 'the correct regulative principle for anything depends on the nature of that thing', I provide in chapter 1 an interpretative characterisation of what the sexual sphere is like, based on empirical research. In one thin sense, I am influenced by the methodology of the so-called practice-dependent theorists who, when constructing principles and evaluating their fitness to govern a particular practice, start from the aim or purpose of that practice.[35]

For instance, Aaron James (2014: 114) presents Scanlon's theory as a tool for constructing principles for 'activities of specified kinds. Our answer to the question of reasonable rejectability for a given kind of activity – that is, substantial regulative principles for that form of conduct –

[35] See (James, 2014: 179; Blomfield 2019: 24; Gosseries, 2005: 283; Meyer & Roser, 2006: 239; Sangiovanni, 2008: 138). These thinkers are sometimes also referred to as isolationists (Caney, 2018: 678).

can be justified … without reference to principles applicable in other areas of human life.' Therefore, in the case of global trade, James (2012: 105) believes that 'a moral principle does not apply in the global economy unless it is justified under an "independent conception" of what its organising institutions are like'. The practice that the principle governs is what explains its existence and application; if the practice were different, then the principle would be different, too.

However, while I start from an interpretation of what the sexual sphere is like, I do not zoom in on the various practices within this sphere to construct principles for each of them. In other words, I do not construct principles for the practices of 'casual' sex, arranged marriage, specific forms of polyamorous relationships, or even nesting. If I had to identify one as such, the relevant practice would have to be the whole of the sexual sphere. The sexual sphere is a very wide practice and given the pluralism I have identified in this sphere, this delineation seems implausible.

Instead, thus, it makes sense to see my theory as an extension of liberal egalitarian theory into the sexual sphere; the theory is neither independent from commitments regarding other societal spheres nor applicable without considering the frameworks of justice and values embedded in them. For the most part, the principles I present are connected to and drawn from the background of basic principles of justice already widely accepted in the liberal egalitarian universe. Claims in the sexual sphere will be understood to co-exist and integrate with claims and principles in other domains of society.

As Simon Caney (2012: 272-283; see also, Leichenko & O'Brien, 2008: 10) has pointed out in relation to the international arena, practices in different 'spheres' interact, and their effects are sometimes hard to disentangle. For instance, the effects of climate change interact with already existing burdens and distributions produced by practices in trade, foreign aid, and the military sector. As we will see in this thesis, international practices have this in common with practices in

spheres such as the sexual sphere, healthcare, digital technology, and the labour market; we should not consider them in isolation from the rest of society. Therefore, one question is how I have chosen to divide the terrain: where does the sexual sphere start and other spheres end?[36]

Potential partners, lovers and spouses are also workers and citizens (Dalla Costa, 1975; Federici, 1975). And as I have mentioned and will discuss in chapters 2, 3, and 4, labour market practices directly and indirectly affect the internal life of families, couples, and nests. How we set up our sexual sphere affects our ideas of things such as work and family. As Nancy Fraser (2014: 68–70) argues in her discussion of boundaries of the capitalist economic order, the exact understanding of this order is not given but 'depends on politics—on the balance of social power and the outcome of social struggle'.[37] I have chosen to define the sexual sphere as the domain of human life and of society, where people typically engage in the kind of relationships and interactions that typically involve sex (Soble, 2008: 49-54). In other words, I start from people's experiences of what they perceive as sex and sexual issues in the real world.

While the claims and goods in the sexual sphere are distinct from other claims and goods, the solutions to the problems of the sexual sphere will often be similar to solutions to problems in other spheres. This is the case in all three major policy cases I present in this thesis: gender-selective migration to cities (chapters 2, 3, and 4), HIV prevention in the presence of gender norms (chapter 5) and dating app technology (chapter 6). In all these cases, people are facing problems in different spheres that relate to each other. In the rural labour market case mentioned above, we can identify a 'bouquet' of claims: from people who stay and from people who leave who would have wanted to stay. In a case such as this, we can identify, for example, migration-related injustices, labour

[36] We face the so-called practice delineation problem, which Walton (2020: 68) discusses concerning trade but which can be applied here as well: How do we know where to draw the line between different practices?
[37] 'Far from being given, capitalism's institutional divisions often become foci of conflict, as actors mobilize to challenge or defend the established boundaries separating economy from polity, production from reproduction, human from non-human nature' (Fraser, 2014: 68).

market injustices, injustices relating to insufficient services, and – I argue – injustices relating to insufficient opportunities concerning intimate relationships.

In the countryside case, this sexual sphere-related problem is likely neither the most serious one nor the only or best explanation of what is going wrong. However, it is a problem that is often neglected yet deserves emphasis. In this sense, my theory takes seriously the integrationist argument, developed in the international setting, that claims, responsibilities, and distributions of goods in one area should be understood to be sensitive to broader concerns about justice (Caney, 2012: 259; 2018; 2020: section 1; Walton, 2020: 54).[38] Notably, I am highlighting something that liberal egalitarianism often has omitted: agents are articulating distinct obstacles to having their specifically sexual sphere-based claims realised. One aim of this thesis is to underscore that there is immense value in untangling these claims with the help of the contractualist framework to see that the interests we have in the sexual sphere are important in themselves. However, in policy formulation, these claims must be understood in their context of being integrated and analysed with phenomena originating in spheres other than the sexual one. In this sense, the approach is an integrationist one.

Due to the project's interdisciplinary nature, I will look more closely at details about the real world than what is customary in analytical liberal political and moral philosophy, where the focus is often on bringing out what is at stake using 'clean' arguments. Compared to work in social theory, however, I will have to spend more time on the systematic formalisation of what might appear to feminists as more straightforward truths about instances of gender oppression (compare, Khader, 2018: ch1). Further, more or less implicit in some sociology, feminism, and social theory is an aversion to liberalism and contractualism, and especially instances where values, concepts or

[38] See discussion in (McLaughlin, 2022).

metaphors of liberalism are perceived to have found their way into non-economic or non-political spheres, such as that of sex and nesting (see, for instance, Angel, 2021: 29-32; Pateman, 1979: 193; 1988: 14-15; Illouz, 2019: 179-180; Vallocchi, 2017).

There is a tension involved in recruiting contractualism to tackle problems articulated by theorists and researchers who tend to see what they call 'contractualism' as a co-creation of those very problems. For this reason, I have devoted parts of the thesis to conceptual correction and clarification. What is social standing, and how should we understand sex to figure therein (chapters 2 and 3)? What is a genuinely 'valuable choice', and what should we incorporate in the idea of a 'generic reason' (chapters 4 and 5)? While, as I have already noted, there are problems involved in using an unrefined contractualism in the sexual sphere, I am unable to fully 'push back' to straighten out the misunderstandings and criticisms against what these literatures refer to as 'contractualism'. I briefly discuss one such critique in section 4.4. However, for the most part, I start from the assumption that the 'contractualism' portrayed in critical social theory is not the one I engage with in the thesis. By adopting this approach, I may have little hope of convincing those who doubt that contractualism as a springboard is suitable for my stated aims. Yet I am afraid that for the scope and purposes of this thesis, readers will have to accept this weak form of dogmatism (Wolff, 2018: 14).

The thesis makes recommendations for the real world that are both what I in chapter 5 call 'social norms-transformative' and what I call 'social norms-sensitive'. These two strategies roughly correspond to Okin's (1989: 183) two basic models of family rights and responsibilities. Transformative recommendations aim at changing social norms that are not in line with what we owe to each other in the sense of our higher moral ideals of, for instance, freedom and equality. The social norms-sensitive ones aim to provide individuals living under such norms with valuable opportunities given said norms, protecting them from risks in the meantime. My approach thus

draws on Khader's (2011; 2019) and Okin's (1989: 170-186) strategies of setting out ways to combat oppression and injustices while mitigating transition costs for vulnerable individuals.

Throughout the thesis, I will engage in moderate epistemic critique (Srinivasan, 2017: 595). By this, I mean that I talk about how to construct contractualism as a normative moral theory. Contractualism's scope, principles, and rejection method are at the level of ideal theorising (Stemplowska, 2008). This means that I am not merely saying that, in the real world, we need to apply contractualism with attention to, for instance, social norms (although this is true, too). Moreover, when I argue that contractualists must consider claims to equal standing and choice improvement in the sexual sphere, I am not merely saying that we can simply apply contractualism in a new area – the sexual sphere. More radically, I argue that the view needs to change concerning the boundaries between what we owe to each other and other parts of morality. This is because social norms and sexuality are features not merely of our particular circumstances.[39]

Let me finish with something about what this project is not. I am not providing an original account of the metaphysical, moral, or social interpretation of social norms, on the one hand, or of sexuality, on the other. Instead, I will rely on recent work in relevant literature to paint a broader picture of these phenomena that fits the purposes of the thesis. This means that my arguments do not need a precise account of their exact nature. My arguments, in other words, are not vulnerable to objections against particular notions of these phenomena. To provide some orientation of the arguments I make in the thesis, I next provide an outline of its chapters.

[39] This is not to say that the recommendations would be the same wherever the theory was applied, but rather that bracketing questions relating to social norms and the sexual sphere as being outside of 'what we owe to each other' is a mistake.

Outline of thesis chapters

In chapter 1, I present contractualism and the sexual sphere. I argue that the sexual sphere is characterised by at least four main features: people's interests in vulnerability, pluralism in sexual life plans and conceptions of the good, the significant value of choices, and inequalities in exposure to harm, desirability, and what we desire. I argue that a theory of justice for this sphere must consider these features. The chapter identifies contractualism as a theory that aims to handle the four features when they appear in other realms of society. I then highlight that traditionally, liberals have treated the sexual sphere differently. On the liberal approach to the sexual sphere, people have a claim to non-interference in the sexual sphere. On this approach, which I call the Principle of Mere Non-Interference, justice is realised in the sexual sphere if people are not wrongfully interfered with. While I endorse the claim to non-interference as a necessary part of any theory of social justice for the sexual sphere, I note that there is an asymmetry between this approach and the theories of social justice that liberals and contractualists apply in other spheres of society. I conclude by suggesting that the non-interference approach is insufficient and that we have claims in the sexual sphere that go beyond it.

Chapter 2 continues my exploration of the liberal approach to the sexual sphere. I present four arguments against the Principle of Mere Non-Interference from within liberal contractualism. The first argument notes that the basic structure, as traditionally understood, impacts our opportunities in the sexual sphere. I argue that it is arbitrary that the basic structure need not be justified with regard to those effects. Next, I point out that the gender norms that control sexuality and sexual attractiveness in the sexual sphere also affect people's opportunities in, for instance, the labour market. On the second argument, traditionally included spheres in the basic structure are unlikely to become just unless the sexual sphere becomes just, too. The third argument highlights an incoherence in the divide between private and public that the principle of mere non-interference rests on. The fourth points out that liberal contractualists see a deep connection between justice

and people's opportunities to develop self-respect – and that what happens in the sexual sphere is crucial for self-respect. To ensure that people can develop self-respect, liberal egalitarian contractualism must take seriously the sexual sphere. I conclude this chapter by starting to sketch my positive view. On this view, we have the claims to non-interference that liberals have defended. In addition, however, we also have claims in the sexual sphere relating to equal standing and choice improvement. I argue that justice requires that features of formal and informal institutions are such that people are provided with the sexual bases of self-respect. The realisation of the sexual bases of self-respect entails that people are not interfered with, but also – importantly – that people have opportunities to develop what I conceptualise as sexual standing and opportunities to follow what I conceptualise as sexual life plans.

In chapter 3, I explore our second claim in the sexual sphere, the claim to equal standing. I argue that in the sexual sphere, this claim is explicated through a sufficientarian principle of distribution of opportunities to develop sexual standing: opportunities to become someone some relevant others consider as a potential partner for a sexual relationship in a non-demeaning way. I introduce the concept of sexual standing and explain its defining parts. I contrast this concept to the sexual capital concept used in sociological theories of sexual attraction and sexual fields. I present my sufficientarian principle on which we owe each other valuable opportunities to develop sexual standing in an adequate range of social settings.

In chapter 4, I explore the third kind of claim we have in the sexual sphere, the claim to choice improvement. In the sexual sphere, this claim is explicated by a sufficientarian principle on which we owe each other valuable opportunities to follow sexual life plans. I explain the novel concept of a sexual life plan: a plan for some duration of a person's life involving reciprocal and non-degrading sexual relationships. I argue that we have interests in a wider social environment where there are opportunities to follow such plans and taking advantage of them is not unreasonably

costly. I introduce Scanlon's Value of Choice view and explore how to expand it into the sexual sphere. I show that doing so requires an enlargement of the pool of reasons that count as generic.

Chapter 5 functions as a continued refinement of Scanlon's Value of Choice view and an engagement of my theory with an empirical case from the real world. I continue exploring the claim of choice improvement in the sexual sphere, now turning to the implication that having had one's choice situation improved can make it the case that one has no more claims on other people or the state. I look at empirical research relating to PrEP rollout in HIV prevention policy, a case in which harmful gender norms have been found to impair the situation of young women choosing to follow their sexual life plan. Drawing on this case, I refine Scanlon's Value of Choice view and introduce a social norms-sensitive contractualist theory of substantive responsibility. This feminist 'Value of Constrained Choice view' presents those who choose under harmful norms as having generic reasons to reject principles that provide them with opportunities that norms constrain them from choosing. I also argue that policymakers will not be understood to have done enough in a case like this one unless they study the influence of social norms on choice in the sexual sphere and accommodate it in public policy.[40]

In chapter 6, I provide a case study showing how the demands of the theory I developed in the previous chapters can help us evaluate the contemporary sexual sphere, of which a significant part takes place online. I explore the case of online dating applications, which have recently become the most common way for potential partners to meet. Drawing on computer science, science and technology studies and the political philosophy of digital technology, I consider how these apps exercise power over individuals and argue that they are the kind of institutions that fall under the demands of justice. Since they are such institutions, they should not undermine people's interests

[40] This chapter incorporates findings I have published elsewhere (Kugelberg, 2021; 2022).

in non-interference, equal standing, and choice improvement in the sexual sphere. The aim of this chapter is modest: I highlight how dating apps and the 'digital sexual sphere' contribute to and undermine people's opportunities, but the recommendations I provide are not final. Instead, they are best seen as sketches to be further deliberated among stakeholders and the public. I hope, also, to alert empirical social scientists on dating technology to the sexual bases of self-respect in general and the concepts of sexual standing and sexual life plan in particular. Important questions relating to these concepts could inform new avenues for future research.

Conclusion

We are used to thinking about sex and love as phenomena we are lucky to encounter but which could not be further from politics. This thesis takes seriously what queer and feminist struggles have shown us, that even in this most personal of realms, there are things we owe others, and they owe us in return. It also highlights that certain forms of liberalism are useful for theorising about the politics of sex. Liberal contractualists need to acknowledge that we owe each other more than non-interference in the sexual sphere, and that making access to sexual relationships more likely need not amount to interference. Taking seriously the link between sex, politics, and morality, I develop a theory that explores and justifies individuals' interests in the sexual sphere.

This work starts in chapter 1, where I introduce contractualism and the traditional liberal approach to the sexual sphere: the principle of mere non-interference. This sets the scene for the rejection of this principle and subsequent presentation of my positive view, on which we have claims on others not only to non-interference but also to equal standing and choice improvement.

CHAPTER 1:
Sex and contractualism: the claim to non-interference

The practices of the sexual sphere have immense power over people's lives. The norms embedded in these practices determine whether individuals can care for others and be cared for themselves. Together, these norms and practices, in part, determine whether people's fundamental rights and freedoms can be realised. The sexual sphere warrants serious and careful attention. Despite this, liberal contractualists have not sufficiently theorised phenomena such as dating, courtship, nesting, and sex. But they have not been entirely silent. In this chapter, I will explore what contractualists have said about justice and the sexual sphere.

To understand what it would mean for the sexual sphere to be just, we must first get a sense of what this realm is like. What characterises it? What interests do people have in this domain? What do they have reason to want? At least four major factors affect people's lives within the sexual sphere. As I elaborate further in section 1, these characteristics correspond to a set of interests that people have in this part of the social world.[1] First, in the sexual sphere, we have an interest in being vulnerable and exposing this vulnerability to chosen others. Second, there is a pluralism in views about how to live and act. Third, we can recognise that there is a significant value in being able to make choices. Finally, there are vast inequalities between individuals and groups.

Contractualism is dominant in contemporary writing about justice, and it is a framework that has the tools to handle the four characteristics present in the sexual sphere. However, contractualists

[1] My characterisation starts from contemporary, real-world sexual spheres. In chapter 6, I consider a fifth characteristic that make the contemporary sexual sphere special compared to previous ones: people now initiate a significant part of interactions and relationships digitally, in a space designated explicitly to dating that is separate from the rest of society.

have not used these tools to find principles for social justice in the sexual sphere specifically. In this thesis, I explore how they could be refined to regulate the sexual sphere.

One problem we must face head-on is that liberal contractualists have explicitly argued against applying their complete set of ideas of social justice to the sexual sphere. To be clear, liberals have not ignored this realm of society. However, they have previously argued that in the sexual sphere, we owe each other to honour our claims to non-interference through what I call the Principle of Non-Interference (PNI). According to the

> PNI: no one should be wrongfully coerced, harmed, or not tolerated by the state or other people.

This principle overlaps with John Stuart Mill's (1940) harm principle but is not reducible to it. Using this principle, liberal theorists have discussed consent in sexual relationships. They have seen non-consensual sex as a clear example of wrongful interference that the PNI covers, and they have spent considerable energy trying to work out what conditions need to be satisfied for consent to be freely given (Bentham, 1978; 1989; Chambers, 2008; Nagel, 1969; see also discussion in Pateman, 1988). Liberals have discussed prohibitions of sex work and pornography, which too can be understood as a potential infringement of the PNI.[2]

In this thesis, my main aim is not to take issue with these debates: I grant that we have claims to non-interference in the sexual sphere and that liberals have made significant contributions to making us see this. I agree with liberals and feminists that we have a claim to be able to consent to all sexual interactions we have with others and to have our sexual choices tolerated. In many cases, this means that how and with whom people have sex is no one else's business. However, the claim

[2] See, for instance, (Satz, 1995; 2010; Phillips, 2011; Nussbaum, 1999).

not to be wrongfully interfered with, as covered by the PNI, is not our only sexual-sphere-based claim against others. The PNI is not sufficient as the only principle in a plausible theory of social justice for the sexual sphere. The thesis will show that in addition to the non-interference claim, we have claims to equal standing (chapter 3) and choice improvement (chapters 4 and 5). In this chapter, I present the sexual sphere, the PNI, and its role in liberal contractualism. This presentation sets the scene for the next chapter (chapter 2), where I put forward four arguments from within liberal contractualism for why a *mere* non-interference approach to the sexual sphere is insufficient.

1.1 The sexual sphere

The sexual sphere is characterised by at least four features: vulnerability, pluralism, significant value of choice, and inequalities.

Vulnerability

We have strong reasons to want to be vulnerable in the sexual sphere. Our interest in vulnerability sets this realm apart from those societal areas and practices in which we typically are not *intimate* with others. When we are intimate, we let 'another within the boundaries we normally maintain around ourselves, boundaries marked by clothing and by full self-control and monitoring', as Robert Nozick (1989: 60) puts it. Vulnerability, therefore, is both a goal in itself and an inevitable result of intimacy. Indeed, vulnerability is bound up with intimacy. Most, if not all, forms of intimacy come with vulnerability in one way or another. Jasmine Gunkel (forthcoming) argues that certain

> zones of a person are intimate. Intimate acts are those that expose intimate zones. Intimate relationships are relationships in which intimate zones are exposed.

According to Gunkel (forthcoming), intimate zones are features of a person that make him vulnerable, that we are 'disposed to hide'. She argues that they are often 'important to our conception of our identity'. What counts as an intimate zone will somewhat depend on the social context and the social norms that apply. Typically, some parts of the body or the mind are intimate zones. But they can also include physical things such as contraceptives, letters, or underwear. In the sexual sphere, people typically expose intimate zones to others. In relationships typically involving sex, people show each other parts of their body they do not show everyone and do things with it that they typically do not do in front of everyone. In addition, people sometimes show each other their sexual preferences and innermost fears and hopes. These things are generally hidden. Inviting people into intimate zones makes us vulnerable.

People are especially vulnerable to violence in committed relationships (UNODC, 2018). But they are vulnerable in the context of casual sex, too. In casual sex, individuals expose intimate zones to sexual partners they do not necessarily know well. Because people sometimes have sex with people they do not know (James-Kangal et al., 2018), our interest in being vulnerable in the sexual sphere does not correspond perfectly to our interests in other spheres. To see this, consider a comparison with friendship. Friendships are particular and personal. While friends must follow general moral rules, they largely make their own worlds of meaning and expectations as they go along. This, of course, is true also for many sexual partners. But because many sexual interactions take place between people who do not know each other as well as friends do, or who do not know each other at all, they are often left to rely on the background conditions – the established social norms and expectations that exist in their society or their social group. A theory for the sexual sphere needs to be able to ground policies that enable social norms that protect individuals' vulnerability interests.

Pluralism

Consider next the wide variety of conceptions of the good sexual life in the sexual sphere. Concerning sex, intimacy, and nesting, people are looking for different things. In the US, 57 per cent of single people say they are *not* looking for a relationship (Pew Research Center, 2023a). Not all American adults who say they are 'single and looking' are looking for the same kind of relationship: According to Pew Research Center (2023a), 31 per cent are only looking for a committed relationship, 17 per cent are looking for casual dates only, and 51 per cent are open to either a committed relationship or casual dates. Young people and men are keener to date than women and older people. Men say they are more interested in casual dates, whereas women are more likely to say that they are looking only for a committed relationship (Pew Research Center, 2023a).

In other words, people have different sexual life plans. What counts as a sexual life plan? I refer to a sexual life plan as a plan for some time in one's life regarding the sexual sphere concerning a reciprocal and non-degrading relationship. Examples of sexual life plans include plans to have one or a few marriages or civil partnership style long-term relationships with one or several individuals, plans to have a series of casual relationships that are purely sexual, plans that centre polyamorous relationships, plans not to be sexual at all, and so on. People are likely to change their minds about their sexual life plans during their lives. Sometimes, an individual will have a clear picture of their plan from a young age. Sometimes, they will carry out their plan without having consciously deliberated about it. And in some cases, it does not make sense to talk about a person's life as following a 'plan' at all. I say more about this in chapter 4 when I discuss the claim to choice improvement. For now, it suffices to note that we can acknowledge that not everyone knows what

they want all the time and still see the point that people want different things in the sexual sphere.[3] Perhaps more than in other spheres, the sexual and intimate parts of one's life are important determinants of one's identity (Gunkel, forthcoming).

In our social and historical circumstances, sexual choices and desires tend to inform our view of who we are. They typically also affect our relationship with the world. Partly, this is because although there is pluralism in sexual lifestyles, they are not all equally socially valued – it is not the case that everyone can live according to their conception of the good on the same terms. As we will see, respect for the existing plurality of choices and desires is unequal: some choices are expected and encouraged; others are policed with threats and sanctions. People have strong reasons to value being able to make decisions about their sexual relationships and sexual life plans, which I consider next.

Significant value of choice

When we consider that people subscribe to a plurality of different conceptions of the good, we can see that people are likely to make or want to make different choices in the sexual sphere. The value of choice is significant in this sphere. Indeed, there are few areas in a person's life where it is more fundamental to make choices for ourselves. Most would see that it is more valuable to make choices about what happens to one's body and one's spare time than it is even to make choices about how one spends one's workdays or one's income. In the sexual sphere, it seems particularly true that, as John Stuart Mill (1940: 83) puts it, a person's 'own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode'. This is something that I will discuss in more detail in the next chapter. For now, it suffices to say that I

[3] As we will see in chapter 6, many turn to dating apps to find potential partners. According to Pew Research Center (2023b: 20) '45% of adults who are 'single and looking' have used a dating platform in [the] past year.' Yet, these are not for everyone.

will start from the assumption that decisions about intimate relationships are generally best left to the people in these relationships. Because of the pluralism in the sexual sphere, one way of life is unlikely to suit everyone. Therefore, individuals will more likely fulfil their desires and get what they want if they can make these choices themselves rather than have them enforced on them by the state, their family, or their religious leaders. While some people might be lucky that what the state says they should do, they want to do anyway, this is far from always the case in pluralistic societies like ours.

At the very least, people should be able to reject potential partners they do not want to have sex or nest with. While there can be immense meaning in relationships arranged by others, this observation does not contradict the point that there is value in being able to choose to reject a partner one is presented with but does not feel attracted to. There is also value in being able to reject relationship *forms* or life plans that do not suit one's interests or preferences. This is the case even if wrongful social norms or hierarchies formed the preferences in question and even if we would be better off had we had other preferences (Bartky, 1990). And we have reason to want to be able to make choices about the result of sex – the value of choice is high regarding contraception, pregnancy, and abortion, as well as concerning protection from and treatment of sexually transmitted diseases.

Inequalities

There are at least three major forms of inequality in the sexual sphere. First, there are inequalities in power and exposure to risk and harm.[4] The sexual norms of the dominant group in a society tend to 'shape the sexual conduct and self-understandings of other groups, whether or not they also stand to benefit from such norms and whether or not they can achieve them' (Chitty, 2020:

[4] The following passage provides some examples of such inequalities, but I do not suggest it as a full list.

25). Therefore, people have vastly different opportunities to live their lives. Some face only a few problems in relation to their life in the sexual sphere. Some are oppressed, live under threat, and have their choices circumscribed. Some must put a significant amount of time and energy into showing others that they should get to live their lives as they want. There is a social hierarchy according to which certain relationships are understood to be better and more 'normal' than others and where particular sexually related identities and orientations are better than others (Green, 2013; see also Federici, 2004; Richardson, 2018; Smietana et al., 2018). Generally, monogamous, heterosexual relationships between a cis woman and a cis man are privileged and encouraged, while gay, queer, and polyamorous relationships are discouraged.[5] Studies suggest that the monogamous long-term relationship's promotion as the most important one, getting special protections, and being assumed as the core unit of social interaction leads to the stigmatisation of single people.[6]

Violent threats, protests, and planned bans against drag events are rampant (Goodman & Graham, 2022). Legal protections for gay couples that were introduced only recently and only in some parts of the world are already being challenged. The same is true for healthcare and fundamental rights for trans people, who are also facing increased violence and threats (NCAVP, 2018). In Europe and Central Asia, 2022 was the most violent year in more than a decade (Ilga-Europe, 2023a), with Ilga-Europe (2023b) reporting that 'attacks on LGBTI people with a conscious and deliberate will to kill and injure have increased to unprecedented levels, including two terror attacks outside LGBTQ bars'. In this context, it is important to remember that 'hate crimes punish individuals, but such crimes make an example of a visible homosexuality in order to drive the rest back into the closet' (Hill Collins, 1990: 131). Research on US election spending in 2022 revealed that

[5] Another way of putting this is that our institutions are heterosexist, defined by Patricia Hill Collins (1990: 128) as the 'belief in the inherent superiority of one form of sexual expression over another and thereby the right to dominate' See also TallBear (2018: 151) on how the idea of the monogamous nuclear family was forced by settlers on Indigenous people in the US and Canada, suppressing traditional non-monogamous systems of kinship and love.
[6] For instance, studies show that housing markets discriminate against single people (DePaulo & Morris, 2005; Morris et al., 2007; Fisher & Sakaluk, 2019; Budgeon, 2008).

'extremist candidates and the anti-LGBTQ organizations supporting them are seizing on an anti-trans messaging strategy… funnelling tens of millions of dollars into political ads and mail attacking transgender youth and spreading misinformation' (Human Rights Campaign, 2022). Europe has witnessed an increased amount of hate speech among political and social leaders, 'as antipathy for LGBTQ people has been driven and then exploited for political gain' (Ilga Europe, 2023b). Globally, women, trans and non-binary people are more likely to face sexual violence and physical violence from sexual partners than men (James et al., 2016). In some parts of the world, trans women are also at particular risk of HIV infection and face barriers to protection (Stutterheim et al., 2021).

We are also at particular risk at certain ages, such as when we are young or very old. The risk of unwanted pregnancy, and the risk involved even in a wanted one, put people with uteri in reproductive age in an especially vulnerable position when having sex with cis men. Further, women with autism spectrum disorders are at high risk for unwanted sexual contact (Brown et al., 2017), sexual abuse and victimisation (Sevlever et al., 2013). These are a few examples of inequalities in exposure to risk and harm in the sexual sphere. Any account of justice in the sexual sphere must start from an understanding that we do not have intimate relationships and sex on the same terms.

Second, there are inequalities in desirability. Some people are considered more attractive as potential partners than others. Beauty standards vary from society to society, which tells us that physical attractiveness is socially constructed, at least to some extent. For instance, we know from historical accounts that the body shapes people consider attractive today have not always been desirable. And there are beauty norms that correspond with contemporary racist ideas about

certain groups being superior to others,[7] something that presupposes the particular forms of racism that exist in our societies.

Certain features may be such that humans are prone to find them aesthetically pleasing or displeasing regardless of social context.[8] Regardless of the basis of these features' desirability or undesirability, it is often difficult to change our and others' ideas about attractiveness. In other words, a feature's being socially constructed as ugly or beautiful, rather than having a basis in biology, does not necessarily make it easier to change. Attractiveness also has different effects in different societies and different effects on different members. In many societies, for instance, women are expected to work harder on their appearances than men (Chambers, 2008). Attractive individuals will receive different benefits and burdens depending on society's structures and existing societal norms (Green, 2013; Hamermesh, 2011; Kaplan & Illouz, 2022; Wong & Penner, 2016). A theory of justice in the sexual sphere should have the tools to tell us which inequalities in attractiveness are objectionable and under what circumstances inequalities in attractiveness are less worrisome.

Third, there are inequalities in what we desire. This kind of inequality means that it is easier for some people to meet their desires than for others. Some people desire things that are widely available in their social context, and others desire things that are harder to come by (Williams, 2002). To take an atypical example, if Amy desires anyone who wears a backpack, it will be easy for her to try to get what she desires – at least compared to Beth, who desires only astronauts. Because in most contexts, there are more people with backpacks than astronauts, Amy and Beth *ceteris paribus* do not have the same access to what they desire. More realistically, imagine that Dasha and Elinor desire to have an intimate relationship with each other but that there is a social stigma

[7] See, for instance, (Robinson & Frost, 2018; Li & Chen, 2021).
[8] Some argue that symmetric features and the appearance of health are examples of such features. See, for instance (Little et al., 2011).

against lesbian couples where they live. This stigma hinders them from being together. It is easy to see that it is harder for them to access what they desire than it is for Felice and Gianni, who desire to be in a non-stigmatised heterosexual relationship. Finally, suppose that Carol's disability means she can only enter buildings accessible to her wheelchair. Even if Carol has the same desire as Amy, it is harder for her to satisfy it in a society that does not make meeting places accessible. What kind of claims can we make with regard to our desires? What status do these claims have? These are questions to which a theory of justice for the sexual sphere must have answers.

In sum, a theory for the sexual sphere needs to give us the correct answers to questions relating to vulnerability, pluralism, choice, and inequalities.[9] One tradition that has developed systematic frameworks for thinking about vulnerabilities, pluralism, choice, and inequality is liberal egalitarianism. Liberal egalitarian contractualism, in particular, has, in other areas, proved to be a fruitful tool for finding justifiable principles of social justice for specific practices of society (James, 2013: 50-51; 2014).

1.2 Liberal contractualism

Famously, liberal contractualists John Rawls and T. M. Scanlon start from the assumption that institutions that exercise power over people must be justified to them. Inequalities 'necessary, or else highly advantageous, in maintaining effective social cooperation' need to be justified to the worst off (Rawls, 1977: 160, 163). This seems like a promising place to begin looking for principles to guide the governance of the sexual sphere. I start by examining Rawls's view before turning to Scanlon's.

[9] I am not suggesting that this is an exhaustive description of the sexual sphere, but instead the point is to highlight some important features. I am open to there being other essential characteristics.

According to Rawls (1977: 159), the basic structure is 'the way in which the major social institutions fit together in one system, and how they assign rights and duties and shape the division of advantages that arises through social cooperation'. The basic structure determines people's life chances and their relationships with each other. In Rawls's work, the basic structure is the subject of social justice – what must be justified to people for society to be just. It is because the basic structure has this immense power over people's lives that liberals like Rawls seek to find terms under which the institutions it incorporates could justify themselves to people. The institutions traditionally understood to make up the basic structure include, for instance, the legal system, the labour market, political institutions, and the political economy. Rawls (1977: 160) argues that 'the role of the basic structure is to secure just background conditions against which the actions of individuals and associations take place'. They do this if they satisfy the two principles of justice.[10]

The principles of justice are not satisfied in a society where persons of certain social groups are generally seen by employers as unfit for certain jobs. The labour market, which is part of the basic structure, cannot be justified to people it treats as inferior because of their social group membership.[11] Most liberals would agree that labour market discrimination constitutes an injustice. Rawls (1977: 160) argues that 'the form of society affects its members and determines in large part the kind of persons they want to be as well as the kind of persons they are'. The form of society will also affect what the members think is possible in relationships with others. They will 'view themselves' according to their given place in society because, as Rawls (1977: 160) puts it,

> an economic regime is not only an institutional scheme for satisfying existing desires and aspirations but a way of fashioning desires and aspirations in the future.

[10] The two principles are '(i) Each person has an equal right to the most extensive scheme of basic liberties compatible with a similar scheme of liberties for all. (ii) Social and economic inequalities are permissible given they are (a) to the greatest expected benefit of the least advantaged and (b) attached to positions and offices open to all under conditions of fair equality of opportunity' (Rawls, 1977: 160-168; see also 1999: 266-7).
[11] Specifically, it would violate the principle of fair equality of opportunity.

As we will see, this is true also in the sexual sphere – economic regimes also fashion sexual desires. As liberals have known since Adam Smith and Mary Wollstonecraft, how we structure our economic institutions impacts our sexual relationships and desires (Slegers, 2021). Therefore, I will examine what it would mean to see established practices in this sphere as social institutions that must be justified much in the same way as the practices in, for instance, the labour market.

In this thesis, I will draw on the work of both Rawls and Scanlon. I will highlight some differences but will not provide a full account of what unites and differentiates them. While Scanlon would not deny Rawls's point about the economy's effect on people's desires, his project differs from Rawls's; where Rawls theorises the major political institutions of society, Scanlon (1998: ch1) offers a theory for explaining and justifying morality. Instead of focusing on finding principles for the guidance of a liberal society, Scanlon searches for moral principles for the governance of behaviour towards other persons. He is interested in what it means to wrong a person. At first glance, thus, we might think that Scanlon's theory is more flexible than Rawls's; not tied to looking at the basic structure of a society, it is more versatile and could say more about the spheres outside the basic structure. Since the sexual sphere, to a great extent, is governed not by law and policymaking but by informal rules for behaviour, such as social norms, we need to go beyond the basic structure and examine what moral and social principles need to be in place to make the sexual sphere just. As we will see, however, Scanlon has not given a complete account of social justice or morality in the sexual sphere – and what he says about this thorny issue is not always clear. Rather than building a Scanlonian or Rawlsian account of the sexual sphere, we can use contractualism as a springboard to develop a theory for this task.

Scanlon (1998: 33) argues that policies and moral principles should be such that no one could reasonably reject them. Such rules then act as guidelines for the behaviour of individuals and their political representatives. They demand that people are respected and can respect themselves.

According to Scanlon (1998 86, 106), respecting a person is to treat them as an equal. When we treat someone as an equal, we are not taking her reasons less seriously than anyone else's (Scanlon, 1998: 212). For contractualists the point is that we should find principles for living together in a way that expresses mutual recognition (Scanlon, 1998: 52). Contractualist principles protect the equal standing of persons and allows each of us to be true to our ideas of the good life. We should live in a manner that does not focus narrowly on our self-interest, but that also does not demand that we one-sidedly sacrifice ourselves for the sake of others or unreasonably demand that others make sacrifices concerning their ideas or life plans. We have reason to set up the institutions of our society according to such principles as their absence would be reflective of our standing in a deficient relationship with others (Scanlon, 1998: 163-5).

In thinking about what principles would suit the governance of behaviour in a particular area of society, we have reason to look at the situation of the person who would be worst off under each principle. Because the person who is worst off has the most to complain about, this person likely would have the strongest objection to the principle. If this person could not reasonably reject the principle, it is the best option in the set. The other complaints, being less severe than the one put forth by the worst off, would not be weighty enough to reject the principle.

Contractualism's focus on people's claim to develop their abilities and life plans according to their conception of the good makes it well suited for an account for the sexual sphere, where, as we have seen, there is great pluralism and the value of choice is significant. According to Scanlonian contractualists, actions, policies, and norms can be rejected only with the use of 'generic reasons'. Generic reasons will figure heavily in the thesis as the kind of reasons people generally would have, were they in the standpoint of the person making the complaint. Scanlon (1998: 204) gives the example of our interests in non-interference with our bodies and life plans as grounding generic reasons:

> We commonly take it that people have strong reasons to want to avoid bodily injury, to be able to rely on assurances they are given, and to have control over what happens to their own bodies. We therefore think it reasonable to reject principles that would leave other agents free to act against these important interests.

Scanlon (1998: 204) gives another example of an interest that grounds a generic reason: the interest that we typically have in being able 'to give special attention to our own projects, friends, and family'. Because we have this interest, we have generic reasons to 'object to principles that would constrain us in ways that would make these concerns impossible' (Scanlon, 1998: 204). In other words, we cannot demand that people generally understand everyone else's sexual desires, relationships, or life plans perfectly. What matters is that we can understand the reasons others have for wanting opportunities to pursue these things and the reasons people may have for rejecting specific policies or norms in the sexual sphere. I elaborate on the idea of the generic reason in the following chapters, especially in sections 4.2 and 5.5.

According to contractualists, there is a moral division of responsibility between society and its members: society owes it to the individual members to provide a wider environment where they can make valuable choices and take advantage of genuine opportunities (Scanlon, 1998: ch6). It is then up to individuals to decide whether to exercise these opportunities. In sum, this approach fits the sexual sphere, where, as we have seen, people have strong reasons to value being able to make choices about their lives.

While these frameworks for social justice are rigorous and seemingly hold promise for guiding our pursuit of finding principles for the sexual sphere, we must confront a problem before we proceed. Contractualists, and liberals more generally, have not fully worked out what the implications of their wider frameworks are for the sexual sphere. They have treated this area as a special case, excluded from their full theories of social justice. I turn to this issue next.

1.3 The Principle of Non-Interference

Instead of applying their complete frameworks of social justice, according to which we owe it to each other to bring about an environment where people can make valuable choices and where inequalities can only be justified under certain circumstances, most liberal contractualists believe that our duties in the sexual sphere do not stretch beyond the PNI, on which people should not be wrongfully interfered with, as in not harmed, coerced, or disrespected, or non-tolerated. Because these liberals believe that PNI is sufficient, they hold that justice is realised in the sexual sphere if PNI is realised.

The PNI is based on the observation that we have strong reasons not to want to be intruded on in certain areas of our lives, not least the sexual one, and we have strong reasons to want conventions and norms in place that protect these interests. We can find support for the PNI's application in the sexual sphere in Jeremy Bentham (1978; 1989; 2013), who in 1785 argued for decriminalising sodomy, and John Stuart Mill, whose harm principle laid the ground for much of the liberal thinking about sexuality.[12]

In liberal countries, sexual freedoms have often been articulated as a right to privacy.[13] In her historical account of Rawls and post-war liberalism, Katrina Forrester (2019: 45; Hart, 1963) describes how 'provoked by the 1958 Wolfendon Report on the criminalization of homosexuality in Britain, [liberal philosopher H.L.A.] Hart defended a realm of "private morality" into which the law should not intrude.'[14] Further, a US constitutional right to privacy was recognised for the first

[12] Mill (1940: 121) argues that 'fornication' must be tolerated.
[13] 'A right to be let alone' in Igo (2018).
[14] H.L.A. Hart (1973: 541) criticised Rawls for not explicitly including sexual liberties among the basic liberties in *A Theory of Justice*. As Kevin Mintz (2019: 56-63) points out, in *Political Liberalism*, Rawls (1993: 291) repeats his exclusion of sexual liberties from the basic liberties. Mintz (2019: 63) interprets Rawls and other liberals' silence about sexual liberties as 'maintaining the liberal consensus on sexual liberties that emerged from the writings of Bentham and Mill'. However, Rawls writes in the 1970s and 1980s, when gay and lesbian rights were being contested and fiercely fought for. During this period, politicians rolled back laws prohibiting employment discrimination against people based on sexual orientation. In other words, the PNI was attacked in the United States. Against this historical background, we

time in 1965, when the Supreme Court ruled that a ban on married couples' contraceptive use infringed on a right to marital privacy (Igo, 2018).[15]

Being intolerant, as in taking facts about individuals, such as gender, sexual desire, or race, to ground 'reasons not to associate with them, not to employ them, not to want to live near them, and perhaps even not to allow them to vote or hold office' (Scanlon, 2019: 3-4), is morally wrong according to most liberals. People with such views must give them up if they want to be moral. As we will see in the next chapter, liberals believe a society fostering intolerant attitudes is unjust. Scanlon argues that people 'have good reason to want to behave in public in ways that are consistent with and express' their sexual inclinations through 'such things as … holding hands and other public displays of affection'. Therefore, morality requires that people permit and do not interfere with public conduct even if they personally think what it expresses is wrong. It is also morally required not to interfere, or try to interfere, with people's private lives (Scanlon, 2019: 5).

Scanlon (1975; 1998: 203) rightly argues that we would object to policies and acts that violate privacy norms and interfere with our interests in not being observed, which underlie such norms. There are obvious risks of harm involved in state intervention in our most private spaces. Liberals thus share the PNI with queer theorists and 'sex positive' feminists who, during the 1980s 'sex wars', worried about the policing and moralising over sexual desire they saw 'sex negative' feminists being engaged in when these were cautioning against indulging in patriarchal desires (MacKinnon, 1989b; see also Srinivasan, 2021: 77–84; Willis, 2012: 3-14). For instance, Gayle Rubin (1984: 151)

might expect that liberals would have found it especially important to underline that sexual liberties indeed flow from the basic liberties (of conscience, expression, and so on) that a liberal society must provide. The backlash against LGBT rights, in that case, could have been understood as an attack on liberalism as it showed that basic liberties are not ever something that liberals could take for granted. However, if Rawls saw sexual liberties as part of a liberal canon, he did not put them centre stage. While important and needing more exploration, this issue does not matter for my argument that the PNI is insufficient. Therefore, I put it aside.

[15] What this right entailed remained ambiguous. It is worth noting that the Court had identified the importance of privacy several times before that and as early as 1886. However, not everyone's privacy rights were created equal: while the white middle class was protected from intrusion, privacy was denied to homosexuals, trans people, people with low incomes, and people of colour.

observed in this period an obsessive overemphasis and extensive focus on sex in the public debate, leading society to police the sexual sphere particularly harshly according to what she called the 'fallacy of misplaced scale'. Rubin argued that in times of social upheaval and great changes, there is a tendency for society to shift its disciplining focus to the sexual sphere. She worried that, regardless of whether there are right and wrong ways to behave as an individual sexual agent, focus on individual blameworthiness and responsibility would easily fall into moralistic and conservative discourses.[16]

Therefore, while feminists have long criticised the division between private and public, many do not endorse the use of the state for feminist aims (Srinivasan, 2021: 87). Wendy Brown (1992: 11), for example, worries that the state cannot be recruited in the struggle to overcome 'domination, dependence, discipline' because it is inherent to state power to dominate, make dependent and discipline. Welcoming the state into yet another part of people's lives will, in this view, only make things worse. As we will see, I think there are things that the state should do and that it should refrain from doing, none of which would make things worse.

Liberals, however, believe that interference from the state or other people *can* be warranted in the sexual sphere, under certain circumstances: when individuals are interfered with. If a person harms another, touches her without their consent, or directly hinders her from doing something that in itself is not harmful, the state can step in. Yet, liberals have often shunned the explicit discussion of sex and sexual attraction. Rawls, for instance, does not discuss sex directly.[17] However, he does explore one intimate association: the family, which he among other things treats as an important

[16] For a contemporary example, see (Robinson, 2018).

[17] There is one exception. Referring to Scanlon's work on tolerance, Rawls, at one point in *Political Liberalism* (1993: 458), argues that 'in considering whether to make homosexual relations between citizens criminal offences, the question is not whether those relations are precluded by a worthy idea of full human good as characterized by a sound philosophical and nonreligious view, nor whether those of religious faith regard it as sin, but primarily whether legislative statutes forbidding those relations infringe the civil rights of free and equal democratic citizens.' I discuss Scanlon's version of this argument in the following paragraphs.

space for children to learn to be moral and become democratic citizens (see e.g., Rawls, 1999: ch7, esp. 405-9). The main debate has concerned whether the family is a part of the basic structure and what principles should apply to it. For instance, Susan Moller Okin (1989: 89-109) argued that liberals, in their formulation of principles of justice, must factor in how these principles would affect the situation in the family. In her internal critique of liberalism, she showed that gender equality was constitutive of justice and that the distribution of housework would have to be reformed to achieve it. Whether Rawls and his followers accept this development of his framework is still unclear (Abbey, 2011: 61-82). Crucially, however, Rawls's and Okin's discussions do not cover the issue of what society must be like for people to initiate or form the kind of relationships that might turn into families. Dating, courtship and (consensual) sex remain firmly in the private sphere, as opposed to the public one.

Others have explicitly excluded the sexual sphere as a realm in which their full theories of morality and justice apply. Scanlon's view of what we owe to each other as members of the same society does have tools that would be well suited to handle the sexual sphere based on the characterisation of this sphere above. Yet, he argues that his theory of what we owe to each other does not apply to sex. As we saw above, it is not the case that Scanlon (2019: 4) ignores our reasons for wanting to 'want to lead sexual lives of the kind we are drawn to and choose' – quite the contrary. However, it is the case that, except for the PNI, he is silent about any further claims on others that we might have concerning the interests that underlie reasons. While what I present in this thesis is a theory that builds on contractualist insights rather than an exegetical interpretation of Scanlon's view, trying to untangle the contractualist approach to sex helps us see why PNI is insufficient.

In '*What We Owe to Each Other*, Scanlon (1998: 171-175; 343) is clear that consensual sex – sex that fulfils the demands of the PNI – is outside of what he calls the narrow part of morality. However, he is ambiguous as to why. Thus, there are tensions in the view he puts forth. For Scanlon, the

narrow part of morality is what we owe others by virtue of their being members of the same society as us. These are the duties we have to anyone we interact with. To explain why sex is outside of the narrow part of morality, Scanlon (1998: 171-2) contrasts his view with a particular kind of sexual morality. He argues that, in his view,

> while some actions involving sex are morally wrong—actions such as rape, other forms of coerced sex … —these wrongs can be seen as violations of general moral principles against coercion and the infliction of harm. The idea that there are specific moral prohibitions against certain forms of sexual conduct—against masturbation, for example, or against sexual relations between two men or between two women—has no plausibility whatever when the term 'moral' is understood to refer to "what we owe to each other.". [18]

To explore Scanlon's view of sex and morality, let us assume that a person, Cathy, holds that there is a moral prohibition against sexual relations between two men, such as the one Scanlon describes. While Scanlon thinks we have moral duties to others, these do not include having or not having certain kinds of sex. Scanlon (1998: 352–3) argues that 'some may hold, for example, that sexual relations between adults of the same sex are forbidden by requirements that have the same authority as prohibitions against deception and murder'. Then, 'we disagree not merely about sexual morality but also about the kind of reasons that support even those moral requirements that we both recognise'.

Therefore, Cathy has no standing to demand that people who do not share her conception of sexual morality should not engage in homosexual relationships. Scanlon is saying that masturbation and sex between men or between women are not moral wrongs. They are not moral wrongs because they do not interfere with, coerce, or harm anyone (Scanlon, 1998: 171). Like other liberals, Scanlon thus puts sex in the private sphere. The only way what happens in or in relation to the

[18] The quotation cites 'the irresponsible begetting of children' as one further action involving sex that is morally wrong. The inclusion and phrasing of this issue require their own separate discussion. I put it aside as it is outside of the scope of the main discussion of the thesis.

sexual sphere can have anything to do with general duties is when some general wrong happens in a sexual situation. Interference, harm, and violence are always *prima facie* wrong (Scanlon, 1998: 243). So, while Scanlon (1998: 174-5) recognises that, due to its intimate nature, sex is important and significant and sexual violence especially harmful, it is not the case that there is some sexual value that in itself can ground a general moral claim on others.

How, then, should we understand Cathy's claim? Scanlon (1998: 343) argues that outside the narrow part, 'within this broader realm [of morality, outside of "what we owe to each other"] there are many diverse values that are worthy of respect, and that a plurality of standards of appraisal may arise from this fact'. We can derive some moral requirements in this way: from an ideal that demands *more* from those who hold it than what we can generally ask of each other. These ideals do not apply to everyone and do not have any force against people who do not hold them.

If Cathy derives her view of sexual morality from such a particular ideal of sexuality, then this explains why she thinks there is a moral duty to abide by it. However, she is wrong to think that this duty applies generally, to everyone. It would be wrong to impose her views on others or believe that her sexual ideal grounds a *general* prohibition against homosexual relationships. She must tolerate other people's life choices and not interfere with them, because the reasons homosexual individuals 'have for wanting not to be stigmatized … are stronger than the reasons, whatever they may be, that people have for wanting their way of life to be the norm, rather than merely having a community of like-minded others' (Scanlon, 2019: 14). When discussing the relationship between people who hold different ideals, Scanlon (1998: 346) argues that,

> even if such people should not look down on each other, they are still separated in an important way by their commitments. But this is…a different and less serious kind of gulf than separates us from those who are unmoved by the requirements of justifiability to others. People who are separated in this way value different things, but can still recognize each other as valuable.

In sum, Cathy and Scanlon thus disagree because she thinks homosexuality is *generally* prohibited by morality, whereas Scanlon thinks this is incorrect. Based on Scanlon's systematisation of the different areas of morality, we can see Cathy's claim about homosexual acts as likely based on a *particular* ideal of sexual relations. Support for this interpretation of what Scanlon says in *What We Owe to Each Other* can be found in Scanlon's (2019:4) writings on tolerance, where he argues that trying to 'control the private lives of others' is morally wrong:

> Laws against homosexual conduct in private, or against certain forms of religious belief or private religious observance are intolerant in this sense … We therefore have good reason to object to a principle permitting this kind of interference. And as long as doing these things in private does not affect other people's lives in a way that imposes serious costs on them they have no good reason to object to a principle requiring this kind of tolerance.

In contrast to the prohibition against deception, Cathy's sexual ideal could bind only those who hold that same ideal; it has no force against people in general. What *does* have this kind of force against people in general is a demand along the lines of the PNI: a person, Dasha, who wants to have a homosexual relationship, and who does not think that it is wrong to have one, has a right to not be interfered with by people like Cathy, who disagrees with her. Likewise, the *pro tanto* prohibition against deception is general and true always and everywhere – it does not matter if a person's conception of the good demands that others deceive each other. It would still be morally wrong, and under certain circumstances it would be permissible to interfere with someone who is deceiving. The same goes for the right *not* to be interfered with by people with a different view of sex than one's own. As we have seen in this chapter, Scanlon (2019: 5–6) thinks that it is always and everywhere wrong for someone like Cathy to interfere with someone like Dasha, whether in private or public. Scanlon, Dasha and Cathy must tolerate each other.

We have seen that on Scanlon's contractualism, the only sexual-sphere-related demands that apply always and everywhere are the ones represented by PNI. We have also seen that people who

subscribe to particular sexual ideals can, based on such an ideal, hold themselves and others who similarly subscribe to the ideal to different standards than people generally can be held to.

For Scanlon, there is one further way in which non-general rules regulating issues relating to sex can be grounded: via being part of an established practice in a particular society. Such rules are not part of what we owe to each other (the narrow part of morality) but rather only apply in certain societies in which they are generally accepted. While, as we have seen, the demands of the 'narrow part of morality' hold everywhere, there are domains outside of it where there may be a wider variety of moral standards – where 'judgments of right and wrong … depend on reasons for rejection that people have only under certain social conditions' (Scanlon, 1998: 348).

This means that, on Scanlon's contractualism, demands outside the narrow part of morality can sometimes be binding even on those who do not hold them.[19] Because all societies need established practices to regulate certain activities, Scanlon argues that once one such practice has been established, it becomes *prima facie* wrong – according to the requirements of the *narrow* part of morality – not to follow the duties that the practice assigns one. The content of these duties is outside of the narrow part of morality and is instead part of the *broader* part of morality. Thus, in a society where the sexual sphere is ordered in a certain way, it is *prima facie* wrong not to fulfil the related expectations that others have of one. Scanlon (1998: 339) calls this the 'principle of established practices'. The principle of established practices is part of the narrow part of morality, meaning it holds everywhere. Applied in particular societies, it applies to established practices that fulfil the other requirements of the narrow part of morality. Like other liberals, Scanlon thinks that the sexual sphere is a domain where only some parts of the requirements of this narrow part of morality, namely the PNI, apply; in his chapter on moral relativism, Scanlon (1998: 343) argues

[19] Scanlon (1998: 329) sees his contractualism as a 'parametric universalism', a theory that applies a 'fixed set of substantive moral principles to varying circumstances'. However, 'part of what moral values in the broader sense require one to do may also be required simply by the morality of right and wrong'.

that 'sexual practices or family systems that involve demeaning or enslaving others, for example, are morally excluded'.

Therefore, the relevant test for whether the principle of established practices covers an established practice in the sexual sphere is whether it goes against the PNI. If it does not contradict the PNI, the practice can create duties in the population in the particular society in which it is generally accepted. So, for instance, in a society where there is an established practice that people use dating apps for meeting people, its rules might hold that it is wrong not to help others gain access to the internet. Or, in a society with anti-racist ambitions, an established practice might hold that if an individual has a racist sexual preference of the kind that Srinivasan (2021: 73-122) discusses in recent work she should try to alter it. In other words, we can owe each other things in the sexual sphere based on rules originating in the broader part of morality. Once an established practice is generally accepted in a population, its rules become binding on them. Even though the content of the rules themselves come from the broader part of morality, their being binding is rooted in the narrow part of morality, as in what we owe to each other.

To reiterate, it is not enough that the established practices to which the rules belong are generally accepted in the population; they must also be in line with the demands of the narrow part of morality. And because the practices we are discussing are in the sexual sphere, the applicable part of the narrow part of morality is the PNI. This means that even in a particular society where a principle such as Cathy's was generally accepted as part of an established practice, it could not create general duties on people such as Dasha, who does not subscribe to a particular ideal that holds it to be true. Because Cathy's principle goes against the PNI, it cannot be binding on people who themselves do not accept it.

Note that Scanlon's judgment of Cathy as being misguided hinges on the PNI. And note that in the Cathy-style cases that Scanlon and other liberals often use to defend the PNI's role in the sexual sphere, the PNI gives the right result. After all, of course, it is wrong for Cathy to interfere with Dasha.

1.4 Noting the contrast

Now, note here something else. Importantly, there is a contrast between the PNI approach to the sexual sphere and contractualists' approach to other parts of the social world. As Scanlon has formulated contractualism, we can generally demand *more* than *mere* non-interference. For instance, as we saw concerning the labour market and in the public sphere, contractualists would reject principles that hold people to be unworthy of being neighbours or co-workers because of their class, race, gender, sexual orientation, or ability (Scanlon, 2018; working paper; 2019: 3–4; see also Kolodny, 2023). However, not only must we see people as potential co-workers and neighbours, but we also owe them a wider environment where they have a good chance to get a job and somewhere to live (Scanlon, 2018: ch3). As a part of the narrow part of morality of right and wrong, we owe others to actively try our best to put them in circumstances where they can make genuinely valuable choices rather than merely tolerating and refraining from interfering with them (Scanlon, 1998: ch6).[20] Outside the sexual sphere, liberals are clear that non-interference is a necessary part, but it is not sufficient.

Scanlon (2018: 138, 142) supports a version of Rawls's difference principle, which is much more demanding than the PNI and on which inequalities are justified only on condition they are to the benefit of the worst off. Scanlon (2018: ch5) also supports the principle of fair equality of opportunity, which I will discuss in the next chapter. Scanlon (1998: ch6) thinks that work or

[20] I will discuss this argument in more detail in chapters 4 and 5.

healthcare is not outside of 'what we owe to each other': people have a duty to ensure that others are in good circumstances of choice when applying to jobs, going to university, or getting medical treatments. Yet, like in the sexual sphere, people have their views of what the tax system, labour market, higher education, and healthcare system should be like. Some, like certain libertarians, think this disparity in views warrants the sole application of the PNI in these spheres, too. Scanlon (1998: 258), Rawls (Jackson & Stemplowska, 2021), and other liberal contract theorists explicitly reject such views (see discussion in Kugelberg & Kugelberg, 2022). Outside the sexual sphere, they endorse far-reaching duties to other members of society.

What is clouding liberal judgment in the Cathy case is that, in this type of case, the result of Scanlon's view is right, and the result of Cathy's view is wrong. Dasha has a claim to non-interference – she should be able to live her life according to her orientation and life plan without people interfering with her. But, as I will show in this thesis, we also have claims and duties that go beyond mere non-interference, not completely different from those that contractualists think we have in the labour market, housing market, and healthcare.

We have reason not only to want to be someone others could consider as a neighbour or co-worker but also someone others could consider as a potential sexual partner. In this thesis, I will show how these claims and duties can be grounded and what they entail. We will see that the reason that 'the idea that there are specific moral prohibitions … against sexual relations between two men or between two women has no plausibility whatever' is not only that such a view is merely part of a particular moral ideal or conception of the good, rather than of the morality of right and wrong – 'what we owe to each other'. It is also that Cathy is wrong – there are no generic reasons that can ground such a prohibition, only sentiments resting on something like – as Stephen Macedo (2015: 32; compare, Scanlon, 2019) puts it, 'the religious commitments of some in the community'.

Yet, Cathy is right about something. She is right that there are general claims and duties in the sexual sphere that the PNI does not cover.[21] They are just not the ones she thinks they are. It is true that, as Scanlon says, the demands of what we owe to each other do *not* include a prohibition of homosexual relations and their expressions, whether in the private or public sphere. Instead, those demands *do* include *permission* for such relations (Scanlon, 2019). However, I will argue they *also* include a requirement to provide others with valuable opportunities to become someone other people desire as a potential partner in such a relationship, and to plan and carry out life plans that include them. We owe each other more than merely tolerating other sexual life plans than our own. If contractualism is worth having, then there are contractualist principles that no one could reasonably reject, according to which we owe it to others to bring about a social environment where, for instance, non-heterosexual relationships are not only permitted but where there are genuine opportunities to have them. We have reason to include PNI as a necessary but insufficient approach to the sexual sphere. However, a principle of mere non-interference (MNI), on which justice is realised if the only PNI is realised, is not the right principle to govern the sexual sphere.

1.5 Conclusion

In this chapter, I introduced the sexual sphere. I argued that a theory of justice for this sphere must take seriously at least four characteristics of this sphere: people's interests in vulnerability, pluralism, the significant value of choice, and inequalities. Against the background of this characterisation and drawing on resources within liberal egalitarianism, I introduced the contractualisms of John Rawls and T.M. Scanlon. These theories contain important insights and tools for dealing with the traits of the sexual sphere, based on the correct observation that we have

[21] I note that while he puts sex outside what we owe to each other, Scanlon (1998: 176) does not deny the importance of sex: 'although the Catholic doctrine that all forms of sexual relations that are not "essentially procreative" are morally forbidden strikes me as mistaken, it at least can be seen as having the merit of starting from the right question, of how sexual relations should be understood and properly valued. More attention to alternative answers would be a good thing.'

claims to non-interference in the sexual sphere. However, we saw that there is an arbitrary asymmetry in the way liberals and contractualists handle the sexual sphere and how they handle other realms of society. In the sexual sphere, they refer to the MNI – the Principle of *Mere* Non-Interference. Outside of it, their theories of justice have more far-reaching demands.

In the next chapter, I set the scene for my view of justice in the sexual sphere, on which we can make claims on others in the sexual sphere that are not about non-interference. To do this, I will present four further arguments from within the liberal framework to refute MNI as the governing principle of justice for the sexual sphere. The first is based on the observation that the basic structure affects how people's lives go in the sexual sphere and thus should be justified regarding these effects. The second highlights effects in the opposite direction: the sexual sphere affects people's opportunities in the public sphere, so realising justice in the latter one requires that it is realised in the former as well. The third argument points to incoherence in the MNI's assumption that the sexual sphere is private. The fourth argument notes the importance liberal contractualists put on self-respect and points out that the state of the sexual sphere is of great significance to people's self-respect.

CHAPTER 2:
From mere non-interference to the sexual bases of self-respect

In this chapter, I will present four arguments against the principle of mere non-interference, on which all we can ask of others in the sexual sphere is to respect our claims not to be interfered with. These arguments are as follows. The basic structure affects people's opportunities in the sexual sphere and must, therefore, be justified in relation to these opportunities (section 1). The sexual sphere's norms affect the realisation of fair equality of opportunity in the public sphere, so the non-sexual spheres cannot be just as long as there are harmful social norms in the sexual sphere (section 2). The division between private and public is incoherent (section 3). The circumstances in the sexual sphere can harm self-respect – a central concern for liberal egalitarians' view of justice (section 4). In section 5, I take the first steps to introduce my alternative to the approach of mere non-interference, namely the sexual bases of self-respect.

2.1 The basic structure

As we saw in the previous chapter, the basic structure affects the extent to which people in different social positions have opportunities to follow their chosen life plans. This power must be justified. According to Rawls, justifying the basic structure and its power requires realising the two principles of justice. In short, the two principles distribute primary social goods among members of society. These goods are things that persons need to live a good life, regardless of what their life plan is. They include rights and duties, 'liberty and opportunity, income and wealth, and the social bases of self-respect' (Rawls, 1999: 54).

Rawls does not discuss the sexual sphere. Not being mentioned, it is implicitly treated as a private matter and not part of the social primary goods. In private matters, justice is realised by the MNI

rather than by the principles that distribute social primary goods. Therefore, our claims of justice in the sexual sphere are exhausted by non-interference. We can understand the Rawlsian view in the following way: the basic structure is justified concerning its effects in the sexual sphere if the MNI is realised. This means that if no one is interfered with against their will by the state or other people, then the institutions of the basic structure have done everything that individuals can ask of them in relation to the sexual sphere. If, on the other hand, the basic structure creates a situation where people *are* interfered with, even when they have not consented, then the basic structure cannot be justified. In sum, Rawls's framework provides individuals with merely one form of claim and potential complaint regarding their situation in the sexual sphere. They can complain about the basic structure's effects on their opportunities in the sexual sphere, but only if these effects amount to interference with them or their choices.

This brings us to the first problem with applying the MNI as the principle of justice in the sexual sphere. The basic structure effects that amount to interference are not the only basic structure effects we have reason to care about in the sexual sphere. The sexual sphere is one in which we have reasons beyond wanting to be free from interference. We have reason to want genuine opportunities to become people others could desire, and opportunities to follow our chosen sexual life plans. After all, sex, love, and intimacy are important in most conceptions of the good life. And the extent to which we have opportunities to set and follow life plans in this sphere partly depends on the basic structure. Intuitively, we now have reason to think that opportunities to set and follow life plans concerning these things should be included among the primary social goods. Indeed, their exclusion looks arbitrary. I will say much more about this below, particularly in section 7.

Consider the following real-world example of policies affecting the European countryside. In recent decades, researchers have observed a gender imbalance in European urban and rural areas.

The state has rolled back public services, and there is a deficient local labour market structure. Note that these policies are part of what Rawls calls the basic structure of society. As a result of these policies, there is a gender-selective migration to cities. Due to the low quality of social services and structural changes at the local, national, and global levels, many of the jobs that women traditionally held in rural labour markets have disappeared, making women search for employment elsewhere (European Parliament, 2019: 13). Where 'the state effectively abandons rural places, mobile youth will be far less likely to return to under-serviced communities, even if they truly want to live in these places' (Corbett, 2009: 8). As a result, in the last decades there has tended to be a surplus of single men in the countryside (Bourdieu, 2007; Edlund, 2005; Johansson, 2016; Kaberis & Koutsouris, 2012; Wiest et al., 2013).[1] Leiber (2016; observes that in some cases,

> negative effects for the remaining population, especially the male stayers, include a feeling of being rejected and the "entrapment in a personal reproduction crisis" which can lead to depression, substance abuse, delinquency and even suicide.

Some people in the countryside are in social conditions such that they do not have any opportunities in the sexual sphere. As one of the farm worker respondents in one study from rural Greece says about a rare recent date:

> She says she doesn't like the village, she can't have an affair with a farmer; she gets kind of sick with such a prospect … After our meeting I went back home … I took off my clothes, stood in front of the mirror and stared. "What is wrong with me?", I wondered. Are others [he has mentioned TV stars] more masculine? (Kaberis & Koutsouris, 2012 :86).

[1] This does not mean that one will necessarily find a corresponding surplus of single women in cities today. Indeed, while there tends to be a surplus of single women in their 40s, 50s and 60s, cities also tend to have a surplus of single men in their 20s (for an overview of the American situation, see Florida, 2015). Young women are more likely to date men from different age cohorts, while as Bergström's (2022: 71-79) studies of western dating app behaviour show, heterosexual women of all ages are generally uninterested in young men. This can explain why rural women moving to cities are not numerous enough to cause a surplus overall of young single women in urban areas. The question of age preferences in dating raises important and potentially justice-related questions of their own, but they are not the focus of this thesis.

Another respondent states that:

> local girls don't want to get involved with farmers. I don't know why ... we have sunk low. They keep out of your way' (Kaberis & Koutsouris, 2012: 85).

The policy response to this situation clearly cannot be to distribute women, sex, or intimate acts to men in rural areas. That is ruled out by the liberty principle and by the PNI. However, the PNI cannot alone explain what is going wrong: the problem is not that these men are interfered with or not tolerated by the state or other people. No one is intruding on them or touching their bodies without their consent. Suppose we only use the MNI as a principle for justice in the sexual sphere. In that case, these men will be blocked from making complaints against these policies based on what is actually harming them, namely these policies' effects on their opportunities in the sexual sphere. In part, the basic structure determines their chances of finding a long-term life partner or more casual dates. Given that most people care about these things, it seems that the farmers should be able to complain about the basic structure's co-creation of this situation. Note that they would have a complaint not against the women who leave or do not care for farming but against the state and other societal institutions.[2]

Policies whose purpose is not related to people's opportunities for intimate relationships will nevertheless sometimes affect them. When we consider that society's infrastructure and economic system, in fact, inevitably shape the way we relate to each other on an interpersonal level and what kind of relationships are possible for us, it makes even more sense to see the effects on the sexual sphere as ones that need to be justified to us.

[2] For a critique of the communitarian appeal to community and family as a way to unfairly assign responsibility for structural changes to women who leave or who do not wish to fulfil traditional gender norms, see (Frazer, 1999: 160).

In sum, Rawls was mistaken in implicitly setting a boundary between sex and other areas of society. It does not make sense to view sex as merely important in some particular conceptions of the good. We are now more inclined to understand the opportunities of the sexual sphere as part of the social primary goods. Interactions between individuals in the sexual sphere take place in part against the background situation set up by the basic structure. Therefore, what goes on in the sexual sphere should allow us to ground judgments about the quality of that background situation. Given these considerations, we have reasons to care about whether the basic structure helps or prevents us from becoming potential partners for others and following our sexual life plan. We should reject the MNI as the principle for justice in the sexual sphere. Instead, in addition to the PNI, the basic structure should be justified with regard to its general effects on people's opportunities to become potential partners and follow sexual life plans in the sexual sphere.

Readers might see this connection between sex and the spheres that are firmly established as the subject of justice, like the labour market. They might think that this consideration does not warrant a rejection of the MNI in the sexual sphere – the reason that the men in my example are faring badly in the sexual sphere is that the basic structure is not working, so what we should do is to work harder to make the basic structure just, where justice is understood to encompass only the non-sexual parts of society. Clearly, the farmers can already make complaints against the state and other social institutions in the basic structure about their insufficient access to work and social services. According to this line of thinking, once we have ordered the non-sexual spheres according to non-rejectable principles, sexual issues would not be salient. Justice would have as a side effect that the sexual sphere becomes just. Applied to our example, if the labour market worked better in rural areas, women would not be forced to leave for reasons of economic dependence.

In response, it is essential to note that the complaint concerning the farmers' inability to attract a partner and follow their sexual life plan is not meant to capture everything going wrong in this

situation. I am not even claiming that it is the most important explanation of what is going wrong. The injustice related to their sexual sphere based opportunities is potentially one of many injustices we can identify in this situation. However, it is one significant problem that is making the lives of the farmers significantly worse. There is reason to underline the fact that claims and reasons originating in the sexual sphere are legitimate and to insist that they should be valid for use in the rejection of principles and policies. As we saw in chapter 1, one feature that characterises the sexual sphere is the vast inequalities that different people face. However, in the public debate and much academic discourse, the sexual sphere is framed as a domain where individuals are solely responsible for their intimacy failures. Even though how we fare in the sexual sphere is partly determined by politics, there is a risk that we incorrectly assume that a person is 'failing to flourish primarily because of problems with her psychology (her values, desires, etc.) rather than because of her structural environment', a phenomenon that Serene Khader (2011: 56) calls 'psychologising the structural'. Further, as Katherine Angel (2021: 37, see also Gill, 2012a; 2012b; Illouz, 2019) argues, the 'confidence feminism' of the last decades presents women as responsible for drawing their own boundaries and demands that they 'simply set aside the imbalances of power and pleasure in the world, accessing and voicing [their] desire with confidence'. I will return to the issue of privatisation of responsibility for intimacy in chapter 5. For now, it suffices to note that in this context, drawing attention to the effects of the basic structure on the sexual one – to the political aspect of sex – is essential. I will now turn to examine influence going in the other direction, namely from the sexual to the public sphere.

2.2 Fair equality of opportunity

Let us consider the next reason why merely focusing on making the non-sexual spheres just, in combination with applying the MNI in the sexual sphere, is insufficient for realising justice in this sexual sphere. This reason is based on an observation that influence between these realms goes

both ways: social norms for sexual behaviour and sexual attractiveness also prescribe certain forms of behaviour *outside* the sexual sphere. Moreover, demands in the sexual sphere form our identities and preferences: who we ultimately become and what we come to want. As an example, consider how women in many societies from a young age have been encouraged to make themselves pleasing, passive and submissive.[3]

As John Stuart Mill (1895: 444) argues, 'women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self-will, and government by self-control, but submission, and yielding to the control of others'. It would, Mill continues, 'be a miracle if the object of being attractive to men had not become the polar star of feminine education and formation of character'. To ensure women stay in their place, Mill (1940: 444) argues that an essential strategy has been that of

> representing to [women] meekness, submissiveness, and resignation of all individual will into the hands of a man, as an essential part of sexual attractiveness.

To be sexually attractive as a partner, whether for a committed relationship or casual dates, it has often not been enough for women to be more passive than men in the bedroom. Women have also had to downplay their agency and ambitions in the workplace and the education system to be viable sexual partners for men.[4] Black feminists have discussed how, in part, because middle-class white women's middle-class sexuality historically has been constructed with 'corresponding controlling images applied to U.S. Black women' as deviant and hypersexual, black women face particular barriers that are connected to deep historical injustices (Hill Collins, 1990: 132; Davis, 2019: 163). Averil Y Clarke (2011: 31) describes how these intersect with gendered structures to

[3] This submission is part of the institution of heterosexuality and has been connected to sexual pleasure and a part of what it means to be sexually attractive for women (Beauvoir, 2011; Garcia, 2021: 168; hooks, 2000; Illouz, 2019: 83).
[4] We can find examples of similarly destructive social norms that condition men's being sexually attractive and finding a mate on, for example, taking risks or performing according to other harmful expectations of masculinity.

produce lower rates of marriage, coupling and childbearing among black women with college degrees than among white and Hispanic women with college degrees and shape their 'simultaneous experience of deprivation and privilege'.

Simone de Beauvoir (2011: 683-684) argued that love traditionally has been understood to mean different things for men and women. For women, love is bound up with the idea of sacrificing, among other things, one's career and life plans in the public sphere (Garcia, 2021: ch8). For men, love does not have this implication. On the contrary, succeeding in the public sphere has traditionally made a man more attractive as a potential partner for sex or love. Consider now how this dynamic affects the possibility to realise something like Rawls's (1999: 57-65; 2001: 13) principle of fair equality of opportunity. Rawls (1999: 63) argues that,

> assuming there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system.

Under the circumstances painted above, it will typically be more challenging for heterosexual women to compete with men of equal talent for positions in the public sphere. It is not unreasonable to want to be someone others can see as a potential partner. However, given the way men's preferences are shaped under the current basic structure, women must give this up to be able to compete with men in the public sphere. Unless we consider the effects that norms in the sexual sphere have on opportunities in the public sphere, we will think that all men and women have the following opportunity set: {compete, (pursue love); do not compete (pursue love)}.

However, heterosexual women's opportunity set will in reality be more like this: {compete, (do not pursue love); do not compete (pursue love)}, while men's opportunity set is {compete (pursue love); do not compete (do not pursue love)}. I am claiming neither that this is true for everyone

nor that women's ability to compete with men for top positions in the basic structure is the most crucial issue for society to handle. Instead, I am showing one way out of many in which the sexual sphere's norms contribute to inequality of opportunity in the public sphere. The likely result of this violation of the principle of fair equality of opportunity is that positions of social and political importance will be assigned to men or women who must choose to forsake their sex and family lives and their other interests in the sexual sphere. If society urges women to prioritise being attractive in the sexual sphere, they will be more likely to deprioritise the public sphere.

This argument against the MNI is similar but not identical to one of those that Okin (1989: 89-109) and others levelled at Rawls's theory of justice, which focused on the division of labour in the family.[5] They worried that women, because they do housework, would become vulnerable to men's power in the public sphere. Here, I am not talking about how the distribution of housework in the home affects men's and women's opportunities. Instead, I highlight a problem that precedes the situation where housework is not shared. In the presence of unequal social norms, women's reasonable interest in becoming people others can see as potential sexual partners interfere with our shared interest in a society where everyone has equal opportunities to become people others can see as potential (leadership) co-workers. Adding to the many other barriers to women's entry to positions of power in social and political institutions, this will affect not only who gets those prestigious roles historically occupied by men. It generally reinforces women's social and economic vulnerability, making a change in sexual norms less likely.[6]

[5] It also shares features with Andrew Williams's (2002: 31) argument that men's and women's capabilities to combine parenthood and career life depend on the preferences and ambitions of others. Suppose most heterosexual men want a heterosexual spouse who wants to focus on family life over work. In that case, a woman who wants to focus on both will have a smaller pool of potential partners than a woman who primarily wants to focus on family life. In a society where men's preferences are like this, Williams argues, women of the first kind are also more likely to give up their ambitions either *vis-à-vis* family or *vis-à-vis* career.

[6] Concerning black feminists' discussion of difficulties for black women as a group to speak up against lies and prejudices about their sexuality and the controlling efforts of the majority, Hill Collins (1990: 123) argued that 'one important factor that contributes to these long-standing silences both among African-American women and within Black feminist thought lies in Black women's lack of access to positions of power in U.S. social institutions. Those who control the schools, news media, churches, and government suppress Black women's collective voice.'

If the norms affecting the opportunity sets described above had had their basis outside the sexual sphere, liberal egalitarians would have seen them as an obstacle to justice. Rawls (1977: 160) correctly observes that 'the conditions necessary for background justice can be undermined, even though nobody acts unfairly or is aware of how the overall result of many separate exchanges affects the opportunities of others', and that, precisely because this is so, the basic structure should 'make the corrections necessary to preserve background justice'.[7] The basic structure should be designed to dampen the effects of people's choices according to their abilities and desires, which themselves are formed by society and its norms and expectations.

Liberals contractualists' understanding of justice in the sexual sphere as being the realisation of the MNI makes them risk incorrectly coding as just the pattern resulting from unequal norms for sexual attractiveness. After all, this pattern is a consequence of individuals choosing differently in the sexual sphere, without direct interference from the state or other people. However, people choose differently because they face different kinds of opportunity sets imposed by social norms of heterosexuality. Unless we include the sexual sphere and its norms in our analysis, we miss this important information and lack any means to correct it.

In sum, even someone who does not care about sex has reason to care about the unequal norms of the sexual sphere because sexual norms affect our chances of ever realising principles of justice. Since agents strategically change their appearance and behaviour in the public sphere to appear more attractive in the sexual one, unequal sexual social norms affect the quality of people's general opportunities (Green, 2008: 45; Garcia, 2021).

[7] Iris Marion Young later presented this idea (2006; 2011: 64-72) as a critique of Rawls's work. Specifically, she argued that Rawls's account of the basic structure was too narrow and could not account for injustices caused by structures based on many individual choices rather than flowing directly from the decisions of political institutions. However, as the clarificatory quotations in this section show, there possibly are resources within the Rawlsian framework to handle this issue.

The sexual norms of attractiveness are not likely to improve if merely left tolerated. We can only change this situation if we reject the MNI as a guiding principle in the sexual sphere. We need the PNI, but unless we pair it with more substantial principles of justice, there is a risk that the effects of the unequal sexual norms of the sexual sphere will keep feeding back into the public sphere.[8] Where we stand, thus, these social norms are obstacles to realising principles of justice *outside the sexual sphere*.

Next, I consider how ideas of private and public relate to the MNI.

2.3 The public and private divide

Recall that one motivation for using the MNI in the sexual sphere, as opposed to more comprehensive frameworks for justice, was that it would ensure that the state and others stay out of people's sex lives and bedrooms. Indeed, individuals have general interests in keeping lawmakers and policymakers out of the private sphere. Historically, the police and social services have far from always been allies in the fight for LGBT and women's rights (Stein, 2010: 177; Reich, 1963; Solinger, 2005). Therefore, an important question is whether we can abandon the MNI as the approach to justice in the sexual sphere without violating these interests. We might worry that opening the sexual sphere to a more comprehensive ideal of justice could invite oppression into the bedroom.

[8] We can see an example of this insight in sexual harassment law. Sexual harassment in the workplace is an instance where sexual norms permitting men access to women's bodies affect how women are treated in the public sphere (see MacKinnon, 1979; Rich, 1980: 21-22). Those harassed are affected not only by having their sexual integrity violated. Sexualising them is also a means for the harasser and bystanders to express disrespect for and dominance over them in their *non-sexual* capacity as workers. With sexual harassment law, the state shows that the existence of an unjust sexual gender norm is of public concern. It might be that when principles that could not be reasonably rejected are realised, this law will not be necessary. But it has proven to be helpful in the meantime.

There are two replies available. Firstly, it is important to note that there is a problem with the premise of the argument: the MNI does not amount to keeping lawmakers and policymakers out of the private sphere. Lawmakers are already regulating this sphere, and they are already invited to the bedroom in cases of interference. The important question, thus, is not where an act happens, but rather which acts are of public concern. To make us see this, I will briefly explore the idea of the private sphere. Secondly, swapping the MNI for a more comprehensive theory of justice would not amount to allowing interference in people's lives. A plausible version of such a theory would include the principle of non-interference with certain actions as a necessary but insufficient building block. The reason for rejecting the MNI is that this approach treats *mere* non-interference as sufficient.

Let us first turn to the assumption that the MNI is right because it blocks the state and others from the private sphere. It is true that the MNI holds that it is wrong to interfere with anyone in the private sphere. However, the private and public spheres does not track the different physical spaces in which an act takes place, 'as if one's front door marked the boundary between the public and the private' (Brighouse & Swift, 2014: 10). Instead, the 'private' simply describes instances where the individual should be protected against intrusion from others, regardless of where spatially she is. Therefore, rape is wrong regardless of whether it happens in the street or in the home. When it happens in the home – a private space – it is still of public concern. Rape is of public concern, and thus not in the private sphere, *because* it counts as interference.

If we would not think rape is wrong – which obviously we do – we would think it is in the private sphere. When marital rape was legal, and where it still is, it is regulated as a private matter between spouses. In many parts of the world, the law prohibits marital rape. There, it is a public matter. The state can interfere with those who rape their spouses, even though this almost always happens in the bedroom of people's private homes. In other words, acts that take place in the sexual sphere

are already sometimes of public concern. In societies that legally prohibit physical violence against children, it does not matter whether a parent hits their child in the home or the street. Both acts are of public concern. Hitting at home is not a protected activity because it occurs in a privately owned space. Conversely, in societies that legally permit parents to hit their child, a parent's violence is a supposedly *private* matter, even if it happens in a public space. Note that I am not saying that the MNI permits any of these acts – it does not. Instead, I am using these examples of legal and social constructions of private and public to show that the idea of a private act happening in the street is conceivable.

In sum, then, the bedroom is a private space, but what happens there can be a public concern. MNI acknowledges this. It holds that people are protected from interference *as long as* they do not act in certain interfering ways. When people wrongfully interfere with others, regardless of where they are, they step out of the private sphere. Therefore, simply referring to the MNI as applying in 'the private sphere' is redundant. It amounts to saying that the MNI applies where the MNI applies.

Further, as we saw in the discussion of the basic structure's effects on the sexual sphere, the state indirectly interferes with people's sexual lives. In the real world, few states live up to the MNI. Special protections for families, married people and partners exist in all liberal countries. These laws and policies favour one form of relationship over others (Brake, 2015; Chambers, 2017: ch1; Munoz-Dardé, 1998; Rich, 1980). They often also favour one kind of sex over others, namely that which takes place in heterosexual monogamous long-term relationships and has as an implied reproductive aim. The state, through law, shapes what is considered normal sexual activity in a society and which relationships are acceptable and desirable. As feminist legal philosophers have shown, the law has often been formulated in line with male assumptions, privileging men's right to rule over women's sexual lives and bodies (MacKinnon, 1979; 1983). With family law, the state

interferes in people's choices over sexual lifestyles and life plans. To really endorse the MNI, liberals would need to give up several existing legal doctrines (Brighouse & Swift, 2014: 8-13).[9] In sum, the boundary between public and private is unstable.

Let us turn to whether rejecting the MNI for something more comprehensive would harm our interests in non-interference. I have referred to the MNI as the principle of *mere* non-interference because we need to distinguish it from approaches that see non-interference as a necessary but insufficient part of a theory of justice in the sexual sphere. As Rawls, Scanlon, and other liberals have shown in other areas of society, extending the pool of interests that can ground reasons to reject principles and policies beyond that of not being interfered with does not necessarily amount to increasing interference as long as we pair it with solid commitments to autonomy. We need PNI in combination with other principles.

Forms of policymaking or monitoring that would be demeaning or intrusive can and should be rejected on liberal grounds (Wolff & de Shalit, 2007: 175–6). But just as Scanlon recognises, this is true generally rather than only in the sexual sphere. Direct interference with our lives is often rejectable. Policymaking that provides good opportunities to make choices about our lives is often not. There is nothing about the sexual sphere that makes it particularly suited for being governed by the MNI rather than by the PNI *and* the complete set of demands of some version of a theory of social justice. Taking seriously our interests in being vulnerable, following a plurality of life plans, making choices, and standing in relationships of equality with others does not require the state to interfere in our lives directly. But it also does not require that we settle for the MNI. Just

[9] Some have done so. They have argued that giving marriage a special status as a privileged legal category with a set legal content is wrong, believing instead that the state should be neutral about what kind of relationships it protects and that the number of participants and the content of the contract should be up to those involved. Brake (2010), for instance, argues that marriage unjustly privileges amorous relationships over other types of relationships. She proposes a 'minimal marriage' that would protect care networks between adults who choose to care for each other but who are not in an amorous or sexual relationship with each other. See also, (Chambers, 2017)

like in other spheres of society, there are things we can do that provide a better environment in the sexual sphere for choice and equality.

I have already given some examples of policy areas outside the sexual sphere that affect people's opportunities to form intimate relationships. Improving women's opportunities in rural labour markets could improve the situation for men working in farming. And yet, this policy does not seem to interfere with individuals' privacy interests. The same can be said for policies that provide better conditions for meeting potential partners or that aim to ensure that technologies such as dating apps do not discriminate against users, something I will discuss in chapter 6. For now, it suffices to say that not every policy targeted at improving opportunities in the sexual sphere, by definition, is oppressive, illiberal, or else infringes on the PNI. Therefore, the MNI fails as an approach to providing justice in the sexual sphere. In the next section, I consider how the liberal focus on self-respect provides another way to argue against the MNI.

2.4 Self-respect

Recall that liberal egalitarian contractualists want individuals to be able to choose and follow a life plan. To be understood to have the form of opportunities required to live our lives in the way we value, we need to stand in a certain kind of relationship with others. To be able to follow our life plans and pursue our conception of the good, we need a sense that our plans and our conception are of worth and that we can follow them. This is what Rawls understands as self-respect.[10] Rawls (1999: 154, see also 386-9) argues that our self-respect

> normally depends upon the respect of others. Unless we feel that our endeavours are respected by them, it is difficult if not impossible for us to maintain the conviction that our ends are worth advancing.

[10] For Rawls, (1999: 386) 'self-respect includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out' and it 'implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions.'

According to Rawls (1999: 154, 386, 477), the *social bases of self-respect* are the features of a society that provide people with opportunities to develop a sense of themselves as having a worthy life plan and confidence in their ability to carry it out. They are part of the primary goods that social institutions should be set up to organise and distribute fairly.

Based on Rawls's discussion, Scanlon (working paper) argues that there are different forms of standing we have reason to want and that we can object to not having. One has *moral* standing if one 'matters morally and has full legal and constitutional rights'. As noted above, one has *social* standing if one is 'someone whom others have reason to want to associate with, to live near, to work with, and is a possible friend or could become a family member by marriage, and certainly not someone whom others have reason not to want to associate with in these ways' (Scanlon, working paper).[11]

If the social bases of self-respect are in place, people are provided with opportunities for developing social standing and developing confidence that they have this standing. If, on the other hand, society's institutions fail to provide the social bases of self-respect, the relatively worse off are more likely to lose their sense of self-worth. It can make a person believe that people see them as ineligible, or less eligible than others, for valued roles and various associational goods. It can also involve being unable to function effectively as a 'normal agent' in one's society, leading even to the sense that one is a failure in life (Scanlon, 2018: 31).

In a liberal society, people value different things and look for different qualities in those with whom they associate. Therefore, one does not need to have a consistent level of social standing across every possible context. Instead, what matters is that one has opportunities to develop this

[11] Cited with Scanlon's permission.

standing among members of some associations or social circles of which one is a member and in which one's accomplishments and qualities are affirmed by others (Rawls, 1999: 386-91).[12] Even though social standing is something one has in particular social contexts, one's opportunities to develop it will depend on structures that order society as a whole. Thus, in a racist and ableist society, racialised individuals and individuals with disabilities will, in many contexts, have a lower social standing (Scanlon, 2018: 27-29). We must pay attention not only to a person's standing in particular social circles but also to how, for instance, race and ability structure our opportunities to develop social standing more generally. This is especially important against the background of historical injustice in our societies. As Hill Collins (1990: 130) points out,

> Blacks have long worked in close proximity to Whites, but Blacks and Whites alike were discouraged from seeing one another as friends, neighbors, lovers, and, most important, legal sexual partners. In a context where Black bodies signal sexual deviancy, laws against intermarriage and other components of racial segregation ensured that the deviancy could be simultaneously exploited yet contained.

One of the ways people can want others in their society to want to associate with them is through intimate association.[13] At the very least, we have reason not to want others to see us as generally unsuitable for such an association. Being seen as generally ineligible for romantic, sexual, or intimate partnerships can be extremely detrimental to a person's self-respect. Recall the farmers' situation above. Standing in front of the mirror, one farmer wonders, 'what is wrong with me?', another thinks 'we have sunk low'. It is possible to imagine that such a situation can make one feel that one is a 'failure in life' in the way Scanlon (2018: 31) worried about concerning social standing more generally. It does seem that if liberals are serious about self-respect and the social bases of self-respect as a way of providing opportunities to develop it, they should include sexual

[12] Compare, Bourdieu's (1977) idea of the field.
[13] We can see why, as Charles Mills (1994: 132) discusses, 'in the biracial coalitions of the civil rights movements, both communist and liberal, of the 1930s-l960s, acceptance of such relationships [between black and white individuals] was often seen as a kind of ultimate test of good faith, a sign of whether or not whites had genuinely overcome their racist socialisation.'

relationships in their analysis. As we have seen, the basic structure's distribution of primary social goods profoundly affects people's sexual life plans and prospects as a sexual partner. Further, the sexual sphere's demands on individuals condition their opportunities in the public spheres.

Taking self-respect seriously requires looking at the sexual sphere specifically and alongside our analysis of the rest of society. We need to let go of the MNI and apply more demanding theories of justice in the sexual sphere. Widening the social bases of self-respect into the area of sex and intimacy – what we might call the sexual bases of self-respect – is my suggestion for how to do this. Before I present this view in the following chapters, I want to remind readers that Scanlon (working paper) does mention that if one has social standing, one is someone others could consider as a family member by marriage. But he does not say what this entails. And as we saw in the previous chapter, in other works, Scanlon has argued that the sexual sphere is outside of the narrow part of morality, as in what we owe to each other.

As Scanlon has formulated contractualism, we *can* demand that our society is one in which people do not consider certain people as unworthy of being a neighbour or co-worker just because of their race, gender, sexual orientation, or ability. This is what it means to say that people should have social standing. However, as long as the sexual sphere is outside of what we owe to each other, we *cannot* complain about a social environment in which racialised people or people with disabilities are denied the standing as a potential life partner or sex partner to others. That is strange because being seen as ineligible as a potential partner in an intimate relationship likely has an even more significant impact on one's self-respect than being seen as unworthy as a neighbour or co-worker.

Given the importance of having opportunities for intimacy for our self-respect, we owe each other more than the right not to be interfered with in our sexual lives. The MNI should be rejected

because in addition to non-interference, we owe each other to ensure that people have access to opportunities to become someone with whom others would want to be in an intimate relationship and opportunities to develop the ability to follow their chosen sexual life plan. To provide people with opportunities to develop self-respect, we must bring sex and the sexual sphere into the narrow part of the morality of right and wrong. Only then can we demand that our societies are ones in which people have genuinely good opportunities not only to become someone others would work with but someone some relevant others could consider as a potential partner for sex, intimacy, nesting, and the sharing of a life.

In sum, thus, the MNI can be rejected. While the sexual sphere is importantly different from other societal areas and therefore needs its specific tailored principles, the MNI is not the right approach to making this sphere just. To take seriously the context of pluralism, the value of choice, inequalities, and vulnerabilities, we need a theory of justice that respects privacy while providing genuinely good opportunities to set and follow sexual life plans. We need a theory that acknowledges that while we have claims to non-interference in the sexual sphere, this is not the only kind of claim we have against others in this sphere. In the next section, I start my presentation of precisely such a view.

2.5 The sexual bases of self-respect

Drawing on Rawls's and Scanlon's ideas of the social bases of self-respect and social standing and keeping in mind the previous chapter's discussion of the importance of intimacy for self-respect, I propose the following view. If one is a person whom some relevant others see as someone they could consider being in a sexual relationship with, in a non-degrading way, one has what I call *sexual standing*, which we may view as a form of social standing.[14] Our interest in standing in

[14] I develop this idea more fully in chapter 3.

relationships of equality with others is, in the sexual sphere, explicated as a claim on others that they should provide an environment in which we can develop sexual standing.

To some, it might seem that we should only include opportunities to become someone others could marry or nest with in 'what we owe to each other'. They might think that, in contrast, we should see more general opportunities to be someone others could want to interact with sexually as belonging only to particular conceptions of the good life. As we saw, Scanlon and Rawls, for instance, both discuss marriage and the family – and implicitly take for granted that sex is taking place—but not under which conditions people can become potential spouses and members of families. And they pay far less attention to other relationships that tend to involve sex and dating. However, I do not see opportunities to become someone some relevant others could consider being in a sexual relationship with, in a non-degrading way, as something that belongs only to a few conceptions of the good life. Instead, I assume that it is something we generally have reasons to want. Even people who do not care for sexual relationships and who are confident that they will not revise their life plans concerning the sexual sphere can see that a general constraint on such opportunities can have detrimental consequences for individuals and society as a whole.

A sexual life plan is a plan for some time in one's life concerning the sexual sphere involving a reciprocal and non-degrading sexual relationship. Any ambition to have a relationship involving some form of interaction with other people typically involving what in a society is generally understood as 'sex' count, as long as they fulfil the reciprocal and non-degrading conditions. The interest we have in being able to follow a sexual life plan of our choice grounds a claim on others that they should, when possible, improve our opportunities to do so. Thus, in addition to the claims to non-intervention that liberals hold that we have in the sexual sphere, we have claims to have opportunities to develop sexual standing and claims to have opportunities to follow sexual life plans.

Where what I call the *sexual* bases of self-respect are in place, features of formal and informal institutions are such that, in addition to not being wrongfully interfered with, people have genuine opportunities to develop sexual standing and to follow sexual life plans. The sexual bases of self-respect are a subset of the social ones. They are the features of a society that provide individuals with opportunities to develop a sense of themselves as having a worthy life plan for the sexual sphere and confidence in their ability to carry it out. I understand formal institutions as the institutions of a society regulated by the constitution and the law, such as government agencies, bureaucracies, and economic structures. They include, for instance, a state's defence, the criminal justice system, and welfare programmes. I understand informal institutions as social norms – informal rules for behaviour (Bicchieri, 2017; Brennan et al., 2013). The reason for including informal institutions in the analysis is that the sexual sphere is largely governed not by law but by social norms, something I will discuss in the following chapters, particularly in chapter 5.

My theory underscores that people have strong reasons to value choice in the sexual sphere. While considering someone for a sexual relationship is not only about sexual attraction, it is hard to imagine how we can make choices in this realm without being a person whom someone sees as a potential partner. Therefore, even people whose sexual life plan only includes nesting generally have generic reasons[15] to want opportunities to develop sexual standing in the wider sense.[16] In the following, I will treat opportunities for sex and opportunities for nesting the same.[17] This move makes even more sense when we consider that an individual may revise their sexual life plan several times during their life. What people enjoy and hope for in their late teens often differs from what

[15] See section 4.2, and (Scanlon, 1998: 204).
[16] A majority of UK and US dating happens online, via friends or at work (Yougov, 2020; Pew Research Center, 2020). However, every reasonable sexual life plan does not involve choosing a partner ourselves, and relationships organised by others can have immense value to those involved. I assume that even in such circumstances, the choice to reject a possible match ought to be up to the individual. People still have a right to consent to the person chosen for them. Therefore, even if we are not 'found' directly by our partners, we have reason to want to have sexual standing in the eyes of others (including the people who may potentially be chosen for us).
[17] Compare, (Kaplan & Illouz, 2022) on the different forms of sexual capital.

they strive for in their 50s. In circumstances where the sexual bases of self-respect is provided, people are supported in their ability to reflect on and, if needed, revise their sexual life plan as they go along.[18]

In the rest of the thesis, I will argue that we can make three kinds of claims on others and the state in relation to the sexual sphere. First, as we saw in this and the previous chapters, we can make claims on others and the state not to interfere with us or our sexual life plans in cases where we are not interfering with others. This is the claim to non-interference. Second, we have a claim to stand in relationships expressive of equality with others. This is the claim to equal standing. Third, we have a claim that others, as far as possible, put us in good circumstances of choice when it comes to setting and following our sexual life plans.[19] This is the claim to choice improvement. In the next chapter, I focus on the claim to sexual standing. The claim to improvement of our choice situation *vis-à-vis* sexual life plans is the focus of chapters 4 and 5.

In line with this, we can understand the discussion in the present and the previous chapter as showing that concerning the sexual sphere, liberal contractualists have so far considered the first kind of claim—against interference—as being able to ground reasons for the rejection of principles and policies. In other realms of society, liberal contractualists have shown that we have further claims to equal standing and choice improvement (Scanlon, 1998: ch1; Kolodny, 2023: ch1). The further inclusion of these claims to equal standing, on the one hand, and claims to improvement of choice,[20] on the other, constitutes an extension of the contractualist framework into the sexual sphere.

[18] Angel (2021: 38) argues that relying on the concept of consent or the contract metaphor in the bedroom is risky, as people often do not know what they want before a sexual act but instead develop and revise their aims with the people they are with and may change them during the interaction.
[19] Compare, (Kolodny, 2023: 15-17; Stemplowska, 2022).
[20] I will use choice sets, choice situations, and opportunity sets interchangeably to refer to the set of options that an agent has in specific circumstances of choice.

Before ending, a note on an issue that recently has received much attention: do people have a right to sex, or a right to an intimate relationship (Srinivasan, 2021: 73-92, 149-180)? Some so-called 'incels' ('involuntary celibates') argue that attractive women should sleep with them or be their girlfriends (Menzie, 2022). Further, some argue that the state should redistribute sex or provide subsidies for sexual services (Douthat, 2018; see also Srinivasan, 2021: 118-119). Readers might, against this background, wonder how the sexual bases of self-respect relate to this question. Do we have a right to sex?

It is worth noting, first, that this thesis provides a framework that makes it easier to see what is at stake in these and related debates and policy decisions. Once it has been established that the claims to non-interference, equal standing, and choice improvement that contractualists have argued that we have outside the sexual sphere also apply within this sphere, we see that a central question to ask concerning sex work, as a service and as work, is whether a particular policy would impair or further the realisation of these claims. We will see in the chapter on sexual standing (chapter 3) why it might be challenging to see an opportunity for a person such as the 'incel' to have sex with sex workers as a genuine opportunity to develop sexual standing. Given certain idealised assumptions, I do not rule out that it could be possible. However, because sexual standing has to do with the person's being desired in a certain way, rather than with their getting to have sex, the opportunity to pay for sex is not in itself something that necessarily contributes to the realisation of the sexual bases of self-respect. After all, as we will see in chapter 3, it is possible to have sex with someone in whose eyes one does not have sexual standing – whether or not one pays or gets paid for it. What we have reason to want is not to merely have experiences of sexual activity or sensation, but rather to also be seen by others as the kind of person whom they could desire to be with sexually and who can set and follow their own sexual life plans.

Kevin Mintz (2019: ch5; 2022) argues that there are strategic risks involved in focusing on the provision of sexual services in the context of disability, as this could pose a faux alternative to the more radical changes needed to provide a wider social environment in which others see individuals with disabilities as sexual equals. At the same time, as Mintz points out, some treatments focused on improving people's sexual capabilities could contribute to their ability to carry out a sexual life plan with a partner in whose eyes they have sexual standing. This kind of service, being more educational, is notably different from experiencing sexual sensations or sex *per se*, something I will discuss in chapter 4 on the claim to choice improvement. While it might be beneficial to individuals to be assured that they will get sexual sensations, for other reasons, it is not necessarily a way to provide the sexual bases of self-respect.

Further, people's claim to choice improvement might include being able to sell or buy sex. However, because of the reciprocity and non-degradation criteria in the sexual standing and sexual life plan concepts, many such plans will fall outside the protection of my theory. A further complicating factor is that the claim to non-interference is impossible to combine with a right to sex *per se*. If one person (the sex buyer) has a right to sex, the state must guarantee that other persons provide it. This is incompatible with the claim to non-interference. Consider Irving Singer's (1984: 382) point that although 'sexual interest resembles an appetite in some respects, it differs from hunger or thirst in being an *interpersonal* sensitivity, one that enables us to delight in the mind and character of other persons as well as in their flesh'. This makes intimate relationships less suitable for policymakers' direct distribution than food.

Whether sex workers' opportunities to develop sexual standing and follow sexual life plans would be impaired by the fact that their occupation is stigmatised is an empirical question, but even granting that their opportunities would be diminished, this does not tell us which policy remedy would best accommodate this impairment (Nussbaum, 1998). The claim to non-interference is

likely to protect sex workers from unwanted interference from clients or law enforcement, but remedies can be found across the policy space, ranging from interventions aiming to make sex work less stigmatised to prohibitions on buying sexual services.[21]

This short discussion serves to illustrate the point that the focus of the thesis is that opportunities to develop sexual standing and to follow (reciprocal and non-degrading) sexual life plans is included in what we owe to each other. The services of sex work do not primarily provide such opportunities. Therefore, while my theory can help illuminate the values on the different sides of the sex work debate, I put this issue aside for reasons of scope.[22]

In sum, even if there were ways to redistribute sex, dates or relationships in a non-rejectable way, such redistribution is unlikely to contribute to self-respect or social standing in the way I have been – and will be – discussing. However, this only tells us that redistributing sex in our societies is a bad idea. It does not mean that we do not owe each other anything concerning what happens in the sexual sphere.

2.6 Conclusion

We have reason to leave the traditional liberal approach to sex behind. While we have claims not to be interfered with in our sexual lives, mere non-interference is insufficient to explain all we owe each other in relation to the sexual sphere. Liberals have persuasively shown that outside of the sexual sphere, the MNI does not cover all that we owe to each other. We now know that the same is true for claims and duties in the sexual sphere: the claim to non-interference is necessary but not sufficient.

[21] For a discussion on different approaches ranging from liberalisation to decriminalisation to the 'Nordic model' to total criminalisation, see (Mac & Smith, 2018).
[22] I will, in chapter 4 briefly discuss a related case.

To make good on their promise to provide an environment where people can stand in a relationship of equality, liberal egalitarian contractualists must include the sexual sphere in their analysis. In this chapter, I took the first steps to provide a theory of social justice in the sexual sphere. I argued that in this sphere, what we owe each other as members of the same society is neither sex nor sexual relationships. Instead, we owe each other the provision of the sexual bases of self-respect. This entails that the features of a society's formal and informal institutions provide people with opportunities to become someone others can consider as a potential partner and opportunities to follow chosen life plans in the sexual sphere without being wrongfully interfered with. In addition to claims of non-interference, we can make claims on others to stand in relationships of equality and to choice improvement.

While contractualists have been clear that the first kind of claim can ground reasons for rejecting principles and policies, my inclusion of the second and third kinds of claim constitutes an extension of the framework. I will spend the rest of the thesis developing this theory. In the next chapter, I explore the second kind of sexual-sphere-based claim, the claim to stand in relationships of equality with others.

CHAPTER 3:
Sexual standing: the claim to equal standing

In the previous chapter, we saw that the traditional liberal approach to the sexual sphere, the principle of non-interference, is insufficient. We do have important reasons for not wanting to be interfered with in the sexual sphere, reasons that ground a claim to non-interference with our sexual lives. However, while non-interference must be a necessary part of any liberal approach to sex and justice, it is not sufficient as a complete strategy for bringing justice to this sphere.

I have argued that liberal contractualism has tools for the problems in the sexual sphere that go beyond mere non-interference. In the previous chapters, I presented these tools and introduced a way to refine them to fit the purpose of guiding action and policy in the sexual sphere. I argued that we owe each other to provide the sexual bases of self-respect. My theory agrees with traditional liberal views of sex, on which we can make claims on others that they do not interfere with us in the sexual sphere. The theory goes further, however. I argued that in addition to the claim of non-interference, we have two further kinds of claims on others in the sexual sphere: claims to stand in relationships of equality with others and claims to choice improvement. As I will expand on in this and the following chapters, liberals have previously argued that we have these three kinds of claims on others in realms other than the sexual one (Kolodny, 2023: 6-8). The novelty of my argument, thus, is that it recognises that these three kinds of claims exist in the sexual sphere. In this chapter, I focus on the claim to stand in relationships of equality with others.[1]

As we saw in chapter 2, the way others see one plays a crucial role in whether one can develop self-respect. The idea that we have a claim to standing in a relationship of equality with others is

[1] In chapters 4 and 5, I will develop the view that we also have a claim to have our situation of choice improved in the sexual sphere.

central to liberal egalitarianism and Rawlsian and Scanlonian contractualisms. In the public sphere, this is expressed as a claim to social standing (Scanlon, 2018). According to Scanlon (working paper), a person has social standing if they are someone others can consider having as, for instance, a neighbour or a co-worker. Relatedly, because we have claims to be the kind of person people view in this way, we can object to standing in untampered or unlimited relations of inferiority (Kolodny, 2023: 101-102).

In this chapter, I extend this idea to the sexual sphere and explore how we should understand it in this context. In this sense, this chapter functions as a development of contractualism so that it can handle not only claims to equal standing in labour and housing markets and other public sphere domains but also claims to equal standing in the sexual sphere.

Recall from chapter 1 that I highlighted that the sexual sphere is characterised by (at least) four traits: our interest in vulnerability, the existence of pluralism, the significant value of choice, and the existence of inequalities. Because the sexual sphere has these traits, we have strong interests in being in relationships of equal standing with others in this sphere. Using contractualist ideas of social standing as a springboard, I argue that in the sexual sphere, we explicate the claim to equal standing by a sufficientarian principle of distribution.

What should be distributed? Neither sex nor sexual relationships. Our claims on others are related to our standing in their eyes. Drawing on sociological theories of sexual capital, I develop a novel concept that captures something essential we have reason to want in the sexual sphere. We have reason to want sexual standing: to be someone some relevant other(s), in a non-degrading way, consider as a potential partner for a sexual relationship. Part of what it means to provide the sexual bases of self-respect is to ensure that formal and informal institutions are such that people have *sufficient* opportunities for developing sexual standing in an adequate range of social settings. In

what follows, I develop the concept of sexual standing and discuss what it means to provide opportunities to develop it as a part of realising the sexual bases of self-respect. I argue that even if we cannot claim that others desire us, we have a claim on them concerning our opportunities to develop sexual standing, namely that they do not undermine our opportunities and, where possible, try to contribute to an environment where everyone has sufficient opportunities.

I begin in section 1 by defining sexual standing and elaborating on its different components. In section 2, I compare the account of sexual standing to social theories of sexual capital. As we will see, sexual standing is not reducible to sexual capital; instead, the concepts are complementary. A person who has an abundance of sexual capital in a particular social setting does not necessarily have opportunities to develop sexual standing in that setting. In section 3, I discuss what the principle of provision of opportunities to develop sexual standing entails, namely valuable opportunities to develop sexual standing in an adequate range of social settings. This principle is one part of my theory for social justice in the sexual sphere, and providing opportunities for sexual standing is part of what it means to realise the sexual bases of self-respect.

3.1 Conceptualising sexual standing

Recall from chapter 2 that one has *social* standing if one is someone others could have reason to want to have as a potential neighbour, friend, co-worker, or family member by marriage. When the *social* bases of self-respect are in place, one can develop this form of standing in the eyes of others (Scanlon, working paper). We saw that one way we have reason to want others to want to associate with us is as a potential partner for a relationship that typically involves mutual sexual desire (Soble, 2008: ch3). At the very least, we have reasons not to want to be seen as generally unsuitable for such an association. While in society as a whole, we have reason to want social standing, in the sexual sphere, we (often) have reason to want to be able to develop sexual standing.

What, more precisely, does sexual standing entail? Let us unpack this concept by looking at each of its conditions. An individual has *sexual* standing if some relevant others could, in a non-degrading way, consider them a potential partner for a sexual relationship.

Sexual relationship

The sexual relationship condition in the sexual standing concept is satisfied when other(s) see a person as a potential partner in an interaction or relationship that typically involves sex. People can find others interesting for specific types of relationships, as in long-term ones as opposed to short term ones; they can desire to be the other's 'soulmate' or only to have sex with the person. A common theme in popular culture is the question of someone being or not being 'husband material'. In the 2001 movie *Legally Blonde*, Elle Woods is dumped by her college boyfriend. The boyfriend is going to Harvard Law School and believes that, with her platinum blonde hair and pink clothes, Elle is not as bright and 'serious' as the brunettes on the East Coast. In the eyes of this boyfriend, blonde women like Elle are potential partners for college romances, but they are not potential partners for marriage: Elle is 'just for fun'. In other words, it seems as if there is conceptual space for subcategories of sexual standing: in any given moment, a person can have sexual standing for relationship type A but not for relationship type B.

As per the moral of any romantic comedy, people can surprise each other; what the protagonist thought she wanted was not that at all. Once she gets to know the love interest, she realises she has got it all wrong. The 'fling' becomes a long-term partner; the man deemed 'husband material' bores her to death. The kind of sexual standing an individual has in relation to another can shift with time and space.

However, in this thesis, I will use the sexual standing concept as a building block for my sufficientarian distributive principle of justice for the sexual sphere. For such political purposes, a more coarse-grained version of the concept does a better job of capturing the relevant cases without taking a stand on which kind of relationship is to prefer. This issue of sexual standing types also overlaps with the issue of sexual life plan types. Because I do not want the concepts of sexual life plan to overlap with sexual standing, I have put most of my discussion about relationship types in the next chapter, on the claim to choice improvement. In chapter 4, I will discuss the issue of what kinds of sexual life plans, including relationship types, a theory of justice must provide opportunities for – as well as what counts as such an opportunity.

In sum, one can zoom in on the 'sexual relationship' condition in the sexual standing concept to find fine-grained differences in how people relate to those they consider as potential partners. In what follows, I will not use this zoomed-in version but, instead, assume that the 'relationship' condition is fulfilled when a person sees the other as a potential partner for a relationship or interaction that typically involves sex. Let us now explore the 'consider' condition.

Consider

What do I mean by 'consider'? To have sexual standing, one must be the kind of person that some relevant others consider having sex with, but not merely for their own status elevation or satisfaction. Further, one does not have sexual standing in the absence of other people. It is a relational concept, something one has in the eyes of others. In other words, we only have it in case someone does consider us in this way in the physical world or, in the digital one, if they consider our digital profile in this way. Sexual standing, thus, is something one has in particular social settings. It is not a status one has generally, in society as a whole. This makes sense when we consider that the sexual standing concept is a part of the principle that one should have genuinely

valuable opportunities to develop sexual standing in a range of social settings, which I discuss in section 3.

While structures of race, gender, ability, and class affect sexual standing, it would be too incorrect to say that there is one general hierarchy of sexual status in society. It is well documented that sexual status works differently than other forms of status and can cut across other social hierarchies (Bergström, 2022; Green, 2008, 2013; Kaplan & Illouz, 2022). Even if heterosexuality and ability constitute the norm in many societies in the global north, there are contexts where these traits will ensure one does *not* develop sexual standing. In a lesbian nightclub, few participants will find a conventionally attractive male Wall Street banker to be a potential sexual partner. This does not mean that we are unable to say anything general about the distribution of sexual standing; it will still be the case that social norms for attractiveness will make it the case that some, like, for instance, the banker, enjoy a broader range of opportunities for sexual standing, than others. However, it is not the case that he has sexual standing everywhere.

An individual can have sexual standing in some cases when he is not directly interacting with others. This explains how sexual standing is measurable to social scientists; we can ask people if they consider a particular individual a potential sex partner. To see this, let us consider an analogy with social standing. A person has social standing if she is someone others consider a potential neighbour, friend, or co-worker at a particular moment. We can imagine, or ask people who live nearby to imagine, a situation where this person was to rent an apartment or buy a house in the neighbourhood. Do they think that she would be fit to be their neighbour? If the answer is yes, she has social standing.

When we ask someone if they could potentially have sex with a person, this is not relative to the considerer not being in a monogamous relationship or committed elsewhere in a way that makes

them *de facto* unavailable should they encounter the person. Compare the case of social standing: a person can have social standing in a specific neighbourhood even if there are no available apartments. All it means is that the people living there consider her a potential neighbour under the relevant circumstances (an apartment is available, and the person is applying for the tenancy).

There are two levels of social standing: as something a person has or lacks in virtue of their social group membership or demographic profile, on the one hand, and as something they have or lack due to people's view of their personal characteristics, on the other. A person who fits the demographic profile can be excluded from a neighbourhood because of their personal traits and behaviour. Let us assume that empirical data shows that most people in Southern England consider Danish female lawyers potential neighbours. However, when the Danish female lawyer Katrine goes to a meeting for new tenants in a St Ives neighbourhood, she parks her SUV over another neighbour's parking spot, plays loud music, and brags about 'partying hard'.[2] The people in the neighbourhood do not see Katrine as a potential neighbour. But this is not because of her membership in a particular group but because of her personal traits (annoying, loud, rude, parking manners). Katrine does not have social standing in this neighbourhood. However, suppose that it would be relatively easy for her to change her ways in a way that would make her a potential neighbour. Then she would have good opportunities to develop social standing. I say more about what counts as sufficiently valuable opportunities to develop *sexual* standing below.

The conditions of social standing are epistemically accessible: it is possible to know if they are satisfied in the real world. It is possible to operationalise it to allow social scientists to measure whether a person or a group of persons have social standing in a population. We can draw some conclusions about social standing from interviews where researchers ask people if members of

[2] These are the top three reasons people in Southern England complain about their neighbours (Goodmove, 2020).

certain social groups would be someone they could have as neighbours or co-workers. Sexual standing can also be surveyed through qualitative and quantitative methods.[3] Asking participants about their attitudes and experiences with sex and dating can reveal something about whether the group's members are likely to have opportunities to develop sexual standing. It can also give us clues about what policies could provide better opportunities. Consider the following example, where the online dating app user respondent Sandra tells Curington and colleagues (2021: 122) that:

> Even when I'm matched with others I still wouldn't get a response. I'm a dark-skinned Black woman. Is that it? I have natural hair … Could that be it?

Sandra's experience with dating apps indicates that, in the context of the particular apps she is on, she lacks sexual standing. We might be able to draw (some) conclusions from the data that such apps generate about the difficulties in developing sexual standing that the members of certain groups face. While we certainly cannot infer that particular group members will lack sexual standing in all circumstances, it can alert us that something is blocking the provision of opportunities to develop sexual standing in the group to which these individuals belong.

Non-degrading

I have included the 'non-degrading' condition because we are interested in the way that having opportunities concerning sexual relationships contributes to self-respect. One has sexual standing only insofar as one's sexual status does not entail that others merely degrade one in the sexual

[3] Studies have recorded an ableist assumption of asexuality in individuals with disabilities among the general public and healthcare professionals. For instance, we know that this group faces difficulties both with regard to opportunities to follow their sexual life plans, as they often lack support from care professionals in developing their sexuality, and with regards to opportunities to develop sexual standing; there are perceptions of this group as being unable to perform normative sexual acts, which excludes them from the pool of people who could be considered potential sexual partners (Esmail et al., 2010; Kaufman et al., 2007; Mintz, 2018, 2022; Shakespeare et al., 1996).

sphere. Again, it is helpful to offer an analogy to social standing. It would seem counterintuitive to say that we have social standing if people in our society consider us as potential neighbours or co-workers but only because they think we might be helpful to them concerning their aims. For instance, if the neighbourhood Lazytown allows a new family to move in but only because they think that this family will do all the street cleaning or babysit everyone's children, it looks as if they perceive the family merely as people they can use for their own ends. We might suspect that the family lacks social standing in this neighbourhood. Similarly, a woman who men want as a potential sex partner only as a mere object for their sexual satisfaction or status elevation does not have sexual standing. There is reason to worry that in a society that teaches men to see women merely in this way, it will be harder for heterosexual women to develop sexual standing.

It is important to note that sexual standing does not require that all individual sex acts that take part within the frame of a relationship are non-degrading. Many individuals desire that others degrade them in sexual contexts,[4] and the condition is not meant to exclude all relationships that involve the satisfaction of such desires. An individual can be seen as a potential sexual partner in a non-degrading way by someone who would consent to fulfil his or her desire to be degraded. A relationship with a non-degrading nature can include degrading acts if desired and consented to in particular ways.[5] To fulfil such desires could be what it means to see and accept someone as a partner and the person they are. And, as Simone de Beauvoir argued, to be seen as mere means can be a source of pleasure and joy. CITAT MANON GARCIA What matters is that the person is not merely, and not all the time, seen by the other in a degrading way or as a mere object.

Determining whether something is degrading or not requires a normative evaluation. Therefore, the inclusion of the non-degrading condition makes sexual standing a moralised concept. As we

[4] For a review of the research on the prevalence of BDSM fantasies and practice, see (Brown et al., 2020).
[5] See discussion in (Garcia, 2023: ch3).

will see, this sets it apart from concepts such as sexual capital or Amia Srinivasan's (2021: 75, 84) idea of 'fuckability', both of which refer to forms of sexual status that often come with harmful consequences for those who have it.

Relevant

People are '*relevant* others' if they are people whom the individual in question could, in turn, consider for a sexual relationship. Sexual standing differs from social standing because sexual relationships and sexual attraction differ from general social relationships. This is related to the points made in the previous chapters about activities in the sexual sphere being choice-dependent. Because the value of these activities lies in the participants choosing them, sexual standing requires potential reciprocity. So, while a person's social standing in a group is not dependent on her having a specific attitude toward the people in that group, her sexual standing *will* depend on her attitudes toward those who could potentially consider her a partner in a sexual relationship.

To see this, consider the case of the famous person Posh moving into the small village of Impressedville. Everyone in Impressedville is happy about their new renowned neighbour. Posh has social standing. This social standing is unaffected by his attitudes toward his new neighbours. Even if we imagine him thinking they are unimportant people he does not need to treat well or even greet, we will still say that he has social standing in the eyes of the people in the village. The contribution to his self-respect that his social standing in Impressedville makes seems not to depend on his seeing them as someone he would like to have as neighbours.

Now imagine another community, Straighttown, where everyone is straight except for one man, Gabriel. The people Gabriel considers to be potential partners are men. When Gabriel walks into a supermarket, goes to yoga, or rides the bus, many women consider him a potential partner.

Because Gabriel only desires men, he is considered a potential partner by a group of *irrelevant* others. Gabriel's being sexually desired by people different from the group of people that he could potentially desire could have some benefits – especially in a society where sexual attractiveness among the dominant group is rewarded even in non-sexual spheres (Kaplan & Illouz, 2022: 87-103). However, it does not necessarily contribute to the kind of self-respect I have been discussing (Jiménez, 2021). Being desired only by people one could not possibly consider being with sexually could even potentially harm one's self-respect. It could make one feel that something is wrong with one's desires. Therefore, my account of sexual standing requires that the others are *relevant*. In Straighttown, there is no one desiring Gabriel who is relevant to him. Thus, in this context, he lacks sexual standing.

How broadly or narrowly should a person's desires be interpreted as being for others to be considered relevant for her? How much should we 'zoom in' on each individual's wants? Sexual orientation towards men or women might seem a straightforward example, as we may understand this as an organising preference on which other preferences build or rely (Stein, 1999: ch2). But what about people who only desire blondes, people with postgraduate education, or members of their own ethnic or religious group? It is possible to apply a wider or narrower account of sexual standing, where a narrow account would be more 'zoomed in' on the individual's preferences for relevant others, and a broader one would accept more variability.

At the narrower end of the scale, relevant others are people with similar preferences for specific kinds of relationships. Imagine Paula lives in Weddingshire, where everyone dreams of traditional monogamous marriage. Paula, however, only wants to be in polyamorous relationships. Mona, who wants a monogamous long-term relationship but lives in Openville, where the majority wants open, casual relationships, is in a similar situation. On a wider account, Paula and Mona have sexual standing if some relevant others in their respective communities consider them as potential

partners for a sexual relationship in a non-degrading way. On a narrower account, the people in their respective communities are not relevant others for them, and so they lack sexual standing in these contexts. For the purposes of the thesis, I will use a wider account. I am not using the sexual standing concept in isolation from other concepts, on the contrary it is connected to, for instance, the sexual life plan concept I develop as a part of the principle of choice improvement in the next chapter. Therefore, I must take care so that these concepts do not overlap. As we will see, the concept of sexual life plan is able to capture many of the cases we care about and that would have satisfy the narrower account would apply to. In sum, the wider interpretation of the relevant others condition puts the sexual standing concept in the most plausible relation to other concepts in my theory (List & Valentini, 2016: 532-533).

Others

By how many 'others' does a person need to be considered as a potential partner to have sexual standing? Imagine that Mantown has only five women and 100 straight men. If they stay in this town, it seems unlikely that all these men will be able to have a monogamous relationship with a woman. However, if, in a particular situation, they are all considered potential partners by the five women, that is enough for these men to have sexual standing in that situation. The 'others' condition is fulfilled.

As noted above, sexual standing is a threshold concept that is satisfied when some relevant others consider one a potential partner. It might appear counterintuitive that Ludvig, a single man living in Mantown, has sexual standing. After all, even if some potential partners desire Ludvig, this is not very helpful. However, as noted, sexual standing is only one component of the sexual bases of self-respect. As we will see below, what we are owed is not sexual standing but genuinely valuable opportunities to develop it in a range of social settings. If Ludvig, as it appears, only has the settings

of Mantown available, he might not have good enough opportunities to develop sexual standing. In other words, the 100 men may have sexual standing in these settings, but as it depends on the mental states of only five individuals, it is not a very robust standing.

Compare Ludvig's fate when he shortly after that moves to Sneakyville. In Sneakyville, everyone is monogamously nesting, but most inhabitants sneak out at night to meet other people. Sneakyville has many social settings where women desire Ludvig, and he can have sex with them at night. He robustly has sexual standing. However, his sexual life plan involves being in the same kind of long-term nesting relationship that everyone else in Sneakyville is in already. Because no one in Sneakyville is available for this kind of relationship, he cannot carry out his sexual life plan in these circumstances – just like he could not in Mantown. As we will see in the next chapter on the claim to choice improvement, in cases such as Ludvig's, individuals could have complaints based on a lack of opportunities for developing their sexual life plan. However, Ludvig's problem in Sneakyville is not with sexual standing.

Those who cannot interact with people who could consider being their sexual partner lack a 'constituency' in which they could have sexual standing. Consider the real-world example from the European countryside that I introduced in chapter 2. Recall that researchers in recent decades observed a gender imbalance in European rural areas where the state had rolled back public services, there was a deficient local labour market structure and a gender-selective migration to cities. As these farmers describe their situation, very few women consider them as potential partners – something that makes their situation similar to Mantown. If, in their area, there would be literally no one who considers them this way – perhaps because the few women who have stayed do not prefer farmers – we would be able to identify (among other things) a lack of sexual standing. But the sexual standing concept is only one part of the principle for distribution that fulfils the claim to equal standing in the sexual sphere; just because a person lacks sexual standing,

this does not mean that they have a complaint against others. I discuss this issue below in the section on the principle regarding opportunities to develop sexual standing. For now, it suffices to note that if it is very hard for the farmers to develop it, either by leaving their rural society or going online to look for potential partners on dating apps (I say more about this in chapter 6), they could have a complaint regarding insufficient opportunities to develop sexual standing. If, by contrast, there had been some women who considered them as potential partners, or if there were some women who considered them as partners but did not share their farming life plan, we would instead understand their problem as having to do with insufficient options to carry out their sexual life plan – I discuss this issue in the next chapter, chapter 4, on the claim to choice improvement.

We have now conceptualised the idea of sexual standing. I have not yet presented this concept's role in my wider theory of justice in the sexual sphere. Thus far, we only know that there is such a thing as sexual standing. Note that any number of theories could use the concept. We can imagine, for instance, a theory saying that to ensure equality the state should try to eliminate relationships in which people have sexual standing. Another theory might hold that people living in the same apartment building owe each other sexual standing. In both theories, the sexual standing concept would play an important part. In my theory, the sexual standing concept is one of the building blocks of the principles of the sexual bases of self-respect. In section 3, I will explicate the principle that formal and informal institutions should be such that people have opportunities to develop sexual standing. I will explore what it means to have this kind of opportunity. First, however, I turn to the question of how sexual standing relates to sexual capital.

Because the domain of application for sexual standing as a concept is the set of conceivable forms of sexual status, it competes with other concepts that apply to sexual status.[6] Examples include

[6] By contrast, sexual standing does not compete with concepts that do not track sexual status, such as sexual orientation and sexual identity. The extension of the sexual standing concept is the set of all the forms of sexual status that satisfy it (List & Valentini, 2016: 531-532).

sexual capital (Kaplan & Illouz, 2022: 42-103; Green, 2013) and erotic capital (Hakim, 2011; Kaplan & Illouz, 2022: 6-9).[7] For the purposes of grounding a theory of justice in the sexual sphere, sexual standing is superior to these concepts. In the next section, I will illustrate this point by contrasting the sexual standing concept to social theory's sexual capital.

3.2 Sexual standing and sexual capital

What is the relationship between sexual capital and sexual standing? As we saw in the previous chapter, sociology has provided us with evidence indicating that the contemporary sexual sphere, like its historical counterparts, is deeply conditioned by the way we have set up our political, economic, cultural, and social institutions. People are competing against each other for attention from potential partners. Sociologists like Adam Isaiah Green (2013), Dana Kaplan and Eva Illouz (2022) and refer to the currency of this market as a form of resource or status – 'sexual capital' – that people within a particular social circle and context assign each other according to norms for valuing, for instance, social group membership and characteristics.[8]

Depending on how much sexual capital a person has in a social setting, they will occupy a position or rank in that context. There exist various definitions and types of sexual capital. For our purposes here, we follow Green (2008, 29; 2013), who argues that sexual capital 'can be conceived of as the quality and quantity of attributes that an individual possesses, which elicit an erotic response in another'.[9] These attributes 'can be classified as "natural," immutable attributes … while others can be acquired (e.g., body sculpting through breast augmentation surgery and liposuction, enhanced

[7] As noted, another related concept is 'fuckability' (Srinivasan, 2021: 75, 84).
[8] Sociologists have developed the concept of sexual capital (sometimes also referred to as erotic capital) by drawing on Bourdieu's (1977; 1997) concept of cultural capital (Green, 2013; Kaplan & Illouz, 2022: 36).
[9] According to Kaplan and Illouz's (2022: 3) alternative conception, 'sexual capital refers to the returns people may receive from investing money, time, knowledge, and affective energy in constructing and enhancing their sexual self, the aspect of their identity that concerns sexuality'.

musculature through bodybuilding, or a "makeover" of wardrobe and hairstyle)'. It often takes money, time, and hard work to gain sexual capital.[10]

In one sense, sexual capital works as a currency for the sexual sphere that sometimes also works in other markets – it can be used to get other forms of capital.[11] At the same time, findings indicate that sexual capital is not always straightforwardly exchangeable into other forms of capital;[12] It is a resource that does not withstand time and is not available to all (England & McClintock, 2009; Green, 2013: 152).[13]

Although there is variation between social contexts, sexual capital tends to be related to power hierarchies in the wider society (Kaplan & Illouz, 2022: 91-92). Social norms that value characteristics (skin tone, hair, body shape) associated with dominant groups will affect the distribution of sexual capital. In the global north, this means that 'white' beauty standards inform social norms for sexual standards more generally, according to what bell hooks (2004: 17) called the 'imperialist white supremacist capitalist patriarchy'. Therefore, people tend to 'internalise standards for beauty and sexual appeal that often exclude them, resulting in assaults to self-esteem, eating disorders, and high-risk sexual activities' (Green, 2013: 151).

The discriminatory patterns of racism, sexism and ageism that exist in, for example, the labour market also affect patterns of distribution of sexual capital. Importantly, studies of behaviour on dating platforms indicate that in certain societies, some individuals generally are not understood to be desirable simply because they have certain characteristics or belong to a particular social class

[10] See, for instance, Mears's (2011) study of the fashion industry and the production and commodification of beauty.
[11] For instance, sexual capital can be directly transferred into economic capital, as in the case of sex work (Kaplan & Illouz, 2022: 64-74). However, research also shows that one's perceived attractiveness can provide returns in non-sexual social settings, particularly for men (Green, 2013).
[12] See, for instance, (Illouz, 2019; Mears, 2015; 2020).
[13] In the global north, women's attractiveness is closely tied to youth. Therefore, women spend most of their lives outside the time frame when they are considered desirable, meaning that whatever sexual capital they have in this limited time, they will lose (Bergström, 2022: 133-7).

or are members of certain social groups (Bergström, 2022; Berkowitz et al., 2021; Curington et al., 2021; Li & Xu, 2021; Stacey & Forbes, 2022; Thompson, 2018).

What, then, is the relation between sexual capital and sexual standing? Many sociological theories of sexual capital are descriptive – they aim to *describe*, survey, and analyse the workings and patterns of the social world. In contrast, while the concept of sexual standing does describe a certain form of relation, it includes moralised features, and it is a part of a wider normative political theory. A sociologist would typically be agnostic about the criteria according to which sexual capital is distributed; they might be just or unjust, but determining this is not part of the descriptive sociologist's tasks. This is where normative political theory can complement descriptive social theory and empirical sociology.

Instead of merely describing and analysing what the world looks like and what people have right now, a normative political theory makes judgments about what the world *should* look like and what people *should* have. Doing this requires taking a stand on whether certain social norms are just or unjust. We can determine if a person has sexual capital by just examining whether the person is understood to be sexually attractive according to some social norms, regardless of the normative content of those norms. Sexual *standing*, in contrast, requires that we insert ourselves into the understanding and judgement of the norms. Suppose the social norms of a society prescribe that it is sexy to wear clogs but also that it is acceptable to demean anyone who does. In that case, clog wearers in this society likely have sexual capital but not sexual standing in many social settings. The idea of sexual standing can guide policy recommendations that would take us further away from the problems of the contemporary sexual sphere – which we would know less about were it not for, for instance, sociological examinations of sexual capital. Therefore, there is an important sense in which the concepts are supplementary; we need not see the theories as rival accounts of

the sexual sphere. Instead, they both constitute essential tools for theorising about the sexual sphere.

However, it is possible to conceive of a rival egalitarian theory based on the idea of sexual capital. Such an 'Equality of Sexual Capital' theory or 'Sufficiency of Sexual Capital theory' could have as its aim not to provide opportunities to develop sexual standing but instead to redistribute sexual capital (or opportunities to gather it) in an egalitarian manner among all members of society. That is, we could envision a distributive theory of sexual capital. I discuss this next.

Distributive Theory of Sexual Capital

DSC holds that justice in the sexual sphere requires that we distribute sexual capital equally in each community. In contrast, Sufficiency of Sexual Capital holds that we should distribute it so that everyone's sexual capital reaches a certain threshold. Since I take issue with sexual capital rather than the particular distributive principle in these theories, I refer to both as DSC in what follows.

There certainly is conceptual space for these theories. However, I do not think they are right. To see why, consider that sexual capital can be conferred on one by people one could not desire, while, as we saw above, sexual standing requires potential reciprocity. DSC would not be able to track that anything is going wrong in the situation Gabriel experiences in the Straightville example discussed above. As a gay man, nobody he considers a potential partner in a sexual relationship desires him. Nevertheless, he has abundant sexual capital in Straightville because many straight women desire him. DSC would judge him to be in a fortunate position. In the egalitarian version, DSC would identify as problematic Gabriel has too much sexual capital in comparison to other members of the community of Straightville. Therefore, policy recommendations based on DSC might involve levelling Gabriel down rather than making sure he has opportunities to become a

potential partner in the eyes of someone he, in turn, could desire back. The sufficientarian version of DSC would not detect a problem for Gabriel in Straightville at all.

Further, as noted, we can have sexual capital while being objectified, fetishised, or degraded. This form of attention does not contribute to sexual standing. Think of social norms that encourage people to see sexually attractive members of certain social groups only as a potential means for their satisfaction or status elevation rather than as ends in themselves.[14] Consider the case of the racial fetishisation of Asian women among white men in the West that Robin Zheng (2016; see also Chan, 1988; Lee, 2021; Li & Chu, 2021) has discussed. When *The Sydney Morning Herald* (Aubrey, 2021) spoke to Alice, a Vietnamese-Australian woman, she said that:

> I've received a lot of comments along the lines of, "I've always wanted to try Asian" or, "I have yellow fever…" [People] view our bodies as literal and symbolic sites to construct their fantasies onto.

After having had sex with a white man who wanted her to speak to him in Chinese, Karina told *USA Today* (Ryu, 2022) that she

> felt like I was just a body… a literal bag of water and cellular matter… He just wanted to have sex with an exotic woman that would make sexy noises he didn't understand.

These women can have a high degree of sexual capital in many social settings. They have attributes that elicit erotic responses in the men they meet. However, as Robin Zheng (2016: 405; see also Stacey & Forbes, 2022) points out, this fetishisation harms them psychologically and socially and makes them more vulnerable to sexual harassment and violence. Similarly, in his study of middle-class black men going out in New York City's Chelsea and West Village's commercial gay venues,

[14] Compare Langton's (2009: 228–229) and Nussbaum's (1995) discussions of objectification. This issue also relates to the situation of the 'supremely fuckable' (Srinivasan, 2021: 102-103).

Green (2008: 37; see also Orne, 2017; Robinson & Frost, 2018) examines the effectiveness of 'doing race' for the acquisition of sexual capital. In his interviews, Green found that Black men have a degree of sexual capital among the white men they meet, but this is dependent on them being objectified and fetishised as performing according to the white men's racist prejudices and preferences.[15]

One can have sexual capital even among people one could not potentially consider as a sex partner, and one can have sexual capital even if it comes conditioned on one being degraded or seen as inferior. These things do, however, impair one's sexual standing. Sexual standing tends to contribute to self-respect, while sexual capital can make it harder to stand in relationships of equality with others. As such, sexual capital could not be the foundation of a just arrangement of the sexual sphere grounded in the idea that we have a claim to stand in such relationships with others. We should reject ESC for a distributive theory that incorporates sexual standing instead.

Note that my rejection of ESC theories does not imply that I reject all theories of sexual capital developed in sociology. On the contrary, and as discussed above, some of these are compatible with the idea that we should provide people with something like sexual standing (see, for instance, Green, 2008; 2013). In other words, they are helpful in the implementation of the sexual bases of self-respect. The idea of sexual capital is useful when we formulate policy recommendations that aim at promoting sexual standing. Data about the distribution of sexual capital in a population could provide information about some of the specific problems with sexual standing that society faces. This information allows us to understand what we should do to come closer to providing opportunities for sexual standing. In sum, we have distinguished sexual capital from sexual standing. Sexual standing plays an important role in my theory of sex and justice.

[15] See also (Bedi, 2019: 82-112; Coleman, 2011).

As noted, we do not owe each other sex. We do not owe each other sexual capital. Sexual standing is a plausible concept in line with widely shared intuitions about what would be valuable to have in the sexual sphere. In that sense, it is helpful for social science and policymaking. It is one of the concepts that act as building blocks of principles about what we are owed and have reason to want in the sexual sphere. The principle that 'we ought to provide everyone with opportunities to develop sexual standing' is, in turn, one of the building blocks that make up my theory of justice for the sexual sphere. We do not owe each other sexual standing. Instead, we owe each other to bring about a wider social environment in which people have sufficient opportunities to develop sexual standing in an adequate range of social settings. But what do I mean by opportunities? Who should have such opportunities? And what kind of opportunities does society owe its members concerning sexual standing? This is what I explore next.

3.3 Opportunities to develop sexual standing

Part of what it means to realise the sexual bases of self-respect is that formal and informal institutions provide people with a social environment where they have access to valuable opportunities to develop sexual standing in an adequate range of social settings. This is how the claim to stand in relationships of equality with others is explicated in the sexual sphere. The question, therefore, is not whether everyone in this very moment has sexual standing but whether they have or have had good enough opportunities to develop it.[16] Seeing Ehsan as a potential partner while not seeing Fiola as a potential partner does not amount to seeing Fiola as an inferior.

[16] Opportunities for sexual standing are not something valuable to have from the day of our birth until the day we die. Individuals tend to value different kinds of relationships to different extents and in different ways at different points in their lives. People in different age groups generally have reason to want to have a different range of opportunities for sexual standing. For instance, sexual standing can be harmful if developed too young; therefore, we do not owe opportunities to people under a certain age. The appropriate threshold will depend on the social context, but it would reasonably be related to the legal age for consent. See Bidadanure's (2021: 137) discussion of opportunities we have reason to want at different ages and Daniels's (1983: 508) idea of the normal opportunity range.

When we are attracted to Ehsan, this gives us a generic, agent-relative reason to pay special attention to them and their interests, a reason that we do not have to serve Fiola's or other non-relevant people's interests.[17] As Kolodny (2023: 103) puts it, 'she's just not a friend, and she has other people, but not you, as friends. In social hierarchies marked by disparities of regard, by contrast, people regard members of the higher stratum more highly than members of the lower stratum, regardless of any further relationship to them.'

Where people are not standing in relationships of equality in the sexual sphere, some are likely to be seen as inappropriate for certain important relationships, like certain forms of sexual relationships. It can make it the case that others do not attend to their personal traits as they attend to those of more privileged people (Fanon, 1967: ch5). It can make it the case that others take their reasons less seriously than those of the more privileged. In a hierarchical society tainted by relationships of inferiority rather than equality, some individuals struggle to be seen as persons with all their particularities. This is particularly worrying in the sexual sphere, where many activities and relationships require that one be very attentive to people's individualities, personalities and particular traits. As Kolodny (2023: 112), drawing on Fanon (1967), puts it: 'People whose particular traits are not attended to are thereby disbarred from forms of association, such as love and friendship, that require attention to particular traits.'

What matters, thus, is not that everyone has equal or the same opportunities to develop sexual standing but that everyone can develop sexual standing. In a sexual sphere where people stand in relationships expressing equality, we can acknowledge that even if we do not see Fiola as a potential partner, we see that she could be a potential partner of someone. In an unjust society, there are some individuals who others see as being neither a potential partner for themselves nor anyone

[17] For more on why such reasons are generic, see chapter 1 and (Scanlon, 1998: 204-205).

else. The kind of inequality that should worry us is not that some people have many more opportunities to develop sexual standing than others. Instead, we should be concerned where some people are generally excluded from sexual relationships.

Therefore, when the sexual bases of self-respect are realised, the features of formal and informal institutions of society should be such that people should have valuable opportunities to develop sexual standing in an adequate range of social settings. I will discuss these conditions in turn. Let us first look at how the idea of an adequate range works in relation to sexual standing.

Adequate range

Social norms or rules setting standards for attractiveness do not always apply to society as a whole. More often, we will find that standards vary and that different specific social contexts have their own set of norms for what is appropriate and attractive for their participants.[18] Consider that the provision of the *social* bases of self-respect is not premised on the assumption that everyone in society wants to have everyone else as a friend or family member, and so on (Scanlon, working paper). People have different interests and value different qualities in those they interact with. Therefore, it is sufficient that there are some social circles or associations that a person values where he can be regarded in this way. If everyone has an *adequate range* of options of such associations or circles that one could join and where they can develop social standing, this is sufficient.

A similar logic applies to the sexual sphere. Before we go into more detail, recall that the sexual bases of self-respect do not include a right to have sexual standing in the eyes of any particular

[18] I will explore the issue of social norms and their effect on people's choices in detail in chapter 5.

individual or at all. Instead, what we owe each other is to bring about a wider environment where people have opportunities to develop sexual standing. It focuses on the duties of society – some of which should be discharged by the state. This way, it shifts the burden of responsibility for intimacy failures from individuals to society.[19]

As we have seen, sexual standing is something that one has in particular social settings in the eyes of particular others. One can have sexual standing in one setting but lack it in another. Such settings can be seen as arenas with their own particular rules for what constitutes valuable traits and skills, where a subset of individuals look for potential partners for a sexual relationship. Some are explicitly focused on sex – drawing on his fieldwork of commercial gay venues in Manhattan, Green (2008: 28) argues that what he calls erotic worlds consist of two elements: a physical or virtual site and a social structure. They are 'physical (and virtual) sites of sexual sociality that are organized by an underlying structure of social relations', which 'emerges when actors with potential romantic or sexual attraction for one another converge in social space (e.g., a site) and wherein this convergence orients each toward the other according to a logic of desirability imminent to the domain itself.' [20] Note, however, that not all social settings in which a person can want to develop sexual standing is an erotic world in this highly specialised or compartmentalised sense. A social setting can also be a yoga studio, gas station or a chat forum.

When I discuss opportunities to enter social settings, state interventions in these settings will often be inappropriate. Even if we, based on the second kind of claim – to equal standing – have reason to ensure that the social norms of these settings do not discriminate, many interventions would be ruled out due to the first kind of claim – to non-interference – which we discussed in chapters 1 and 2. However, there are interventions that do not infringe on the claim to non-interference, such

[19] I will explore the issue of responsibility distribution in chapter 5.

[20] 'Erotic worlds are, more importantly, social arenas, organized by "objective historical relations between positions" that render the "playing field" of sexual sociality inherently uneven'...'Whereas the sites of sexual sociality constitute the observable spatial nodes of any given erotic world, sexual fields represent the structure of relations that underpin these sites and constitute their social organization.' (Green, 2008: 28).

as the implementation of prohibitions against discriminatory entry rules for bars and nightclubs, as well as more general policies that aim at transforming social norms that decrease the number of opportunities available to members of certain social groups. The state has reason to fund research that could alert us of people's lack of opportunities to develop sexual standing (Young, 2001: 17). Importantly, where it is found that some individuals do not have valuable opportunities to develop sexual standing in an adequate range of social settings, this informs us that society must do more to change social hierarchies.

To see why we have reason to want opportunities in an adequate range of social settings, assume that Adam and Bea are in a relationship. They consider each other as people they like to have sex with, so they have sexual standing in each other's eyes.[21] If, however, in every other context in their society, no one considers Bea sexually attractive, Bea would have merely one context in which she has opportunities to develop sexual standing. While Bea has sexual standing, she does not have an adequate range of opportunities to develop sexual standing.

What we owe each other is that there is a range of social settings in which people have opportunities to develop sexual standing. As noted above, we are not obligated to ensure that every individual can develop sexual standing in each of these settings. The rules of these specialised settings may be more demanding than more general social norms as long as there is an adequate range of other settings that people unable to meet the demands can enter.

[21] While many people in intimate relationships have sexual standing in each other's eyes, it is not true for everyone. Some who have been with their partner(s) for a long time find they no longer feel sexually attracted to them. In some cases, this is not something they regret – indeed, couples may find that their relationship has evolved to an intimacy without sex that they highly value. In cases where the partners involved do feel that the situation is regrettable, the lack of sexual standing is something that could impact their self-respect and well-being. For people in long-term relationships, having opportunities to develop sexual standing entails that there are not, for instance, ageist social norms in place and that they can get therapeutical help from, for instance, a couple's therapist should they want to improve the sexual aspect of their present relationship. As a society, we have reason to care not only about people's ability to enter meaningful intimate relationships but also that there are means available to maintain them.

What does it mean that an individual can enter a social setting? It might be helpful to contrast the sexual sphere with the labour market. Recall that Rawls (1999: 63) argues that people should have a fair chance to get jobs and positions and that these should be allocated according to merit. Characteristics such as race, gender and age are unacceptable criteria, while natal abilities and willingness to use them are acceptable ones. There are important differences between the public sphere and the sexual sphere. As we have seen throughout, there is no right to sexual standing – whether generally or in the eyes of a specific individual or group. While we can demand to be considered in a certain way by a potential employer, we cannot demand that people want to have sex with us or consider us as potential partners. One reason for this disparity is that what determines whether someone wants to have sex with a particular person is not suitability or merit in how we usually understand it.

Instead, we might think of each individual as having her own more or less subconscious system for determining with whom she wants to have sex. She typically does not owe anyone an explanation for why it is Adam and not Bo (and, for the most part, could not even if she wanted to). While social norms affect individuals' sexual preferences, they do not fully determine with whom and how people want to have sex.

At the same time, if society's structures and institutions are set up to favour some social groups over others, it is reasonable to expect that these groups will be dominant in the wider culture. As we saw above in the discussion of sexual capital, sociological research indicates that traits these groups often have are more desired than others. As a result, they generally have a wider range of valuable opportunities for sexual standing than other groups. Such hierarchies also entail that traits associated with certain racial groups and disabilities can make the people who have them appear less desirable. In short, our social hierarchies ensure that members of certain groups generally have fewer and less valuable opportunities to develop sexual standing.

What we owe each other is to bring about a wider social environment where people are considered equals and where social norms do not deem some to be inferior in the sexual sphere. This is compatible with social norms that exclude some people in some settings as long as the excluded have adequate opportunities in an adequate range of other settings. I elaborate on this below. Would the state succeed in fulfilling its duty concerning relationships of equality among society's members? It seems less likely that people would develop preferences that exclude certain people from developing sexual standing in their eyes. In a just society, most social settings would not have social norms that rule out certain racial groups or people with disabilities. Such settings might be highly specialised in their sexual expressions and practices, but this differs from being shut to people based on race, ability, or other hierarchies.

What the state owes us, thus, is not a fair chance at developing sexual standing in a particular context. Instead, it owes us opportunities to enter the playing field for sexual standing in a range of settings. Consider the following example.

> Luke wants to look for partners among Tolkien fans at Tolkien-themed parties. To develop sexual standing at such parties, he might need to make a fitting costume and learn Elvish.

The question is whether the norms for entering the Tolkien setting are too demanding. Learning Elvish is indeed very challenging. However, should Luke do so, he could develop sexual standing among the participants.

This particular social setting's condition on Elvish fluency does not necessarily mean that his set of opportunities to develop sexual standing is not valuable.[22] The question is whether there are

[22] I am assuming here that being a *Lord of the Rings* (Tolkien, 1954) fan does not fulfil the criteria for integrity-protected commitments that I discuss below, but I might be wrong about this.

other social settings available that Luke can enter should he want to. If Luke already has opportunities in an adequate range of other settings, this could make it the case that he cannot complain about being denied entry to the setting of Tolkien fans because he cannot be bothered to learn Elvish. I say more about when people are or are not responsible for not taking up opportunities below.

Individuals have interests in having opportunities to develop sexual standing due to its deep connection to self-respect and their being able to live their lives according to their chosen life plans. At the same time, there is value in being able to specialise sexually and romantically and to form separate group subcultures. This might sometimes require rules that exclude certain people from being considered as someone with whom people in that context would want to have sex.[23] The former interest can outweigh the latter, but this is unlikely to be the case where there is a range of other settings in which an individual could develop sexual standing available to the individual.[24]

This explains why a member of a dominant social group cannot complain about being unable to enter the social setting of an oppressed minoritised group. In the context of oppression, individuals have reasons to want to be with people who are less likely to fetishise them on the basis of their race or group membership and who are likely to support them in their struggle against injustices. Members of the latter group have legitimate interests in forming relationships with people with similar experiences of oppression and injustice. I discuss this issue more below.

Even if the norms of social settings vary, they will be deeply affected by the dominant social order. In the real world, therefore, many settings have norms that are sexist, racist and ableist, and that

[23] Even if not all social settings can be defined as clearly as the fictional world in my example, there is still reason to think there could be a principle of something like freedom of association regarding the competitions for sexual standing that do take place in the sexual sphere.
[24] Compare Soon's (2023) argument of what freedom of association entails.

makes it the case that racialised individuals and people with disabilities generally have fewer opportunities to develop sexual standing. My account can explain why the state does not have a duty to ensure that everyone has opportunities to compete for sexual standing in a Black feminist reading group. In contrast, it does have a duty to ensure, for example, that people with disabilities can enter night clubs and thus are not blocked from developing sexual standing there.

The state has reason to care about social settings that block members of certain groups from participating and playing according to their rules, especially if these individuals do not have an adequate range of other setting in which they are a part. It serves as an indication that features of formal and informal institutions are such that people do not have valuable opportunities to develop sexual standing. In other words, it tells us that the state has not provided the sexual bases of self-respect.

Valuable opportunities

As we have seen, the lack of sexual standing is sometimes a result of injustice. This is the case when an individual has been deprived of valuable opportunities to develop sexual standing or where the opportunities provided are not valuable to her.[25] While a person's being attracted to others is not just a function of social norms, such norms can influence what she desires. Sometimes, the cost of choosing a particular option is too high for that option to be considered valuable in the relevant sense. When social norms hold standards for attractiveness that are very high or that require much work, this can affect the cost of choosing to develop sexual standing. And where such costs are much higher for some groups than others, this can ground a claim to be

[25] As I will elaborate on in chapter 5, one reason that the value of an opportunity can vary is that biased social norms apply to some and not to others. In that chapter, I consider a case that does not concern opportunities to develop sexual standing but rather opportunities to follow a sexual life plan. However, what we learn there about some opportunities being valuable to a person to whom a biased norm does not apply, while not being valuable to individuals to whom such a norm does apply, applies concerning sexual standing as well.

put in better circumstances. In other words, this is a reason to reject the relevant norms and to work for their change. We can understand the feminist objection to social norms that demand more from women than men when it comes to improving one's appearance in this way (Garcia, 2021). I will talk more about social norms and sexual standing below.

Sometimes, an individual may lack sexual standing in the presence of genuinely valuable opportunities to develop it. In these situations, even though we find his situation regrettable, he likely has no complaints against others that the situation came about. Therefore, an important question is what constitutes valuable opportunities and under what circumstances an individual can be thought to be able to take advantage of such opportunities.

Consider the case of the 'Jerk':[26]

> Jerk desires to be in a relationship with a woman. But because he often goes on misogynist rants and posts disrespectful texts about women online, he finds it hard to find a partner. He feels excluded from the sexual sphere because he (correctly) believes that no one considers him someone they would want to have sex with. Jerk lacks sexual standing.

Does Jerk have a complaint against others? Our intuitions say no – it seems reasonable that no one would want to be with Jerk. This is, on the face of it, the correct verdict. The sexual standing concept is not fulfilled. Is this a problem? Not necessarily – not every instance of a lack of sexual standing is morally or politically problematic. To make normative evaluations of a particular situation, we need to look at the principle in which the idea of sexual standing plays a role. This is because the principles of a theory are not the same as the explications of its concepts. The fact that the sexual standing concept applies to cases where our intuitions say that nothing has gone

[26] This case approximates that of the real-world 'incel'. See (Menzie 2022; Srinivasan, 2021).

wrong does neither make the concept less useful nor the theory less plausible. In the case of Jerk, the theory seems to give the correct answer.

To determine whether that is the case, we need to assess the claims that someone in Jerk's situation could make. Jerk, like any other member of society, has a claim to valuable opportunities to develop sexual standing in the ways that I have been discussing. If we take this seriously, we see that we must separate moral evaluations of Jerk's behaviour from the political evaluation of his situation. In other spheres of society, we do not see rights as being bound up with people's morally abhorrent attitudes or actions; few egalitarians would argue that Jerk's misogyny should make him ineligible for healthcare should he fall sick, for example.

Independent of this evaluation of his situation, Jerk cannot demand that other people should be with him, desire him, or consider desiring him. They have a claim to non-interference with their sexual life plans. Further, he has many reasons to behave respectfully towards others, one of which is that this would allow him to develop sexual standing in their eyes. Another reason is that as long as he stays a misogynist jerk, he might be unable to see others as potential partners in a non-degrading way. Because the sexual standing concept has a non-degrading condition, in addition to not having sexual standing himself, Jerk will, in this case, not be able to transfer sexual standing onto other people.

When assessing Jerk's complaint about his lack of sexual standing, we must determine whether he has opportunities to develop it. We know that several social problems can unfairly stand in the way of people's having such opportunities. For instance, we have seen how hierarchies of class, race and ability make it harder for members of the working class, racialised individuals, and people with disabilities to develop sexual standing. They are deprived of opportunities that others have

and that they, too, should have. If Jerk falls under these categories, his complaint should be taken seriously (Srinivasan, 2021: 76).

An evaluation of whether social institutions have done their part to ensure that Jerk and others have opportunities to develop sexual standing can show us whether Jerk has a complaint against his outcome (the lack of sexual standing) coming about. If it does turn out that Jerk is in a situation where he has perfectly valuable opportunities, he cannot complain about his situation. He has a complaint against our social institutions if he lacks such opportunities.[27]

However, society's provision of valuable opportunities is not enough to ensure that Jerk, in fact, develops sexual standing. If he wants to do that, he needs to change how he approaches others. In contrast, it would be unreasonable of him to demand that society, or the women he desires, change so that he can develop sexual standing and keep his misogynist behaviour.

This illustrates the point I make in chapter 5, that we must get right the appropriate distribution of responsibility between society on the one hand and the individual on the other. In the case of sexual standing, what must society do to provide us with good opportunities to develop it, and to what extent is the actual development up to the individual?

Sexual standing is a relational concept; as such, it will inevitably be conditioned on what others find attractive in a partner. If we want to have sex or be in a relationship with someone, we must be prepared to present ourselves in a way that they would like. It will often be the case that people do things or perform in specific ways to make a good impression on potential partners and that

[27] In principle, he might also be able to complain about the social environment he grew up in if it played a role in socialising him into becoming a jerk and thus learning to behave in a way that makes him unable to take advantage of generally good opportunities to develop sexual standing. Our judgment of his situation will depend on the social norms he is presently subjected to; would he face sanctions if he chose to behave less jerk-like? If so, he could have a complaint against his society that he was subject to such norms.

people will develop sexual standing in their eyes only on the implicit condition that they do something they would not otherwise do. This need not be objectionable.

However, as we have seen, individuals' preferences depend on social conditions, which formal and informal institutions form. In many cases, thus, the lack of sexual standing will have to do with a lack of valuable opportunities. In circumstances that, like our own, are conditioned by grave injustices, people are likely to form their idea of a potential partner in relation to oppressive social norms. This makes it less likely for people who do not fulfil the demands of such norms to end up in conditions where they have good opportunities to develop sexual standing. We know that the state must ensure that people are put in better circumstances of choice regarding sexual standing. But what does this entail, more specifically? Consider the following examples.

> Harry identifies as queer. Among the residents in his town, he lacks sexual standing; he fares badly on dating apps and struggles to find a partner or anyone with whom to have sex. Others tell him that it is because he does not conform to traditional gender norms.
>
> Sara, a citizen of a country with a non-Muslim majority, wears a hijab. Like Harry, she struggles to find anyone to date. According to studies conducted on dating apps in her geographical area, few men from the majority culture consider women with hijabs to be potential partners. She lacks sexual standing in most social settings.

Like Jerk, Harry and Sara lack sexual standing, but they also lack good enough opportunities to develop this standing. Due to the pervasiveness of the traditional gender norms of his society, Harry cannot, in this social setting, develop sexual standing unless he stops identifying as queer or hides this aspect of himself. This option to develop sexual standing is not a valuable one. Similarly, in the context of anti-Muslim sentiments in her society, Sara would have to stop wearing her hijab or even hide her Muslim faith to develop sexual standing. These options to develop sexual standing are costly and harmful or best understood as being no options at all.

Cécile Laborde's (2017) idea of integrity-protected commitments is a helpful way to make sense of this. Laborde argues that an integrity-based commitment can ground exemptions from general laws. Such integrity-protected commitments must pass the tests of thick sincerity and thin acceptability; in Laborde's (2017: 207) view, a commitment that is important, non-trivial and sincerely forms a part of one's conception of the good passes the test of thick sincerity. If it is not 'flatly incompatible with the basic rights of others', it passes the test of thin acceptability. Laborde argues that the commitment can legitimately ground a claim to exemption from certain laws if these conditions are fulfilled.

Applied to the sexual sphere, this kind of commitment grounds a claim to having one's commitment considered when we consider what the provision of valuable opportunities to develop sexual standing entails. To develop sexual standing in their circumstances, Sara and Harry would have to give up commitments that are important, non-trivial and sincerely form part of their respective conception of the good. Therefore, they have a claim to be put in better circumstances to develop sexual standing, where this is not conditioned on giving up their commitments. Jerk does not have such a claim because his commitment to being a jerk is unlikely to pass either test: his misogyny is hopefully not a sincere part of his conception of the good, but regardless of whether it is, it does not pass the thin acceptability test.

Now contrast the following cases:

> Philip lacks sexual standing in Tallville. Women there prefer men who are taller than them. Philip is shorter than most women, so most women do not consider him to be attractive. He would develop sexual standing in the eyes of many women if he had an excruciating and expensive leg-lengthening surgery (Compare BBC News, 2020).
>
> Ulf lives in Trendytown. He wears a pair of shoes. According to most people, including Ulf himself, his shoes are quite ugly. If he did not wear these shoes, he could develop sexual standing. Other shoes are both affordable and comfortable.

Here, the problem is not with integrity-protecting commitments. It is not (necessarily) the case that having a certain height is essential to one's conception of the good. However, having a painful surgery is not something we should demand of Philip – it is too burdensome. Even if the option is a possibility, it is not a good enough opportunity to develop sexual standing to count as valuable. Therefore, Philip has a complaint based on his claim to have access to valuable opportunities. Such a complaint does not entail that he is remedied directly. Instead, its identification illustrates the need for the state to act in ways that could improve the social environment. Further, even though Philip cannot demand that particular people desire him, he does have a claim on others that they, where possible, work to change social norms that demand that men are taller than women. Because we owe each other the realisation of the sexual bases of self-respect, it would be wrong to contribute to such norms or to spread one's views that short men are unworthy of sexual attention.

What about Ulf in Trendytown? Like Tallville, Trendytown has views of sexual attractiveness that inappropriately focus on specific features or capacities. Perhaps the thought experiment, presupposing that sexual standing is conditional on individual style or characteristics, gets sexuality wrong.[28] I think there is something to this, and we might say that the mayors of these towns have a duty to support features of institutions that are such that opportunities for sexual standing are not conditional on adherence to social norms for trendiness. Let us assume, though, for the sake of the argument, that one's choice of shoes really is a condition for sexual standing in Trendytown. Then what would we say about the opportunities of Ulf?

It seems reasonable to ask Ulf that he gets new, inexpensive shoes. In any society, there will be some social norms for attractiveness, and there will be some things we need to do to make ourselves attractive to other people. If these norms are not morally objectionable, we have reason

[28] It is often the case, too, that breaking norms can be attractive to a potential partner.

to accept the burden they put on us if we want to meet others. In the present case, it seems unlikely that the small burden of getting a pair of new, inexpensive, and comfortable shoes will generate a complaint against the state. Instead, it seems that Ulf has valuable opportunities to develop sexual standing.

The question of how burdensome it is to take advantage of opportunities also relates to the question of geographical location. We have seen, for example, in the European farmer case, that sexual standing can be blocked for individuals who live far away from potential partners. The strength of this geographical blocker depends in part on the quality of infrastructure in the area; if there is fast and affordable public transport to a city, the range of settings and opportunities to develop sexual standing grows. If there are no ways to travel to another community quickly and inexpensively, we might conclude that opportunities for sexual standing are lacking.[29]

Because many rural areas are located such that this will be unfeasible, the state is responsible for realising the sexual bases of self-respect in other ways, some of which I discuss in the next chapter. In short, there might for example be ways to make rural areas more attractive for women, which would result in more potential partners in whose eyes the farmers could develop sexual standing. In societies where the state is a major employer, one way to make rural areas come alive can be to relocate government agencies there. Another way to provide the farmers with opportunities for sexual standing is to support them in their relocation from the countryside. While both kinds of policies could provide opportunities for sexual standing, we may think that the latter comes with too high a cost – it might, like in the case of integrity-protecting commitments, be too costly to

[29] When is making the trip too expensive or troublesome to rule out valuable opportunities to develop sexual standing? This is a question that would need to be explored more in detail with the help of clinical sexologists, psychologists and sociologists, but at the very least, it seems that we might want someone like the farmers to be able to make the trip at least every week without substantial financial and temporal hardship.

ask that someone give up their general life plan in order to take advantage of opportunities to develop sexual standing.

3.4 Conclusion

Providing people with an adequate range of social settings where they have valuable opportunities to develop sexual standing is what it means to treat them as equals in relation to the sexual sphere. We do not all need to have the same number of opportunities to develop sexual standing because we do not all value sex and sexual relationships to the same extent or in the same way. Even though we can hope that in an entirely just society, people would be able to consider a wider range of individuals as potential partners, demanding equality would risk infringing on the other claims that people have concerning the sexual sphere: to non-interference and choice improvement.

My theory demands that features of institutions are such that people are not wrongfully interfered with, have opportunities to develop sexual standing and set and follow sexual life plans. While sexual standing in the eyes of some relevant other is necessary to carry out most sexual life plans, we should not conflate the claim to have opportunities for sexual standing with the claim to opportunities to follow one's sexual life plan. To be able to follow a chosen life plan requires more than being desired by relevant people. In the following two chapters, I explore the claim to choice improvement. Together with our claims to non-interference and to equal standing, our claim to choice improvement makes up the claim set that we have in relation to the sexual sphere.

CHAPTER 4:
Sexual life plans: the claim to choice improvement

In the previous chapter, we saw that providing opportunities to develop sexual standing is what it means to realise our claim to equal standing in the sexual sphere. Because many activities in the sexual sphere include other people, individuals need to have sexual standing to carry out their sexual life plan, which, recall, is a plan for any duration of a person's life that involves reciprocal and non-degrading sexual relationships. Yet, the categories of opportunities to develop sexual standing and not be interfered with – based on the first kind of claim, to non-interference, discussed in chapters 1 and 2 – do not exhaust the full range of opportunities we have reason to want concerning the sexual sphere. There are instances where an individual is not wrongly interfered with and has sexual standing yet cannot live according to her sexual life plan. In such situations, the person has no further claims to non-interference nor any further claims to stand in relationships of equality. Instead, she has a claim to be put in better circumstances of choice. In this chapter and the next, chapter 5, I will explore the third claim we can make on others in the sexual sphere: that they improve our choice situation. The claim to choice improvement is explicated by a sufficientarian principle on which we owe each other to bring about an environment in which people have genuinely valuable opportunities to set, develop and follow sexual life plans.

The chapter is structured as follows. First, in section 1, I discuss the contractualist approach to choice. I show that we should understand the claim to choice improvement in the sexual sphere as the improvement of people's ability and opportunities to set, develop and follow (from now on, I will refer to this as 'follow') sexual life plans. In section 2, I argue that we should understand the contractualist idea of a generic reason to include reasons based on people's interest in following their sexual life plans. In section 3, I give a few examples of policies that could constitute an

improvement of opportunity sets in the relevant sense. I do not offer a full policy agenda for improving people's opportunities to live according to their sexual life plans. Instead, I point to some factors to consider in our thinking about the aspect of justice in the sexual sphere that concerns the claim to choice improvement.[1] In section 4, I answer an objection that holds that more choice is not always better than less.

Before we start, there are a few things to note concerning a sexual life plan. An individual may revise her sexual life plan many times. The concept of a sexual life plan is not an extension of the Rawlsian idea of a life plan; while Rawls (1999: 78-81) understands a life plan in the context of his theory as being rational[2] and 'designed to permit the harmonious satisfaction of [the individual's] interests', my account of a sexual life plan is thinner. A sexual life plan is subjective, need not be rational, and is not necessarily the best possible plan the person could have. It is instead just the plan that the person understands themselves as having. It may well be that the Aristotelean principle applies in the sexual sphere, that concerning the activities in this sphere 'a person takes pleasure in doing something as he becomes more proficient at it' (Rawls, 1999: 364), that the 'enjoyment increases the more the capacity is realised, or the greater its complexity' (Rawls, 1999: 364). However, a sexual life plan is, in my view, merely a plan for some duration of one's life in the sexual sphere that involves reciprocal and non-degrading relationships. If a person wants to stay in a relationship where she does not develop as a person, lover, or in some other relevant capacity, we must take her at her word. This is her sexual life plan (or one of them). As Amia Srinivasan (2021: 82-83) argues, it has been essential to 'generations of feminist and gay and lesbian activists' fighting hard to 'free sex from shame, stigma, coercion, abuse, and unwanted pain' to 'stress that there are limits to what can be understood about sex from the outside, that sexual acts can have private meanings which cannot be grasped from a public perspective, that there are times

[1] I continue exploring this question in the following chapter, where I examine how social norms affect our ability to choose among options in our option sets.
[2] '[T]he good is the satisfaction of rational desire' (Rawls, 1999: 80).

when we must take it on trust that a particular instance of sex is okay, even when we can't imagine any way it could be'. The sexual sphere involves interactions and relationships that are not best described as driven by rationality, and it is a sphere in which people develop their desires, preferences, and plans as they go along – and often in interaction with their partners. This is not to say that a person cannot set a sexual life plan early in life and thereafter more or less follow this one plan. It just illustrates why the sexual life plan concept differs from the Rawlsian life plan concept. The sexual life plan also should not be confused with a lifestyle.[3]

Further, the sexual life plan concept is just one part of the political principle of distribution of opportunities to develop sexual life plans involving reciprocal and non-degrading relationships and interactions – which, in turn, is part of my theory. The concept of a sexual life plan excludes plans to harm others. There are life plans involving sex such that opportunities to follow them fall outside of what we owe to each other. However, this does not make such a plan a sexual life plan as fulfilling the concept.

4.1 The value of choice in the sexual sphere

How should we understand the idea of improving people's choice situations? As we saw in chapters 1 and 2, Rawls and Scanlon base their contractualist theories on the idea that we should, as far as possible, try to bring about social circumstances in which others, regardless of their background, can make genuinely valuable choices about their lives.

According to my theory, a genuinely valuable choice in the sexual sphere is one in which one can follow one's sexual life plan. On what is this idea based? Recall the observation from chapter 1

[3] For a critique of the lifestylisation of sexual politics, where queer identities are constructed as lifestyle choices that can be 'consumed' like consumer goods in capitalist culture see (Bell & Binnie, 2000).

that I highlighted four characteristics of the sexual sphere: vulnerabilities, pluralism, significant value of choice, and inequalities. I said that a plausible theory of social justice for this sphere must consider the implications of these traits. Because there is a wide pluralism regarding life plans and conceptions of the good in the sexual sphere, it is appropriate to locate the value of an opportunity set in the individual's own sexual life plans. And when we consider what it means to have valuable opportunities to develop and follow sexual life plans, it is crucial to consider the pluralism that characterises the sexual sphere.

Further, because there are inequalities in what we desire in the sexual sphere, improving one person's chances to follow their sexual life plans will be different in terms of effort and costs in comparison to what it means to improve the choice situation for another. It is important to note that whether our situation of choice counts as valuable will depend on whether we can feel and be safe in the sexual sphere, whether following our life plan comes with costs in terms of risk of harm, abuse, or social stigma. We have reasons to want to be able to be vulnerable but not at risk of harm.

What does it mean to have genuinely valuable opportunities for setting and following a sexual life plan? As a part of his wider contractualist theory, Scanlon (1998: ch6) has developed a framework for evaluating the value of choice and determining when we should understand a social environment as giving individuals genuine opportunities to make crucial life decisions. This Value of Choice view is a promising place to start thinking about what the claim to choice improvement in the sexual sphere entails. In this chapter, I will look at one aspect of this theory – the idea of valuable opportunities – and in chapter 5, I will continue my exploration of how this view fares in the sexual sphere by looking at the other important aspect of the theory – the idea of substantive responsibility.

As we have seen, Scanlon has so far not considered how his contractualist theory of the narrow part of morality of right and wrong could extend into the sexual sphere in its entirety. I explore this issue in what follows. The Value of Choice view is a part of the narrow part or morality of right and wrong. To use this view in the sexual sphere as a part of what it means to realise the sexual bases of self-respect, we must develop it to make it sensitive to reasons originating in the sexual sphere. This is connected to individuals' being able to make valuable choices according to their sexual life plan. In the next chapter, chapter 5, I show that it also involves making the Value of Choice sensitive to the impact of social norms.

There are several reasons to value having choices in relation to one's sexual life plans. Activities in the sexual sphere are choice-dependent (Kolodny, 2023: 21). When an activity is choice-dependent, its value depends on it being autonomously chosen. Sex, nesting, and intimacy are only valuable when chosen. When they are forced on us, or someone feels compelled to have them with us, their nature changes and value decays. I will say more about the reasons we have to value choice momentarily. Recall that my theory is based on the idea that sexual relationships and the ability to have them are essential for our sense of self and self-respect. Therefore, we must consider what kind of sexual relationships and life plans could contribute to a person's self-respect. My theory does not differentiate between sexual life plans as long as they involve reciprocal and non-degrading relationships or interactions of the kind I discussed in the previous chapter on sexual standing. I start from the assumption that people have strong reasons to want to live according to their own life plans. In the sexual sphere, thus, the claim to choice improvement is explicated as a sufficientarian principle of distribution on which people have genuinely valuable opportunities to follow sexual life plans.

Therefore, we cannot take a plan to have many casual relationships or interactions less seriously than a plan to have one long-term nesting partner. Casual sex may be casual in the sense that it

does not involve a 'serious' relationship in the traditional sense of the word, but this does not mean that people with life plans involving casual sex have a more casual approach to the sexual sphere. It is possible to be very serious about casual sex, and it can play a central role in someone's life. It is possible, too, to be married without being serious about either one's own marriage or marriage as a way of life. From the point of view of my theory, there is nothing inherently less worthy in casual sex than in marriages. People do sometimes feel disrespected in casual sexual interactions. And we can object to people treating others disrespectfully. But this is true in for example monogamous marriages, so-called hook-ups, and open relationships. This is why the relevant kind of sexual life plan involves reciprocity and non-degradation. On the sexual basis of self-respect, we care that people should be able to set and follow such life plans and have faith in their ability to carry them out. Having such opportunities contributes to self-respect in a relevant way. Beyond this requirement, it is inappropriate for the state to make further judgements about what sexual life plans are worthy of pursuing.

As we saw in the previous chapter, the idea is not that sex in which a person chooses to be degraded is not valuable. As long as it is part of a sexual relationship in which one is respected and not demeaned as a person, it can be valuable. Importantly, sexual relationships as connected to self-respect depend on reciprocal voluntariness. Sex and intimacy given out of pity or generosity, for instance, may be valuable for other reasons and on different views. However, they fall outside my theory, in the sense that we do not owe each other opportunities to pursue them. For an opportunity to be considered valuable, according to my account, they cannot be incompatible with our and our partners' preferences.[4]

[4] This argument does not rely on a particular view of preference formation – its success does not depend on whether we can choose our sexual preferences or merely make choices according to the ones we have.

Choices in this sphere have representative value: we have reason to want to make them for ourselves because what we choose is a representation of ourselves. As Scanlon (1998: 252) argues, when a partner buys a present for us, we often care more about it being the present that the partner chose rather than the best thing we could imagine getting. We would want the partner to take time and think about what would make us happy – even if they did so rather unsuccessfully. That is preferable to them relying on the algorithm of a big tech company successfully predicting what we want. Choices can also have symbolic value. A choice is symbolically valuable if being deprived of it signals that one does not have equal standing with others. Scanlon (1998: 253) argues that:

> In a situation in which people are normally expected to make choices of a certain sort for themselves, individuals have reason to value the opportunity to make these choices because not having or not exercising this opportunity would be seen as reflecting a judgment (their own or someone else's) that they are not competent or do not have the standing normally accorded an adult member of the society.

Scanlon (1998: 253) gives the example of arranged marriages; in a society where most people choose their partners themselves, this – in itself – gives individuals reason to want to choose their partners. The reason is that the meaning of having partners selected for one in such a social context differs from in a society where arranged marriage constitutes the norm. In a social setting where adults typically get to choose who they have sex and live their lives with, 'having their parents make the choice would be "demeaning"—that is to say, would suggest that they are not competent, independent adults'.[5]

Another reason to value choice has to do with effectiveness. Where we know what we need and want, our choosing for ourselves can make it more likely that we can lead a life that suits us. This is certainly true in the sexual sphere. Rather than our families or governments, we are the best

[5] It is worth noting that Scanlon (like Kolodny, 2023: 21) uses these examples from the sexual sphere to illustrate his view about what we owe to each other in relation to choice, but does not argue that we have a claim to choice improvement or what such a claim would consist in if applied in the sexual sphere.

judges of what kind of people are relevant potential partners for us. This *instrumental* value of choice is 'a function of the value of the alternatives that would result from the actions one might choose when presented with this choice and the likelihood that one will choose the action with the more favourable outcome' (Scanlon, 2013: 511; see also Kolodny, 2023: 21). This is not to say that everyone always knows what they want in the sexual sphere. In this sphere, we often make choices or want to make choices that are not in line with our general values (Bartky, 1990: 45-62). Sometimes, we do not know what our preferences are until we have tried different options out or when they are presented to us. As noted, the exploration of our sexual or intimate desires often happens with others, who simultaneously discover their preferences (Angel, 2021: 38). Further, as in the case of generally degrading life plans, sometimes what we want is not what we need; it may be harmful to us or based on preferences informed by oppressive norms. Therefore, not all options have instrumental value, even if we are able to choose them ourselves. And sometimes, it is better not to have an opportunity. I will explore this issue in section 4. We can keep this in mind and simultaneously see that some choices have instrumental value. I am neither suggesting that we always know what we want in the sexual sphere nor that what we choose is always best for us. Instead, I am suggesting that, on balance, people have reason to be able to choose among options in the sexual sphere.

To make it more likely that people can take advantage of opportunities, we must consider what would contribute to developing people's capacity to choose between options.[6] On any reasonable conception of the value of choice, part of what it means to have a valuable choice set is that one can choose capably and freely among the valuable options that become available when society is structured in the relevant way.

[6] In the following chapter, I explore this question in my discussion of Scanlon's view of responsibility.

Many factors contribute to the development of people's capacity to choose among sexual life plans (Seaford, 2020). One is the extent to which schools have high qualitative sexual education programmes, where young people are respectfully taught about sexual and reproductive health, consent, and the specific harms that people risk in the sexual sphere. In addition, this form of education would incorporate information about different sexual life plans and how to treat partners and potential partners well in such plans – something that is especially important against the work of queer theory and disability studies on the interactions of systems of oppression of heterosexism, ableism, and monogamy (Bell & Binnie, 2000; Kafer, 2013; Lewis, 2019; Rich, 1980). Alison Kafer (2003: 79) argues that able-bodiedness has been 'cast as separate from politics, as a universal ideal and a normal way of life, in much the same way as heterosexuality'. The cultural assumption that people do not have disabilities hides the fact that many people do, which in turn can block access to essential services (Kafer, 2003: 80). In the sexual sphere, the assumption that sex takes place between cis men and cis women without any disabilities means that it is harder for people who do not fit these categories to access opportunities to follow sexual life plans. Therefore, an essential task for sexual educators in schools is to help students question the view of sex communicated by mainstream culture and to encourage them to think more creatively about sex and intimacy (Srinivasan, 2021: 33-72). Likewise, sexual education should enable students to follow non-heterosexual life plans.[7] By giving access to more creative ways of thinking about sex and raising awareness of a plurality of sexual life plans, this kind of policy improves the choice situations of everyone, not only those who, for instance, are queer, trans, or have a disability.

[7] The aim of providing people with better choice sets will sometimes clash with parents' claims to influence the education of their children, where some parents find getting specific kinds of information about sex to be contrary to their conceptions of the good life (Reich, 2002: 149-151). I will discuss a related case in section 4, but we can note for now that it is essential that policies strike the correct balance between these values. In general, the aim of enabling people to develop an autonomous capacity for making choices in the sexual sphere can be furthered in different ways, and how best to do so is a question that cannot be settled in this chapter.

As noted, one of the characterising features of the sexual sphere is that the values of choice are significant. In most cases, it is preferable that people make choices about their sexual lives themselves. Therefore, one thing that matters when we evaluate a policy, principle, or state of affairs in the sexual sphere is its effects on people's choice situations. Scanlon (1986: 184–5) argues that:

> Moral principles or social institutions which deny such opportunities [to have the ability to shape their lives and obligations through the exercise of choice under reasonably favourable conditions] when they could easily be provided, or which force one to accept the consequences of choice under extremely unfavourable conditions which could be improved without great cost to others, are likely to be reasonably rejectable for that reason.

Where the sexual bases of self-respect are realised, people are put in good choice situations. By this, I mean that they have access to and can choose from genuinely valuable opportunity sets. What constitutes such an opportunity set? It is a set of options from which an individual can choose, according to their conception of the good, to follow their sexual life plan(s). Life plans that are non-reciprocal or degrading will sometimes be ruled out by people's claim to non-interference, which we discussed in chapter 1 and 2. This does not mean that they will necessarily be outlawed, and we cannot beforehand say what constitutes the best policy for all cases where people choose to be involved in degrading relationships. That a life plan involving sex falls outside the sexual life plan concept does not mean it will be ruled out by law or policy – it just means that individuals have no claim on others to be provided with opportunities to follow that plan. The claim to choice improvement requires that people can go through a particular procedure for choosing, develop choosing capacities and select among sexual life plans that have a (minimal) substantive content (of involving reciprocal and non-degrading relationships).[8] I will now consider some potential policies that could improve people's choice situations in the sexual sphere.

[8] In other words, the account of autonomy I am working with is both procedural and (weakly) substantive (Lépinard, 2011: 207).

Consider the following fictional case. Sana and Amy are in love and have a sexual relationship. They met in their hometown in the east of their country. Now Sana has to move to work in the west of the country. The couple struggles to maintain their relationship because travelling between their homes on the fast train is so expensive. Note that Sana's problem is not with her sexual standing. Nor is anyone interfering with her. Yet because she can only live according to her sexual life plan at a very high cost, she has a claim to be put in better circumstances of choice. One day, the government proposes the policy

> Long distance bonus: Everyone in a relationship with someone who works far away from them gets a premium to pay for train tickets. Tickets now become very cheap.

Long-distance bonus would provide people like Sana and Amy with a better opportunity than before. It would make it cheap to buy fast train tickets. Does Sana have a generic reason to want this policy to be implemented? The Long distance bonus policy would provide her with better opportunities. Even though a further argument is needed to show that the policy is all things considered justified – after all, the funds would have to be allocated from somewhere else – this consideration at least counts in favour of its implementation.

Consider now the example of Ronja. Ronja is single and at a point in her life where she wants to date many people. However, after working 10 hours daily, she has neither time nor energy. Therefore, she cannot follow her sexual life plan. One day, the government proposes the following policy.

> Shorter workweek: The workweek is shortened to 4 days a week. People get to keep their salaries.

There might be many reasons to want to implement Shorter workweek (Rose, 2016). One is that people like Ronja can follow their sexual life plan of meeting with many people. This policy has

the benefit of being helpful for people almost regardless of what sexual life plan they have – if one's plan is time-consuming, it will be beneficial to get more time. Shorter workweek would improve the opportunity sets of many individuals.

A problem for Cece, who likewise is single, is that housing rules do not prioritise her (Rosa, 2023: 53). Let us imagine that couples get better placed in the apartment queue due to a policy allowing them to combine their time spent queuing. Every year, Cece sees many younger, coupled-up friends skip the line. Because Cece cannot move out of the small room she is renting in a busy flat, she feels it would be harder to maintain a stable relationship if she did meet someone (Wells, 2019). Right now, it is uncomfortable even to bring people over, so she cannot imagine how she could follow a sexual life plan that includes a long-term relationship or one involving nesting. On the policy

> Neutral housing: Rules for distributing apartments become neutral regarding what kind of relationships tenants are in.

Neutral housing would enable Cece to get an apartment faster. The policy would give her more opportunities to be in relationships and bring over dates. She has a reason for wanting Neutral housing implemented. While housing is not all about sex or intimate relationships,[9] one important reason we want to get the privacy that Cece feels is lacking in her house is that we want to develop our sexual life plans without other people snooping around.

To know whether to implement Long distance bonus, Shorter workweek, and Neutral housing, we must look at the costs and explore what reasons other people might have against these policies. The same can be said about the sexual education policy I discussed above. To explore how to weigh different values in this way, we must understand what it means to make a claim and reject

[9] See Waldron's (1991: 41) discussion about the obstacles houseless people face in relation to 'making love'.

principles and policies in the contractualist framework. Next, I will present the idea of the generic reason and explain how this concept must be refined for contractualism to work in the sexual sphere.

4.2 Generic reasons in the sexual sphere

To evaluate claims from different standpoints, we must rely on 'commonly available information about what people have reason to want'– information about what Scanlon (1998: 204–5) calls generic reasons, that is,

> reasons that we can see that people have in virtue of their situation, characterised in general terms, and such things as their aims and capabilities and the conditions in which they are placed. Not everyone is affected by a given principle in the same way, and generic reasons are not limited to reasons that the majority of people have.

Scanlon (1998: 212, 216) gives several examples of generic reasons, as in the kind of reasons that could be used to reject principles or policies. Unfairness is one example of a generic reason to reject a principle. We cannot accept that one person's complaints are taken more seriously than someone else's for no good reason. A policy that arbitrarily favours A's reasons at the expense of B's similar reasons would be rejectable because it is unfair. B would also have a generic reason if the burden the principle puts on her is greater than the burden someone else would have to bear on an alternative principle.

When we judge whether a policy could be rejected from the standpoint of a specific member of our community, Scanlon (1998: 204) argues that what is of importance is not her 'particular aims, preferences, and other characteristics.' Generic reasons are not concerned with what is likely to lead to an agreement, considering what the individuals in our situation are like. What matters, instead, is the merit of the claims of those involved – the reasonableness of their arguments for

and against policies (Scanlon, 1998: 194). I will continue exploring Scanlon's Value of Choice view and especially how generic reasons are connected to choice and responsibility in the next chapter, specifically in sections 5.3, 5.4, and 5.5.

Now, readers might worry that contractualism is not well suited to the sexual sphere – after all, what characterises this sphere if not *particular* aims and particular preferences? However, this would be too fast. The point here is that we do not care about the *specific* sexual life plan that people have, but rather that people, in general, have reason to have the opportunity to follow a sexual life plan. Recall from section 1.2 that Scanlon (1998: 204) argues that we have reason to reject principles that hinder us from giving special attention to our projects and the people we hold dear. Our interest in following our own sexual life plan, whatever it is, is such a generic reason. In his work on toleration, Scanlon makes this point concerning what I have called the claim to non-interference. Considering conservative proposals to outlaw homosexuality, which these conservatives defend by referring to their worry that social mores concerning sexuality will change, Scanlon (2003: 107) argues that,

> the costs to the individuals who would be restricted are severe – too severe to be justified by the considerations advanced on the other side. In fact, the argument for restriction seems virtually self-contradictory on this score. What is the legitimate interest that people have in the way their social mores evolve? It is in large part the legitimate interest they have in not being under pressure to conform to practices they find repugnant under pain of being thought odd and perhaps treated as an outcast. But just this interest is violated in an even more direct way by laws against homosexual conduct.[10]

Traditionally, liberals have been clear that the claim not to be interfered with in the sexual sphere can ground generic reasons to reject principles and policies. This is what we saw in chapters 1 and 2. Recall that what has been ambiguous is whether claims to other forms of improvements in the

[10] The full quote starts in the following way: 'In the case of proposed restrictions on deviant sexual conduct'. I have chosen to cut it out of the main text, which does not mean that I do not believe the choice of words does not matter.

sexual sphere can ground generic reasons. We now know that how one is faring in the sexual sphere can impact one's self-respect and sense of how one's life is going. A central claim of this thesis is that people have generic reasons to want to be put in good circumstances of choice regarding their sexual life plans.[11] In extending the contractualist reasoning into the sexual sphere, we make a more comprehensive range of reasons originating in this sphere count as generic.

Given that there is a significant pluralism in conceptions of the good and sexual life plans and that there are inequalities, we might worry that relying on an idea of the 'generally valuable' will cater to the majority's view of what is valuable in the sexual sphere. However, as noted, the generally valuable should not be understood as a function of what the majority believes. What matters when we determine whether a reason is generic is whether others, when contemplating the situation of an agent, can see the force of the reason. They need not have this reason themselves. However, if they would contemplate the other's position, they could see that having it in that position makes sense. The application of the generic reason is complicated when we add the consideration that the sexual sphere – like society as a whole – is regulated by social norms, some of which are unequal and harmful. I will explore this issue further in the next chapter in 5.5.

For now, it suffices to sum up that to use the Value of Choice view in the realisation of the claim to choice improvement in the sexual sphere, we must expand the pool of generic reasons to include reasons that are based on the interest we have in following a sexual life plan. In the next section, I consider further policies that could improve people's opportunities to follow such life plans. I also discuss what separates such policies from policies based on the other two kinds of claims we have in the sexual sphere.

[11] This, together with the arguments of the previous chapters on non-interference and sexual standing, justifies why society must provide the sexual bases of self-respect. When the sexual bases of self-respect are in place, people's claims of the three kinds are realised.

4.3 The claim to better circumstances of choice

To see the importance of recognising that people have a claim to be put in better circumstances of choice with regard to their sexual life plans, consider the example of

> Intimacy benefit: Family law policies that give married couples certain rights, responsibilities and benefits designed to make it easier to live intimate lives with others are extended to apply to all who register that they are in a relationship.

In contemporary liberal societies, family law is skewed to benefit certain sexual life plans. Marriage laws have typically favour heterosexual, monogamous couples, while queer relationships, singles, and families that do not fit this category often lack certain rights. For instance, married couples are often given priority when it comes to housing (Rosa, 2023: 53-53). One way to improve the situation of people whose life plans do not include being part of a 'conventional' or 'traditional' nuclear family is to make family law neutral to all life plans. A liberalisation of family law could either level married couples down by removing any special benefits or introduce such benefits to everyone who registers as being in an intimate relationship.

Against this background, we can see that Intimacy benefit, by doing the latter, improves the opportunity sets of non-married people without worsening that of married people. It does something to level the opportunity sets of individuals who do not wish to marry, with those of other individuals. It is designed to make it easier to live more versions of an intimate life. If we assume that it is efficient at this, Intimacy benefit is one appropriate policy response recognising the second kind of claim to improvement of choice situations. Intimacy benefit improves the opportunity set of Niki, who wants to have a non-traditional relationship. It makes it easier to follow her sexual life plan(s). This constitutes a reason for her to accept it. By working for the implementation of policies like this, other people can justify themselves to Niki. Just as in the other

individuals we have encountered in this chapter, Niki may well have sexual standing. What the policy would achieve is an improvement of her choice set.

The reader might worry that what is doing the work in Intimacy benefit is not the fact that it provides more opportunities to follow sexual life plans. Instead, Intimacy benefit is right because it removes a policy that is wrong. And this previous policy is wrong not because it denies certain people the opportunity to follow their sexual life plan but because it is discriminatory. The Intimacy benefit policy makes it the case that not only married couples can get the rights and benefits. The state should not discriminate against people for choosing not to marry. It is this discrimination that makes Intimacy benefit something we have reason to want and what makes the previous policy rejectable.

While this is one reason in favour of Intimacy benefit, it does not tell the whole story. To see this, consider:

> Grass straw distribution: The state will send an envelope with four grass straws to the homes of everyone who is married or has a sexual life plan that includes marriage.

Grass straw distribution is wrong. It discriminates against people on the basis of their relationship status. It has this in common with family policies that only apply to married people. But in contrast with such policies, it provides nothing valuable – four grass straws are useless. Being in possession of grass straws does not make it harder or easier to follow one's life plan. Following one's sexual life plan, on the other hand, is immensely valuable. So even though we can object to Grass straw distribution based on its discriminatory application and what this expresses, in the family law case, we have the additional reason to reject the policy that Intimacy benefit replaces. We can thus not only count on discrimination considerations to do all the work. In addition, we must consider what improves opportunities to follow sexual life plans.

In chapters 2 and 3, we got to know the case of rural heterosexual men who felt left behind when women left for the city as a result of changing labour market conditions and social institutions leaving the countryside. We saw that these men had complaints against the state for failing to provide adequate social services and rural labour market policies. With the help of the sexual bases of self-respect, we can now make sense of this situation of the people involved. As we saw in the previous chapter, many of these men lack sexual standing; most women have left, and the women who remain in the countryside 'do not want to get involved with a farmer'. Some men may have sexual standing or opportunities to develop it on the condition that they give up their rural or farming lifestyle. Others might have sexual standing even if they remain. Hence, it is essential to separate claims to sexual standing from claims to choice improvement.

To see this, let us imagine a farmer man, Alfred, who has a sexual life plan to marry someone in the countryside who also wants to share his life at the farm. If there are women who desire him but do not want to be married or do not want to live a farm life in this way, then Alfred would have sexual standing but not valuable opportunities to follow this particular sexual life plan. Does Alfred have a claim to be put in better circumstances of choice when it comes to following this sexual life plan? It depends on why women do not wish to live according to it. If they are interested in farming but feel that the sexual life plan does not give them enough financial or social independence, Alfred has reason to amend his sexual life plan to fit that of these women better. In this situation, it is clear that Alfred has (additional) reasons to accept policies that aim to improve gender equality and provide employment opportunities for women in rural areas. What might such policies look like?

In many rural societies, there is a 'variety of informal "education systems" that work to integrate young men into resource industry employment and into cultural and family traditions and practices', while 'for women, this restricted labour market creates the conditions for more

successful careers in formal education as well as for mass outmigration' (Corbett, 2009: 1-2). Where inheritance norms prioritise sons, this reinforces the pattern (see discussion in Bourdieu, 2007). We can understand this situation as one in which society gives men and women vastly different opportunity sets. In these sets, the options to stay are much costlier for women than for men. As a result, men, like Alfred, find it much easier to stay, and women find it easier to leave. If we want to improve the opportunity sets of men – and women – to live according to their sexual life plans, it would be wise to focus on the opportunities for women to stay and opportunities for the men who want to leave. Efforts should include women in the systems that integrate men into the rural labour market and cultural practices. Women would need more power over these institutions, which would have to be gender equal. Another option is to enable women to create new environments, practices and jobs. Alfred and other men who find their opportunities less than ideal have reasons to work hard to make these changes happen.

For example, policies promoting cooperatives and shared ownership of farms and enterprises in the EU have proven to improve women's economic conditions and opportunities for employment. Several European gender-oriented projects have also reported promising results in increasing stable long-term employment for women in rural areas. These include business training programmes for women, support for small rural female-run businesses, improved childcare, and social initiatives that enable women from different generations to exchange knowledge and care for each other (European Parliament, 2019: 46–51). In countries where the state is a significant employer, relocating government agencies' offices to rural areas could also be an option. So could laws that allow remote work. One further policy solution would be to ensure that sons and daughters inherit equally. We can also think of policies to improve commuting infrastructure to help connect rural areas with cities, which could enable relationships between people who work in different places, or labour market laws that would require more employers to allow remote work. Ensuring high-quality broadband connection is another important policy that could improve the

farmers' situation. In other words, many policies that would improve people's choice situation in the sexual sphere would also improve people's choice situations generally.

Let us assume that the farmer Anton lives in a rural area with a good broadband connection. Anton is one of many local men who wish to live on a farm and have some form of long-term nesting relationship, a sexual life plan that very few local women share. Because the internet connection is good, and the real-world opportunities to follow their sexual life plan are few, Anton and the other men downloaded the dating app Greedy. On this dating app, Anton has developed sexual standing, as described in chapter 3. Many women signal on this dating platform that they see him as a potential partner. As far as Anton can tell, these women also share his sexual life plan; in their profile, they write that they want to live on a farm with a man – or use emojis to express this preference – and that they would not mind moving to a rural area. Many men in Anton's area have similar experiences with the Greedy dating app.

One day, Anton and the others log on to find they must pay 1000 pounds monthly to continue using Greedy. The dating app company has implemented the same policy on all its platforms. Whistle-blowers at Greedy headquarters report that the company's algorithms figured out that men in rural areas were an especially eager audience. They predict that since these men have no other viable way to follow their sexual life plans, they will pay a higher price. It is unclear whether Greedy's behaviour is legal in the UK; even if the company is taken to court, legal experts say the process will likely take years. This example is inspired by real events (Sveriges konsumenter, 2022). As we will see in chapter 6, one of the distinguishing features of big dating app companies is that they can act as gatekeepers in the digital sexual sphere. Specifically, I return to the case of Greedy in section 6.4 when exploring how dating apps contribute to the realisation of the claim to choice improvement in the sexual sphere.

Now imagine that following this scandal, people in Anton's area deliberate about what to do. It is proposed that the following policy should be implemented to ensure that Anton and the others have opportunities to follow their sexual life plans in the meantime:

> British Dating Corporation: The state introduces a public, free-of-charge, non-profit online dating app, British Dating Corporation, financed by the funding model traditionally used in public service broadcasting. The dating app is given funds for marketing in the cities and rural areas around the country to ensure that everyone finds out they can use it to find potential partners who share their sexual life plans.

If successful, the British Dating Corporation policy would go some way to ensure that everyone, regardless of economic status, can use a dating app. This is a reason for Anton to want the policy to be implemented. Valerie Soon (working paper; see also Sangiovanni, 2007) has provided a theory for 'de-bundling' as a means for providing genuine freedom of association, arguing that when basic goods are available only for individuals who associate with private actors, this forces people to do so regardless of whether they share the values of these private actors. Soon (working paper) argues that in such situations, the state must unbundle the goods from the private actors by supplying them. Providing a publicly funded service for online dating is one way to ensure that people are not forced to associate with private companies to have access to opportunities to follow sexual life plans. In this sense, the addition of the British Dating Corporation constitutes an improvement of Anton's opportunity set.

There are reasons against this policy as well. As the state can be a source of oppression and repression in the sexual sphere, it is reasonable for individuals not to want to hand over their data. While the public service broadcasting model puts the state further from the control of the content and has traditionally been able to provide independence, the sexual sphere is an area where we are especially vulnerable and thus have particularly strong reasons to be wary of the state.

The question of dating apps and their ability to provide people with valuable opportunities to follow sexual life plans is a crucial one – after all, it is now one of the major ways in which people meet. I will return to it in chapter 6, where I explore to what extent it provides people with opportunities to follow sexual life plans and, in general, contribute to the realisation of the three claims we have in the sexual sphere.

To sum up, the case of rural male surplus is one example of how the politics of the non-sexual spheres shape the sexual sphere and how what happens in the sexual sphere can give us reason to reject policies outside of it. When new labour market policies are proposed, we have reasons to ask how they affect people's opportunities to follow sexual life plans. Some necessary policies, like labour market law, only indirectly contribute to the sexual bases of self-respect. However, numerous interventions are more directly aimed at increasing the quality of options in the sexual sphere. Intimacy benefit above relates to one such area. Consider next the case of disability.

Recognising that following sexual life plans is central to many people's sense of how their lives go is especially important in light of recent welfare cuts of assistance for people with certain disabilities. People who require assistance to do things such as showering, having dinner, or going to the library will find it hard to maintain intimate relationships without this kind of assistance. In some welfare states, the state has, during certain periods, provided and funded support, services and assistance to make it possible for individuals to carry out their lives (Bylund, 2022: 73-85). Unfortunately, in recent years, austerity measures deprived people of support and assistance even though they need it (Bylund, 2022: 86-90). As a result of these austerity measures, individuals have access to a much smaller range of opportunities to follow sexual life plans and intimate relationships. As Christine Bylund (2022: 97) writes about the dreams and desires of individuals with disabilities in this situation: 'what a person longs for and sees as possible says something about the situation she lives in while longing.' When one cannot leave one's house, dating new people

and maintaining existing intimate relationships becomes challenging. Because such service for assistance in many cases is needed for some individuals to be able to follow any sexual life plan at all, these individuals will have very strong reasons to reject austerity policies.

In some cases, general assistance policies will be insufficient to count as providing valuable opportunities to develop the capacities needed to follow one's sexual life plan. Imagine the case of Becca, an individual with a disability that makes it difficult for her to enjoy sex. Becca has opportunities to develop sexual standing in the eyes of others and a girlfriend, Cindy. However, the couple find it hard to have sex together because Becca has not been able to develop a sexual practice that works for her. This case illustrates the importance of seeing as generic the reasons from standpoints that most people have not occupied and including the perspectives of individuals with disabilities in sexual education in school. In some cases, more assistance might be necessary for people to develop their capacities in the sexual sphere.

To improve the situation of individuals like Becca, some propose that in addition to the general assistance policies for people with disabilities discussed above, the state should do more to provide access to a treatment whose purpose is to directly assist the receiver in developing their capacities and skills in physical and emotional intimacy with a partner. This therapy is carried out by trained professionals who follow ethical codes for therapists, and its cost is like other forms of psychological treatment.[12] Let us assume that the state introduces a policy,

> Therapy: The state funds a treatment on which individuals with can access therapy to develop physical and emotional intimacy skills.

[12] This fictional policy is inspired by surrogate partner therapy, specifically Kevin Mintz's (2014) analysis of this case. In SPT, the receiver works with their partner, a therapist and a 'surrogate' to develop skills in physical and emotional intimacy. In this treatment, the team provides 'therapeutic experiences' which 'include partner work in relaxation, effective communication, sensual and sexual touching, and social skills training' (IPSA, 2023).

Therapy appears to provide education and skills that enable receivers with disabilities such as Becca's, as well as other disabilities, to develop their sexuality with their partners.[13] The therapist, who has specialist training in how to train a person in Becca's situation, predicts that Becca and Cindy would go to a certain number of sessions, and after that, they could have a well-functioning sex life. If the state introduced Therapy, Becca and Cindy would be able to improve their intimate lives. Therapy would significantly improve Becca's choice situation. She has a generic reason for wanting it to be implemented.

Therapy allows people with a previously limited choice situation to follow a larger number of sexual life plans (Compare, Mintz, 2019: ch5). In this way, it improves the situation of all those who partake in it, regardless of what sexual life plan they have. Note that this policy is based neither on the claim to non-interference nor on the claim to equal standing. No one is interfering with the individuals in question, and they might already have sexual standing. Instead, it is based on the claim to choice improvement I have argued that we have in the sexual sphere.

Recall from my characterisation in chapter 1 that the sexual sphere is one in which people are vulnerable. This is true in cases like Becca's, where individuals are hoping to develop their skills for sex and intimacy. Because we are vulnerable in sexual situations, extensive research on the potential risks for harm involved in treatments like Therapy is necessary. The state would also need to investigate what safeguards and procedures would best ensure the therapy is right for the person applying for it. If the risk for harm involved in Therapy is substantial, that affects the justifiability of having state funding for it. In the next chapter, I will discuss the issue of policymakers' responsibility for outcomes that individuals suffer as a result of their policies.

[13] Mintz (2014: 5) writes that 'Although research on SPT is limited, a recent study of women with vaginismus found that 100 percent of those who underwent SPT succeeded in penile-vaginal intercourse, as opposed to 75 percent of those working with their partners in couple's therapy (Ben-Zion et al., 2007)'.

This discussion of some examples of policies which could improve people's opportunity sets in the sexual sphere should not be read as a comprehensive political agenda.[14] Instead, it provides some guidance to understand the view I am developing in this thesis. I will continue explaining what we owe each other concerning claims to improvement of choice sets in the next chapter.

4.4 Is more choice better than less?

I have started from the assumption that in the sexual sphere, more choice is better than less. The significant value of the choices we make in this sphere, I said, is one of the features any theorist constructing principles for it must take into account. Yet, on many conceptions of the good life, the sexual sphere has been seen as a realm of society where individuals' choices must be limited. Such restriction is required to bring out what is valuable in sex on these views, which partly explains why social norms for sexuality have been strict and punishment for their infringement severe. Chapter 5 shows an example of this kind of norm. For those who believe that people who grow up having only one or very few choices concerning sex are better off than people who grow up in a society where more options are available, what does my theory have to say?

We might understand this situation as one in which there are interests that some have in choice being limited and interests that some other people have in more options being available. The latter

[14] One crucial but often lacking set of policies and laws that need to be in place for people to be in good circumstances of choice are those that provide reproductive rights and protections. Here, the sexual sphere interacts and overlaps with other spheres. I cannot, in this thesis, present a view of how people's interests in these overlapping spheres should be weighted. I note, however, that the inclusion of reproductive rights is one way in which my view underscores that we are all responsible for the sexual sphere being a safe and accepting place where we can afford to be vulnerable. Accessing safe contraceptives is one important reproductive right, but so is the right to safely and without excessive costs give birth to children and to support those children as they grow up. My view, like that of liberal egalitarians such as Serena Olsaretti (2022: 414), rejects the idea that children are the responsibility of their parents alone. Not all pregnancies are wanted, and therefore, yet another crucial right is to be able to choose to terminate unwanted pregnancies. Reproductive rights are thus one policy area where we can see that people have claims to both non-interference and choice improvement and one that illustrates that it is not always easy to draw the line between these two values. We owe others not to interfere if they want to have an abortion or use contraceptives, and to ensure that they can reliably and cheaply access abortion clinics and contraceptives. We also need to work towards providing an environment where social sanctions do not stand in the way of people's treatment, which I discuss at length in the next chapter.

set of interests – of those who want choices to be limited – might be based on a desire to protect their way of life or in their not wanting the traditional option of, say, marriage changing meaning. This set of interests might include protecting a certain kind of family life, as well as the fear that a 'freer' sexuality will impact society in negative ways. Whether these interests are threatened is an empirical question that must be answered with the help of data on how the institutions of marriage and coupledom are actually faring today.[15] While the feeling that society is changing can be uncomfortable, it is not always the case that it is indeed changing in ways that correspond to such feelings.

The demand from certain groups that people live according to their traditional sexual life plan is based on the idea that sex is special, important, and significant. And it is because it is special that it must get special treatment and take place only within specific life plans. When the conservative Christian argues that sex must only happen for procreation between married men and women, he is not underestimating the value of sex generally. Similarly, when liberals say that it is especially wrong to infringe upon a person's claim to non-interference in the sexual sphere, they are pointing out that sexual interference without consent is especially harmful compared to other interferences with our bodies (Scanlon, 1998: 175). Sex, on these views, is significant.

Recognising the value and importance that sex has in one's own life plan or conception of the good, it is hard to argue that the options of others to follow theirs should be limited. One can often follow one's own plan even while being aware of other plans. The fact that the meaning and

[15] For instance, there are indications from sociological research that young people's having more sexual partners does *not* seem to lead them to reject long-term relationships later on. Instead, what can be observed is a 'broadening of the relational repertoire' (Bergström, 2022: 69), where people have different types of relationships in different periods of their lives, but where the norm to 'couple' ultimately stays very strong. Even among the radical changes in women's employment, LGBTQ rights, and the 'sexual revolutions,' coupledom remains a strong norm and still 'defines what it is to be a citizen, a fully recognized and rights-bearing member of society' (Roseneil et al., 2020: 3). Based on this, it appears that it is not people who want to live according to a couple centred sexual life plan who has the weightiest complaint, but rather those who do not wish to live that form of life and who are discriminated against.

effect of that choice does change when others choose differently may be able to explain why someone could have a reason to want to reject the addition of options to these other people's opportunity sets. Still, it will rarely overweigh the reasons they have to have access to or at least find out about those options.[16]

Some individuals in some social groups do not want their co-members to get more options (Margalit & Halbertal, 1994; see also Reich, 2002: ch3). They worry that the co-members will opt out of the original life plan. It is reasonable to worry about this – after all, many particular ways of life have disappeared or changed significantly throughout history. Imagine that some members (the 'Worriers') of one such group disagree strongly with my argument that we owe it to others to improve the circumstances of choice in the sexual sphere. These Worriers might argue that the opposite is true – what people owe the members of their group is not to make all these options available.

I have argued that we should take sex seriously. If we do, it should make no more sense to take seriously these kinds of worries concerning sexual relationships than worries relating to other valuable things, such as education. Similarly to the Worriers, some members of some social groups do not wish for example that their female members go to university or to go through professional training (Reich, 2002: 59-64). Let us assume that the Worriers are like this. In this situation, allowing everyone, regardless of social group and gender, to go to university adds a (formal) option to everyone's option set. Adding this opportunity does not mean anyone must take it up. Everyone can choose whether to include training of this kind in their life plan. Still, it remains the case that education will change a person's life (and make her become aware of even more life plans). In

[16] Compare Scanlon (2019) on toleration.

other words, the worries of the Worriers are not implausible. As a result of more opportunities becoming available to more people, the character of society is likely to change as well.

Very few liberals would think the Worriers' complaints would justify universities excluding members of the Worriers' social group from admission. Instead, it would be argued that education is so crucial for an individual that what her co-members, the Worriers, think does not matter or that they do not have a say in her life choices. If Worriers do not want to go through this kind of training, they do not have to. But they cannot demand that the option be removed for others.

Why should we view sex and sexual life plans any differently? If I am right, being able to choose what kind of intimate life we want is essential, just as deciding whether to take part in higher education or professional training is essential. Education has significant value to people, as does intimacy, sex, and relationships. Different sexual life plans have considerable significance to the people who have them. The interests some people have in keeping things as they are, or as they once were, are unlikely to outweigh the kind of interests that many people have in developing their sexual lives according to some sexual life plan.

Note that I am not arguing that people must take up sexual life plans they do not like or that do not conform to the traditional ways of their ancestors (or the ideals of their contemporaries). Forcing people to have certain relationships would be wrong, not least due to the claim to non-interference I share with traditional liberals. Further, I am not arguing that we cannot choose to exclude specific options for ourselves. Choice improvement, *nota bene*, does not mean choice accumulation. More choice is indeed not always better than less. For a hungry person with no way to tell the different dishes apart, a menu that lists two delicious meals and many low-quality options does not necessarily provide a more (instrumentally) valuable choice situation than a menu that

lists only the two delicious ones.[17] Keep in mind that what makes a choice set in the sexual sphere valuable, according to my theory, is the extent to which it enables a person to follow their sexual life plan.

Often, when the people in a relationship promise each other never to have sex with anyone else, they are 'abandoning the very idea of an option': rather than rejecting options as they come along, they are promising in advance not to even consider other people as potential partners (Dworkin, 1982: 56–57). Making this kind of promise or contract is a way of choosing a sexual life plan with another person. While it would be wrong for the state to hold that this is the only reasonable way to live or try to enforce these sexual contracts, it is not wrong to accept this sexual life plan as acceptable. In other words, the state does not need to constantly remind married people that there are different sexual life plans out there. Similarly, there is no interpersonal moral duty to remind our married neighbours that other people exist that they could consider having sex with – just as there is no moral duty to remind happy singles to get married. A person's choice set is improved when it makes it easier for the person to follow her sexual life plan. Gerald Dworkin (1982: 57) is correct that some people whose sexual life plan includes marriage think that 'the abandoning of certain choices provides a way of manifesting in the clearest fashion that the relationship is of a special nature'. One way of understanding this situation in the terms of my theory is to say that this kind of happily married person does not have a claim to improvement of their choice situation. They are already doing well, so we can prioritise the claims of others.

There is a related critique from social theory on which the promotion of choice impairs people's lives. Eva Illouz (2019), for instance, draws on Carol Pateman (1988) to criticise the focus on choice improvement in the sexual sphere. Observing a tendency to see relationships as 'contracts'

[17] Additional options could increase the set's symbolic value.

that one can enter and exit as one chooses, Illouz (2019: 179–180) points out that in the contemporary sexual sphere,

> Emotional-sexual contracts can be exited without any (or little) penalty, thus making breakup a plausible and permanent threat on self-worth. Because much of the content of intimate relationships cannot be contractualised, these relationships are entered and monitored with an expectation of their end, thus making actors adopt strategies of risk calculation and risk avoidance, thus leading to pre-emptive exit.

It is at least possible that Illouz could be right, that the availability of the option of divorce could make people less likely to commit to each other, that spouses are now less eager to work on the marriage and more likely to break up than they were in a world where divorce was not an option. Even so, divorce is a good option to have if one's marriage is bad – as many are and were. The question is whether the value in the option to end bad relationships outweighs the potential disvalue in people's being less eager to work on their marriages than they would be if they knew they had to stay with their spouse for life. At the same time, providing an exit option does not make the relationship less of a relationship. And choice improvement does not make the earlier agreement to be together less of an agreement. In ordinary thinking about promises, there are circumstances that we recognise as freeing us from what we have promised.[18] The reasons why people break their relationship promises are diverse. Most of them seem perfectly reasonable as excusing and justifying circumstances: we are not in love, we are in love with someone else, our partner has disappointed us, or our life plan has changed.

Illouz's observation is premised on the idea that staying in one long relationship is more valuable than having several shorter relationships. This idea requires justification, some of which Illouz provides in her discussion about the psychological harm of breaking up and its impact on self-worth. But even if we grant that longer relationships are better for self-respect and that breaking

[18] Most people, after all, are not Kantians.

up harms self-worth, denying the claim to choice improvement in the sexual sphere would be worse.

Still, the question is worth taking seriously: is the principle that we owe others to improve their circumstances of choice with regard to sexual life plans likely to make it harder to love, harder to commit? Contractualism focuses on agreement on principles and norms. But rather than pulling people further apart, the striving to find common terms for behaviour would provide possibilities to ask certain things of others and to hold them accountable according to certain expectations (based on the terms that no one could reasonably reject). It is true that the language of 'contract' belongs to the public sphere rather than to any form of romance. Yet, as Jeremy Waldron (1988; 647 see also Giddens, 1992: 190) points out,

> having something to fall back on if an attachment fails may be a *condition* of being able to identify intensely with one's attachments, rather than something which derogates from that intensity.

The contractualist idea of organising society according to principles that no one could reasonably reject is a way of making sure that the wider social environment is such that one can safely 'loose oneself' in the sexual sphere as the risk of humiliation and harm is mitigated. Opening oneself up to others would, in a society ordered according to such principles, not equate to jeopardising one's social standing. I explore the issue of what social norms would impair and support the aim of bringing about such a society. The claim to choice improvement expresses that we owe each other to provide the social and material conditions needed to enter and exit relationships safely. Thus, the liberal egalitarian kind of contractualism discussed here seems less vulnerable to Illouz's critique against the possibility of exit than perhaps other doctrines are. After all, the social bases of *self-respect* aims to enable us to develop social standing more generally. When we see this, it should be clear that a society built on contractualist principles would go a long way to enable

individuals' sense of self-worth. We owe others to improve their circumstances of choice because this would make their self-worth less socially and materially fragile, even to break up. However, the possibility of loss is likely inherent to valuing a relationship and loving and desiring one's partner(s). No reasonable moral or political doctrine could ever ensure that the psychological harm involved in being broken up with does not harm one's self-worth. However, my theory requires a wider social environment of choice where other connections are possible and where, importantly, the end of love does not equal the end of a lease or the end of one's life. In a context where people are materially and financially secure, break up would be slightly less devastating (at least on a practical level).

Dworkin and Illouz are right that there is a trade-off between freedom and dependence (which, in some form, is a prerequisite for all intimate relationships). But when we acknowledge that, concerning sexual life plans, people have a claim to be put not in any circumstances of choice but in genuinely valuable ones, this trade-off becomes less salient. The trade-off persists in my theory, especially compared to an ethics where divorce and breakup are socially or legally prohibited (and where dependence has trumped freedom as the core value). To this ethics, honouring the claim to choice improvement is preferable.

4.5 Conclusion

In this chapter, I introduced the third kind of claim that I have argued that, in addition to the claim to non-interference (chapters 1 and 2) and the claim to equal standing (chapter 3), we can make on others in the sexual sphere, the claim to choice improvement. We now have a first overview of the three kinds of claims an individual has on others in the sexual sphere.

This chapter drew mainly on one part of Scanlon's contractualist theory – the Value of Choice view. I argued that concerning the third kind of claim, to choice improvement in the sexual sphere, the relevant improvements enable others to live according to their sexual life plans. I gave some examples of policy areas that could deliver such improvements. However, in this chapter, I only discussed one aspect of Scanlon's Value of Choice view, namely that which explains what constitutes valuable opportunities. The other important part of the theory concerns what Scanlon calls substantive responsibility for choices. To provide a more complete account of the claim to choice improvement in the sexual sphere, we need to know how to handle this issue of responsibility.

On contractualism, one implication of agents' having a claim to be put in good circumstances of choice is that this can make it the case that they cannot complain about the result of the decisions they make in such circumstances. They can still be granted assistance, but they cannot claim that people should have done more or gone to greater lengths to provide a better choice situation. That is because they have already been given what they were owed – choice set improvement. There is a distribution of responsibility, where policymakers are responsible for providing good circumstances of choice, and the individual has some responsibility to take advantage of the options that are best in line with her plans and desires. This issue of *substantive* responsibility, or the relationship between what an agent chooses and what she can ask of others, is the subject of the next chapter.

The view of substantive responsibility in the sexual sphere that I offer in the next chapter also provides a way to incorporate social norms into contractualism. Recall that the sexual sphere is an area predominantly governed not by law and policy but by social norms, informal rules for behaviour. A problem with applying contractualism in the sexual sphere, therefore, is that it is silent about the effect of social norms on people's choices. Getting these norms right is especially

important when people engage in activities that make them vulnerable to the decisions of others. As we saw in chapter 1, one thing that characterises the sexual sphere is that it is an area where people are vulnerable in this way. Therefore, it would be helpful if the background conditions of the sexual sphere were such that opening oneself up to others was not understood as inviting harm or abuse. It would be less risky to be vulnerable if social norms expected people to care for one another and not take advantage of the vulnerable. In other words, we need a theory of substantive responsibility that can handle social norms. In chapter 5, I provide such a theory.

CHAPTER 5:
Responsibility and social norms

So far, we have seen that in addition to the claim to non-interference that liberals argue that we have in the sexual sphere (chapters 1 and 2), we also have a claim to stand in relationships of equality with others, as explicated by a sufficientarian principle of distribution of sexual standing (chapter 3), and a claim to choice improvement, on which we owe each other opportunities to follow sexual life plan(s) (chapter 4). I examined a part of Scanlon's (1998: ch6) contractualism, namely the Value of Choice view. I argued that this view is a valuable resource for thinking about what kind of opportunities we owe each other in the sexual sphere.

In the previous chapter, I explored the first of two important parts of Scanlon's Value of Choice view, namely the contractualist idea of a genuinely valuable choice. The present chapter will explore the second part of the Value of Choice view, namely the contractualist view of the connection between valuable choices and what Scanlon (1998: 248-9) calls substantive responsibility.[1] I will examine the implication of an agent having had their claim to choice improvement realised, and under what conditions we should see her as having her claim thus realised. This present chapter and chapter 4 constitute a full account of the claim to choice improvement in the sexual sphere. Together with chapters 2, 3 and 4, this chapter fully accounts for my theory. In the next chapter, chapter 6, I apply this theory to the case of online dating apps in the digital sexual sphere.

As we saw in chapter 1, where I described some of the sexual sphere's particular traits, many activities in the sexual sphere are choice-dependent: they are valuable only if people can choose whether to participate in them. Because sexual sphere activities are choice-dependent in this way,

[1] A version of this chapter was published in *Politics, Philosophy and Economics* (2021).

we owe others to put them in good choice situations so that they can make valuable choices per their own conception of the good and preferences. And when this is so, an individual's having been put in good circumstances of choice and having made a certain choice, can make it the case that he cannot make further claims on us concerning that particular choice situation.

It is because many activities in the sexual sphere are choice dependent in the way described, that we need to get this issue of *substantive* responsibility right. The contemporary public debate inappropriately assigns responsibility for the hardships people face in the sexual sphere to individuals, even though the causes often are social or political. Rejecting this perspective, the onus is on me to provide better answers to questions about where responsibility lies, and where we should draw the boundary between individual and societal responsibility. While the main focus of my theory is on how we can bring about a wider social environment where people can set and follow sexual life plans and stand in relationships of equality with one another, there is a related question of how society's responsibility for providing such an environment is connected to individuals' responsibility for taking advantage of such opportunities. When can society be said to have done enough for people's opportunity sets to be understood as genuinely valuable?

So far, contractualist accounts of substantive responsibility have not explored how the impact of social norms on choice situations affects the evaluation of this form of responsibility. Therefore, an important part of developing the Value of Choice view, especially for use in the sexual sphere, is to make it fit the empirical observation that social norms largely determine our behaviour. That is true not only in the sexual sphere, and the lacuna regarding social norms exists in other ethical and political-theoretical frameworks. Therefore, the chapter makes three central contributions, one specific and two general ones. Building on our work in chapter 4, the specific contribution is to show the implications for substantive responsibility of applying the choice improvement claim in the sexual sphere. However, my analysis of social norms and substantive responsibility in this

chapter does not only apply in the sexual sphere. One general contribution, thus, is a critique of any account of choice and responsibility that does not factor in social norms. Because social norms structure our opportunity sets, any evaluation of the value of choice and the assignment of responsibility for particular choices and opportunity sets must take them into account. This point works independently of my theory of social justice in the sexual sphere, even if I draw the examples from this sphere. Together with the previous one, the present chapter makes another general contribution by providing the first feminist critique and refinement of Scanlon's Value of Choice view.

I will further explicate what constitutes genuinely valuable opportunities by examining PrEP rollout policy in the context of oppressive gender norms. This case will help me illustrate the point that realising the sexual bases of self-respect – and indeed, the social bases of self-respect more generally – does not only require that features of formal institutions provide people with genuinely valuable opportunities. It also entails that features of informal institutions such as social norms do so.

The chapter is structured as follows. First, I present the PrEP policy case and social norms as a wider phenomenon and as something that impacts the value of choice. Then, I provide an idealised version of the case before turning to Scanlon's view of choice and substantive responsibility. I use this idealised PrEP case to highlight some ambiguities and lacunas in Scanlon's presentation of his theory before showing how to extend it to deal with gender, sexual social norms and indeed social norms more generally. This contractualist development is what I call the Value of Constrained Choice view. On the Value of Constrained Choice view, we can only hold an individual substantively responsible if her opportunities under a policy are genuinely valuable, considering the social norms that apply to individuals in her position. My feminist view explains the value of choice and how the value of choice affects substantive responsibility, as well as how both these

relate to social norms. Lastly, I suggest that impairments on choice resulting from social norms are especially worrying for contractualists, as these reveal that we are not living on terms which no one could reasonably reject.

5.1 Social norms and HIV prevention

In 2015, the World Health Organisation started recommending that governments provide individuals at high risk of HIV infection with the opportunity to take oral pre-exposure prophylaxis, PrEP. PrEP is a treatment that significantly decreases transmission risk. Now policymakers worldwide are considering how to fairly and effectively roll it out. UNAIDS (2020) has emphasised that it is vital to consider gender inequality in this process. The UN Commission on the Status of Women reported in 2020 that

> proven strategies to prevent HIV among women and girls have not been scaled up; research on female-controlled HIV prevention methods and on treatment that is safe and appropriate for women and girls has not been prioritized; and national HIV strategies and policies have not included sufficiently funded gender-responsive interventions. Globally, AIDS continues to be the leading cause of death among women and girls of reproductive age.

HIV prevention has historically neglected the impact of gender norms and the power dynamics that they regulate, and this is what explains, in part, women's vulnerability to infection. To ensure PrEP policy effectiveness, experts thus urge policymakers to pay attention to the effects of norms on women's opportunities (OPTIONS Consortium, 2019).

An important factor explaining the inability to curb the HIV pandemic is policymakers' insufficient attention to gender inequality (UNAIDS, 2020). In South Africa, HIV is up to four times more common in young women than their male peers (SANAC, 2016). The gender disparity has been attributed to both biological and behavioural factors. One example of the former is that women

have a higher biological susceptibility than men. A behavioural factor is that young women tend to have sexual relationships with older men with many sexual partners. This behavioural pattern, which puts women at higher risk of contracting HIV, interacts with a set of traditional social norms regulating the gendered power dynamics and distribution of resources in many communities (UNAIDS, 2016: 12–15).[2] Consequently, policymakers would need a prior understanding of how social norms operate to determine how to provide individuals with valuable opportunities to take PrEP.

In short, social norms are informal rules for behaviour that impact people's choices and that are closely intertwined with expectations: an individual will likely follow a social norm if she expects that other people follow it, and if she thinks that other people think she should follow it (Bicchieri, 2017: 1–49). While social norms constrain the bundle of opportunities open to an individual, they also work to enable her actions within her opportunity set. Biased social norms are norms that apply exclusively to individuals with certain characteristics, such as gender. Demanding different behaviours from men and women or stricter adherence to a behaviour from members of one gender than from other people, gender norms are an especially troublesome obstacle to women's empowerment.[3] Characteristics that traditional gender norms prescribe for men, such as strength, competence and independence, have historically often been perceived as generally more desirable than those that are expected of women to have, such as passivity and emotionality (OPTIONS Consortium, 2019: 63; Rudman, 1998, 629; Seem & Clark, 2006). Because social norms rely on our views of what society approves of, such norms will not change without a collective shift in

[2] To end the spread of HIV substantive structural change is needed. Ensuring that the rights of young women are protected and that they have access to education and resources is vital to this task. This chapter looks specifically at how social norms impair otherwise good opportunities to take PrEP, and how a theory of substantive responsibility can alert policymakers to this fact. Focusing on this particular short-term policy question does not neglect the fact that many individuals in this context are facing injustices that can be remedied only by deeper and wider long-term structural reform.

[3] Naila Kabeer (1999: 337; see also Narayan & Petesch, 2005; Boudet et al., 2013) defines empowerment as a process where people who have been denied alternatives become able to choose and take advantage of opportunities.

normative expectations (Bicchieri, 2017: 35). Receiving information that a norm-sanctioned behaviour is unnecessary or dangerous will likely give us a reason to question it. However, whether we will stop following the norm depends on our beliefs about others' adherence to it (Bicchieri, 2017: 166).

When a social norm is established in a community and has been accepted or internalised by its members, they will see the norm as authoritative and judge themselves according to its standards (Brennan et al., 2013: 15–39). Although people may generally agree with the norm, some might reject it because they think it is unattractive or because they see it as an inappropriate standard for their society. Nevertheless, they will experience positive feelings when they fulfil its demands, and negative feelings such as shame or guilt should they fail to do so. Further, norms shape the opportunities people perceive themselves to have. The options a norm prohibits might not even arise in the individual agent's mind as being part of her opportunity set. If they do, these options will look unappealing or unavailable to her (Brennan et al., 2013: 252). In this way, social norms are upheld by internal sanctions, a form of policing that comes from within the agent herself.

Internal sanctions can suffice to uphold a social norm. However, social norms are sometimes supported directly by external sanctions. In some cases, people will reward an agent for complying with a norm or treat her action with indifference. In contrast, if she goes against the norm, she will receive criticism or negative reactions. The intensity of people's reactive attitudes to norm transgression, which determines the cost of each transgression, varies. Sometimes, a norm violation makes the transgressing individual liable to criticism, or it can change others' perception of her. In other cases, people may lash out or even become violent (Bicchieri, 2017: 38).

As scholars and activists have shown, gender oppression – where oppression is understood as the systematic disadvantage based on individuals' perceived social group membership – cannot be

understood in isolation from other forms of disadvantage (see, for instance, Combahee River Collective, 1981; Davis, 2019; hooks, 1981). Individuals have overlapping memberships in social groups, affecting their social status and particular experiences. Therefore, within the group of men individuals have various advantages and disadvantages, as do individual women (Bird & Rieker, 2008: 37). In any given situation, different, intersecting norms and structures will determine which options are open to the agent.[4] As we will see, this will need to be considered in the rollout of PrEP.

PrEP has been shown to greatly reduce the risk of HIV infection. Because people can use it 'discretely and not at the time of sex', WHO presents it as 'especially important for women, including young women, adolescent girls and also those who are concerned about acquiring HIV in the context of a stable partnership'. It is intended for, among others, 'people who lack the negotiating skills and power to insist on condom use' (UNAIDS, WHO and AVAC, 2015: 6).[5]

When policymakers prepare for rolling out PrEP, it is vital to incorporate knowledge from the previous decades' HIV prevention. Traditionally, there have been efforts to quell the HIV pandemic by providing information about the virus, and by offering free or heavily subsidised protection (Ackermann & de Klerk, 2002: 165; van Loggerenberg et al., 2012: 1). The idea behind this kind of policy has been that knowledge about HIV, and prevention tools, are something generally valuable to have. Further, policymakers have thought that someone who becomes aware of the dangers involved in having unprotected sex in a region where many people are HIV positive, and who gets access to protection, is likely to use the available protection because it is in their

[4] To understand the implications of being in a particular social position, we need to look not only at gender but also at biased norms targeting groups based on factors such as class, race, sexual orientation, and age. To provide valuable opportunities, public policy needs to incorporate an intersectional perspective. For an in-depth discussion of intersectionality in public policy, see (Hankivsky & Cormier, 2019), for a classic statement, see (Crenshaw, 1989).
[5] UNAIDS, WHO, & AVAC (2015) state that '[s]ome people in clinical studies of PrEP had early side-effects, but these were mild and usually went away in the first month … No serious side-effects were observed.'

interest. To illustrate my argument in what follows, I will refer to an idealised representation of a policy that might be considered for PrEP rollout if policymakers do not take gender norms into account, and which corresponds to many previous HIV prevention strategies, only in this case with the addition of PrEP:

> Universal: Policymakers distribute information about the benefits of using PrEP in the community. PrEP is made available at low or no cost at health clinics, pharmacies and other usual pickup spots. This effort is taken together with other prevention policies, such as testing, education, antiretroviral treatment, and provision of condoms and other forms of contraception.

Policymakers may well think that this 'Universal' policy provides citizens with sufficient opportunities to avoid the harm involved in contracting HIV, as expressed by the opportunity set {protect (low risk of HIV infection), do not protect (high risk of HIV infection)}.[6] However, many policies like this have failed, and young women are thus continuously at high risk of HIV infection. One part of the explanation is the role of gender norms in individuals' decisions about protecting themselves from HIV. There is a connection between gender inequality and sexual risk (SANAC, 2016: 44; Auerbach et al., 2011; Mantell et al., 2009). Specifically, it appears that a woman's risk of becoming infected with HIV is related to the gender norms of her community (Harrison et al., 2006; Macphail et al., 2009). More egalitarian norms correlate with an increased likeliness of the use of protection in heterosexual intercourse (Harrison et al., 2006: 717; Jama Shai et al., 2010; Harrison et al., 2001; Sprague, 2018: ch7; Fladseth et al., 2015).

In many countries, male initiative is a strong tendency in the sexual sphere. It functions as an organising principle of dating, where men are in charge in the pursuit for potential partners (Bergström, 2022: 151) Such norms constrain women from initiating discussions of sexuality, STI

[6] Similar policies aimed at making people use condoms have often succeeded in providing people with information about the role of prevention tools in preventing HIV. For a discussion on this process in the case of South Africa, see (SANAC, 2016: 35).

prevention, and contraceptive use (UNSC, 2020: 14).[7] In South Africa, for example, studies indicate that gender norms encourage men to lead interactions while encouraging women to be passive (OPTIONS Consortium, 2019: 104). The social sanctions connected to these norms work differently in different communities, meaning that the costs of transgression vary. Some merely face feelings of awkwardness, and others face a loss of social status and a risk of violence. In a study conducted in South Africa 2009, all participants perceived that 'gender inequalities and oppression continue to be greater for Africans than for … other South African population groups' (Mantell et al., 2009: 147). This is linked to the high levels of male unemployment in this group, which have their historical basis in the detrimental effects of the Apartheid regime's efforts to break up and control black communities (Jewkes & Morrell, 2010; Strebel et al., 2006).[8]

As noted, this kind of gendered dynamic is by no means unique to South Africa. Instead, norms in the contemporary sexual sphere often prescribe submission, chastity, and passivity for women, while being more permissive for men.[9] As sociologist Marie Bergström (2022: 142–143) finds in her quantitative study of contemporary dating in Europe:

> female modesty works as an organising principle of heterosexual relations. It is all at once a measure of women's respectability, a fundamental component of the dating game, and a female strategy for counteracting sexual violence. Although the norm applies to women, it regulates men's behaviours and attitudes as well.

According to the logic of such norms, women should be talked into sex, not think about it independently. Taking PrEP, or bringing condoms to a date, constitutes a transgression of this kind of norm because it implies that one has planned for and thought about sex (Calabrese &

[7] I refer to 'constraint' as something that impairs an agent's ability to choose the most valuable option in her opportunity set, and so alters its value (Pattanaik & Xu, 2015: 361).
[8] The following analysis will idealise the description of the challenges involved in providing people in various real-world circumstances with valuable opportunities. Nevertheless, my recommendations aim at making the Value of Choice view applicable in non-ideal conditions.
[9] Social norms in the form of chastity rules have a long history, and they have been discussed in relation to justice for centuries. See, for instance, David Hume's (1975: 208) discussion of the function of chastity as an artificial virtue.

Underhill, 2015; Giovenco et al., 2021; Haberer et al., 2019). Further, such behaviour implies sexual experience or an attempt to take control of the sexual situation, in which men are perceived to be entitled to power. This will make a woman seem less interesting and, like other norm transgressions, generate feelings of discomfort in others. Even more worrying, the social norms can code a failure to come across as unassertive as an invitation of abuse or violence in the sexual sphere (Bergström, 153-155).[10] In the intersection with other norms and conditions that women find themselves in, these gender norms change the value of women's choices and apparent options in the sexual sphere through internalisation, social pressure, or a mix of the two (UNSC, 2020: 3).

Against this background, several PrEP trials have focused specifically on the conditions of young women, and more are underway (AVAC, 2019b; OPTIONS, 2017). Alongside studies of gender norms and HIV, the findings suggest that if a country wants to curb the epidemic, it is not enough to merely provide information and prevention tools (UNAIDS, 2016: 35). To protect young women (and, by extension, their partners and future children), interventions need to be tailored to their specific needs (AVAC, 2018). This includes providing women with opportunities to take the drug without giving up their sexual life plan or having to bargain with or get social approval from their friends and sexual partners (Haberer et al., 2019).

Policies aimed specifically at young women are more costly than universalist approaches. Nevertheless, this is a case where young women have a claim to choice improvement of the kind we explored in the previous chapter. Governments owe it to young women to fund studies such as the abovementioned trials and opt for policies responsive to biased social norms. Recall that on the fictional policy Universal, policymakers believe that individuals have this opportunity set: {protect (low risk of HIV infection), do not protect (high risk of HIV infection)}. Such a picture

[10] As Bergström (2022: 155) says in her study of dating in the global north: 'For women, not to conform to the norm of sexual reserve can reduce their control over the subsequent course of events. A woman who signals that she is sexually available takes the risk of being perceived as unreservedly and unconditionally available; when she does not display the expected sexual modesty, she is considered as having no limits at all'.

differs dramatically from what we now know about gender dynamics in the community's sexual sphere. Although Universal provides something valuable, many women will face a dilemma between transgressing gender norms and risking HIV. I will, for analytic purposes, categorise the opportunity sets of citizens under Universal into three types, here represented by three fictional agents who all make their decisions about how to act under the influence of the gender norms:[11]

> Going against the norms by using PrEP would make Anna feel bad. If people in her social network discover that she is under treatment, her choice to take it could also result in social stigma, loss of vital goods, or possibly even violence. Thus, she faces internal and external sanctions upholding the social norms, which constrain her choice. Her opportunity set is {protect (high risk of social stigma, loss of vital goods, and or violence), do not protect (high risk of HIV infection)}.[12] This set constitutes what Marilyn Frye (1983: 2) describes as a double bind: a situation where 'options are reduced to a very few and all of them expose one to penalty, censure or deprivation'.[13]
>
> For Bella, using PrEP would be uncomfortable. She would feel bad about transgressing the gender norms, but it would not affect her relationships or social status badly. In other words, her choice is constrained mainly by the internal sanctions she faces for transgressing the norms. Her opportunity set is {protect (discomfort), do not protect (high risk of HIV infection)}.
>
> Charles is allowed by the gender norms in question to use PrEP, and his opportunity set is the one predicted by policymakers: {protect (low risk of HIV infection), do not protect (high risk of HIV infection)}.[14]

As the HIV case illustrates, even when people like Anna and Bella make conscious, informed choices, such choices are often part of wider social practices. We cannot understand the meaning

[11] In the real world, the situation will be more complex than presented here, where I only consider the impact of a set of social norms inspired by the empirical findings discussed above. There are two main reasons for this focus: first, researchers' emphasis on the role of gender norms in HIV prevention, and second, contractualists have discussed other factors that impair choice (e.g., lack of resources, denial of legal rights), but the relationship between gender norms and choice remains underexplored.

[12] Compare (Voorhoeve, 2008: 186).

[13] Compare (Khader, 2011: ch1; Bicchieri, 2017: ch1).

[14] This is not to say that in the real world, men face no barriers to choosing to use protection. In modelling Charles's opportunity set, I rely on studies indicating that PrEP likely would be acceptable among young men. For instance, based on their interviews with young heterosexual men in KwaZulu-Natal, Hannaford et al. (2020) find that gender norms do not hinder men's taking PrEP. They argue that the gender norms could 'facilitate PrEP use as men recognise their risk concurrent with their ongoing high-risk behaviours but may also serve as a barrier to the rollout of PrEP among women.'

and moral status of an individual's choice in isolation from their cultural context. We must consider social norms to assess whether policymakers have done enough to protect Anna, Bella and Charles from harm and provide them with valuable opportunities. The case I have presented is one example of many instances where biased social norms affect agents' choices. Similarly, we should think of PrEP rollout as an example among many situations in which the success of policymaking depends on such norms. Against this background, it becomes clear that social norms pose a significant philosophical challenge to theories that focus on choice in their assignment of responsibility to individuals.

In the next section, I introduce Scanlon's theory of substantive responsibility, the second part of the Value of Choice view. We discussed the first part in the previous chapter, chapter 4. After that, I apply this theory to Universal to see how we could properly extend it to deal with situations where agents like Anna and Bella choose under harmful gender norms.

5.2 Substantive responsibility and social norms

In thinking about what constitutes genuinely valuable opportunities in the sexual sphere and the kind of precautions policymakers need to take to argue that they have provided such opportunities and thus done enough for citizens, Scanlon's contractualist view of substantive responsibility is a valuable resource. Scanlon (1998: ch6) assumes that the value of having an opportunity to choose is connected to responsibility for what one chooses under certain conditions. An agent's being substantively responsible for an outcome under a principle means that she has had her claim to choice set improvement realised and that by implementing the principle, others have done all they could reasonably be asked to do regarding this claim (Scanlon, 1998: 290). If an agent is substantively responsible for her situation, this weakens her complaint against the principle and counts in favour of its justifiability. On Scanlon's theory, an individual can be held substantively

responsible for the outcome of her actions under a policy if that outcome results from her choosing while being free and capable and something that she could have avoided by choosing differently among sufficiently good options. The efforts on the part of policymakers are connected to the reasons agents can give to dispute policies. As we saw in the previous chapter, these reasons must be generic. Substantive responsibility depends not only on the opportunities that are formally available to the agent but also on the precautions and efforts that policymakers have taken to decrease the risks involved – whether they have done enough to improve their choice sets:

> When the relevant background is in place – when conditions are right, necessary safeguards have been provided, and so on – the fact that a person chooses a certain outcome may make that outcome one that he or she cannot reasonably complain of. But choice has this effect only when these other factors are present (Scanlon, 1986: 190).

Therefore, a consideration that bears on the evaluation of whether a policy could be rejected has to do with the extent to which the affected agents are responsible for their situation. The issue of responsibility is connected to the decisions that the potential rejecter has made herself and, specifically, in what circumstances she made them. As we saw in chapter 4.1, there are several reasons to value choice, such as the symbolic and representative values choices can have. I focus here on the instrumental value of choice (Scanlon, 2013: 511).

When considering whether to reject a policy, we explore the potential complaints agents could have about it. Let us return to the Universal policy in the section above to see how substantive responsibility figures in this examination. Assume that Charles has had a range of decent options to follow his sexual life plan, including using a condom or taking PrEP. If Charles, in these circumstances, knowingly and freely has taken great sexual risks, he cannot reasonably complain about the implementation of Universal. By contrast, imagine that on a policy, which we may call:

> Partial: Information is sent out, and precautions are taken like on Universal, but the warnings do not reach some areas in the community.

David lives in such an area. On Partial, he would receive no information about the risks of unprotected sex. He might become infected with HIV without having been given a choice. We would judge David to have ended up in a more unfortunate position under Partial than the one Charles would be in on Universal. Importantly, the necessary safeguards were not in place – by implementing Partial, policymakers have not done enough for David. Therefore, in contractualist terms, he would have a stronger reason to reject the policy that allowed him to become infected than Charles, who is responsible for his situation. Since the outcome in this case is extremely harmful, a genuinely valuable opportunity set would include insurance so that one would be provided with necessary care regardless of what one chooses. Thus, the responsibility consideration does not imply that any of these agents would not be owed assistance in the form of treatment. However, it helps policymakers in their deliberation over the choice between Partial and Universal. However, to know whether the policy is rejectable from David's standpoint, and according to the Value of Choice view, we would need more information about the preconditions and whether the opportunities provided by Universal were generally valuable (Scanlon, 1998: 259).

Specifically, the question is whether policymakers have done all that they 'could reasonably be expected to do to warn and protect' people, including Anna and Bella (Scanlon, 1986: 191; see also 1998: 257). It is important to note that Scanlon does not himself discuss how substantive responsibility is affected by gender dynamics, gender norms, or other social norms. Further, as we saw in the previous chapter, he does not consider choice improvement claims in the sexual sphere. As Andrew Williams (2006: 255) has argued, the Value of Choice view is not a full account of substantive responsibility.[15]

[15] Williams (2006: 252) argues that the view is too incomplete to act as an 'explanation only of why certain factors are relevant when arriving at conclusionary judgments', in part because Scanlon does not specify how to weigh an agent's

Nevertheless, the gender lacuna in the broader literature on the Value of Choice is especially critical. The same can be said for the gap regarding sex and intimacy, as noted. The fact that these gaps exist, however, does not mean that Scanlon's contractualism is incompatible with considerations of gender and sexuality, and to say that the theory does not consider gender norms and the sexual sphere is not the same as saying that we cannot develop it to do this. So, how should we refine it? To accommodate the claims of individuals who choose under the influence of oppressive social norms, we need to clarify how to interpret two central features of the theory, 'generic reason,' which I introduced in the previous chapters, and 'done enough'.

First, how does the fact that a harmful social norm influences an agent's choice under a policy affect the status of her reason for rejecting the policy? I will argue below that harmful gender norms must be understood as something that can make an opportunity set that is available to someone in a particular social position less valuable than it would otherwise be. I will also argue that we should give reasons for complaining about policies in such positions the status of generic reasons. Doing this entails separating claims based on gender norms from claims based on other factors that might influence individuals to make harmful choices, such as their internal dispositions.

Second, how should we judge policymakers' precautions to improve choice situations when individuals' opportunity sets differ because harmful social norms prescribe different roles and behaviours to them? In this context, what does it mean that others have 'done enough' to improve an agent's choice set? I will argue that policymakers owe it to individuals to research how gender dynamics and norms affect the situation in which they are intervening. Further, they need to make efforts to counteract harmful social norms.

reasons for wanting a specific set of opportunities against other considerations, such as the reasons of other people not to want to provide such a set.

A few more details are helpful in the understanding of the relationship between agents' generic reasons and policymakers' having done enough to improve their choice sets. In his explanation of the role of generic reasons and doing enough in the Value of Choice view, Scanlon tells a story about a community where hazardous waste threatens the water supply. Someone has illegally dumped this material, and policymakers owe it to citizens to do something to save the water (Scanlon, 1986; 1998: 256-63). Public officials agree that to fix the problem, the policy Inform Everyone should be implemented (Scanlon, 2013; Voorhoeve, 2008). Under this policy, the waste will be transported away from the community and safely taken care of elsewhere. Policymakers predict some material will get out and pollute the air when it is removed. The air will become dangerous to breathe, as this material badly damages human lungs. Therefore, the policymakers must make some paternalistic efforts:

> Inform Everyone: Fences are put up around the excavation site. To make the material as safe as possible, it is wet down before transportation. Information about the danger is sent out to everyone in the community to advise them against going outside.

Scanlon (1986: 191) argues that this is all that could reasonably be expected regarding warning and protecting the inhabitants. By taking these precautions, the policymakers have done enough. According to the Value of Choice account, what matters is the value of the opportunity to choose with which the person is presented. If a person has been placed in a sufficiently good choice position, this can make it the case that he or she has no valid complaint about what results, whether or not his or her active choice produced it (Scanlon, 1998: 258).

Despite these efforts, an *ex ante* unidentified person, 'Curious', chooses to go outside. She is so curious to see what is going on that she ignores the information that encourages her not to. As a result, she ends up with severe permanent lung damage. Scanlon (1986: 192; see also 1998; 256-7) argues that 'by choosing, in the face of all our warnings, to go to the excavation site, she laid down

her right to complain of the harm she suffered as a result'. Curious is substantively responsible for the situation she ends up in since she was in as 'good a position as one could ask for' (Scanlon, 1986: 195). Because of the precautions the policymakers took, she does not have a generic reason to reject the policy. Her claim to choice improvement had already been realised.

Let us now ask what the Value of Choice view would say about the reasons put forth by people choosing to follow their sexual life plan under the influence of harmful social norms. What precautions must policymakers take in this situation? In the following, I will compare Curious's situation under Inform Everyone to those of Anna, Bella and Charles under Universal. Applying Scanlon's theory to the HIV case allows me to discuss how his ideas of 'choice improvement' and 'generic reasons' should be understood and developed in light of social norms.

5.3 Generic reasons

When someone puts forward a generic reason against a policy's adoption, we must compare that reason to the generic reasons others might have against alternative policies. That comparison involves looking at the costs of choosing another policy. Would it be more costly for other people? Would it require them to carry a heavier burden? What kind of research or inquiries would policymakers have to pursue? What would such studies cost? Scanlon (1998: 205) argues that making principles

> more fine-grained, to take account of more and more specific variations in needs and circumstances … will create more uncertainty and require those in other positions to gather more information in order to know what a principle gives to and requires of them.

Regrettably, Scanlon is vague about what level of generality he defends. While he wants to tend to people's differential potential needs, he shows that going into too much detail causes problems of

its own. The challenge is thus to strike a balance between making society's rules understandable, predictable, and reliable for everyone and considering different standpoints. But how?

In his discussion of Inform Everyone, Alex Voorhoeve (2008; see also Stemplowska, 2013a) has asked why Curious should have to accept this policy just because it is helpful to most people or constitutes an example of 'what people have reason to want', if there exist alternative policies on which she would be better off and no one else would be worse off than she would be on Inform Everyone. Although Curious did choose to explore the danger instead of avoiding the risk, she did so because of her extreme curiosity. Why should she be held substantively responsible for the outcome that befalls her due to her unchosen internal disposition? Voorhoeve (2008: 189–190) argues that Scanlon is not justified in limiting the range of reasons that can be used to reject principles to those that are generic. For people for whom the generally valuable is not instrumentally valuable, this limitation is unhelpful.[16] When they have access to anonymised information about what would enable people like Curious to choose well, policymakers should use it to put them in better circumstances. Voorhoeve's (2008: 195) solution is thus to look not at generic reasons but instead at what the potential instrumental value of individual agents' opportunity sets is when we consider what they can achieve with their options and how likely they are to react to these options given their internal dispositions.[17] The question becomes not what people would generally have reason to want but instead, what would enable Curious (and every other individual in the community) to choose well.

[16] Note that Scanlon (1998: 257) and Voorhoeve (2008: 188) maintain that in the Hazardous Waste case, what is relevant is people's instrumental reasons to want a choice.

[17] On Voorhoeve's (2008: 198) 'Potential Value of Opportunities view, we base our choice of policy on which policy leads to the preferable distribution of the value of people's opportunities to choose (where they are informed, capable choosers) and the value of the outcome achieved (when they could not reasonably have been expected to avoid the outcome in question).'

One important question is why Curious's reasons are not generic. Health is something that everyone values – it belongs to generally valuable goods. In the given situation, Curious has two conflicting interests: she wants to stay healthy, and she also wants to satisfy her curiosity by going out to look at the waste site. As we saw in chapter 1, Scanlon argues that not all aims, preferences and projects a person may have correspond to duties on the part of others. As he has constructed the Hazardous Waste example, the satisfaction of one's curiosity stands in as an aim that falls outside. Voorhoeve (2008: 189) responds that this 'does not give us reason to regard Curious as having been placed in good circumstances of choice under Inform Everyone. For she will suffer damage to her health, and this is among the ways in which a person is affected that Scanlon regards as giving rise to legitimate claims'.

Generic reasons need not be shared by the majority. Recall that Scanlon argues that a minority of a population can put forward generic reasons for rejecting principles that put them under a burden, as long as this burden is such that it can be appealed to in generic terms so that people can recognise it. Curious's reasons, Scanlon (1998: 263) argues, cannot be explained in this way because the policymakers provided her and everyone else with opportunities that people generally would have reason to value, so policymakers did enough. I will return to this issue. For now, it suffices to say that on Scanlon's view, policymakers' sufficient efforts imply that from Curious's standpoint, we could recognise the value in having the provided opportunities and the disvalue that others would suffer were resources differently distributed. The policymakers could not have been asked to do more to improve her choice situation; they were not required to remove the bad option, only to improve it while also giving her a valuable one. The point here is not whether fences and leaflets were realistically enough, but rather that in every policy situation, there is at least a hypothetical point at which policymakers have done enough and individuals' claim to choice improvement is exhausted. The claim has been realised, and individuals cannot ask that policymakers do more. The measures that the policymakers took in the fictional Hazardous Waste

case are, on this view, best read as stand-ins for the measures that, according to our intuitions, would be enough in a case. Scanlon grants that such a point was reached in the Hazardous Waste case. Because such a point was reached, Curious's longing to satisfy her curiosity did not qualify as a generic reason. There was an option in the set she was given that would have allowed her to end up well and that she understood as valuable. The good option in her set it what makes her situation different from that of people choosing while influenced by harmful social norms under policies insensitive to those norms. This should become clear as we explore what the Value of Choice view might say about the reasons of Anna, Bella, and Charles.

5.4 Generic reasons and external sanctions

Recall that Anna's opportunity set under Universal is {protect (high risk of social stigma, loss of vital goods, and or violence), do not protect (high risk of HIV infection)}. The policymakers responsible for Universal predict that she will have one harmful option (no protection) and one valuable one (protection). However, she can only choose between two options involving serious risk: she risks either social stigma and violence or HIV infection. This distinguishes her situation from Curious's. Curious has one option (stay inside), which, although it turns out not to be tempting for her, she can nevertheless acknowledge as valuable. Her curiosity will remain unsatisfied if she chooses this option (which she will not because of her internal disposition). But other than that, Curious fares well. By contrast, all of Anna's options under Universal expose her to the risk of penalty or deprivation, and the opportunity set as such constitutes a double bind. In other words, once we have information about the social norms that apply in the situation and the gendered power dynamic that they regulate, it is clear that none of the opportunities are generally valuable from Anna's standpoint. For Anna, the potential costs involved in the option that

policymakers consider to be generally valuable are unreasonably high.[18] If put in this situation, most people would generally see the value in being given better options.

It is clear that Scanlon's Value of Choice view can explain why Anna's opportunity set is not valuable enough to make her substantively responsible for the harm she suffers under Universal. It provides her with no valuable opportunity. She can follow her sexual life plan, but only at the expense of the high risk of HIV. This is why we must understand Anna as having a generic reason to reject Universal, a reason of a kind Curious lacks in Inform Everyone but which is available to David in Partial. It is important to note, however, that we only see this if we take into account the harmful gender norms that apply to Anna. Therefore, any reasonable interpretation or application of the Value of Choice must incorporate an imperative for policymakers to do the research needed to uncover harmful social norms and the external sanctions that work to enforce them, thus restricting agents' opportunities.

How do the internal sanctions of social norms affect substantive responsibility? To examine this question, I will now look at Bella's reasons in relation to Universal.

5.5 Generic reasons and internal sanctions

Recall that Bella expects that using PrEP while pursuing her sexual life plan would be uncomfortable, that she would feel bad about transgressing certain social norms, but that it would not badly harm her relationships or her social status. Her opportunity set under Universal is

[18] Further, the Value of Choice view only applies in cases where agents can choose freely and capably. Coercion is one of the excusing conditions that make it the case that the agent is not substantively responsible for the result of her choices. Thus, this consideration would be enough to rule out such responsibility in Anna's case. We do not know whether it is correct to say that Anna is coerced, mainly because we do not have all the facts about her situation. Therefore, it is more appropriate to appeal to the low value of the opportunities in her set.

{protect (discomfort), do not protect (high risk of HIV infection)}.[19] It thus differs from the opportunity set that policymakers expect Universal to produce. Because they are ignorant about or inattentive to the gender norms that apply to Bella, they believe the generally valuable option (protect) will appear valuable to her. However, researchers predict that many individuals in her position will choose not to protect because of the internal sanctions of the gender norms that apply to them. Therefore, like Curious under Inform Everyone, Bella will not find the generally valuable option to be valuable. The question is what the Value of Choice view says about her standpoint. Can she provide a generic reason against Universal? Scanlon discounts Curious's internal disposition as irrelevant – Curious is substantively responsible for choosing according to her curiosity. So why should the same thing not be said about Bella? After all, she willingly chooses to put herself in harm's way even after being exposed to comprehensive warnings.

There are essential differences between the cases, however. In the HIV case, social norms encourage Bella to choose in a harmful way. In Hazardous Waste, the community's social norms do not, as far as we know, say anything about how Curious should choose. These agents face different problems that policymakers need to approach with different strategies, something that portraying Bella as being merely 'disposed to choosing imprudently' will conceal. The mistake of confusing these types of cases partly explains the failure of HIV prevention historically. If we want the PrEP policy to succeed, we need an account of substantive responsibility that can tell us explicitly what is moving the scales. That is, even if we could detect the fact that women like Bella are in bad circumstances of choice by examining how they are disposed to choose, describing these women as internally disposed to choose 'imprudently' conceals something normatively important:

[19] Social norms can have different effects on different groups of the population. We may, for instance, assume that Bella has no permanent partner and that in her social circle, questions of contraception and sex are often discussed. She might feel that among her closest friends, there is a consensus that sexist norms are wrong. Thus, Bella may be sure that her friends would not react badly and that her potential sex partners would not even know about her decision to use PrEP. Nevertheless, because she has grown up in a gender-unequal society where gender norms prescribe what she should do, the ideas they embody still influence her view of what is appropriate.

the reason that they are in these circumstances is that others socially oppress them. If we assume that Curious's choice cannot be explained by biased social norms but grant that Bella's can, then we should not conflate them in our analysis. We would psychologise the structural problem in Bella's society, making it look like Bella's own psychological problem (Khader, 2011: 56). Confusing Bella's position with that of Curious could allow a systematic social wrong to masquerade as an individual problem faced by several individuals with individual, non-generic internal dispositions. To provide people like Bella with valuable opportunities, we need to shift the focus from individuals' internal dispositions to their social conditions. This way, we also find ourselves in a different vantage point where we are better placed to articulate the need for social change.[20]

But does this mean that the Value of Choice view can be understood as incorporating reasons formed by and based on biased social norms, such as the gender norms in question, into the range of reasons that are generic? In his discussion of the Value of Choice, Scanlon does not mention the effects on choice that social norms and other factors relating to an agent's social context might have. According to Scanlon (1998: 291), factors that can free an agent from substantive responsibility include drugs, brain stimulation, hypnosis, mental illness, coercion, and young age.

[20] Nevertheless, it is important to note that the impact of a social norm on each individual's opportunities will depend on, among other things, the particular person's internal disposition and how it makes her react to the norm. Therefore, the instrumental value of choice is determined by what an individual could achieve with the opportunity set, shaped by her internal disposition and the norms that apply to her. Considering this, it would be possible to develop Voorhoeve's account instead of Scanlon's. Rather than looking at generic reasons, we could rank opportunity sets by looking at the situation each individual is in with regard to her particular psychology, making sure we take into account the internal sanctions connected to social norms on top of the features that Voorhoeve argues alter the value of opportunity sets. We could then choose the principle to improve the opportunity set with the lowest value. There would be room for asking whether a specific individual identifies with the norm and whether she believes it is a suitable moral requirement for her community. It would also be possible to let this consideration bear on our evaluation of whether she should be held substantively responsible. Whereas this is one way of assigning substantive responsibility, I do not here discuss whether it is the one best suited for formulating public policy. As noted, looking at internal dispositions could lead us to put too much emphasis on the individual's psychological response and too little on the structural context. This remains true even if we add an individual's response to social norms to the formula.

To make the Value of Choice sensitive to social norms, we must extend it. Scanlon (1998: 205–6) argues that the generally reasonable, and what counts as a generic reason, can be changed through the gradual refining of 'our intuitive moral categories under conflicting pressures'. The point is that we

> bring to moral argument a conception of generic points of view and the reasons associated with them which reflects our general experience of life, and that this conception is subject to modification under the pressure of moral thought and argument.

It is reasonable to assume that what general experiences we have, in turn, will be affected by our society's social norms – which both constrain and enable our actions. Therefore, contractualist principles and policies will, to some extent, be influenced by the account of morality already operating in the society in which they are formulated. As we saw in the discussion of generic reasons above and in the previous chapter, we need some shared moral standards to appeal to in our critique of wrongs and injustices.[21] However, there is reason to worry that what appears generally reasonable to those growing up in a racist and sexist society is not likely to be an acceptable standard for morality.[22]

As John Stuart Mill (1940: 440) famously asked about gender inequality, was there 'ever any domination which did not appear natural to those who possessed it?' Unless there are generic reasons to put forward from standpoints such as Bella's, the conception of what is generally reasonable, and thus the Value of Choice view, cannot be understood to sufficiently take into account reasons that people may have in virtue of being in particular social positions that the dominant group, or the majority, generally do not know much about. This would not only prevent us from using contractualism in the sexual sphere, where there is great pluralism. It would also

[21] For a similar argument, see (Fricker, 2000: 151).
[22] See (Hampton, 2002, 357; Sample, 2002) for similar arguments.

make the theory generally implausible in light of the situation in the real world. Therefore, generic reasons cannot only be based on what is generally reasonable in a community. Scanlon is aware of this. Citing Catharine MacKinnon's (1989a: ch12) theory of male power as an essential example of feminist work calling attention to social biases in morality, he argues that:

> some of the most common forms of moral bias involve failing to think of various points of view which we have not occupied, underestimating the reasons associated with them, and overestimating the costs to us of accepting principles that recognise the force of those reasons (Scanlon, 1998: 206n17).

That is one way to interpret what is going on in HIV prevention policy: policymakers fail to take young women's standpoints seriously and come to underestimate their reasons while overestimating the reasons of other citizens. Scanlon points out that feminists have exposed ways in which the socially and historically contingent have been falsely presented as natural, general, or human and how unjust circumstances in this way appear justified. This fact shows that we cannot assume that what we believe is generally valued in a society will necessarily be sufficient grounds for ethical judgment. We must constantly be prepared to update what we understand as a generic reason.[23] Scanlon (2018: 5, see also 64) has elsewhere argued that inequalities based on race and gender as a matter of 'entrenched social customs and attitudes' are especially objectionable, and that 'racist and sexist attitudes in a society … undermine equality of opportunity by discouraging members of these groups from thinking of various worthwhile careers as appropriate for them…'

Importantly, Scanlon (2018: 64) says 'one thing that a society can provide is a larger environment in which various alternatives are available for consideration and presented as possible options'. This statement aligns with what contractualism says about choice set improvement but does not

[23] In practice, this will likely require deliberative processes that allow the marginalised to speak using non-generic reasons. Restricting discussion to the use of terms that the marginalised did not themselves influence but which were set by others may block the rationale behind the contractualist idea of explicitly looking at and improving the situation of the worst off. See (Jaggar & Tobin, 2013) for a discussion of this.

tell us how to provide such an environment. Specifically, we do not know how to deal with responsibility for choices that, although freely made, are regulated by social norms that prescribe different behaviours from different groups depending on members' perceived race and gender. Nevertheless, it appears that we cannot apply the Value of Choice view without taking into account contingencies such as the sexism and racism that structure our societies, as there is an apparent risk that we then might incorporate a form of casual white androcentrism, for which contract theory historically has been criticised (Mills, 1997; Okin, 1989; Pateman & Mills, 2007; Phillips, 2021; Smith, 2021).

We cannot demand that a moral theory provides guidance in every case imaginable. However, the existence of social norms is arguably something that inevitably and predictably shapes individuals' choices and almost always affects policy implementation. Therefore, the lacuna regarding social norms and their effects on choice in Scanlon's account and the literature discussing it is an exceptionally important one to fill. Nothing in the Value of Choice view alerts us that these norms could be at play in the choice situation, and so policymakers using this theory have no indications of the existence of what is a very pressing matter globally: biased social norms make individuals suffer discrimination and harm. Policymakers may then assume that Universal provides people with good opportunities to choose, or at least that the Value of Choice view can justify it.

In this section, I have argued that the idea of a generic reason must be critically examined because opportunities that would be generally valuable in the absence of oppressive social norms are not valuable to the groups to which such norms apply. When we consider social norms, it is clear that individuals in these positions have generic reasons to reject principles that only provide opportunities that are not valuable from their standpoints. However, recall that Scanlon argues that there is a connection between generic reasons and the other central idea that figures in his

thinking about substantive responsibility: policymakers' 'doing enough' to put people in good conditions for choice. In our case, what must policymakers do? I will now turn to this question.

5.6 Doing enough

The question of whether an individual can complain about the burdens imposed on her under a specific principle cannot be settled by looking at what she did or did not do to end up in her position. What matters is not what an individual, in fact, ends up choosing, but rather whether the choice set she had in the position she was in was generally valuable. Therefore, a central part of the evaluation concerns the efforts of others to put her in better circumstances of choice. Were enough precautions taken? Could more have been asked of the community or the policymakers? In the case of Curious, Scanlon argues that it is because enough was done that she cannot reasonably complain about her opportunities. Not only did policymakers send out warnings, but because they expected that this might not be enough for everyone, they also put up fences and transported the hazardous waste at a time when few people would be out. They treated it in this way because it would make it less harmful.

Why should we care about being given *generally* valuable opportunities? Even if we turn out to react non-generally to a specific opportunity set, we might be able to acknowledge that this set was given to us out of respect and that it is something we can recognise as valuable to have. This consideration could be accepted from a feminist perspective, as long as we are careful not to base the 'generally valuable' exclusively on what is understood as generally valuable in a particular community. As we have seen, there is reason to worry that dominant perspectives unevenly influence the generally valuable and that, therefore, gender norms and other factors that unfairly condition individuals' choices are given insufficient weight. A Value of Choice view informed by feminist insight must be context-sensitive. But what might this mean in practice?

Let us return to our case to understand what such a view might look like. How can we know that the precautions taken on the Universal PrEP policy are insufficient? In Scanlon's presentation of his theory, we get an example of one case in which policymakers did do enough. However, Scanlon does not give us further information about why the precautions taken were sufficient concerning the opportunities given to the community's inhabitants. Scanlon appeals to our intuitions about the role of fences in cases of Hazardous Waste's kind. How the judgment regarding agents' substantive responsibility under Inform Everyone may translate into other situations is unclear. Although policymakers' intuitions must play a role, if we want to make the Value of Choice view a viable tool for policymaking, we need to supplement it with additional principles. Specifically, it needs to be able to take social norms into account. I call my suggestion for such a development or extension of the theory the 'Value of Constrained Choice view'. On the

> Value of Constrained Choice view, we look at an agent's opportunities under a particular policy in relation to the social norms that apply to agents in positions like hers. If she has opportunities that are valuable when taking such norms into account, she can be held substantively responsible.

As noted, social norms are powerful determinants of agents' behaviour. They can both improve and worsen the conditions of choice, with some norms encouraging agents to choose to avoid harm and some encouraging agents to make harmful choices. Therefore, we must understand social norms as a condition we must examine when determining whether a community and its policymakers have 'done enough' to provide good opportunities. A set of norms that prescribes that agents listen to warnings and look out for their health will on the Value of Constrained Choice increase the instrumental value of choice, whereas a set of norms that discourages women from taking PrEP, even when this could save their life, decreases the instrumental value of choice.

In real-world circumstances, public officials are obliged to do the research needed to find out about the social norms that apply to agents and how agents, as a result, would react to specific policies.

Although this chapter looks specifically at one set of gender norms, this demand is not limited to PrEP policy, the issue of gender, or the sexual sphere. Instead, on the Value of Constrained Choice, policymakers must take a perspective incorporating all social disadvantage forms. As Iris Marion Young (2001, 17) argues, there are two levels of knowing about injustices. First, we are aware that people are sorted into different social categories and that membership in such a category shapes what norms apply to a particular person and, often, what that particular person's material circumstances are like.[24] Second, we gather information accordingly to know more about what the disparities are like. In other words, even before any data is collected or any research conducted, policymakers can and often do have access to the first kind of information. On the Value of Constrained Choice, having this knowledge grounds a duty to conduct further theoretical and empirical research that can uncover how patterns of inequalities of opportunities play out in one's society. The Value of Constrained Choice view would, when applied to the PrEP case, demand that policymakers do the research needed to reveal that both Anna and Bella can reasonably reject Universal. Based on studies of people's reactions to PrEP, we can expect that Universal will be inefficient in providing instrumentally valuable opportunities for many women. So, what should policymakers do instead?

> Target: Includes the efforts taken on Universal. Further, thorough empirical research is undertaken to determine how social norms affect different groups' choices (AVAC, 2019a: 19). Based on these studies, policymakers take the following precautions: health officials advertise PrEP in non-traditional venues such as nightclubs and beauty salons to reach young women (Haberer et al., 2019: 3). To counter the internal and external sanctions of the gender norms, in-person and online counselling is provided. Care is taken to make the clinics and packaging discreet so that individuals can take PrEP without their social network finding out, to eliminate the need for women to bargain with their partners over the use of protection (Govender et al., 2017; Govender & Abdool Karim, 2018). Support is given to women's organisations. Community-centred programmes aimed at changing gender norms are rolled out (UNSC, 2020: 16).

[24] Even though my extended version of Scanlon's account portrays agents as members of different social groups, this does not breach the individualist restriction inherent to contractualism. On the contrary, it is only if we highlight how individuals are given distinctly different opportunities, based on the categories that social norms sort them into, that we can provide truly, generally valuable opportunities and, most importantly, prevent harm.

This policy, although not guaranteeing that all individuals are protected against the risk of HIV as they follow their sexual life plans, goes a long way to ensure that opportunities to do so are instrumentally valuable.[25] It gives Anna, Bella and Charles the opportunity set that the authors of Universal thought their policy would provide: {protect (low risk of HIV infection), do not protect (high risk of HIV infection)}. To ensure that no one has sex without protection would entail demeaning and intrusive measures that could be reasonably rejected with reasons based on the claim to non-interference that we have in the sexual sphere. Without infringing on the claim to non-interference, Target honours our duty to realise the claim to choice improvement in the sexual sphere.

As noted, we cannot settle once and for all what 'enough done' means in every case because it will depend on the context. Considerations must likely be based on a mix of deliberation among those at whom the policy aims and experts whose conduct is regulated by valid moral principles in line with procedural democratic demands. Target is based on empirical research on the affected population. It is plausible from a feminist perspective because it combines a social norms-transformative approach, which seeks to change oppressive norms, with a social norms-sensitive one, which aims at providing those who presently live under such norms with opportunities that are valuable given said norms and which protects them from risks in the meantime (Jewkes & Morrell, 2010: 7).[26] As Khader (2018: 55) points out, removing a problematic social norm or practice without replacing it with an alternative or changing the wider social and material structure can cause more harm than good.

[25] By presenting this policy, I do not mean to say that it is all that members of risk populations are owed. No single intervention or prevention method can hope to fully remedy the root causes driving the HIV epidemic among young women. See (UNSC, 2020: 16) for a more comprehensive policy agenda. Significantly, Target should be supplemented with egalitarian policies outside the epidemiological realm to ensure that women are not socially nor economically dependent on men.

[26] Compare Okin's (1989, 1989: 183) categorisation.

Could other agents reject Target in favour of Universal? As far as we know, Target would not put Charles in a worse situation on Target than the one he would be in under Universal. However, as Target is more expensive and as public budgets are limited, there might be other health policies that must be scrapped or forfeited to implement Target. Whether or not Charles or any other agent would be able to reject Target on those grounds depends on the gravity of the burdens they would be under relative to others and the claims they could make with regard to them. We have only established that Bella has a valid complaint against Universal based on a generic reason, which counts in favour of Target.

It is worth noting that it is one thing for Bella to have a complaint and another to have that complaint taken to change the policy. Because the presence of choice can make a difference, if the agent David is subject to the same risk on the policy Partial, his position would now be worse than Bella's is on Universal. He has no opportunity to choose to avoid harm – when he engages in sexual activity, he takes the risk of HIV infection without knowing. There is some value in Bella's having an option to protect, even if it is very low. This value is missing in David's opportunity set under Partial. On Partial, policymakers are further from having 'done enough', at least with regards to the area in which David lives, than they are on Universal regarding Bella. From Anna's standpoint, however, Universal is not much better than Partial is for David. She has strong reasons to reject Universal because this policy does not give her a genuine choice. Instead, she is put in a double bind where all options amount to extreme health risks. When we put ourselves in Anna's standpoint, we see that Universal is, in fact, a partial policy that should be rejected in favour of Target.

My extension of Scanlon's Value of Choice view, The Value of Constrained Choice, tracks these considerations by explaining when and to what extent choice matters in the presence of biased social norms.

5.7 Endorsing norms

Scanlon defends his limitation of the provision of opportunities to the generally valuable by pointing out that it would be too expensive to do the research needed to give a few potentially harmful choosers what would constitute instrumentally valuable opportunities, considering all their particularities. Voorhoeve (2008: 190) points out that when anonymised information about the prevalence of certain dispositions and their responses to different kinds of policy is available at a low cost, we should do our best to put people who have them in good circumstances of choice. I agree that information about a population's internal dispositions, such as their attitude to harmful norms, is essential because it can tell policymakers how to approach norm-prescribed behaviour respectfully and effectively. The Value of Constrained Choice can identify situations where policymakers must do more to have 'done enough' and where people have a claim to better circumstances.[27] As noted, whether this is best done by a social norms-sensitive approach, by working around the gender norms by ensuring that women can live according to them without harmful outcomes, or by a social norms-transformative strategy involving actively trying to change the norms (or, as in the PrEP case, a policy that, like Target, mixes these approaches) depends on the context of each case.

However, there are important reasons why policymakers should refrain from enquiring about particular individuals' attitudes to alter their substantive responsibility concerning policies. First, as Wolff and de-Shalit (2007: 77) argue, determining why an individual makes a particular choice is often impossible. In our case, one could argue that even if Bella does identify with the unjust gender norms, to allow this fact to alter her substantive responsibility for her outcome on Universal, we would have to ask more questions. Why does she endorse the norm? What in her life history has led her to form sexist beliefs? Some answers might be hard to find, and many would

[27] Compare Scanlon's (1986: 209) discussion of Harry Frankfurt's 'willing addict'.

require intrusive measures we should not invite policymakers to conduct. Second, we cannot conclude that an agent's unwillingness to stop engaging in harmful behaviour alters what we owe to her or that she can 'simply be left to bear the consequences' of this behaviour, as Scanlon (1998: 292) points out. Thus, even if Bella in some way was found to be blameworthy for complying with or endorsing a gender norm that harms women, this does not change the fact that policymakers should do more, 'to ensure that people are not placed in conditions that generate this kind of self-destructive behaviour' (Scanlon, 2008: 208).

If we grant that we could disentangle what motivates people to act in a certain way, further questions about substantive responsibility arise. For instance, imagine that Emma has an internal disposition that would make her choose to act in a way that is harmful to her under policy X. Emma, however, also belongs to a group to which social norms prescribe such actions. If we somehow know that this fact is not what makes her choose to act this way – her internal disposition would have made her do so regardless – should she be held substantively responsible for the situation in which she ends up? Should we understand Emma's situation as that of Bella or Curious? Put differently: Is it the presence of the social norm that matters for the allocation of substantive responsibility, or is it the fact that the norm makes her perform the action? That is a difficult question deserving of a thorough examination of its own. At the policy level, we know that it does not affect how Emma should be treated. There are other agents in her community whose generic reasons, based on social norms, could be used to reasonably reject the policy X. This will also benefit Emma. At the level of interpersonal morality, however, knowledge about whether the reasons behind other agents' actions are based on social norms or their internal dispositions could alter what we must do for them – especially in cases where the outcome they end up with as a result of their choices is not very severe. Although this point needs further elaboration, it is conceivable that the considerations underlying the Value of Constrained Choice generalise to what we owe to each other as individuals.

5.8 Conclusion

This chapter concludes my exploration of the third kind of sexual-sphere-based claim, the claim to choice improvement. I have shown how this claim is connected to the issue of substantive responsibility and how it, in turn, is affected by social norms. Using empirical findings on HIV prevention, I showed that a viable theory of substantive responsibility must allow the social norms that apply to an agent to affect what others owe to her. This point holds in the sexual sphere but is not confined to this realm of society. The chapter explored a lacuna in the contractualist literature regarding how social norms and harmful gender norms, more specifically, should be understood in relation to choice improvement. I showed how to fill this gap in the literature: using a PrEP rollout policy case, I refined Scanlon's Value of Choice view to clarify that those who choose under harmful gender norms have generic reasons to reject principles or policies that provide them with opportunities they are effectively constrained from choosing. This 'Value of Constrained Choice view' further clarifies that to fulfil the duties of having 'done enough' for individuals, policymakers must research the effects on choice that social norms in their community produce. Further, they must accommodate these effects when they formulate and implement policies. Considering the informal rules already present in society is crucial when we decide how to hold each other responsible for choices. Contractualism is about finding terms on which we can live together. Therefore, this clarification aligns with the spirit of the wider framework.

The provision of the sexual bases of self-respect requires the Value of Constrained Choice view since this view considers choice sets to be valuable only if they can be considered valuable when we consider the particular situation that each agent is in regarding social norms. However, the Value of Constrained Choice view is a general development of contractualism(s) and applies wherever there are social norms. In other words, it applies to all areas of society.

This chapter concludes the presentation of my theory of social justice for the sexual sphere. In the next chapter, I will apply this theory to the case of dating app regulation to see what it says about the digital public sphere.

CHAPTER 6:
The digital sexual sphere

So far, I have argued that in the sexual sphere, we have three kinds of claims on others: to non-interference, equal standing, and choice improvement. These are claims that contractualists assume apply outside the sexual sphere but which they have not examined in the context of sex. In chapter 1, I highlighted that the sexual sphere is characterised by vulnerabilities, pluralism, value of choice, and inequalities. I presented the traditional liberal approach to the sexual sphere – the principle of mere non-interference – and contrasted this approach to the theories of social justice that liberal egalitarians apply to the rest of society. In chapter 2, I showed why, by liberals' own lights, the mere non-interference view fails as an approach to the sexual sphere. I argued that we need a full theory of social justice for the sexual sphere.

I spent chapters 3, 4, and 5 presenting the building blocks of my version of such a theory. On this theory, we owe each other to realise the sexual bases of self-respect. In addition to non-interference, this entails that features of formal and informal institutions provide people with opportunities to develop sexual standing and opportunities to set, develop and follow sexual life plan(s). In chapter 3, I showed how the claim to equal standing is explicated by a sufficientarian principle of distribution of genuinely valuable opportunities to develop sexual standing in a range of social settings. I conceptualised sexual standing as something a person has if they are someone some relevant other(s) consider, in a non-degrading way, as a potential partner in a sexual relationship. In chapter 4, I showed how the claim to choice improvement is explicated by a principle of distribution of opportunities for what I conceptualised as sexual life plan(s). I conceptualised a sexual life plan as a plan for some duration of a person's life concerning the sexual sphere of her life involving reciprocal and non-degrading interactions and relationships. What is to be distributed are genuinely valuable opportunities to set, follow, and develop sexual life plans,

where valuable is defined as that which enables the person to follow their sexual life plan. In chapter 5, I continued to explore the claim to choice improvement in the sexual sphere. I examined how this claim is connected to responsibility for choices and policies. I argued that policymakers must pay attention to the fact that informal institutions such as social norms significantly affect agents' choosing in and outside the sexual sphere. On the view of substantive responsibility I presented, agents should not be held substantively responsible for choices that are not valuable when considering social norms' impact.

Having recapitulated the argument I have been building throughout the thesis, I will apply the theory to a case presently occupying the minds of many: online dating apps. By choosing this application area, I am not arguing that this is the only place to use my theory; as we have seen throughout the thesis, it applies to many examples – ranging from rural labour markets (chapters 2, 3 and 4) to HIV prevention (chapter 5). Instead, the reason for the focus of this chapter is that dating apps, with over 300 million yearly users, quickly have become the most common way for couples to meet (Rosenfeld et al., 2019). They have transformed the sexual sphere by creating a designated area for intimate relationships separate from other realms of society. According to Bergström (2022: 172), by providing a space where people can get in contact with potential partners directly and individually, these apps' rise to prominence has generated a 'growing distinction between the social and the sexual sphere, between public life and intimate life.' The sexual sphere is part of a greater trend, where different social activities and spheres are 'compartmentalised', each given their distinct logic: the gym is for working out, colleagues are for work, and dating apps are for sex and love (Bergström, 2022: 171-173; Kaplan & Illouz, 2022: 26-27). While before, courtship happened wherever people worked, studied, and lived, romance and sex are now assigned a specific time and place, both spatially and temporally (Bergström, 2022:

172).[1] This trend underscores the need to give the sexual sphere special attention and to construct particular principles of social justice for the sexual sphere – as I have done in this thesis.

So, how do dating apps affect the extent to which the three claims are realised in the sexual sphere? Despite being one major way to meet people, having changed the sexual sphere, and generating billions of dollars, the dating app remains vastly underexplored in political philosophy.[2] During the last couple of years, actors in the 'digital public sphere' have faced growing public scrutiny, and social media platforms such as Facebook and X (previously known as Twitter) have also recently caught the attention of political philosophers (Cohen & Fung, 2021; Lazar, 2023a; Reich et al., 2021). Philosophers have explored the digital public sphere, asking questions such as: How can digital platforms exercise power over individuals and societies? 'Under what conditions can that power be justified?' However, few have turned their attention to what I will refer to as the *digital sexual sphere*.[3] The digital sexual sphere is an essential part of the whole sexual sphere, as sexual relationships today occur in both the digital and non-digital worlds.[4] As an agent whose decisions have an immense impact on people's lives, the dating app company deserves examination.

To understand what is at stake in the use of dating apps, we need a theory that captures all claims of social justice in the sexual sphere. While we should take the negative impact that dating apps could have on people's lives very seriously, we also need to consider that their services can provide

[1] This trend towards a more anonymous or privatised way of dating has been visible since the Second World War. It is no longer common for people to meet potential partners among neighbours or those who attend the same church. Even meeting through mutual friends has been declining for almost 30 years (Whitty, 2009).
[2] Amia Srinivasan (2021) discusses the expression of discriminatory preferences on dating apps. Sonu Bedi (2019) has examined dating websites' discriminatory filters.
[3] I refer to the digital sexual sphere as the online ecosystem where people interact with potential sexual partners and exercise their sexual and intimate capacities. Compare Cohen and Fung's (2021: 32) formulation regarding the digital public sphere. The digital sexual sphere may be seen as one aspect of what Seth Lazar (working paper b; 2023a) calls the Algorithmic City.
[4] Dating apps are only one aspect of this sphere. Others might include AI systems for intimacy, sex worker platforms (Rand & Stegeman, 2023), 'date-me-docs' (Gross & Albeck-Ripka, 2023), sextech (Stardust et al., forthcoming), and online pornography platforms.

value for people in their pursuit of opportunities to develop sexual standing and opportunities to follow sexual life plans.

The theory developed in this thesis provides tools for properly understanding and weighing the values and interests involved. In contrast with other liberal frameworks, it can help us understand what people are owed beyond non-interference. Applying the view in the case of dating apps constitutes the first step towards answering the bigger questions of how the digital sexual sphere should be governed and how the power of agents operating within it can be justified.

This chapter makes several contributions. First, it further illustrates what the realisation of the sexual bases of self-respect requires in real-world cases. Second, it is the first systematic political theoretical examination of dating apps. As such, it provides guidance to policymakers, app designers and professional organisations. Third, it opens new avenues for empirical research on topics such as for instance, non-discriminatory platform design and user experience.

The sexual bases of self-respect are realised when people are not wrongfully interfered with and the features of formal and informal institutions are such that people are provided with opportunities to develop sexual standing and follow their sexual life plans. Do dating app companies fall in the category of institutions to which the demands of my theory apply? They are actors who govern behaviour in the digital sexual sphere and who make enormous gains from doing so. In this chapter, I argue that they are institutions to which the demands of my theory apply and that they, thus, should make decisions that respect individuals' claims to non-interference, equal standing, and choice improvement. At the very least, they should not undermine individuals' interests in having these claims realised.

Does this mean that there is a *prima facie* case for regulating dating apps in relation to the three claims we can make on others in the sexual sphere? We cannot hope to settle this question in this chapter, but rather, it needs to be debated by citizens in public forums such as unions, parliaments and non-governmental organisations. Such deliberation should involve dating app companies, users, advocacy groups, and other stakeholders in the digital sexual sphere. In other words, I cannot provide a final list of firm policy proposals, and what I offer should be seen as guidance for further work in this area.

Before we begin, I note also that many of the problems of the contemporary digital sexual sphere are caused by dysfunctionalities and vast inequalities in the wider digital world. The current digital political economy prevents people from being in control over their digital and non-digital lives (Fischli & Beschorner, 2022), including over their digital sexual lives (Stardust et al., 2023). Therefore, while I am unable to provide a full account here of what we might call a just 'digital basic structure', as this falls outside the scope of the thesis, it is worth underscoring that fully realising justice in the digital sexual sphere would require the restructuring of the broader political economy of technology.[5] This chapter considers problems concerning our more specific interests in the digital sexual sphere.[6]

I start by introducing dating apps, explaining their role in the contemporary sexual sphere, and exploring to what extent they should be considered institutions to which the demands of social justice for the sexual sphere apply. In section 2, I explore how dating apps' moderation choices

[5] To this end, Reich and colleagues (2021: 255-7) present an agenda for limiting big tech companies' power as being constituted by three parts: 1) addressing the power imbalance in personal data control and providing individuals with ownership of their data would put them in a better bargaining position over the use of that data, 2) give stakeholders a say in companies, and 3) constrain major tech companies' from dominating markets. These proposals would require that legislation and court interpretation regarding anti-trust, privacy, and property rights be introduced and updated (See also, Fischli, 2022b). The EU's GDPR framework and artificial intelligence law proposals constitute steps in the right direction.

[6] Another way of putting this point is that this chapter relates to the "digital basic structure" in a similar way that this thesis relates to the entire basic structure. The issues in the sexual sphere and those in the rest of the social world are interrelated. Yet, the contemporary sexual sphere poses distinct and significant obstacles to realising justice.

serve or undermine the realisation of the three claims. In section 3, I explore how dating apps' architectural choices serve or undermine the realisation of the three claims. In section 4, I explore how dating apps' amplification choices serve or undermine the realisation of the three claims.

6.1 Dating apps as institutions of the sexual sphere

Dating websites have been around for almost 30 years – match.com arrived on the World Wide Web in 1995. However, the late 00s marked a significant change. By enabling people to bring the internet with them wherever they went, the smartphone's launch created a whole new potential for online dating (Bergström, 2022: ch2). People looking for partners could now use technology to do so regardless of whether they happened to be at the gym, on the bus, or in the club. Instead of using an internet desktop browser, users started downloading computer programs devoted to dating to their phones. While some of these dating applications were simplified and streamlined versions of the original websites, the biggest one – Tinder – was created 'from scratch', without a desktop original or equivalent (Courtois & Timmermans, 2018: 6). Presenting users with an application that fit the phone's visual focus, it quickly became the most used app. At the start of this year, Tinder had 70 million users (Bryant, 2023).[7]

Dating apps profoundly changed the experience not only of dating online but of dating itself (Finkel et al., 2012). By 2017, online platforms had become the most common way for heterosexual American couples to meet (Rosenfeld et al., 2019). In 2022, 53 per cent of Americans under 30 had used a dating app.[8] There are numerous versions; some are very big and cater to everyone, while others are more specialised (Pew Research Center, 2023b). Rather than appealing to everyone, apps in the latter category hope to attract certain groups; there are dating apps for

[7] Tinder was only for smartphones from 2012 to 2017, when a browser version was introduced 'for all those who've ever been stuck in a lecture hall or had to endure an eight-hour workday without access to Tinder' (Tinder Press Room, 2017). Today, most apps can be used with a smartphone or via a computer web browser.
[8] 30 per cent of all Americans have used a dating site or app (Pew Research Center, 2023a).

Muslims, dating apps just for people with pets, dating apps that focus on queer relationships, dating apps that like The League appeal to individuals who believe they belong to the 'elite' of society. In 2021, dating app companies had $5.61 billion in revenue, of which Match Group made around $3 billion (Curry, 2023). Match Group owns several dating apps, including Tinder, Match.com, The League, and Hinge (Bryant, 2023).

Before we explore in what way dating apps serve to realise or undermine the three kinds of claims I have argued that we have in the sexual sphere, we must establish that my theory applies to dating apps. Dating apps differ from the other agents we explored in the thesis. These have been ordinary citizens and policymakers at various levels of public governance. In contrast, dating apps are run by private corporations.

As we saw in chapters 1 and 2, when we discussed the basic structure in Rawls's thought, liberals have traditionally thought that when institutions have a certain kind of power, they must be justified to people. To be justified, their power must be exercised in line with the interests of individuals subjected to it. This power needs to conform to democratic rules and be subject to procedures for accountability. In chapter 2, I argued that part of what it means to realise social justice is to provide sexual bases of self-respect. Recall that on my theory, features of formal and informal institutions must be such that everyone is provided with opportunities to develop sexual standing and follow sexual life plans, without being wrongfully interfered with.

The first important question, thus, is whether dating app companies should be considered an institution in the relevant sense, that is, in the sense that they would have to justify themselves by contributing to the realisation of principles of justice (Berkey, 2021). The interaction within dating apps happens outside the public sphere, in the sexual one, which we saw in chapter 1 that liberals traditionally have understood as being subject to MNI, rather than a more extensive set of

requirements of social justice. As readers might recall from chapter 1, liberals have thought that only the principle of non-interference applies outside this realm. If we were traditional liberals, thus, we would only have been equipped to ask whether dating apps infringe on people's claim to non-interference in the sexual sphere. However, in chapter 2, we saw that that principle fails as a full approach to the sexual sphere. We now know we also have claims to equal standing (chapter 3) and choice improvement (chapter 4 and 5).

I have argued that the relevant principles of justice for the sexual sphere are: the principle of non-interference, the principle of distribution of sexual standing opportunities, and the principle of distribution of sexual life plan opportunities. Therefore, the question is whether dating apps inserting themselves into the sexual sphere thereby have become institutions whose conduct has an impact on the sexual sphere and on the distribution of the social primary goods that are the sexual bases of self-respect. Let us start with the observation that inserting themselves as middlemen in intimate relationships enables dating apps to shape what is possible within these relationships. In the context of social media apps in the digital *public* sphere, Seth Lazar (2023b; see also see also Fischli, 2022a) argues that intermediary power

> governs social relations from the inside out, shaping which kinds of social relations are possible or impossible, frustrating or encouraging behaviours through design, pre-empting choices and enabling in-principle perfection of coercive enforcement, with access to others as a cudgel.

Dating app companies govern the digital *sexual* sphere in several ways. Because dating apps act as middlemen between individuals who otherwise would not have come into contact, dating app companies cannot avoid exercising some power over users. Platforms must sort their information in *some* way, according to *some* guidelines and rules.[9] This shows us why a 'hands-off approach' to

[9] For similar arguments related to social media platforms, see (Gillespie, 2015; Lazar, 2023a; 2023b; working paper a). Cited with Lazar's permission.

dating apps is insufficient. The case of dating apps clearly illustrates that not influencing users' intimate lives does not exist as an option. Dating apps will influence what happens; the question is how this influence can best protect the interests of users and non-users – rather than just the interests of shareholders.

Dating apps aim to solve perceived problems with the traditional, non-digital sexual sphere. One problem with the purely non-digital sexual sphere was that it was hard for people to find others who shared what I in chapters 4 and 5 conceptualised as sexual life plans. Another was that it was difficult to know whether the person one was interested in was interested back – whether they had what I in chapter 3 conceptualised as sexual standing, in their eyes. Because people did not know others' availability, interests and intent, awkwardness and humiliation were risks. This trait could make searching for dates slow, ineffective, and annoying. A third problem in the traditional sexual sphere was that social norms constrained some individuals from following their sexual life plans. As we saw in the previous chapter, norms for femininity, for instance, hold that women should neither take the initiative nor 'sleep around' (Garcia, 2021: 22-32; Bergström, 2022: 149–155). LGBT individuals face social constraints against following their life plans, as do people who want to have non-monogamous or polyamorous relationships. This problem persists in the digital sexual sphere, as we will see.

One primary purpose of dating apps is thus to provide people in the sexual sphere with valuable opportunities to develop sexual standing and follow sexual life plans. As we will see, app designers introduced several design features to lower the threshold for interacting with strangers (Ortega & Hergovich, 2017). These might be people who live far away but share similar sexual life plans or other interests, or they might be people who are geographically close and want to meet up to have sex in a certain way as soon as possible. In other words, dating apps could connect various relevant others. Further, the fact that dating apps are not social but only allow one-on-one conversations

shields the dating activity from the view of one's family and friends. That makes it easier for people worried about how dating would affect their reputation to explore their sexuality and experiment with dating without others knowing (Bergström, 2022: 70). In sum, dating apps thus offer solutions to problems with traditional dating. They have provided new opportunities to communicate and match with relevant others – opportunities, in other words, to develop sexual standing and follow sexual life plans.[10] Therefore, it looks as if these apps are tools that help realise the second and third kinds of claims we have been discussing throughout the thesis: the claim to equal standing and the claim to choice improvement.

However, we must remember that the companies behind dating apps have different interests than the individuals who use them and the wider public. Good governance of the digital sexual sphere will have to take, at least, these three types of interests (of the users, the non-users, and the app companies) into account. Let me explain. Dating app companies need to satisfy their shareholders by generating income. There are different models for how to monetise online dating, but the goal for most companies is to be able to charge a subscription fee. Apps also offer extra services within the app, charging users for this. Pay features allow users to see who has shown interest in their profile. It can take the form of a special message, such as a digital rose, that users can send to those they are most interested in meeting (Tinder, 2016).[11] App companies, therefore, have reason to optimise users' paid time spent on the platform – 'the key is to keep users sufficiently satisfied so they do not abandon the service too quickly, but not too satisfied so they would be inclined to convert to paying services' (Courtois & Timmermans, 2018: 7).

[10] The introduction of dating apps has also removed options (compare my discussion in section 4.4 above about how more choice is not always better than less). For instance, findings indicate that the option to hook up online has contributed to the decline of easy-meet-up forms such as cruising, limiting the opportunities for casual sex outside these apps. See, for instance, (Ahlm, 2017).

[11] Dating apps also generate income through selling advertising opportunities within the platform. See, (Rita et al., 2021). They can do this in a more 'traditional' way where the advertisement appears on the display or through a third-party collaboration with the app. For instance, some apps help match users who have decided to meet outside the app to plan the date by recommending restaurants. The Norwegian Consumer Council (2020) have also shown that dating apps have covertly been selling users' data on political views and sexual orientation to third-party corporations.

The most common reasons for using a dating app are to find a long-term partner or meet someone casually (Pew Research Center, 2023b), meaning that many people using dating apps would like to eliminate their need for it. Those whose sexual life plan is to have a long-term relationship want to delete the dating app once they have found a partner for such a relationship. They might download it again if the relationship ends but do not want to use the app indefinitely.

Contrast this with a social media app such as Instagram. Instagram's owners also have an interest in making its shareholders happy. However, its users do not generally wish to use the app temporarily; in theory, one can use Instagram habitually to connect with friends and search for information. One can integrate it as part of one's wider life. Therefore, users' interests in connecting and the owners' interests in making money through users' connections do not clash. Many dating app users, in contrast, see dating apps as temporary tools, while it is in the interests of the owners that they become permanent ones. This disparity in interests distinguishes dating apps from other communicative apps.[12] It is something that the designers of these apps will have to consider when balancing the interests of users and owners.

One further set of interests that such designers need to consider is that of non-users. As we have seen in the previous chapters, it is not necessarily the case that a policy that would serve one individual's interests in developing sexual standing or improving their choice situation is necessarily good for everyone else. We have reason to care that the sexual sphere is such that everyone has opportunities to develop sexual standing and follow their life sexual plan(s). Since not every citizen is also a dating app user, the optimisation of the sexual opportunities of users may come at the

[12] I am not claiming that dating apps are unique in this sense; there exist other apps that match their users and want them to stay for a limited time. For example, apps connect mothers in similar phases of motherhood (Atherton, 2023). We may also think of estate agent apps that connect buyers and sellers of apartments.

expense of non-user opportunities.[13] If, for instance, dating apps become the only place to develop sexual standing, this poses a problem for people who are not on these apps.

When apps further users' interests in getting sexual standing and their owners' interests in generating income from these platforms, non-user interests can sometimes suffer. On the other hand, dating apps can also potentially provide value for non-users distinct from the value they generate for users and app companies. As we saw, apps have introduced means to solve some of the problems related to forms of traditional (as in non-digital) dating, such as social stigma and the risk of misunderstandings about sexual life plans and sexual standing. They provide a system where users get to reveal their (tentative) intent before they ask each other out.[14] Being outside of this system, non-users who are not looking for new potential partners now are less likely to be approached by strangers and might find value in this. Given this disparity in interests, it is unsurprising that dating apps as a phenomenon already have received a substantive amount of critique. Several features have been heavily problematised in empirical research, cultural discourse, and art (Wilson, 2023). However, in a competing narrative, dating apps have also been understood as an essential tool for providing people with more opportunities to explore their sexuality, especially for groups who have previously been policed and excluded from the sexual sphere (Bergström, 2022).

In sum, the dating app exercises power over people's lives. It distributes social primary goods – opportunities to develop sexual standing and follow sexual life plans. It is the kind of institution to which principles of social justice, as in the demands to realise the sexual bases of self-respect, apply. Therefore, they must not undermine our interests in the sexual sphere.[15] In the following

[13] For a discussion of the problems involved in the 'optimisation mindset', see (Reich et al., 2021: ch1).
[14] Questions regarding whether this has had positive effects outside the app or can be said to improve the sexual sphere provide an interesting potential direction for further research.
[15] Those who remain unconvinced by this argument may consider that in addition to this, dating apps are generating enormous sums of money for their owners. On standard views of corporate responsibility, the point of profitmaking

sections, I will consider to what extent apps fulfil this demand. Like social media platforms, dating apps exercise their power through their choices regarding architecture, amplification, and moderation.[16] Therefore, I will discuss these functions in relation to the claims we have in the sexual sphere, to non-interference, equal standing, and choice improvement. I start by examining dating apps' moderation practices.

6.2 Moderation

Dating apps exercise power when they make moderation choices. Through moderation, platforms 'protect one user from another, or one group from its antagonists' and 'remove the offensive, vile, or illegal' (Gillespie, 2018: 6). According to sociologist Tarleton Gillespie (2018: 5), they come to

> serve as setters of norms, interpreters of laws, arbiters of taste, adjudicators of disputes, and enforcers of whatever rules they choose to establish.

How, then, does moderation work in dating apps? After user A has filed a report about another user B, user B can be banned or blocked. Humans – employees of the dating app company – or artificial intelligence systems can do the banning and blocking. By being able to remove users, dating apps exercise power over them. Since dating apps are pervasive in the sexual sphere, this power is substantial.

Removing abusive users is one way to cater to people's claims to non-interference in the sexual sphere. Underscoring the personal risks involved in using dating apps, lawmakers have recently

is that this incentivises corporations to provide social value. However, if companies benefit but undermine rather than provide social value, their profiting is not justified. In this way, a company's benefiting makes it the case that they become responsible for the externalities their conduct creates (Heath, 2006). We know that individuals have claims to non-interference, equal standing and choice improvement in the sexual sphere. Thus, it is possible to tentatively see the undermining of the realisation of these claims as externalities.

[16] Compare, (Lazar, 2023b; Van Dijck et al., 2018).

criticised their moderation practices and argued that they need to be regulated.[17] If app companies would create a digital environment where users end up harmed or else wrongly interfered with, this would count in favour of their regulation. Unfortunately, these companies have indeed often failed to do moderation properly. About half of everyone who has ever used a dating app reports that they have been sent unwanted sexually explicit messages or images, had 'someone contact them after they said they were not interested', been called an offensive name, or been threatened with physical harm (Pew Research Center, 2023b: 35-37).

After being sued for matching women with convicted rapists (Flynn et al., 2019), Match Group started allowing users to report others for sending threats or explicitly sexual images or content they have not asked for. However, the report system is easily misused. For instance, some users have implemented a 'revenge report' strategy, reporting anyone who rejects them as a potential partner. Further, Match Group has been criticised for allowing suspension due to reports targeting trans people, people of colour, other minoritised groups, and people who support specific political causes such as abortion rights and social justice (Cheung, 2022). Unless the rules for moderation are adequately fine-tuned, the moderation AI can mistakenly be triggered by these report revengers to block users who have done nothing wrong. Reporting becomes a weapon with which abusive users can punish people rather than a tool with which abused users can protect themselves and others from interference (Larson, 2023). And since users can be banned from the major apps for life (Tinder, n.d.), and since these constitute crucial sites for developing sexual standing and following sexual life plans, the stakes are high. This speaks in favour of providing due-process avenues for users to report the decisions or practices of the apps. A due-process requirement would also pressure the app companies to explain how they make decisions, thus empowering

[17] This development follows the pattern of the more general 'securitisation' trend discussed in previous chapters, where the sexual sphere gets attention only when what happens within it can be framed as having to do with dangerous strangers. To be sure, there are dangers involved in meeting up with violent men. At the same time, the risk involved in focusing on these instances is worth noting: we might lose sight of what is producing many of these dangerous situations, namely that inequalities and unjust social norms structure the wider social environment.

users to hold companies accountable for what their automatic systems are doing (Reich et al., 2021: 106–7).

Lawmakers have been critical of other features of dating apps' moderation practices.[18] In particular, there has been criticism of their insufficient safety efforts after journalistic investigations have shown that Match Group does not do background checks on the users of their free apps (Flynn et al., 2019). In response, Match Group has conducted several initiatives to provide more safety. The company has invested in security start-up companies, offering their services to users within the app. One of these companies, Garbo, provides the option to do a background check on potential partners (Lyons, 2021).

Match Group has also invested in another start-up, Noonlight. This start-up gives Tinder users a 'panic button'. When they push this button, Noonlight is alerted that they feel threatened by their date (Edwards & Naismith Picciani, 2021). Noonlight, in turn, contacts law enforcement. When the user opts to use these services, they get a badge on their profile that alerts potential dates that their meetings will be under the supervision of Noonlight, which Tinder's CEO has compared to a 'lawn sign for a security system' (Blistein, 2020).

This development demonstrates the power of dating apps; they provide functions that traditionally have been the state's, such as keeping citizens protected from interference and punishing people who are violent or abusive. Dating apps already offer law enforcement agencies an abundance of data that can be used for a broad range of purposes, from intelligence-gathering to entrapment' (Stardust et al., 2023: 86). We must understand their new start-up collaborations in this context.

[18] It is relatively common to be exposed to fraudsters (Cousins, 2020). Pew Research Center (2023b: 11, 41) reports that about half of those who have used a dating app believe they have encountered a scammer. According to the Federal Trade Commission (Fletcher, 2022), romance scams have generated more money than any other reported scam. Dating app scammers often ask for money because they or someone close to them 'is sick, hurt or in jail', claiming to be unable to meet because they are far away at a military base (Fletcher, 2022).

As Stardust and colleagues (2023: 286) point out in their discussion of what they call dating apps' 'carceral solutions', such data can increase 'the likelihood of human rights abuses in jurisdictions where same-gender sexual activity is criminalised or stigmatised'. The reported misuse of personal and intimate data is a great source of worry (Norwegian Consumer Council, 2020), and tells us that some of the most significant risks in online dating come from the behaviour of dating app corporations themselves (Albury et al., 2017), and raises further doubt about whether this form of extensive corporate power is justified. Dating app companies' practices of selling or sharing personal information clashes with the sexual-sphere-specific interest people have in being able to be vulnerable. These practices and are obviously wrong when individuals have not consented, as they then infringes on our claim to non-interference. But they can harm individuals even in cases where they have formally consented. These considerations count in favour of requiring apps to give users power over the use of their data (Stardust et al., 2023; Fischli, 2022a; 2022b; Reich et al., 2021: 255-7). They also favour prohibiting the harmful processing of data relating to individuals' sexual life plans, orientation, and preferences.[19]

There are further problems with the efforts taken by Match Group from the perspective of the sexual bases of self-respect. First, the option to do a background check on a potential match comes with a fee. Rather than doing its duty to provide safe and real matches to all its users, the company packages non-interference as an add-on service. This move amounts to an effort more aligned with the corporate interests than users' interests to non-interference, equal standing, and choice improvement. But more importantly, by making safety an option, the app risks reinforcing the idea that vulnerable individuals are responsible for their fate in the sexual sphere. Recall our discussion about substantive responsibility in the previous chapter, chapter 5. Once the dating app introduces the options of Noonlight and Garbo, it can argue that if users do not buy these options, they are

[19] According to GDPR's article 9, data relating to people's sexual orientation or sex life cannot be processed.

substantively responsible for their outcome: that by providing genuinely valuable choices not to be interfered with – it has 'done enough' to protect users from wrongful interference, as in everything that it could be asked of them (Scanlon, 1998: ch6).[20] The app can then argue that it is up to the person who does not want to be violated, harassed, or scammed to use these features. In this scenario, there is a risk that the burden of responsibility is shifted to the individual. If the user does not select the option and ends up harmed, it is too easy to fall into the narrative of victim blaming so prevalent in the sexual sphere. When the non-interference options are introduced, there is also the risk that not using them signals something different than before. The introduction of Noonlight and Garbo, in other words, affects not only those who decide to use it but also third parties.

However, even if background checks became mandatory for all users, not only those with whom a paying user matches, issues with this response to the non-interference claim would remain. Relying on records of offences can be risky in unjust legal systems where false convictions are predominantly common among minoritised groups (Srinivasan, 2021: 1-31). In the US, for instance, false allegation of black men is a practice with deep historical roots; according to a 2017 report by the National Registry of Exonerations, 'a black prisoner serving time for sexual assault is three-and-a-half times more likely to be innocent than a white sexual assault convict'. The report attributes this disparity to 'the high danger of mistaken eyewitness identification by white victims in violent crimes with black assailants' (Gross et al., 2017: 12-13).

In this context, removing or labelling users with a record of sexual offences is likely to burden innocent individuals, who are especially likely to be members of minoritised groups. There is a danger that background checks will contribute to the stigmatisation of people who have been

[20] Compare my discussion in chapters 4 and 5 on the value of choice.

incarcerated, removing opportunities to develop sexual standing and follow sexual life plans from one group without having established that this will contribute to the realisation of the claim to non-interference of another group. The designers of dating apps must factor in the risk that users use safety features in a racist way. This, as well as the risk that app initiatives 'weaponise women's safety to justify police and state surveillance tactics, expansion of police power and, inevitably, more punitive carceral measures' (Stardust et al., 2023: 290), must be weighed against the potential gains with regards to non-interference that the safety initiatives could result in. Therefore, such moderation practices must be based on empirical research on the risks involved in online dating and the actual benefits of background checks in relation to dating. What dating app companies must do is contribute to a safer social environment in the sexual sphere where people take each others' claim to non-interference seriously. This is different from providing their users with a *sense* of safety.

Being targeted by revenge or hate reporting is only one form of discrimination against minoritised groups within dating apps. Another common criticism against dating companies is that their architectural design creates, sustains, or magnifies racist sexist, and ableist structures.[21] I consider this issue next in relation to the three claims.

6.3 Architecture

In the context of platform technology, 'architecture' refers to the design of the platform and its protocols (van Dijck, 2013). Like the architecture of a physical space such as a park or a building, the app's architecture affects where users can go and what they can do in the digital space. The architecture of a dating app does not fully determine whom users will match or with whom they

[21] Bedi (2019: 82–112) explores this issue in relation to online dating websites.

will go on a date, but it nudges and guides their choices. It presents them with specific options while making other options impossible.[22]

Through the app's architecture, the designers have the power to make users focus on specific features of potential partners while making users miss features they otherwise could have considered in their choice of a date. For instance, the chat-based process is the only way for app users to set up dates. On the one hand, this architectural feature provides users with new opportunities; as psychologist Elizabeth Mazur (2022: 215) argues, 'in contrast with a traditional bar scene where attention from others might represent sexual interest or curiosity about a person's disability, online dating offers a setting in which an individual's disability does not need to be disclosed right away and therefore is not an immediate disqualification'.[23]

On the other hand, there is always the risk that the architecture, to be as simple as possible, focuses too heavily on one or just a few features. In the case of the dating app, it is impossible to capture everything we care about in a potential partner. If the only information users have available to them is a couple of photos, there will likely be a skewed focus on appearance – even for those users who otherwise would not have cared most about whether their potential partner looks good in a photo or is good at texting.[24]

There are two major types of dating app architecture. The first allows people to send a direct private message to anyone whose photo appears on the screen. This kind of app shows the user a

[22] Fischli (2022b: 143) and Aytac (2022) have argued that this kind of power constitutes a restriction of freedom.
[23] At the same time, this means that people now require verbal abilities and writing sensitivities to meet a potential partner. During a short time, using a few words and sentences, individuals must convince their match that they are worthy of meeting outside the app. They must signal that it will be worth 'investing' time and money into this potential relationship or exchange – that they are a good option compared to all the other people on the app. Naturally, it was always the case that one needed to strike a balance between showing that one was seriously interested while not revealing *too* much eagerness or desperation – that one was desirable and desiring. In that sense, little has changed.
[24] In response to this kind of critique, Hinge launched a voice message function. This design choice introduces a new possibility for users, encouraging them to use another sense in their choice of date.

grid or list of photos of other users in the order of geographic proximity, and he can choose to interact with any of those he sees. Grindr is one example of an app employing a grid architecture. The second type requires a 'match' between users before they can start messaging (Wu & Trottier, 2022: 91). Tinder's swipe function, for instance, enables you to look through many photos of potential matches and choose whether you want to show interest or not (David & Cambre, 2016).

An app that falls into the second category is Bumble. This app's architecture prevents men from starting a conversation, thus putting women in the role of the initiator (Bivens & Hoque, 2018). To architecturally change the user relationship, the app institutionally swaps men's and women's social roles and expectations in heterosexual dating. That can be helpful in a social context where men find it hard to accept rejection and it is uncomfortable for women to do decline their invitations (Bergström, 2022: 160). So is the option to simply exit a conversation without giving an explanation or ever having to see the person again, which is available on most apps. There is reason to see these architectural features as adding valuable options to people's opportunity sets. They further women's claims to non-interference and choice improvement. It can serve men's interests too: Since women initiate conversations, they spend less time interacting with users in whose eyes they will not develop sexual standing.

It should not surprise us that logging on does not remove people from the unjust social structures of the non-digital world in which they live. Social norms still apply. We still live in a hierarchical society. It has become harder to ignore that there exist longstanding inequalities *in sex and dating* rather than just inequalities generally. One reason that we nowadays seem to be more aware of the inequalities in sexual standing – or at least talk about it more – is that, as Bergström (2022: 66) argues:

> on the internet…the realities and inequalities of dating are exposed to the light of day. Because dating platforms are explicitly and specifically dedicated to romantic

> and sexual encounters, they reveal the otherwise hidden mechanisms of matching: these become now visible and tangible, primarily to the users themselves.

In one sense, app companies are just giving people what they were already into and providing them with an efficient way to fulfil their preferences. However, while it is true that we cannot blame dating apps for existing material inequalities and social structures, we can ask that they do not aggravate the situation. Even if it were not the case that dating apps made things worse – that is, even if they could show that, for instance, sexism, racism, transphobia, and ableism were just as bad or worse before them or would be without them – this would not mean that the apps have no responsibility to use what means they have available to alleviate these problems. Recall, by taking up the intermediary role between users, dating app companies have inserted themselves into the sexual sphere.[25] As an institution in this sphere, they need to justify their impact on people's lives. It needs to be in line with the demands of justice. This is true even if it could be shown that the discriminatory preferences of users exist independently of the app.

So, what can we say about the architecture of the apps in relation to the claim to equal standing, as explicated in the sexual sphere as a sufficientarian principle of distribution of opportunities to develop sexual standing? Consider how, for sexual minorities, dating apps provide new opportunities to develop sexual standing and follow sexual life plans. Pew Research Center (2023b: 18, 8) reports that '51% of lesbian, gay or bisexual (LGB) Americans say they have ever used a dating site or app, compared with 28% of those who are straight', and that 'LGB users are more likely than straight users to [report positive experiences] (61% vs. 53%)'. Algorithms can efficiently find others who are relevant in the sense of being someone a user could consider a partner. They can also find people sharing an individual's intimate life plans and interests. More options are available, even for people living in smaller communities like Straightville, Openville, Sneakytown,

[25] Compare, (Lazar, 2023a; 2023b).

and the other thought experiments I discussed in chapters 3 and 4. Consider that 24 per cent of partnered LGB adults say they met their partner online dating, compared to 9 per cent of straight Americans (Pew Research Center, 2023b: 7). This is important from a contractualist perspective, since LGB Americans have been worse off in terms of opportunities to develop sexual standing and follow life plans their claims should be taken particularly seriously in the deliberation about potential future regulation.

Dating apps offer individuals something that people, as a requirement of justice, are owed. This ability to provide people with something valuable – opportunities to develop sexual standing and follow sexual life plans – is the most plausible explanation of the value of online dating available to liberal egalitarians.[26] Note that we only see this if we use a theory that recognises our claims to equal standing and choice improvement in the sexual sphere and that opportunities to develop sexual standing and follow sexual life plans are valuable.

App companies made the architectural choice to make apps private rather than social media. This choice constitutes what I, in chapter 5, on choice improvement and social norms, called a social norms-sensitive approach. Consider how the privacy feature provides women with opportunities to follow a greater variety of sexual life plans, especially in the presence of gender norms for female modesty of the kind we discussed in the previous chapter on HIV prevention and the claim to choice improvement. A social norms-sensitive architecture gives people living under biased norms options that are valuable because of the norms in question, shielding them from interference while keeping the norms intact. Because women can chat and meet with a greater number of potential partners with neither their social network nor these potential partners finding out, it also becomes

[26] Note, for instance, that restricting apps from using specific algorithms is not a breach of individuals' freedom of association. Even if algorithms stopped matching people with suitable others, individuals would still be free to associate with whomever they want. They just would not find the most people for them through the app.

less costly to take advantage of these opportunities. They can develop sexual standing without risking their *social* standing. However, as Bergström (2022: 163) puts it,

> while dating platforms temporarily alleviate the risk of sexual stigmatization for women, they also thrive on traditional sexual morality. It is discretion rather than sexual assertion that contributes to making these platforms popular.

As we established in the previous chapter, we owe women the opportunity to meet with people without having to worry about social sanctions. Unfortunately, there is not much in the architecture of these apps that can count as what I, in chapter 5, refer to as social norms-transformative – measures or policies that would work to change the harmful gender norms in question. In the digital sexual sphere, courtship norms and the tendency of mate sorting according to race, social class and background remain in place.

Groups oppressed by racist, ableist, and transphobic social norms constantly get fewer matches on dating apps.[27] Some dating apps have filters that ensure users get matches from particular social groups. When signing up, users can fill in their preferences when it comes to potential partners with this architectural characteristic. Potentially, the existence of this kind of filter could promote existing sexual and social hierarchies by encouraging people to conform to discriminatory and oppressive sexual norms.

Some findings indicate that this is, in fact, the case (Robinson, 2015). There are indications that dating apps aggravate patterns of discrimination (Stacey & Forbes, 2022; Christensen, 2021; Li & Chen, 2021). For instance, Conner (2023: 8) found that 'Grindr reproduces categories [according to physical attributes that align with the sociological literature on sexual hierarchies] by formatting

[27] For instance, it has been shown that black women get particularly few matches (Curington et al., 2021; Rudder, 2014).

their platform to emphasize those traits'. Another study found a correlation between the frequent use of dating platforms and sexual racism and scepticism of multiculturalism (Callander et al., 2012). The researchers theorise that the existence of racial labels in apps' search filters may in themselves 'encourage the belief that [racial labels] are useful, natural or appropriate for defining individuals and sexual (dis)interest' and that 'men who frequently visit such web services may find their beliefs confirmed and reinforced in an environment that appears conducive to sexual racism' (Callander et al., 2012, see also, Hardy & Lindtner, 2017).

If these findings are correct, the apps' filters threaten people's access to opportunities to develop sexual standing in several ways. First, by encouraging users to think about others as belonging to categories that one should opt out from interacting with, the app's architecture will result in fewer potential matches for the filtered-away groups. Second, the filters contribute to social norms for desirability in the sexual sphere that hinder some people from developing sexual standing and following sexual life plans. Instead of resisting racist and ableist norms, the apps co-create them.

The dating apps' architecture can also make it harder to realise that one is making choices in line with such norms. Tinder's swipe function, for instance, enables users to engage with the app in an absent-minded way, allowing 'unconscious racial preferences to be expressed without troubling users' perceptions of themselves as non-racist' (Narr, 2021: 3). Relatedly, dating apps' amplification practices can prevent minoritised users from accessing opportunities to develop sexual standing and follow sexual life plans. When many users reject potential matches with specific characteristics, the algorithm learns to see similar profiles as less attractive. In turn, this gives these profiles fewer matches. The problem is aggravated if the app uses these users' data to predict the preferences of new users whom the app codes as similar (Wang et al., 2011). The app then treats the new users as if they had the same preferences as the former group, applying the pattern of rejecting minoritised profiles. Therefore, the app could treat even users who have not acted on racist

preferences as if they did have such preferences, further eliminating the pool of potential matches the app could show to the minoritised individuals. It would, as sociologist Gregory Narr (2021: 6) points out, 'make it impossible to circumvent the racial biases of the entire network of past and present users on dating platforms'.

When dating apps were first introduced, their creators could not be held responsible for people's preferences. If we take seriously the vast impact these apps have in the contemporary sexual sphere, we see that this is not true anymore. However, even if it were true that app designers were only responsible for how preferences develop through app use, it is still the case that they can choose whether to help users exercise their pre-existing preferences. As Sonu Bedi (2019: 82–112) argues about dating websites and racial filters, removing such filters does not hinder anyone from acting on their racist preference; a racist can still choose not to accept a match from any other user they do not find attractive. However, the app architecture must not necessarily encourage or make it easier for the users to opt out of considering potential matches belonging to certain social groups. The fact that so many app companies think they owe their users to enable racist preferences in this way points us to a wider problem with the (non)regulation and under-theorising of the digital sexual sphere, namely that we have failed to see that what the app designs should optimised are benefits overall, not only in particular interactions (compare, Lazar, 2023a: 87, 111).

As we saw in chapter 3, what people are owed is opportunities to develop sexual standing in an adequate range of social settings, not in every single interaction. From this perspective, there is a risk that big dating companies' acquisition of many apps results in less various opportunities for developing sexual standing and autonomy. Indeed, this is what has happened in Match Group's apps. Tinder and Hinge used to be labelled as each other's opposites, one being a 'hook-up app' and the other being an app for people who want to 'escape the dating apocalypse' and delete the app after having found a long-term relationship with it (Crook, 2016). They now have similar

features – Tinder has added a feature for signalling that one wants a long-term relationship and Hinge has introduced an option where users can mark their profile as looking for more casual dates (Forristal, 2022).[28]

Because what people have reason to want are opportunities to develop sexual standing in an adequate range of settings, not all exclusions from apps constitute a problem. If, for instance, a secular Christian user cannot use a Muslim dating app such as Muzz, this is not analogous to a case where Tinder bans a Muslim user. If the secular Christian user cannot find matches on Muzz because she is a secular Christian, this should worry us less than if the Muslim would get no matches on Tinder because she is a Muslim. The reason is that Tinder, the most popular dating app, regulates an immense supply of opportunities for sexual standing within millions of social settings. A user who cannot find matches on Tinder is unlikely to have access to an adequate range of social settings in which they have opportunities to develop sexual standing. In contrast, a secular Christian's inability to develop sexual standing on Muzz does not indicate the same problem.

[28] The marketing surrounding it may be as crucial as the labelling of a product or a service. In the case of food products, sellers might trick us into thinking a product is healthy or good for us if the marketing signals this through, for example, being eaten or drunk by a strong-looking person doing sports. The dating app can likely trick people into thinking its design provides features it has not been proven to provide. An example of this would be Hinge's marketing, which centres on them being the dating app meant to be deleted. Hinge promises that their algorithm is especially good at finding life partners for their users (Baah, 2020). Another example is Bumble, which, through its marketing, focuses on 'girl power' or 'girl boss' feminism, claiming to put women in charge. In their communication, Bumble fronts their design features and moderation practices as keys to providing women with more agency. While both apps promise to provide specific experiences using their algorithmic and architectural innovations, users report that their experience of these apps is not very different from other apps (Singh-Kurtz & Rengarajan, 2023; Cherelus, 2023). To take the intermediary power that dating apps have over users seriously, we would need efforts to monitor the marketing and communication practices of dating apps. This shows us the importance of seeing dating app companies as agents in the public sphere, raising questions about their freedom of expression. However, considering that there are problems involved in making the state responsible for monitoring speech, it is not the most appropriate agent to fill this role (Heath, 2006: 551). Instead, it is likely that independent agents, including non-governmental organisations and the media, are best suited to holding dating apps accountable for their claims and promises (Reich et al., 2021: 106). With access to the results of such testing and auditing, the public would be able to have some control over the decisions that dating apps make. While people have different views on the good, some common interests and assumptions could help us set up standards for auditing. For instance, there is disvalue in being in a position where dating apps discourage people from matching with one or being a person that the app simply does not show to potential matches.

In sum, answering the question of whether a specific dating app architecture undermines opportunities to develop sexual standing and follow sexual life plans would require qualitative and quantitative studies using operationalised sexual standing and sexual life plan concepts. Before any such studies are undertaken, we can only make assumptions about what would exclude or undermine a person's sexual standing. Nevertheless, although I am unable to firmly establish that the apps undermine people's opportunities to develop sexual standing, it is possible to say that they could do more to further such opportunities for certain users.

Doing more would entail taking further steps to counteract patterns of discrimination through design. Apps could encourage users to explore outside the group of profiles that the algorithm predicts the users would be most likely to 'like' or say yes to. 'Instead of using algorithms that choose the "safest" possible outcome, matches could be calculated with significantly more enthusiasm for diversity' (Hutson et al., 2018: 10). This would amount to a transformative approach to social norms of the kind I discussed in the previous chapter.

One feature that sets dating apps apart from other institutions in the sexual sphere is their use of algorithms, which I consider next specifically in relation to the question of how their amplification practices contribute to realising our claims in the sexual sphere.

6.4 Amplification

In this thesis, I have discussed how social norms, rather than laws, are the primary rules that govern the sexual sphere. To be able to make valuable choices to develop sexual standing and follow our sexual life plans, we need to know what the rules relevant to our situation are. That is one reason why public policy for the sexual sphere needs to be mindful of social norms and their impact on individuals' choices. If it is not, it will not contribute to the realisation of the three claims.

As we have seen, social norms govern the *digital* sexual sphere, too. Our behaviour is in part determined by what we are socially permitted and prohibited (as well as encouraged and discouraged) to do. As we saw in the previous chapter, chapter 5, social norms must be public to have power over us – to work, social norms must be known. People follow the social norm, if it is, in fact, a social norm, because they know what the norm says they should do and because they think others know it and think they should follow it (Bicchieri, 2017: ch1). The law, too, must be public to work. An implication of the publicity feature of law and social norms is that it makes it possible for people to criticise and resist them. In contrast, this is not the case for the rules of computer systems (Lazar, working paper b). When individuals use dating apps and other platforms, their behaviour is also governed by algorithms – processes or rule sets 'by which calculations are made, problems solved, or decisions reached' (Fischli 2022a: 132; Hao, 2018).

Using algorithms, dating apps exercise power through their choices concerning amplification (Miller, 2021). Amplification refers to the computer system's increasing certain content's visibility and reach at the expense of other content. In the case of dating app amplification, algorithms determine who gets exposure in the app, whose profile is presented to more potential matches, and what behaviour is rewarded by being matched with more, or more relevant, others (Keller, 2021). Note, though, that dating algorithms do this based on the users' self-reported preferences and filters, which are strictly part of the app's architecture.

Even though it is up to the individual user whether, when presented with a potential match, they will accept or reject it, the app provides the options in the opportunity set. We can only consider *the option*s we consider because the app has given us these options. Therefore, in the sexual sphere, the realisation of the claim to equal standing and choice improvement is bound up with algorithmic decision-making. Consider how a dating app's amplification decisions affect people's opportunities

to develop sexual standing. Users are presented *with* options, but they are also presented to others *as* options.

Therefore, what matters is whether relevant suggestions of potential matches are presented to me as options and whether *I* am amplified to be presented as an option to enough relevant others. A user who is presented as an option to few others has fewer opportunities to develop sexual standing. Such a user might feel more needy or dependent on the matches they get – especially compared to a user who gets many relevant matches and thus has many opportunities for developing sexual standing. That might affect the first user's self-respect, but it is hard to say if they would have been better off in a purely non-digital sexual sphere.

Dating apps know that amplification affects users' self-respect and how to monitor this effect. For instance, the Tinder Boost pay feature is presented to users as a means to increase their chances of getting matches. It 'amplifies a profile's visibility for half an hour in the physical area where the user is currently located. The profile is put on top of others' 'stack of recommendations without indicating this to these other users' (Courtois & Timmermans, 2018: 7). As the Swedish Tinder user Simon, 23, explains,

> It's a way for me to get more matches, plus it gives you validation when you're feeling lonely. Today I basically only get likes and matches if I use 'boosts' (Eklund, 2022).[29]

In the data economy of which dating apps are a part, 'there exists an entire ecosystem designed to capitalize on individuals' vulnerabilities' (Fischli, 2022a: 141). As the dating app operates in the

[29] My translation from the Swedish. Original quote: '*[d]et är ett sätt för mig att få mer matchningar, plus att det ger bekräftelse om man känner sig ensam. I dag får jag i stort sett bara likes och matchningar om jag använder boosts.*'

sexual sphere, where we are particularly likely to be vulnerable, this is especially troubling. Emil, a man in his thirties, tells the newspaper *Svenska Dagbladet* (Eklund, 2022) that:

> I've probably burnt [7000 pounds] on Tinder. Sure, it creates an addiction, especially when you're desperate for love. Once you've started paying, I don't think you can go back. If I stop paying, it goes all quiet (Eklund, 2022).[30]

With the help of its data collection, the dating app has ample resources to predict when users are 'at their lowest' and most likely to buy to get that boost – and their self-esteem back. A 2022 Swedish study showed that Tinder charged some customers up to 12 times more for the same service than others (Sveriges konsumenter, 2022). Because Tinder collects data about gender, sexual orientation, age, and geographic area, they have the means to discriminate between users – something that in the EU constitutes illegal price discrimination.[31] This case echoes the thought experiment about the fictional dating app 'Greedy', which we discussed in 4.4., when we considered policies that could improve individuals' opportunities to follow sexual life plans. In the real-world case of Tinder, Match Group promises that prices are not discriminating according to certain features, but simultaneously refuses to reveal how they set their prices (Eklund, 2022).

What are the implications of algorithms' lack of the publicity feature of social norms mentioned above (Fischli, 2022a: 132; Hao, 2018)? As the Tinder case shows, we do not need to know an algorithm's rules to have our behaviour effectively constrained and ruled by it (Gillespie, 2014). Consider now the fictional case of an ableist dating app algorithm that sorts matches on the assumption that people with a visible disability are undesirable. Unfortunately, despite their potential to provide predictable, efficient, and more objective results than human decision-making, algorithms often incorporate the biases of their creators. Ableism in algorithms can be explained

[30] *'Jag har säkert bränt över 100 000 kronor på Tinder. Visst skapar det ett beroende, speciellt när man är desperat efter kärlek. När man gått över till betalningsträsket tror jag inte att man kan komma tillbaka. Om jag slutar betala är det stendött.'*
[31] For which the Swedish Consumer Agency is investigating the company.

by the facts that developers share our societies' ableist assumptions and that they train their algorithms on the data of people living in these societies (Tilmes, 2022; Goggin et al., 2019; Lillywhite & Wolbring, 2019). This algorithm will ensure that most people are not matched with individuals with disabilities visible on the app. This process will not be visible to app users. People with visible disabilities might feel the app is not working for them. However, it will not be clear from their experience whether this is because of the algorithm or because they do not have sexual standing among the users. This lack of transparency means it will be harder to complain about the treatment they receive on the app. For example, who should they blame? Other users? The app? Themselves?

When algorithms shape our behaviour, it is harder for users to pin down the content of the rule shaping us and where it comes from. This feature is an essential source of the dating platforms' power. As Roberta Fischli (2022a: 131) points out, 'only those who have access to and control over costly technological infrastructures, expensive data sets, as well as the software, processing power and expertise required, are able to make sense of them'. We have reason to worry about the 'growing divide between the capabilities of' those who create the data and those who collect and analyse them (Fischli, 2022a: 133-134; see also Andrejevic, 2014).

This problem worsens when one group of people oversee several platforms. Apps with the same owners will likely use the same moderation practices over several big platforms, something that can be especially burdensome to users in the growing context of what Kleinberg and Raghavan (2021) define as *algorithmic monoculture,* a situation in which many decision-makers use the same algorithms. Where several of the more prominent apps utilise the same systems or algorithms, this increases the risk for *outcome homogenization*, which is 'the phenomenon of individuals (or groups) exclusively receiving negative outcomes from *all* decision-makers they interact with' in a particular

sphere of life or society. As Bommasani and colleagues (2022: 2) argue, 'homogeneous outcomes, especially in certain high-stakes settings, constitute serious harms to individuals'.

The dating apps could potentially provide people with valuable opportunities to follow a wide range of sexual life plans. But these opportunities are only available to those who accept the dating apps' terms, meaning that the only way to resist the power of this system without losing these opportunities is to log off and meet up with potential partners in some other forum. But in a society where most people meet potential partners through dating apps, this option is less viable – especially for sexual minorities for whom it is harder to locate like-minded individuals.

In a society where dating apps have become dominant, social norms might even make it seem strange or 'creepy' to approach someone in a bar with whom one has not already matched on an app. This problem also exists regarding other social platforms, such as those in the digital public sphere (Aytac, 2022: 9; Everett, 2018; Flew & Wilding, 2021). But they are arguably amplified in the context of the sexual sphere, where organising is less palatable due to the shame and stigma surrounding sex – few would want to organise under the banner of the 'unmatched' – and there is a higher risk of distress.[32] Therefore, persons who fail in the sexual sphere would find it more challenging to publicly blame the app designers for their failures, even if participants in the sexual sphere are correct in their analysis that the app designers are indeed to blame.

The app algorithms' lack of publicity contributes to the power imbalance between companies and users. It should make us pressure the former to be transparent about what is 'under the hood': to know that an algorithm is being used and how it is being used (Reich et al., 2021: 105). One way to ensure that app companies' use of algorithms is in line with our values and interests would be

[32] See, for instance, the discussion in (Shakespeare, 2000: 160) on the history of the British disability movement and the difficulties of organising around the opposition to being excluded from sex and sexuality compared to the opposition to being excluded from, for instance, the labour market.

to make them provide explanations of how these algorithms work, how they were designed, and how they are thought to balance these demands (Adadi & Berrada, 2018; Suzor et al., 2019). A 'right to explanation' concerns the right to get an explanation for why a decision was made and how this decision was appropriate (Vredenburgh, 2022). The European Union's General Data Protection Regulation (GDPR) codifies this right. While it is challenging to design AI systems in a way that is explainable in this way, it is not impossible (see discussion in Creel, 2020).

In sum, the idea of the sexual bases of self-respect helps us understand the challenges facing individuals in the digital sexual sphere. We can properly weigh the values and interests involved in using dating apps. While liberal egalitarian theories, if applied to the case of dating apps, would have been able to track the issues relating to the claim to non-interference, the theory I have been developing in this thesis also provides us with tools to describe the problems app users and non-users are experiencing with regards to sexual standing and insufficient opportunities to follow their sexual life plans.

6.5 Conclusion

This chapter has analysed dating apps' architecture, moderation, and amplification practices through the lens of the theory I have developed in the thesis. Through this lens, we can recognise the value of dating apps. Like in the sexual sphere generally, my theory recognises that when individuals use these apps, their claims to non-interference should be protected and that they should be provided with genuinely valuable opportunities to develop sexual standing and to set and follow sexual life plans. Like other institutions and practices in the sexual sphere, dating apps need to balance their interests with a duty to contribute to making the sexual sphere just.

In the previous sections, we saw that these apps, in many situations, provide people with more and better opportunities to develop sexual standing and follow their sexual life plans. This is particularly true for sexual minorities since dating apps connect people to potential dates and provide a system where users can reveal their intent and preferences *vis-à-vis* particular dates and intimate relationships generally. Hundreds of millions of yearly users tell us that these apps are, at least sometimes, providing opportunities that people value. In particular, they have provided access to opportunities to develop sexual standing in the eyes of relevant others and follow their sexual life plans to groups who have been worse off in terms of such opportunities, such as LGB individuals. In contractualist terms, this improvement of the choice situations of people who have had and continuously have the weightiest complaints about the sexual sphere is something that significantly counts in favour of dating apps.

At the same time, dating apps do not distribute such opportunities equally. There is reason to think that the apps' discriminatory design features and practices threaten some people's claims to non-interference, equal standing, and choice improvement. These apps also disempower people by making them dependent on unexplained, arbitrary, high-stake decisions. In other words, there is reason to think these platforms both undermine and support our claims to non-interference, equal standing, and choice improvement. I showed how the theory I have developed in the thesis can guide lawmakers, policymakers, and app designers in formulating regulations, guidelines, and algorithms. In addition, by introducing my theory to the digital sexual sphere, I have provided empirical researchers who study intimate technology with an area of future research, for example, on the relationship between sexual standing and digital platforms.

From what we have seen of dating apps' attempts to self-regulate, there are few reasons to be optimistic.[33] Like other platforms, dating apps have largely failed to bring their practices in line with the demands of social justice (Bietti, 2022). They have focused too much on the claim to non-interference in the sexual sphere and thought less about their duties regarding providing everyone with opportunities to develop sexual standing and sexual life plans. As a result, they have ended up with some solutions to improve safety but have been unimaginative regarding the claim to equal standing and choice improvement. These considerations speak in favour of seeing a *prima facie* case for intervening in the market of dating platforms to bring their conduct more in line with the demands of social justice for the sexual sphere.[34] Exactly how this regulation should look is a question for further research and something that we would need to subject to consultation with and deliberation among the public, democratic representatives, dating app companies, and other stakeholders.

In the meantime, dating app workers have reason to establish a professional organisation that can monitor the actions and impact of its members. Reich and colleagues have proposed a 'Hippocratic oath for tech' setting up ethical guidelines for technologists. The professional organisation would be able to license workers and sanction misconduct by removing the license to work with digital technology (Reich et al., 2021: 246–252). While the developers at dating app companies would fall

[33] Like in other digital markets, the dating platform is generally insufficiently regulated. As this issue ranges from the political economy of the digital market to consumer protection, it falls outside of the purpose of this chapter and thesis, which focuses specifically on the specific issues that arise in the sexual sphere. Still, it is possible to say that regulation for dating apps should incorporate demands for increased transparency, due process, and data protection I have been discussing throughout. For making and monitoring demands, the professional organisation for dating app workers, NGOs, and consumer groups would likely all play important roles.

[34] In business ethics and economics more generally, it is thought that 'lower price, improved quality and product innovation would be the only way that firms could compete with one another' – but this only holds in conditions of 'perfect competition', where there, for instance, are no information asymmetries between the buyers and sellers, who are 'rational, utility-maximizing agents with dynamically consistent preferences' (Heath, 2006: 549–550). These conditions do not hold in the digital sexual sphere, a realm where, as Heath (2006: 550) puts it in his general discussion of imperfect competition, corporations 'are often able to make a profit using non-preferred competitive strategies, such as … selling products with hidden quality defects'. The point of state intervention in markets is to bring them closer to the ideal of perfect competition (Heath, 2006). There is reason to make dating apps undergo an independent testing process to ensure that the companies are not selling products or services with quality defects. In such a process, experts would review the results of the apps' specific functions.

under such a wider professional organisation for tech, their practice is special. Governing the digital *sexual* sphere comes with particular responsibilities and considerations. Yet, the producers of dating apps often do not know anything about intimate relationships. As one of Bergström's (2022: 42-43) dating app technologist respondents puts it,

> I made a carpooling site that doesn't work that well, I have the know-how to do websites, why wouldn't I make a dating site? [...] The advantage is that technically it's the same thing.

Acknowledging dating apps' role in realising social justice in the sexual sphere, an important area for further research and public deliberation is to what extent developers of systems for sexual matchmaking should be subject to sexual-sphere-specific rules. It seems reasonable to expect that such matchmaking, based on its shared features with sexology and therapeutic work, requires skills that go beyond those of the general tech worker. It is reasonable to suspect that if dating apps were developed by psychologists and sociologists rather than by professionals trained only in technology and computer science, they would look quite different. At the very least, there is reason for the dating app organisation to implement a voluntary code of conduct for dating app designers, on which moderation, amplification and architectural choices should take into account everyone's claims to non-interference, equal standing and choice improvement in the sexual sphere. That could, for instance, involve features that encourage users to examine their discriminatory preferences, consider a wider variety of traits in their decisions, and be more creative and open in their choice of potential partners.[35]

An objection to my argument is that regular or non-digital matchmaking is not regulated. Since dating apps are matchmaking tools, it appears that any rules or potential regulation must be symmetric and apply to anyone who professionally matches romantic mates. One reason to think

[35] While this has the potential to increase some people's opportunities to develop sexual standing, it would not force anyone to transfigure their desires (compare, Srinivasan, 2021: 89-91).

that this is not the case would have to do with scale – there is a relevant difference between matchmaking a few individuals at a time and matchmaking millions by automatic means. If this argument fails, I am prepared to bite the bullet here: While more exploring is needed to establish this point, it might turn out that my analysis applies to all kinds of matchmaking. One reason that matchmaking has not previously been regulated may be that sexual standing, as we have seen, has not been taken seriously as a concern for social justice. It is time that was changed.

CONCLUDING REMARKS

What do we owe each other in the sexual sphere? That is the question this thesis set out to answer. I argued that in the sexual sphere, we owe each other non-interference, equal standing, and choice improvement. The best way to protect our interests in the sexual sphere is through the theory I developed in the thesis. According to this theory, formal and informal institutions' features should provide individuals with opportunities to develop sexual standing and follow sexual life plans.

Drawing on feminist theory, sociology, empirical political science, digital ethics, epidemiology, computer science, and science and technology studies, this thesis constitutes an extension of liberal contractualism into the intimate realm of sex, dating, and nesting. I have, in other words, presented a liberal egalitarian theory of social justice for the sexual sphere. It provides the first feminist critique – and extension – of Scanlon's contractualism and the first extension of his Value of Choice view that incorporates empirical research on social norms and social norms in general.

I argued that to realise the claim to non-interference, we should implement a principle according to which people should not be wrongfully interfered with, as in not harmed, coerced, or disrespected, or non-tolerated. To realise the claim to equal standing, we should implement a sufficientarian principle of distribution of valuable opportunities to develop sexual standing in an adequate range of social settings. I argued that to realise the claim to choice improvement, the contractualist idea of a valuable choice set must be extended to sex. In this realm, I argued that a valuable choice set includes options through which we can set, develop, and follow our sexual life plan. When we consider whether a choice is valuable, we must consider the impact of social norms. I showed that the effect of social norms also bears on a person's substantive responsibility and that we have a duty to change harmful norms.

The theory I have provided in this thesis is one of several possible ways of explicating the three claims I argue we have in the sexual sphere. Naturally, I believe it is the best one. In addition to providing this theory, the thesis contributes to scholarship in a further way by opening a new research agenda to contractualists. Such an agenda would be concerned with further theorising sex, dating, and nesting, and working out the demands of social justice in the sexual sphere – what we owe each other concerning sexual standing and sexual life plans. I have suggested many potential angles and approaches to future theorising in this kind of 'just sex theory'.

At the outset, I argued that to be plausible, any such theory must incorporate at least four features that characterise the sexual sphere: people's interest in being vulnerable, a pluralism in sexual life plans, the significant value of choice, and inequalities in risk, desirability, and what we desire. As we now reach the end, an obvious question is whether the theory I have presented fulfils this requirement.

Turning first to vulnerability, I argued that because people generally show each other their psychologically or physically intimate parts in the sexual sphere, they become vulnerable to the other's actions and attitudes. Being vulnerable in this way is valuable, but at the same time, it puts one in a risky situation: it gives the other power over one and enables them to hurt one in ways people generally cannot. I argued that part of what it would mean to have a sexual sphere in which people could be genuinely vulnerable, with the risk of being harmed lowered, is that its social norms prescribe that people should be respected and cared for rather than taken advantage of. If the normative and empirical expectations of social norms were such that people should look out for each other's health and well-being, it would make less sense for individuals to go into sexual relationships thinking only about their own pleasure and status elevation or expecting it to be all about their partners'. I showed that a theory for the sexual sphere should direct its focus to harmful social norms, rather than primarily individual wrongdoing. I argued that social norms that allow

others to interfere with individuals' bodies or stigmatise them for their choices in the sexual sphere are wrongful and reasonably rejected. Further, my theory emphasises that wider demands of social justice apply in the sexual sphere – that we have claims to non-interference, equal standing, and choice improvement. By underscoring that what happens in this sphere is an issue not only for individuals but for society as a whole, it illustrates what it would mean to make individuals less vulnerable.

I highlighted that the sexual sphere is characterised by pluralism in sexual life plans and conceptions of the good and that we have strong reasons to want to have choices in the sexual sphere. By drawing on Scanlon's Value of Choice view, I provided an account that pays close attention to individuals' choice situations and demands that they be improved. That, I argued, allows people to choose their own reciprocal and non-degrading sexual life plan according to their conception of the good under genuinely valuable conditions. This theoretical device improves the possibilities for pluralism in the sexual sphere. The same is true for the principle of distribution of opportunities to develop sexual standing. Here, I drew on Cécile Laborde's work to argue that an opportunity to develop sexual standing is only valuable if it does not demand the agent to give up integrity-protected commitments. This condition protects pluralism by ensuring that no one has to trade sexual standing for commitments that are important, non-trivial and sincerely form part of their conception of the good. I presented the concepts of 'social norms-transformative' and 'social norms-sensitive' to describe policies that aim to change harmful social norms or protect people who live under such norms. By including both kinds of policies in my theory's toolkit, I can highlight that there is a plurality of ways to live and that policymaking should, as far as possible, ensure that people can live according to their idea of the good life without ending up harmed. Further, by focusing on improving people's choice situation in the sexual sphere, the sexual bases of self-respect takes seriously the fact that the value of choice is significant.

Finally, I highlighted that the sexual sphere is characterised by inequalities of at least three kinds: exposure to harm and risk, desirability, and desire. Turning first to inequalities in exposure to harm and risk, I argued that addressing the harm non-consensual interference causes requires incorporating the claim to non-interference – as liberalism has traditionally done. However, by adding the principles for the distribution of opportunities to develop sexual standing and opportunities to follow sexual life plans, my account highlights that many relationships – between partners and potential partners – are unjustly unequal with regards to these things. This is important in relation to harm and risk, as a person who does not have opportunities to develop sexual standing and follow their sexual life plan is more likely to end up in relationships that are harmful to them or live according to someone else's conceptions of the good.

The idea of sexual standing tracks whether a person is seen as a potential partner for a sexual relationship in a non-degrading way by some relevant others. It draws on the discussion about social standing in the egalitarian literature by extending the ideas of that discussion into the sexual sphere. The relevant-others and non-degrading conditions block the sexual status that a person is given due to, or in combination with, racial fetishisation, degradation or exploitation. These conditions set the sexual standing concept apart from the concept predominantly used to measure sexual status in the sociological literature: sexual capital. By introducing the novel sexual standing concept, I thus both intervened in the sociological literature on the sexual sphere and enlarged the political theoretical and moral philosophical toolbox. In sum, emphasising that policies must ensure that people have valuable opportunities to develop sexual standing, my theory takes seriously existing inequalities in exposure to harm and risk in the sexual sphere.

Any theory of social justice must be able to tell us which inequalities are morally or politically unjustifiable and which ones are regrettable but not issues of justice. By showing that we have a claim to be in relationships of equality, even in the sexual sphere, I have gone some way to correct

the common assumption that there are no unjust inequalities in desirability. As noted, I have emphasised the claim to equal standing and its explication in the sexual sphere as the distribution of opportunities for sexual standing. My view can explain when a person is owed better circumstances to develop sexual standing and when they have exhausted any claims on others to be given better opportunities to develop it. We saw that a person with genuinely valuable opportunities to develop sexual standing in a range of social settings cannot complain about having less sexual standing or fewer opportunities to develop it relative to others.

My account accommodates the fact that the sexual sphere is characterised by inequalities in what people desire. By including the 'relevant others' condition in the sexual standing concept, I underscore that what matters to an individual is not whether she is desired generally – in contrast with sexual capital, sexual standing is something one can only have in the eyes of people one could consider a potential partner. This condition ensures that the theory will take people's particular desires seriously – as we saw in 3.1, for instance, a gay man desired by many women will be understood not to have sexual standing even if he has abundant sexual capital. By adding this new sexual-status-tracking concept to the literature, my theory explicitly addresses the sexual sphere-specific inequalities in desire. Further, my theory includes the distribution of opportunities to follow sexual life plans. The sexual life plan concept partially incorporates the idea of a life plan as something an individual should be able to set, develop and follow, which has been central to liberal egalitarianism and liberalism in general. In our societies, opportunities to follow such plans are unequally distributed. Some individuals have sexual life plans that align with social norms, and some have unjustly stigmatised sexual life plans. Including the choice improvement principle enables the theory to underline that we owe each other to tend to such inequalities. Compared to the traditional liberal approach to the sexual sphere, the mere non-interference approach, my account goes a long way to level inequalities in desire. The sexual standing and sexual life plan

concepts can be operationalised and measured in empirical studies in political science, economics, and sociology.

In addition to the four general characteristics of the sexual sphere, one might add a demand specifically for our contemporary moment. To be viable as a tool for theorising and policymaking in today's sexual sphere, a just sex theory must be able to shed light on issues arising from the digital nature of the initiation of sexual relationships. The dating app is essential for people to meet potential partners today. Therefore, I applied the theory on this part of the digital sexual sphere. My theory judged dating apps to be valuable because they provide opportunities to develop sexual standing and follow sexual life plans, something we are owed as a demand of social justice. It also provided us with reasons to see risks involved in their widespread usage, especially when it comes to the three claims we have in the sexual sphere.

Thus, I provided the first systemic political-theoretical analysis of dating app technology. It contributes to the field of digital ethics and the emerging field of the political philosophy and theory of digital technology. The introduction of the digital sexual sphere concept is a way to emphasise that the part of the digital world in which we engage in sexual relationships and interactions and expose ourselves in a sexual capacity needs particular ways of theorising. This contribution reaches outside the social sciences and provides guidance for law, policymaking and digital design in a largely unregulated area urgently needing reform. The chapter could potentially give researchers in computer science and science and technology studies with new questions, such as: Which amplification procedure maximises the development of sexual standing? 'How could dating app architecture provide more equal opportunities to follow sexual life plans?', and 'What should a dating app designers' code of conduct look like?'

Before we end, I will make some remarks about liberalism. I showed that, even if liberal contractualism has not previously been applied entirely in the sexual sphere, it has provided answers to questions in other parts of society surrounding vulnerabilities, pluralism, choice, and inequalities. For this reason, liberal contractualism was chosen as a springboard. However, another reason for starting with this form of liberal theory is that liberals are likely to be the most difficult to persuade about the argument that claims in the sexual sphere go beyond non-interference.

Even if many conservatives, feminists, and radicals would not use the language of claims, principles, owing, or even justice, their traditions have long argued that non-interference is not all that matters in the sexual sphere. Conservatives and feminists alike, although often for different reasons, have insisted that it is wrong to have certain kinds of non-interfering, consensual sex (outside of marriage, subordinating to men) and that relationships that typically involve sex are wound up with politics (marriage as a central, foundational institution; marriage as patriarchal oppression). Thus, even if these thinkers would not necessarily agree with my principles, they would likely be on board with the central commitment to seeing sex as political in a more profound sense and politics as something that should be pursued with implications for the sexual sphere in mind. The thesis shows precisely that this commitment is not only compatible with central liberal principles but is required by them.

To be sure, liberals and feminist liberals have traditionally paid close attention to the contemporary and historical debates about sex. Making essential contributions, they have addressed issues around consent and sexual violence, as well as markets in sexual and reproductive services such as sex work and gestational labour. Readers now finishing reading a thesis promising a theory of social justice for the sexual sphere might have wanted more on these issues.

In response, it is worth highlighting something I said early in the thesis. I have provided tools for thinking about what is at stake in the debates about markets, sexual violence, and consent. With the introduction of the novel concepts of sexual standing and sexual life plan, I have provided a way to think about the considerations that the parties on different sides in these debates can appeal to when demands are made. By arguing against the mere non-interference approach to the sexual sphere, I have enabled a new way for feminist liberals to approach issues such as sex work, pornography, sexual violence, or gestational labour. More importantly, however, and in terms that liberals must accept, I have shown that there is more at stake than merely the involved individuals' rights not to be interfered with, harmed or disrespected. In the sexual sphere, people can and should also demand that policies enable them to stand in relationships of equality with one another and that their choice situations are improved. A critical area for further theorising is the application of these findings to additional policy areas, such as the regulation of sex work.

I have delineated the scope of the thesis so that in terms of actual words written, the claims to equal standing and choice improvement take precedence over the claim to non-interference. It is into this non-interference category that many of the debates mentioned fall. My focus should not be read as entailing that this claim is less normatively important than the other two – they are all included in the theory. However, since the claims to equal standing and choice improvement in the sexual sphere remain less explored in the liberal tradition, one fundamental aim of the thesis has been to show that they have a place in the future of this tradition.

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